

**STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER**



REQUEST FOR PROPOSALS

RFP19-03

PROFESSIONAL AUDITING SERVICES FOR THE AUDIT OF OSC'S SYSTEM OF INTERNAL CONTROL

ISSUED: JULY 18, 2019

**DIRECTOR OF FINANCIAL ADMINISTRATION
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET, STOP 13-2
ALBANY, NY 12236-0001**

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1.0 CALENDAR OF EVENTS

RFP19-03 PROFESSIONAL AUDITING SERVICES FOR THE AUDIT OF OSC'S SYSTEM OF INTERNAL CONTROL	
<u>EVENT</u>	<u>DATE</u>
Issuance of Request for Proposals	July 18, 2019
Deadline for Submission of Written Questions	August 8, 2019 4:00 p.m. ET
Responses to Written Questions Posted	August 15, 2019
Deadline for Submission of Proposals	August 22, 2019 4:00 p.m. ET
Interviews, if determined to be necessary (not earlier than the week of)	September 9, 2019
<u>Anticipated</u> Notification of Award (not earlier than)	November 4, 2019
<u>Anticipated</u> Approval of Contract (not earlier than)	December 26, 2019
<u>Anticipated</u> Commencement of Work	December 26, 2019

2.0 EXECUTIVE OVERVIEW

2.1. Overview

Through this Request for Proposals (“RFP”), the Office of the State Comptroller (“OSC”) of the State of New York (“State”) is seeking competitive proposals from qualified independent certified public accounting firms to conduct an independent audit of existing internal controls at OSC as required by Article 45 of the Executive Law (“Executive Law”) and to provide services as further detailed in **Section 3.0** (Services).

2.2. Important Information

This RFP outlines the terms and conditions, and all applicable information required for submission of a proposal. Proposers should pay strict attention to the Deadline for Submission of Proposals in **Section 1.0** (Calendar of Events) to prevent disqualification. To ensure compliance with these requirements and to prevent possible disqualification, Proposers should follow the format and instructions contained in this document. **Appendix D**, the OSC Executive Order on Procurement Integrity and the OSC Procurement Integrity Procedures, impacts the entire procurement and potential Proposers are encouraged to read and understand these procedures as a first step in this RFP.

The Proposer is required to review **Appendix A**, Standard Clauses for NYS Contracts. **Appendix A** contains important information related to the contract to be entered into as a result of this RFP and will be incorporated, without change or amendment, into the contract entered into between OSC and the selected Proposer. By submitting a response to the RFP, the Proposer agrees to comply with all the provisions of **Appendix A**.

The Proposer is also required to review, and is requested to have Legal counsel review, **Attachment J**, the Draft Contract (“Agreement”) as the Proposer must be willing to enter into an agreement substantially in accordance with the terms of **Attachment J** should the Proposer be selected for contract award.

2.3. Term of the Agreement

The term of the Agreement will be for a period of four years from the date of contract approval by OSC's Bureau of Contracts.

3.0 SERVICES

This Section describes the auditing services and deliverables ("Services") that are required to be provided by the selected Proposer. Proposer must be able to provide all of these Services throughout the term of the Agreement.

NOTE: Proposers will be required to provide responses that address all of the requirements of this Section as part of its Technical Proposal.

3.1. Scope of Services

The selected Proposer must conduct two independent audits of OSC's compliance with existing administrative and programmatic internal controls in accordance with Article 45 of the Executive Law (**Attachment H**), to determine OSC's compliance with the Standards for Internal Control in New York State Government ("Standards") issued by the New York State Comptroller in March 2016 (http://www.osc.state.ny.us/agencies/ictf/docs/intcontrol_stds.pdf). In performing the Services, the selected Proposer must follow Generally Accepted Government Auditing Standards ("GAGAS") as set forth by the U.S. General Accountability Office ("GAO") and shall include a report on whether OSC's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the specific objectives of internal controls as defined in the Standards.

OSC's most recent Internal Control Report (2015) has been provided separately as **Attachment I**.

