

Request for Proposals Professional Auditing Services

New York State Legislative Bill Drafting Commission
55 Elk Street
Albany, New York 12210
(518) 455-7602
June 13, 2014

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ATTACHMENTS:

- Attachment 1 Bid Forms (#1, #2, #3)
- Attachment 2 Appendix A – Standard Clauses for New York State Contracts
- Attachment 3 Procurement Lobbying Vendor Disclosure Forms
- Attachment 4 Vendor Questionnaire
- Attachment 5 Internal Control Act.
- Attachment 6 LBDC Accounting Policies and Procedures
- Attachment 7 2011 Auditor's Report to the New York State LBDC
- Attachment 8 Fiscal Year 2014 Per Diem Rates for Albany, New York

- Attachment 9 LBDC Organizational Chart
- Attachment 10 Bidders' Question Form
- Attachment 11 Representation Letter Issued by LBDC for the 2011 Audit

1.0 Purpose

This Request for Proposals (RFP) is issued to invite interested auditing firms to submit proposals to perform an audit of the LBDC's internal controls as required by the New York State Governmental Accountability Audit and Internal Control Act of 1999 (hereinafter referred to as the Internal Control Act). See Attachment 5.

2.0 Timetable

RFP Issuance:	June 13, 2014
Deadline for Vendor Inquiries:	June 30, 2014
Deadline for Bid Submission:	July 31, 2014, 12:00 Noon
Bid Opening:	July 31, 2014, 1:00 p.m.

3.0 Requirements

3.1 Nature of Services required by LBDC

3.1.1 Control Environment

Based on the listing of essential control objectives, the following represents an outline of the significant functional areas within the Legislative Bill Drafting Commission's Administration which should be subject to review:

- personnel, including appointment and change processing, benefits administration and time and attendance functions;
- procurement, including purchasing and contracts;
- disbursements, including both personal service (payroll) and non-personal service (maintenance and operations);

Note: The Commission does not generate Revenue* and relies on the Statewide Financial System (SFS) for its financial reporting. Therefore, the revenue/receipts cycle and the financial reporting cycle are not relevant to the system of internal accounting controls.

*The Commission does receive Revenue from the subscription sale of access to certain of its electronic data bases through a product known as the Legislative Retrieval System (LRS)/Legislative Digest and also for the proofreading of law books for publication, electronic transfer of data, and chapter effective date subscriptions. For the fiscal year ending March 31, 2014, revenues from these sources were \$1,382,761.

- inventory management; and
- data processing support for the above administrative and accounting functions.

As a discrete state agency, the LBDC uses the New York Statewide Financial System (SFS) and the PAYSERV payroll system operated by the Office of the State Comptroller (OSC) to account for

expenditures and encumbrances against authorized appropriations. Basic documents which are used to assist the LBDC in using SFS and PAYSERV include the following:

- Guide to Financial Operation (GFO);
- PAYSERV Documentation;
- Bulletins updating Payroll Process, GFO and Purchasing/Contracting; and

The basic document supporting the administrative control system is the LBDC Accounting Policies and Procedures Manual which is attached hereto as Attachment 6.

3.2 Scope of Audit; Form of Report to be Issued

Pursuant to the requirements of the Internal Control Act, the Firm shall perform an audit of the internal controls of the LBDC in accordance with generally accepted governmental auditing standards and shall report the auditor's opinion regarding LBDC management's assertion that the Legislative Bill Drafting Commission's internal controls maintained during the period of audit are adequate to meet the objectives of internal controls as defined in the Internal Control Act.

The LBDC shall issue to the Firm a representation letter similar to the letter from the 2011 audit (included in Attachment 11) which shall assert that as of October 10, 2011, the New York State Legislative Bill Drafting Commission's internal controls were established and functioning so as to adequately achieve the LBDC internal control objectives and to meet the criteria established by the State of New York, as set forth in the Internal Control Act. Significant control objectives and relevant controls referenced in the previous representation letter issued for the 2011 audit are part of the Auditor's Report included as Attachment 7.

It shall be the responsibility of the Firm to examine and report on the New York State Legislative Bill Drafting Commission's written assertion about the effectiveness of the Legislative Bill Drafting Commission's internal controls. Accordingly, the successful firm shall conduct tests of the relevant internal controls which relate to the Schedule of Significant Control Objectives to allow for an opinion to be rendered on the New York State Legislative Bill Drafting Commission's written assertion that internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objective of internal controls as defined in the Internal Control Act.