There will be two audits of OSC's internal controls. The first audit is estimated to be begin in 2019 ("2019 audit"), while the second is estimated to begin in 2022 ("2022 audit"). Each audit will review the internal controls used by OSC. Specific dates will be determined in conjunction with OSC's Internal Control Officer after award is made. **The majority of field work must be conducted at OSC's offices at 110 State Street, Albany, NY. Hourly rates must be inclusive of all support services, travel, supplies, meals, lodging and expenses related to the performance of the Services.**

Proposers' internal controls audits will cover a comprehensive scope of administrative and programmatic internal controls for operations throughout the organization, in addition to controls related to financial transactions. OSC's system of internal control manages critical State and agency functions including, but not limited to, the State's accounting system, the Common Retirement Fund, the State's payroll system, State contract and expenditure review, and the State's Office of Unclaimed Funds.

The selected Proposer will discuss audit observations with OSC's Internal Control Officer, and any additional OSC staff the Internal Control Officer judges to be appropriate, prior to issuing a draft report. During the course of field work, the selected Proposer must discuss issues with appropriate OSC staff.

All audit documentation and reports must be retained for the balance of the calendar year in which they are made and for six additional years thereafter unless the selected Proposer is notified in writing by OSC of the need to extend the retention period. Audit documentation must contain sufficient information to enable an experienced auditor, who has had no previous connection with the audit, to understand the basis for audit staffs' judgments and conclusions. Such documentation, upon request, must be made available to OSC or its designee.

Since OSC is subject to various other external audits and has its own internal audit function, the selected Proposer must, to the extent possible, review and rely upon the results of these audits to minimize any duplication of audit work.

The following audit reports will be made available.

A. State of New York Comprehensive Annual Financial Report (CAFR)

This report covers an audit of the financial statements of the governmental activities, the business-type activities, the aggregate discretely-presented component units, each major fund, and the aggregate remaining fund information of the State of New York. The 2018 Report may be accessed on the OSC website at:

<https://www.osc.state.ny.us/finance/finreports/cafr/2018-cafr.pdf>

B. New York State and Local Retirement System Comprehensive Annual Financial Report (CAFR)

This report covers an audit of the statement of plan net assets of the New York State and Local Retirement System and the related statement of changes in plan net assets. The 2018 Report may be accessed on the OSC website at:

https://www.osc.state.ny.us/retire/word_and_pdf_documents//publications/cafr/cafr_18.pdf

C. Internal Audit Reports

Internal Audit Reports will be made available to the selected Proposer which cover audits of many of OSC's programs, operations, and control systems.

Other reports relevant to the Services may exist and will be made available to the selected Proposer as needed.

3.2. Mandatory Deliverables

The selected Proposer must provide the following mandatory deliverables ("Deliverables") for each of the two audits to be conducted during the term of the resulting Agreement:

A. Deliverable One: Detailed Audit Plan

The selected Proposer shall deliver a detailed audit plan detailing how it will proceed with its review of OSC's systems of internal control ("Audit Plan") to OSC's Internal Control Officer within five business days of commencement of the engagement (date of opening conference scheduled by OSC). The Audit Plan must include description on the approach the Proposer will use to assess if OSC's administrative and programmatic internal controls system is established and functioning in a manner to achieve the specific objectives of internal controls as set forth by Executive Law and the Standards. This Audit Plan must be approved by the OSC Internal Control Officer in writing (which may be provided by email) prior to audit work commencing. A separate detailed audit plan will be provided upon commencement of the audit to be conducted in 2022 and will include a listing of the number of hours per title per deliverable in a manner similar to **Attachment F**. The number of hours per title per deliverable should match the titles and hours provided in **Attachment C** for the 2022 audit.

B. Deliverable Two: Audit Work

The selected Proposer shall conduct an internal control audit that will cover a 60-day period (to be mutually agreed upon by the selected Proposer and OSC). The audit work must meet all criteria as stated in the approved Audit Plan. During the course of field work, the selected Proposer must discuss issues with appropriate OSC staff and OSC's Internal Control Officer.

C. Deliverable Three: Draft Report

The selected Proposer will discuss audit observations with OSC's Internal Control Officer, and any additional OSC staff the Internal Control Officer deems appropriate, prior to issuing a draft report. Following discussions, the selected Proposer shall deliver a draft report on OSC's system of internal controls within 60 days of commencement of the engagement. The report, addressed to the Comptroller, shall contain the following:

i. Opening Paragraph

A scope paragraph indicating that the audit of OSC's system of internal control was conducted in accordance with GAGAS and that the audit was limited to the system of internal control examined

separately from any financial statements. This paragraph should also contain a statement indicating that the internal controls were reviewed in accordance with standards established by the American Institute of Certified Public Accountants (AICPA) and the GAGAS. The scope paragraph must also reference the selected Proposer's procedures for identifying the types of errors and irregularities that may occur, determining the internal control procedures that should prevent or detect such errors and irregularities, determining whether the necessary procedures are prescribed and followed, and evaluating any significant weaknesses. The selected Proposer must state either that all significant internal controls related to the scope and objectives were reviewed, or that all such controls were reviewed except for those described. It is anticipated that all significant internal controls related to the control objectives will be reviewed.

ii. Report Body

The report shall include:

- a. A statement regarding whether OSC's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal controls, in accordance with the Executive Law, and as prescribed in the Standards;
- b. Identification of OSC's core functions and the significant internal controls associated with such functions. The report must identify those internal controls evaluated and those not evaluated; and
- c. Identification of internal control deficiencies or combination of deficiencies that severely reduces the likelihood that OSC will achieve its objectives, accompanied by the selected Proposer's recommendations for corrective action to address such deficiencies.

iii. Findings

Each finding should contain sufficient information for OSC management to initiate timely corrective action. All findings should be grouped by applicable OSC Division or Office. Non-significant or immaterial findings should be excluded from the report but should be communicated to OSC management before the end of the engagement.

D. Deliverable Four: Final Report

The selected Proposer shall deliver a final report on OSC's system of internal control within seven business days of OSC's approval of draft report.

3.3. Acceptance of Deliverables

All Deliverables will be submitted in a comprehensive and professional manner, address all Deliverable requirements, and be thoroughly edited. Submission of Deliverables must occur within the timeframe allowed for Deliverable submission as indicated in the approved Audit Plan. Upon completion of each Deliverable, with the exception of Deliverable Two, the selected Proposer will submit the required Deliverable to the OSC Internal Control Officer for approval. OSC shall complete its review of the Deliverable within ten business days. OSC may request, in writing, an extension when the review by OSC cannot be completed within the ten business day period or other mutually agreed upon timeframe. The selected Proposer's approval of such extension shall not be unreasonably withheld. The selected Proposer will be notified in writing (which may include email) of approval of each Deliverable by OSC.

In the event that a submitted Deliverable is not satisfactory, the OSC Internal Control Officer will notify the selected Proposer; any notification will include a list of Deliverable deficiencies. The selected Proposer will be required to address all cited Deliverable deficiencies and resubmit the Deliverables within a mutually agreed upon timeframe. Any resubmission of a rejected Deliverable shall include responses to all OSC comments and corrections for noted Deliverable deficiencies. OSC acknowledges that large, complex documents may require more time to correct Deliverable deficiencies and may, at its sole option, provide a longer period of time in its written notice to correct the Deliverable deficiencies.

Any Deliverable deficiencies noted by OSC that relate to resubmitted Deliverables will be reported to the selected Proposer in the same manner as the Deliverable deficiencies related to the original submission of the Deliverable.

3.4. Compensation

Compensation shall be payable for each audit upon OSC's acceptance of Deliverable Four. Compensation will be based on selected Proposer's actual number of hours utilized to provide the Deliverables, limited by the Total Not-to-Exceed Cost, i.e., if fewer hours are actually utilized than those set forth in Proposer's Cost Proposal, compensation will be less than the Total Not-to-Exceed Cost; if more hours are actually utilized, compensation will be limited to the Total Not-to-Exceed Cost.

3.5. Assistance Available During Audit

A. State Comptroller Staff Assistance

OSC staff will be available during the audit to assist the selected Proposer. While OSC staff will pull documents, reproduce files and respond to selected Proposer's inquiries on an intermittent basis, they cannot be expected to prepare schedules or otherwise provide full-time assistance.

B. Computer Time

OSC will make computer time available to the selected Proposer. OSC Information Technology staff will be available to provide system documentation and explanations. The selected Proposer should have computer equipment compatible with that of OSC and should provide all necessary audit software.