As required by law, the report shall identify internal control weaknesses which are significant and which have not been corrected, and actions that are recommended to correct these weaknesses. A listing of significant internal control objectives and relevant controls shall be included as an Appendix to the Legislative Bill Drafting Commission's representation letter in which the written assertion is set forth, and the letter and Appendix shall be included in the auditor's report. While the law requires the auditor to state any internal controls not reviewed, it is not anticipated that any internal controls related to the LBDC internal control objectives would not be reviewed.

3.3 Required Deliverables

A contract with the LBDC will include the deliverables listed below.

3.3.1 Audit Plan

Working from the LBDC's schedule of essential control objectives, provide an audit plan for the scope of services identified in section 3.2. The Audit Plan is subject to the approval of the Director of Administration.

Audit Plan Due: September 12, 2014.

3.3.2 Field Work

Complete field work for the scope of services identified in section 3.2.

Completion By: October 31, 2014. Audit Activity Will Take Place in Albany, New York.

3.3.3 Progress Meetings

At the LBDC's request, the auditor and the LBDC's Director of Administration will meet periodically at mutually convenient times to review audit progress and preliminary findings. At a minimum, such meetings will take place at the start and at the conclusion of field work and at the time of submission of the draft audit report.

3.3.4 Draft Report

Prepare, for the LBDC's review, a draft audit report. It is anticipated that the audit report will follow the format of the LBDC's 2011 report. See Attachment 7 - 2011 Auditor's Report to the New York State Legislative Bill Drafting Commission, and Management Representation Letter. The LBDC will review the draft report expeditiously, and the auditor should be available for meetings as may be necessary to this review.

If the draft report includes findings, each finding should contain sufficient information for LBDC management to initiate timely corrective action where necessary. Non-significant or immaterial findings should be excluded from the draft report, but should be communicated to the Director of Administration through a separate letter.

Draft Report Due: November 14, 2014.

3.3.5 Final Report

Upon resolution of all open issues, deliver eight (8) final signed audit reports to:

Final Report Due: December 12, 2014.

3.4 Administrative Matters

3.4.1 LBDC Staff Assistance Available

The Director of Administration, staff and responsible management personnel will be available during the audit to assist the firm by providing information, documentation and explanations. All staff contacts will be coordinated through the LBDC's Director of Administration.

3.4.2 Computer Resources

The LBDC will provide an internet connection in the auditors' work area. If additional requirements are anticipated, the firm shall so state within the Technical Proposal.

3.4.3 Work Area

Reasonable requests for work space, reproduction and printing capabilities will be provided for the firm's use at the LBDC during the audit engagement.

3.5 Overview of LBDC Administrative Organization

The LBDC is comprised of approximately 220 employees, organized into 8 major operational departments. The Director of Administration is charged with the responsibility for accounting and various administrative functions in the LBDC. The 8 major departments are:

- Administration
- Legal Services
- Document Control and Accountability
- Operations
- Data Processing
- Senate Revision
- Assembly Revision
- Legislative Retrieval System

4.0 General Conditions and Contract Requirements

4.1 Communications During the LBDC Procurement Process

State Finance Law sections 139-j and 139-k includes and imposes certain restrictions on communications between the New York State LBDC and an offeror/bidder during the procurement process. This New York State LBDC procurement is subject to a restricted contact period that begins with the date of this RFP and ends with notification of final award.

All contact with the NYS LBDC during this restricted contact period must be made through the official contact(s) designated for this procurement, unless it is a contact that is included

among certain statutory exceptions set forth in State Finance Law section 139j (3)(a).

New York State LBDC employees are also required to obtain certain information when contacted during the restricted contact period and make a determination of the bidder's responsibility pursuant to State Finance Law sections 139-j and 139-k. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the bidder is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found in State Finance Law sections 139-j and 139-k.

The official contacts designated for this procurement are:

Geralyn Ruhle
Director of Administration
(518-455-7602)

Address for all of the above:
NYS Legislative Bill Drafting Commission
55 Elk Street
Albany, NY 12210

4.2 Disclosure of Findings of Non-Responsibility

In responding to this solicitation, bidders must disclose prior findings of non-responsibility within the past four (4) years by any government entity, including but not limited to (i) impermissible contacts or other violations of State Finance Law sections 139-j and 139-k and (ii) the intentional provision of false or incomplete information to a governmental entity.