The selected Proposer shall not connect any non-OSC computer or telecommunications equipment to the OSC network **without the express written permission of OSC**; personal and corporate laptop computers are included in this prohibition.

The selected Proposer shall be required to comply with all applicable facility and information security policies and procedures (both present and future) of OSC in performing the Services under this Agreement.

C. Work Area

Work areas, stationary telephone(s), desks, chairs, file cabinets, and reproduction capabilities will be provided to the selected Proposer during the audit. OSC will provide limited desktop computers for access to necessary documents. Equipment, such as binders, personal computers, calculators, etc., is to be provided by the selected Proposer.

4.0 MINIMUM QUALIFICATIONS TO PROPOSE

Proposers must demonstrate that they meet the Minimum Qualifications outlined below in their response to this RFP. Subcontractors cannot be used to meet the Minimum Qualifications.

Proposer must:

- 4.1.** Be an independent Certified Public Accounting ("CPA") firm that is registered and in good standing with the New York State Board of Accountancy, or with the State Board for Accountancy where licensed;
- 4.2.** Be registered to practice public accounting in New York State and provide a copy of the firm's current registration;
- 4.3.** Submit a list of client(s) and dates that demonstrate that it has previously conducted a government audit within the last five years that included the review of internal controls, using GAGAS, and a sample audit report resulting from one of the government audits conducted within the last five years;
- 4.4.** Submit a statement signed by an authorized signatory that the firm is independent of OSC in the accordance with the AICPA and government auditing standards and is able to conduct the proposed audit; and
- 4.5.** Submit a statement signed by an authorized signatory that, collectively, the team assigned to the audit is qualified to provide an opinion on whether OSC's system of internal control is established and functioning in a manner that provides reasonable assurance that it meets the objectives of internal controls as described in the Executive Law and as prescribed in the Standards.

Failure to meet these Minimum Qualifications will result in a proposal being found non-responsive and

eliminated from consideration.

5.0 ADMINISTRATIVE INFORMATION

NOTE: From time to time, addenda to procurement documents may be issued or such documents may be amended. It is the Proposer's responsibility to become aware of any such amendments and/or addenda prior to submission of a proposal. All amendments and/or addenda to procurement documents will be posted to the OSC website at www.osc.state.ny.us/procurement/index.htm. Only the OSC website will contain all amendments and/or addenda to the procurement documents, including the Responses to Written Questions. Proposers should review the OSC website prior to submission of a proposal to ensure that they have all information required to submit a complete and responsive proposal.

The following administrative information will apply to this RFP. Failure to comply fully with this information may result in disqualification of your proposal.

5.1. Procurement Integrity/Restrictions on Communication

This procurement is subject to, and shall be conducted in accordance with, the OSC Executive Order on Procurement Integrity and the OSC Procurement Integrity Procedures attached to this RFP as **Appendix D**, which:

- (i) Require a Proposer to make contact only with the OSC Director of Financial Administration or her designee(s) and
- (ii) Prohibit a vendor from exerting or attempting to exert any improper influence relating to its proposal. "Improper influence" means any attempt to achieve preferential, unequal, or favored consideration of a proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law §§ 73 and 74.

All inquiries concerning this procurement must be addressed to the Director of Financial Administration as Contracting Officer, or her designee(s) at OSC, via email (preferred) to RFP@osc.ny.gov or via hard copy mail to:

Director of Financial Administration
Questions for RFP19-03, Professional Auditing Services for the Audit of OSC's System of Internal Control
Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001.

During the "restricted period", as defined below, no Proposer-initiated contact with any OSC official shall be permitted regarding this procurement, except as provided herein. This prohibition applies to any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence this procurement. Violation of any of the requirements described in this **Section 5.1** may be grounds for a determination that the Proposer is non-responsible and therefore ineligible for this contract award. Two violations within four years of the rules against impermissible contacts during the "restricted period" may result in the violator being debarred from participating in an OSC procurement for a period of four years.

"Restricted period" means the period of time commencing with the earliest written notice, advertisement, or solicitation of a Request for Proposals, Invitation for Bids, or solicitation of proposals, or any other method for soliciting a response from Proposers intending to result in a procurement contract with OSC and ending with the final contract award by OSC or, where applicable, final contract approval by the OSC Bureau of Contracts.

5.2. Questions

There will be an opportunity available for submission of written questions and requests for clarification with regard to this RFP. All questions and requests for clarification of this RFP should cite the particular RFP Section and paragraph number where applicable and must be submitted via email (preferred) or by hard copy mail to the Contracting Officer as indicated in **Section 5.1** (Procurement Integrity/Restrictions on Communications), no later than the Deadline for Submission of Written Questions as specified in **Section 1.0**. Questions received after the

deadline may not be answered.

Requests for clarifications of contract language contained in Attachment J (Draft Contract) must be addressed at this time.

NOTE: It is the Proposer's responsibility to ensure that hard copy mail or email containing written questions and/or requests for clarification is received at the above address no later than the Deadline for Submission of Written Questions as specified in **Section 1.0**.

The comprehensive list of questions and responses will be posted to the OSC website and notice of such posting will be distributed by email to all vendors known to OSC who have received electronic access to this RFP on the date specified in **Section 1.0**. This listing will not include the identities of the vendors submitting the questions; those vendors will remain anonymous to the extent allowed by law.

5.3. Right to Modify RFP

OSC reserves the right to modify any part of this RFP, including but not limited to, the date and time by which proposals must be submitted and received by OSC, at any time prior to the Deadline for Submission of Proposals listed in **Section 1.0**. Modifications to this RFP shall be made by issuance of amendments and/or addenda.

Prior to the Deadline for Submission of Proposals, any such clarifications or modifications as deemed necessary by OSC will be posted to the OSC website and subsequent email notification will be provided to all potential Proposers known to OSC. OSC also reserves the right to cancel this RFP, in whole or in part, and to reject any and all proposals.

If the Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Proposer shall immediately notify OSC (See **Section 5.1**) of such error in writing and request clarification or modification of the document.

If, prior to the Deadline for Submission of Proposals, a Proposer fails to notify OSC of a known error or an error that reasonably should have been known, the Proposer shall assume the risk of proposing. If awarded the contract, the Proposer shall not be entitled to additional compensation by reason of the error or its correction.

5.4. Minority- and Woman-Owned Business Enterprise Requirements

Appendix B (Proposer and Contractor Compliance Requirements and Procedures for Participation by Minority Group Members and Women With Respect to OSC Contracts) provides the policies of OSC with regard to participation by Minority- and Women-Owned Business Enterprises with respect to OSC Contracts. In accordance with the provisions outlined in **Appendix B**, it is the intention of OSC to provide real and substantial opportunities for certified M/WBEs on all OSC contracts. It is with this intention that OSC has assigned M/WBE participation goals to this contract.

Proposers submitting a proposal in response to this RFP agree to make good-faith efforts to promote and assist the participation of certified M/WBEs as subcontractors and suppliers on this project, for the provision of services and materials in an amount at least equal to **34%** of the total dollar value of the contract to be entered into as a result of this RFP. These participation goals shall be applicable to the contract as a whole and will be monitored by OSC for compliance.

Below is a link to the current directory of NYS certified M/WBE firms:

<https://ny.newnycontracts.com/FrontEnd/ VendorSearchPublic.asp?TN=ny&XID=4687>

A Proposer shall respond to the participation goals established for M/WBE participation by reviewing the requirements of **Appendix B**. See **Section 6.1.A** for submission requirements with regard to **Appendix B**.

5.5. Service-Disabled Veteran-Owned Businesses

Article 17-B of the Executive Law establishes a program to encourage state agencies to foster the use of Service-

Disabled Veteran-Owned Businesses (SDVOBs) on state contracts. **Appendix H** (Proposer/Contractor Compliance Requirements and Procedures for Participation by Service-Disabled Veteran-Owned Businesses) provides OSC requirements with regard to participation by SDVOBs on OSC contracts. It is the intention of OSC to provide opportunities for meaningful participation by certified SDVOBs on all OSC contracts.

Such participation may be met through partnerships, joint ventures, subcontracting, or by suppliers or other roles. Any joint proposal (submitted by partners or joint venturers) must describe the legal relationship and demonstrate how the firms propose to provide audit services required under the RFP and how the fees will be allocated among the firms. **When submitting a joint proposal, all required materials must be submitted as to all firms that are participants in the proposal.** See **Section 6.1.B** for submission requirements with regard to **Appendix H**.