4.3 Inquiries

A "Bidder's Question Form" is included in the Attachments for bidders' use. The reply to such an inquiry will be communicated, by Addendum when deemed necessary, to all solicited vendors. Pre-bid inquiries answered by means other than Addenda will not be binding. Such an inquiry must be submitted in writing via FAX. Direct all questions to the following by the inquiry deadline of:

Geralyn Ruhle
Director of Administration
(518)455-7602

4.4 Submission of Proposals

Submit four (4) copies of the two-part Proposal, including a Technical Proposal and separate Cost Proposal, with each copy containing original signatures, in separate sealed envelopes. Label Proposals clearly:

TECHNICAL PROPOSAL – Bid for Professional Auditing Services – 07-31-14

COST PROPOSAL – Bid for Professional Auditing Services – 07-31-14

In order to be considered for selection, sealed bids must be received by the:

Director of Administration
New York State Legislative Bill Drafting Commission
55 Elk Street
Albany, New York 12210
no later than 12:00 noon on July 31, 2014

The LBDC will not consider late bids. The LBDC will not consider electronic, telephone, or faxed proposals. The envelope in which the bid is enclosed must be addressed as stipulated. All blank spaces in the bid form must be filled in as noted and no changes are acceptable in the phraseology of the bid. Bids that are illegible or that contain any omissions, erasures or alterations may be rejected. The bid shall be made in the name of the firm or individual under whom business is conducted.

A late bid not eligible for consideration will be returned unopened with notification of the reason for its refusal.

The LBDC reserves the right to cancel all or part of this project.

During the proposal evaluation process, the LBDC reserves the right, where it may serve the LBDC's best interest, to request written clarification from prospective firms, or to allow corrections of errors or omissions, or to request bidders to attend a personal interview.

The LBDC reserves the right to retain all proposals submitted regardless of whether the proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the LBDC and the firm selected.

Bidders who submit proposals do so entirely at their own cost. There is no expressed or implied obligation for New York State or the LBDC to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

4.5 Bid Quotation

The bid quoted shall cover the cost of all labor and materials to furnish all of the services and the performance of all work set forth in this document to the satisfaction of the LBDC.

Prepare each bid on the official forms furnished by the New York State LBDC. Enter all amounts in numerals in whole dollar amounts. Make no erasures, cross-outs, whiteouts, write-overs, obliterations, or changes of any kind in the Bid Form phraseology, in the entry of unit prices, or anywhere on the Bid Form. Fill in all blank spaces legibly. An illegible entry may disqualify the bid in its entirety. If a mistake is made, use a new Bid form. No post bid meetings will be afforded to any bidder to explain or clarify illegible or changed

entries.

4.6 Proposal Effective Period

The bid proposal must remain in effect for at least ninety (90) days following the final date for submission of bids.

4.7 Contract Award

The responses to this RFP shall be evaluated based upon cost, the firm's ability to adequately address the audit requirements stated herein and the firm's past experience in performing similar work. The LBDC reserves the right to evaluate and reject any or all bids; and to waive technicalities, irregularities, and omissions. The LBDC may also solicit new proposals if in the LBDC's judgment the best interest of the State will be served. This RFP, in addition to indicating the contents expected in responses, is intended to generally describe the terms, conditions and requirements to be incorporated into the fully executed contract, the anticipation of which may aid the bidder in their decision as to whether or not a proposal will be submitted. Submission of a bid indicates acceptance of all the conditions outlined in this RFP. This RFP shall become part of the fully executed contract. Unsuccessful bidders may contact the New York State LBDC in order to request a debriefing as to the reasons why the proposal or bid submitted by the bidder was unsuccessful. Requests shall be made in writing within 30 days of notification that contractor was unsuccessful.

4.8 Save Harmless Clause

The contractor shall agree and stipulate that it will assume all risk of liability in the performance of services to be provided under this bid proposal and that they will be solely responsible and liable for damages resulting from all accidents and injuries to person(s) or property; and shall agree to indemnify, keep and hold harmless the State of New York, its officers and employees for any and all claims for service performed under this proposal, including negligence, active or passive, and wrongful or improper conduct of the contractor, its agents, subcontractors or employees.

4.9 Standard New York State Clauses

The provisions of Appendix A, included as Attachment 2, will be made a part of the final contract and the parties shall agree to be bound by the terms and conditions thereof.

4.10 Participation of Minority and Women Owned Business Enterprises

The New York State LBDC recognizes the requirement to take affirmative action to ensure that Minority and Women Owned Business Enterprises are given the opportunity to participate in the performance of State of New York contracts. Accordingly, it is the policy of the State of New York to foster and promote the development of Minority and Women Owned Business Enterprises.