Proposers submitting a proposal in response to this RFP agree to make good-faith efforts to promote and assist the participation of certified SDVOBs in an amount at least equal to **2%** of the total dollar value of the contract to be entered into as a result of this RFP. These participation goals shall be applicable to the contract as a whole and will be monitored by OSC for compliance.

SDVOBs can be readily identified on the directory of certified businesses at:

<https://online.ogs.ny.gov/SDVOB/search>

The same firm can be used to fulfill both M/WBE and SDVOB requirements.

5.6. Sales and Compensating Use Tax Certification (Tax Law, § 5-a)

Tax Law § 5-a requires contractors awarded state contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance ("DTF") 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 of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor 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 certify to the procuring state entity that they filed the certification with the DTF and that it is correct and complete.

The selected Proposer must file a properly completed Form ST-220-CA (with OSC as the Contracting Agency within 48 hours of notification of selection for award) and Form ST-220-TD (with the DTF). These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance's website, available through this link: www.tax.ny.gov/pdf/publications/sales/pub223.pdf. Forms are available through these links:

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

Please note that although this form is not required as part of the proposal, OSC encourages Proposers to include them with the proposal to expedite contract execution if the Proposer is awarded the contract.

5.7. Workers' Compensation and Disability Benefits Certifications

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the State shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with OSC, the selected Proposer will be required to verify for OSC, on forms authorized by the New York State Workers' Compensation Board, the fact that it is properly insured or is otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed below. Any questions relating to either workers' compensation or disability benefits coverage

should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to provide verification of either of these types of insurance coverage by the time the Agreement is ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

The selected Proposer must submit the following documentation within 48 hours of notification of selection for award:

A. Proof of Workers' Compensation Coverage:

Upon notification of award, the selected Proposer will be requested to submit **ONE** of the following forms as Workers' Compensation documentation:

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

B. Proof of Disability Benefits Coverage:

Upon notification of award, the selected Proposer will be requested to submit ONE of the following forms as Disability documentation:

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

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

List the Name and Address of the Entity Requesting Proof of Coverage on the Worker's Compensation and Disability Benefits certifications as:

NYS Office of the State Comptroller
ATTN: Bureau of Financial Administration
110 State Street, Mail Stop 13-2
Albany, NY 12236

Please note that although these forms are not required as part of the proposal, OSC encourages Proposers to include them with the proposal to expedite contract execution if the Proposer is awarded the contract. Note also that only the forms listed above are acceptable; ACORD forms cannot be accepted.

5.8. OSC's Reserved Rights

OSC reserves all rights with respect to this procurement, including, but not limited to:

- A. Cancel the procurement, reject any and all proposals received in response to this RFP or choose to make no award.
- B. Prior to opening of proposals, amend the RFP to correct errors or oversights, or to change any of the scheduled dates, or to supply additional information, as it becomes available. Modifications to the RFP shall be made by issuance of amendments and/or addenda.

- C. Prior to opening of proposals, direct Proposers to submit proposal modifications addressing RFP amendments or addenda.
- D. Waive any immaterial deviation or defect in a proposal. A waiver of immaterial deviation or defect shall in no way modify the RFP documents or excuse the Proposer from full compliance with the RFP requirements.
- E. Waive any requirements that are not material, or eliminate any mandatory, non-material requirements that cannot be complied with by all prospective Proposers.
- F. Reject any proposal that contains false or misleading statements, or that provides references that do not support an attribute, condition, or qualification claimed by the Proposer.
- G. Correct any arithmetical errors in any proposal and, in the event that the fees or costs in two or more proposals are not comparable, to make appropriate adjustments to render the fees and costs comparable.
- H. Require a Proposer to clarify its proposal to assure a full understanding of the proposal and to request revisions to all proposals from vendors susceptible of award of the contract. Any request for clarification or revision is solely at the discretion of OSC.
- I. Use in the evaluation process any information obtained through interviews and OSC's investigation of a Proposer's qualifications, experience, ability or financial standing, and any material or information submitted by the Proposer in response to OSC's request for clarifying information.
- J. Rescind a preliminary contract award and proceed to the next highest-scoring Proposer if a signed contract does not result from good faith negotiations with OSC within a reasonable period of time as determined by OSC.
- K. Proceed to the next highest-scoring Proposer in the event that a signed contract does not result from good faith negotiations with OSC within a reasonable period of time as determined by OSC.
- L. Proceed to the next highest-scoring Proposer in the event that the Proposer who had achieved best value prior to contract award cannot satisfy the requirements as stated in this RFP.

5.9. Freedom of Information Law

All proposals are subject to disclosure in accordance with the requirements of the Freedom of Information Law (FOIL). Accordingly, upon submission of the proposal, Proposer should clearly and specifically indicate any portion of the proposal believed to be a trade secret or the disclosure of which would cause substantial injury to the Proposer's competitive position, and submit a written statement of the necessity for protective treatment by OSC. Blanket assertions are insufficient. Upon receipt of a FOIL request for such records, OSC will grant or deny access in accordance with the law.

5.10. State Ethics Law Provision

By submitting a proposal to this RFP the person signing the proposal certifies, for and on behalf of the Proposer, that:

- A. He/she has read and understands the provisions applicable to post-employment restrictions affecting former New York State officers and employees, available using the link¹ below:
 - i. Public Officers Law § 73(8)(a)(i), (the two-year bar); and
 - ii. Public Officers Law § 73(8)(a)(ii), (the lifetime bar);
- B. Submission of this proposal does not violate either provision;
- C. He/she is familiar with the Proposer's employees, and its agents;
- D. No violation shall occur by entering into a contract or in performance of the contractual services;

¹ Click on this link: [Public Officers Law, Article 4](#). When the page opens, click on "Laws" in the menu bar at the top of the page, then "Laws of New York". On the next page, select "PBO Public Officers". When this page opens, select "Article 4 – (60 - 79) POWERS AND DUTIES OF PUBLIC OFFICERS" and choose Sections 73 (8-a)(i) and 73 (8-a)(ii).

- E. This certification is material to the proposal; and
- F. He/she understands that OSC intends to rely on this certification.

The Proposer shall fully disclose to OSC, within its proposal and on a continuing basis, any circumstances that could affect its ability to comply with the cited laws. Proposers shall address any questions concerning these provisions to:

The New York State Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207
Telephone: (518) 408-3976

5.11. State Finance Law Consultant Disclosure Provisions (Appendix G)

Pursuant to New York State Finance Law § 163(4)(g), state agencies must require all contractors, including subcontractors, that provide consulting services for state purposes pursuant to a contract to submit an annual employment report for each such contract, such report to include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

The Contractor selected as a result of this procurement will be required to submit **Form A** prior to contract approval and **Form B** on an annual basis. OSC has provided the appropriate forms as **Appendix G** to this procurement.

Note that although Form A is not required as part of the proposal, OSC encourages Proposers to include it with the proposal to expedite contract execution if the Proposer is awarded the contract.

5.12. OSC Executive Order Relating to Auditor Independence (Appendix I)

The Comptroller has issued an Executive Order relating to Independence of Auditors, a copy of which is attached as **Appendix I** to this RFP. Any Proposer wishing to submit a proposal in response to this RFP must be in compliance with the terms of the Executive Order. In addition, in accordance with the terms of the Executive Order, before any contract between a Proposer and the OSC is entered into, the proposed contract must be reviewed and approved by the Audit Oversight Board created by the Executive Order.

See **Section 6.1.D** for submission requirements.

5.13. Debriefings

Consistent with New York State Finance Law § 163(9)(c), any unsuccessful Proposer not selected for an award may, within 15 calendar days of release of OSC's written or electronic notice that such proposal is unsuccessful, request a debriefing to discuss the reason(s) that the proposal submitted by the unsuccessful Proposer was not selected for an award.

A debriefing request must be in writing and shall be submitted to the Contracting Officer in accordance with Section 5.1.

A Proposer will be accorded fair and equal treatment with respect to its opportunity for debriefing. The debriefing shall be scheduled within 10 calendar days of receipt of written request by the Bureau of Financial Administration, or as soon after that time as practicable under the circumstances.