The vendor, by bidding on this proposal, acknowledges an understanding of this policy. The contractor is encouraged to assist the Assembly in the implementation of this policy by

taking appropriate steps, in situations under its direct control, to use minority and women employees, suppliers and subcontractors in the completion of this contract. The contractor pledges to make a good faith effort in soliciting and obtaining the participation of minority and women employees and certified Minority and Women Owned Enterprises (MWBE) on this project. Contractors shall use every good faith effort to provide for meaningful participation by MWBEs in the work required to be performed. A directory of minority and women-owned business enterprises is available on-line at www.esd.ny.gov/mwbe.html, or from:

ESD Division of MWBD
30 South Pearl Street
Albany, NY 12245
Telephone: (518) 292-5250

4.11 Tax Provisions

This project is exempt from sales tax. Contractors' purchases on behalf of this project may be tax exempt. Information about tax exemption and form ST-120.1 can be obtained at www.tax.ny.gov.

Purchases made by the State of New York are not subject to state or local sales taxes or federal excise taxes. The official State of New York Purchase Order or Voucher for materials, equipment and supplies is sufficient evidence to qualify the transaction exempt from sales tax under section 1116(a)(1) of the Tax Law.

Section 5-a of the Tax Law requires certain contractors, prior to approval of 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 specific period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specific period is registered to collect New York State and local sales and compensation use taxes. Contractors must also certify to the procuring state entity (New York State LBDC) that they filed the certification with the Tax Department and that it is correct and complete.

Therefore, successful bidders are required to complete two certifications, Forms ST-220-CA and ST-220-TD. These certifications must be completed by the lowest compliant bidder prior to the award of the contract. Please refer to the Tax website for detailed information: www.tax.ny.gov.

4.12 Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a contract awarded hereunder, bidder/contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies

that it will not utilize on such contract any subcontractor that is identified on the Prohibited Entities List. Additionally, bidder/contractor is advised that should it seek to renew or extend a contract awarded in response to the solicitation, it must provide the same certification at the time the contract is renewed or extended.

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

The New York State LBDC reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

4.13 Prior Performance

No bid will be accepted from or contract entered into with any entity that is in arrears to the State of New York, upon debt or contract, or who is in default as surety or otherwise upon any obligation to the said State of New York, nor shall a bid be accepted or contract entered into with any vendor whose performance of any previous work was unsatisfactory.

4.14 Subcontractors

If the bidder plans on utilizing subcontractors for a portion of the work to be performed, such subcontractors must be clearly stated in the bid response, including the subcontractor's name and the work to be performed by the subcontractor.

The LBDC reserves the right to disapprove the use of any proposed subcontractor. In such an event, the bidder shall submit the name of another subcontractor in like manner within the time specified by the LBDC. The bidder shall have and will make no claim for compensation if the LBDC disapproves any proposed subcontractor. The LBDC reserves the right to reject any bid if the names of proposed subcontractors, or additional subcontract information, are not submitted as required.

4.15 Incorporation of Terms

All documents comprising this RFP shall be incorporated into the contract awarded by the LBDC pursuant to this solicitation.

5.0 Two-Part Technical and Cost Proposal

5.1 Technical Proposal

See Section 4.4. Submission of Proposals for administrative details about submitting proposals. Proposals must consist of a Technical Proposal and a separate Cost Proposal.

Evaluations of the Technical and Cost Proposals received in response to this RFP will be conducted separately. The following material is required for the firm's Technical Proposal.

5.1.1 Contents of Technical Proposal

Sealed Envelope: Submit and label as per section 4.4 Submission of Proposals, and include the following:

5.1.1.1 Title Page: Must include the Proposal subject, the firm's name, the name, address and telephone number of the contact person and the date of the Proposal.

5.1.1.2 Table of Contents

5.1.1.3 Transmittal Letter: A signed letter of transmittal briefly stating the firm's understanding of the work to be done, the commitment to performing the work within the time periods required by the LBDC, and a statement that the firm agrees to accept the terms and conditions set forth within this RFP document, and that the proposal is a firm and irrevocable offer for a period of 90 days. State the name, title, address and telephone number of the person authorized to make representations for and bind the firm if other than the contact person identified on the title page. Provide the firm's taxpayer ID number.

5.1.1.4 Detailed Technical Proposal as follows.

5.1.2 Detailed Technical Proposal

There should be no cost information included in the Technical Proposal document.

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firm, and the particular staff assigned to the engagement, to undertake an independent audit of the LBDC, complying with Legislative Law requirements, in accordance with generally accepted governmental auditing standards, and the requirements of this Project Definition and Request for Proposals. The Technical Proposal should also specify an audit approach, citing the standards and form of report that will be provided to meet the LBDC requirements. The substance of the Proposal will carry more weight than its form or manner of presentation, and should be prepared simply and economically, providing a straightforward, concise delineation of the firm's capabilities to satisfy the requirements.

While additional data may be presented, the subjects identified herein must be included. Any proposal that fails to meet these requirements may be found non-responsive. Indicate, within the proposal, the reference numbers below to show where each requirement is addressed by the proposal.

5.1.2.1 License to Practice in New York State

Provide an affirmative statement regarding the NYS CPA licensure status of the professional staff assigned to the engagement.

5.1.2.2 Firm Qualifications and Experience

State the size of the firm's governmental staff, the location of the office from which the work on this engagement is to be accomplished, and the names and titles of the professional staff to be assigned to this engagement.

5.1.2.3 Assigned Staff Qualifications and Experience

Identify the individual staff to be assigned to the engagement and list the governmental audit experience of each person. Collectively, the team assigned to the audit must be qualified to provide an opinion on the LBDC's internal controls as defined in the Internal Control Act. Submit resumes for each assigned staff.

Indicate how the staff continuity and competency level over the term of the contract will be assured. Provide assurances that any substitutions in staff during the engagement will only be made after notification to and approval of the Director of Administration.

5.1.2.4 Prior Governmental Audit Engagements

List separately, in the order of total staff hours, governmental audit engagements with New York State entities that occurred within the last five years, as follows:

- Name of the Governmental Entity
- Date of audit engagement
- Type and scope of audit engagement
- Total hours of the audit engagement
- In-Charge staff assigned
- Location of the firm's office that performed the audit
- Client contact name and current phone number or e-mail for reference check

5.1.2.5 Specific Audit Approach

The proposal submitted should set forth the firm's anticipated approach to performing the services required by the LBDC. Refer specifically to the deliverables as set forth in section 3.3 Expected Deliverables. Provide an affirmative statement indicating that the audit shall be performed by an independent certified public accountant in accordance with generally accepted governmental audit standards (GAGAS). Identify specifically the audit standards that apply to the engagement.

5.1.2.6 Identification of Concerns or Problem Areas Anticipated

Identify and describe any potential concerns or problem areas based on the firm's understanding of the LBDC's prior audit report (see Attachment 7) or description of the LBDC's control environment. Identify the firm's anticipated approach to such issues.

5.1.2.7 Deliverables

Include the list of deliverables identified in section 3.3 Required Deliverables, and a statement about the firm's ability and commitment to providing these services and meeting the deadlines presented in this Request for Proposals.

5.1.2.8 Quality Assurance

Describe how the firm's quality assurance program will be applied to the audit engagement.

5.1.2.9 Form of Report to be Provided

Provide a sample of the form of report that is anticipated to be issued for this audit engagement.

5.1.2.10 Staff Hours

Provide a schedule showing projected hours by title of staff assigned for each deliverable identified in section 3.3 and/or for each major segment of the engagement.

5.1.2.11 Use of Subcontractors

If the firm proposes to use subcontractors for any part of the work, provide a letter from each proposed subcontractor(s) containing the following information:

- Signed statement indicating that the subcontractor understands the scope of the engagement as described herein, and is capable of fulfilling the requirements of the engagement as assigned by the firm signing the Proposal.
- Statement of the name, title, address and telephone number of the person authorized to make representations for and bind the firm if other than the individual signing the statement described above.
- Statement describing the size of the firm's governmental staff, the location of the office from which the work on this engagement is to be accomplished, and the names and titles of the professional staff to be assigned to this engagement.

Failure of the firm to submit the required subcontractor letter(s) with the

firm's proposal may be cause for rejection of the proposal. Subcontracting after a contract award has been made will require the advance written consent of the LBDC.

5.2 Cost Proposal

See section 4.4 Submission of Proposals for administrative details about submitting proposals, which must consist of a Technical Proposal and a separate Cost Proposal. The following material is required for the firm's Cost Proposal.

5.2.1 Contents of Cost Proposal

Sealed Envelope: Submit and label as per section 4.4 Submission of Proposals, and include the following:

All Bid Forms. Bidders must complete, sign and submit all three (3) bid forms which comprise the Cost Proposal and are attached to this RFP as Attachment 1. Failure to complete all bid forms may disqualify the bidder from consideration.

5.2.2 Fixed Cost Proposal

The Total of the Cost Proposal represents a not-to-exceed, all inclusive and firm cost for conducting all services required to accomplish the audit engagement pursuant to the requirements of the Internal Control Act, which requires the LBDC's internal controls to be reviewed in accordance with generally accepted governmental audit standards (GAGAS), and to include a report stating the auditor's opinion regarding LBDC management's assertion that the New York State LBDC's internal accounting and administrative controls maintained during the period July 1, 2014 through September 30, 2014, are adequate to meet the objectives of internal control, as defined in the Internal Control Act.

5.2.3 Hourly Rates by Staff Level

On Bid Form 1, indicate the total number of hours, and hourly billing rates by classification of personnel.

5.2.4 Travel Expenses

Reimbursement for the firm's travel expenses (meals, lodging and transportation) is subject to the same limitations as NYS Management/Confidential (M/C) employees. See Attachment 8 for current rates for reimbursement. All fieldwork will take place in Albany. Include total travel cost on the appropriate line of Bid Form 1.

5.2.5 Other Expenses

If additional expenses are anticipated, list and describe them separately on Bid Form 1 and include these costs in the Total of the Cost Proposal.

5.3 Proposal Evaluation

All proposals deemed to be responsive to the requirements of this RFP will be evaluated and scored for technical qualities and cost. The evaluation process will include separate technical and cost evaluations. All proposals submitted will be evaluated based on the "best value" approach, which optimizes quality, cost and efficiency, among responsive and responsible bidders. The LBDC, at its sole discretion, will determine which proposal best satisfies its requirements, and will award the contract based upon evaluation of all aspects of the project according to the LBDC's needs and the best interest of the State.

5.3.1 Evaluation Criteria

Evaluation criteria to be used to evaluate proposals may include, but not be limited to:

- Qualifications of the firm
- Relevant experience
- Past performance
- References
- Technical capabilities
- Approach to the audit
- Understanding of the scope of the audit
- Staffing plan
- Staff interviews, if interviews are requested by the LBDC
- Cost as a weighted factor

5.3.2 Technical and Cost Proposal Evaluation Factors

The evaluation of the Technical Proposal will result in a maximum of 60 points. The lowest Cost Proposal will receive the maximum of 40 points. The remaining Cost Proposals will be assigned points according to the following formula:

$$\text{Score for Proposal under Evaluation} = \frac{\text{Lowest Cost Proposal} \times \text{Maximum Points (40)}}{\text{Next Cost Proposal}}$$

5.3.3 Oral Presentations

During the evaluation process, the LBDC may, at its sole discretion, request any one or all firms to make oral presentations. Such presentations shall provide firms with an opportunity to address any questions that the LBDC may have. Not all firms may be asked to make oral presentations.

5.3.4 Final Selection

All respondents will be notified in writing of the final decision on auditor selection. The successful firm will be advised by the LBDC through a Letter of Intent, and will be contingent upon the successful negotiation of a contractual agreement between the LBDC and the firm. The RFP and the successful firm's proposal, including all written clarifications thereto, shall be part of the final contract.

6.0 Contract Term and Cancellation

This Request for Proposals and the Technical and Cost Proposals, including all Bid Forms submitted by the selected firm, will serve as the basis for, and will be incorporated into the contract with the LBDC.

New York State Appendix A "Standard Clauses for all New York State Contracts" shall be included as an appendix to the contract. (Appendix A is included in this document as Attachment 2). The selected firm will also be bound by the provisions listed below:

6.1 General Provisions

- 6.1.1** The relationship of the Contracting Auditor to the LBDC shall be that of an independent contractor. In accordance with such status as an independent contractor, the Contracting Auditor covenants and agrees to act consistent with such status; to neither hold itself out as, nor claim to be, an officer or employee of New York State by reason hereof; and not to, by reason hereof, make any demand, or application to or for any right or privilege applicable to an officer or employee of New York State, including but not limited to, worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.
- 6.1.2** With respect to any contract or employment as an independent contractor or employee of New York State, or any New York public corporation as defined in Section Sixty-six of the New York State General Construction Law, or any agency or department of either, pursuant to the terms of any other present or future Agreement, express, implied, entered into with such entity; if any, the Contracting Auditor hereby covenants and represents that there is no conflict as to hours required to be worked or duties required to be performed pursuant to the terms of this proposal and the aforesaid contract or employment.
- 6.1.3** The LBDC may, at any time, by written notice, make changes in or additions to work or services within the general scope of this contract. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of this contract, an equitable adjustment shall be made in the price using the billing rates set forth in Bid Form 1, or time of performance, or both, and the Contracting Auditor shall be notified in writing accordingly. Any claim by the Contracting Auditor for adjustment under this clause must be asserted within thirty days from the date of receipt by the Contracting Auditor of the notification of change; provided however, that the LBDC, if it decides that the facts justify such action, may receive and act upon such claim asserted at any time. Nothing in this clause shall excuse the Contracting Auditor from proceeding with this contract as modified.
- 6.1.4** If the Contracting Auditor is unable to complete the deliverable within the proposed hours and cost, to the acceptance standards agreed to prior to work beginning, the Contracting Auditor must absorb all additional costs associated with completing that deliverable to acceptable standards.

6.2 Extra Work

- 6.2.1 If the Contracting Auditor is of the opinion that any work it has been directed to perform is beyond the scope of the contract and constitutes extra work, it shall promptly notify the LBDC, in writing, of this fact prior to beginning any of the work. The LBDC shall be the sole judge as to whether or not such work is in fact beyond the scope of the contract and constitutes extra work. In the event that the LBDC determines that such work does constitute extra work, using the **billing rates set forth in the Bid Form 1, it shall provide extra compensation to the** Contracting Auditor in a fair and equitable manner. If necessary, an addendum shall be prepared to the contract between the LBDC and the Contracting Auditor.
- 6.2.2 In the event of any claims being made or any actions being brought in connection with the contract, the Contracting Auditor agrees to render to the LBDC all assistance required by the LBDC. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner using the billing rates set forth in the Schedule of Professional Fees and Expenses. In all cases provided for in the contract for the additional services above described, the LBDC's directions shall be exercised by the issuance of an addendum to the contract, if necessary.

6.3 Provision for Equal Employment Opportunity

The New York State LBDC recognizes the need to take affirmative action to ensure that minority and Women-Owned Business Enterprises and minority and women employees and principals are given the opportunity to participate in the performance of contracts of the LBDC.

Accordingly, it is the policy of the New York State LBDC to foster and promote the participation of such individuals and business firms in contracts of the LBDC. Submission of a proposal indicates the Contracting Auditor's acknowledgment of understanding and support for the social policy herein stated. The Contracting Auditor shall be expected to exert a good faith effort to solicit the participation of such individuals and firms as partners, joint ventures, subcontractors, suppliers and employees and to report the results of such efforts to the LBDC.

6.4 Work Paper Retention and Availability

- 6.4.1 The LBDC or its authorized representative, and other State agencies authorized by State law, shall have access to and the right to examine the books, documents, papers, or records of the Contracting Auditor relating to the contract during the progress of the services to be performed by the Contractor and for a period of six years after final payment under the contract. The Contracting Auditor shall make all records available within New York State.
- 6.4.2 The work papers prepared by the Contracting Auditor during this review are its own property, although copies thereof and access to them shall be made available to the LBDC upon request. The Contracting Auditor shall cooperate with other

independent auditors conducting audits of the LBDC's records and with any subsequent auditors for the examination of the LBDC's financial statements upon the specific written request of the LBDC for a period of six years after final payment under the contract. The LBDC reserves the right to extend this retention period beyond six years by so notifying the Contracting Auditor in writing.

6.4.3 The Contracting Auditor agrees to make personnel available to furnish adequate explanation of all data, materials, and working papers developed during the projects at any reasonable time during the period of six years following the date of the final report delivered to the LBDC. Reasonable time is defined to be during normal New York State business hours and should not exceed 40 hours. Any additional agreed upon time as authorized by the LBDC shall be billed by the Contracting Auditor using the rates set forth in Bid Form 1.

6.5 Reports and Findings

Any and all reports and findings rendered to the LBDC by Contracting Auditor shall be the exclusive property of the LBDC and subject to its exclusive use and control. The Contracting Auditor herewith waives any and all rights to such reports and findings and the control thereof.

The Contracting Auditor shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during the course of its performance of the terms of the contract.

6.6 Bond Requirement

The LBDC may require a Performance Bond, in such amount as the LBDC shall prescribe, for the faithful performance of contract, from the Contracting Auditor or approved subcontractor.

6.7 Contract Term and Renewal

The initial term of the contract awarded pursuant to the evaluation of responses to this RFP shall be for an initial period of three (3) years. The contract may be renewed for one, three (3) year period at the sole option of the LBDC for the purpose of conducting a second audit. The option to renew the contract shall be exercised by written notice from the LBDC to the Contractor no later than thirty (30) days prior to the expiration of the initial term of the agreement.

6.8 Termination

The LBDC reserves the right to cancel the complete contract or any part thereof, at any time, by giving the vendor thirty (30) days written notification.

The NYS LBDC reserves the right to terminate this contract if it found that the certification provided by the offeror/bidder in accordance with NYS Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the NYS LBDC may exercise its termination right by providing written notification to the contractor.

The performance of work under this contract may be terminated, in whole or from time to

time in part, by the LBDC whenever for any reason the LBDC shall determine that such termination is in its best interest. Termination of work hereunder shall be effected by delivery to the Contracting Auditor of a Notice of Termination specifying the extent to which performance or work under the contract is terminated and the date upon which such termination becomes effective.

- 6.8.1 After receipt of the Notice of Termination, the Contracting Auditor shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the Notice.
- 6.8.2 The Contracting Auditor shall submit its termination claim to the LBDC promptly after receipt of a Notice of Termination, but in no event later than thirty days from the effective date thereof, unless one or more extensions in writing are granted by the LBDC upon written request of the Contracting Auditor to submit **its termination claim within the time allowed, the LBDC may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of termination and shall thereupon pay to the Contracting Auditor the amount so determined.**
- 6.8.3 If the termination is brought about as a result of unsatisfactory performance on the part of the Contracting Auditor, the value of the work performed by the Contracting Auditor prior to termination shall be established by the LBDC.
- 6.8.4 The Contracting Auditor agrees to transfer title to the LBDC and deliver in the manner, at the time, and to the extent, if any, directed by the LBDC, such information and items which, if the contract had been completed, would have been required to be furnished to the LBDC.

6.9 Contracting Auditor's Liability

The Contracting Auditor shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the Contracting Auditor, its sub-contractors, agents or employees, in the performance of its service under the contract. Further, it is expressly understood that the Contracting Auditor shall indemnify and save harmless the LBDC from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the Contracting Auditor under the contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the Contracting Auditor's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing in the contract shall create or give to third parties any claim or right of action against the Contracting Auditor or the LBDC beyond such as may legally exist irrespective of this Article or this Agreement.

6.10 Disputes and Dissatisfaction

In the event the LBDC or the Contracting Auditor is dissatisfied with the other's

performance under the contract, either party must so notify the other in writing. The other party may then make every good faith effort to solve the problem or settle the dispute amicably, including meeting with a party's representatives to attempt diligently to reach a satisfactory result.

6.11 Notices

All notices, demands, instructions, claims, approvals and disapprovals required to be given to either party hereto shall be deemed to have been given properly if sent by registered mail addressed to the party at the addresses hereinbefore set forth or to such other address as either party shall have notified the other in writing to be the proper mailing address.

6.12 Waiver, Modification, Execution, or Severability

6.12.1 No waiver or modification of the contract or of any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the parties hereto, and no evidence of any waiver or modification shall be offered or received in evidence in any action between the parties hereto arising out of or affecting the contract, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of this paragraph may not be waived except as herein set forth.

6.12.2 The written contract shall contain the sole and entire agreement between the parties and shall supersede any and all other agreements between the parties.

6.12.3 The parties hereto shall execute such other and further documents as may be required to effectuate the terms of the contract.

6.12.4 The terms, clauses and provisions of the contract are intended to be severable, and the unconstitutionality, illegality or unconscionability of any terms clause or provision shall in no way effect the enforcement of any other term, clause or provision.

6.13 Additional Approvals

The contract awarded pursuant to the evaluation of the responses to this RFP, as well as any amendments, shall be subject to the approval requirements of the Offices of the Attorney General and State Comptroller.

7.0 Payment

Progress payments will be made on the basis of a contractor's invoice submitted to the New York State Legislative Bill Drafting Commission, Department of Administration, 55 Elk Street, Albany, New York 12210. Invoice will detail hours worked during the period, by classification of personnel consistent with the Bid Form 1 submitted with the firm's Cost Proposal. Billing will cover a period of not less than a calendar month. From each billing, ten (10) percent will be withheld pending delivery of the Final Report. The Comptroller of the State of New York shall have the right to audit services, costs and expenses as submitted.

8.0 Vendor Responsibility

The New York State LBDC is committed to ensuring that its contracts and purchase orders are awarded to vendors who have the integrity to justify the award of public dollars and the capacity to fully perform the requirements of the contract or purchase order. Therefore, the LBDC reserves the right to make additional inquiries about a vendor's legal authority to do business and their integrity, financial and organizational capacity, and past performance in order to obtain reasonable assurance that the vendor is responsible. For contracts valued at over \$100,000, before a contract is awarded, the vendor will be required to complete a Vendor Responsibility Questionnaire. In lieu of this requirement, the vendor may submit a copy of such Questionnaire completed within the last year and filed with another State agency. Due process will be afforded to any vendor deemed by the LBDC to be non-responsible.

9.0 Failure to Comply

Should the successful bidder be unable to perform in accordance with the response time set forth in this document, the LBDC shall have the right to seek and utilize the emergency services of an alternate vendor and shall be entitled to a credit from the successful bidder equal to the charges and costs incurred by the LBDC for such service.