5.14. Protest

Any interested party may file a protest concerning the contract award with OSC's Director of Financial Administration at the above address within 10 business days from the date of the notice of the contract award, except that any protest concerning the terms and conditions of the solicitation (or other matters that would be apparent to an interested party prior to the date set in this RFP for the receipt of proposals) must be filed on or before the date set

in this RFP for the receipt of proposals. OSC's Contract Award Protest Procedure may be accessed by using this link: http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/files/XI_17_att2.pdf

5.15. Background Investigations

OSC policy requires that background investigations be conducted on the selected Proposer's staff who will have access to OSC's IT systems, access to OSC confidential information/data, or routine access to any OSC facility. For purposes of this policy, "routine access" is defined as access to an OSC facility for five consecutive business days or 10 business days over the annual term of the engagement. Accordingly, with the signing of the Agreement, the selected Proposer certifies that it has or will conduct a background investigation on any staff to whom the policy applies within the 12 months prior to the staff commencing Services under this Agreement. The selected Proposer agrees to undertake a background investigation of any new/replacement staff during the term of the Agreement. For the purposes of this RFP, "staff" includes employees, owners, officers, directors, or agents of the Proposer and of any of the Proposer's subcontractors.

At a minimum, background investigations shall include a review/evaluation of the following:

- identity verification, including Social Security Number search;
- employment eligibility, including verification of U.S citizenship or legal immigration status where appropriate;
- criminal history/court records (Federal, State and local for the past five years);
- work experience/history for the past five years;
- pertinent skills, qualifications, and education/professional credentials; and
- references.

The selected Proposer must obtain the consent of its staff to allow OSC, upon request: (i) to review the background investigation records, including all supporting documentation, and (ii) to conduct its own background investigation. Only staff who have passed the background investigation, and provided such consent shall be assigned to provide Services to OSC under this Agreement. During the term of the Agreement and in accordance with Appendix A (Section 10, Records), the Contractor must maintain records related to the background investigations performed.

5.16. Staff Integrity

The selected Proposer must certify that staff provided to perform Services possesses the necessary integrity and professional capacity to meet OSC's reasonable expectations. OSC has final approval of any staff furnished to provide Services and may refuse to approve any staff member(s) based on its review of the staff member's responsibility to perform the required Services. OSC reserves the right to bar anyone from access to OSC's premises and/or access to OSC's information resources.

Subsequent to the commencement of Services, whenever the selected Proposer becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OSC no longer possesses the necessary integrity or professional capacity, the selected Proposer shall immediately discontinue the use of such staff and notify OSC.

6.0 PROPOSAL CONTENT

The following includes the required format and information to be provided by each Proposer. Proposers responding to this RFP must satisfy all requirements stated in this RFP. All Proposers are required to submit complete Administrative, Technical, and Cost proposals. A proposal that is incomplete in any material respect will be rejected.

To expedite review of the proposals, Proposers are requested to submit proposals in separate Administrative, Technical, and Cost packages formatted with tabs as shown in **Attachment B**, Proposal Documents. This separation of information will facilitate the review of the material requested. No information beyond that specifically requested is required, and Proposers are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications. Additional information, if submitted, should be in a separate package. Proposals must contain sufficient information to assure OSC of their accuracy.

Evaluations of the Administrative, Technical, and Cost Proposals received in response to this RFP will be conducted separately. **Proposers are therefore cautioned not to include any Cost Proposal information in the**

Administrative or Technical Proposal documents.

OSC will not be responsible for expenses incurred in preparing and submitting the Administrative, Technical, or Cost Proposals. Such costs should not be included in the Proposal.

6.1. Administrative Proposal

The Administrative Proposal should contain all requirements listed below. A proposal that is incomplete in any material respect may be eliminated from consideration. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy.

Provide the forms in the same order in which they are requested. Your proposal must contain sufficient information to assure OSC of its accuracy.

A. M/WBE Requirements

Proposers are required to comply with Minority and Woman-owned Business Enterprises (M/WBE) participation requirements as stated in **Section 5.4** of this RFP. As part of your proposal, submit the following documents (forms required are provided with **Appendix B**), as appropriate.

1. A copy of the **Proposer's EEO Policy Statement** as described in Clause 12 of **Appendix A – Standard Clauses for NYS Contracts**;
2. **Form AC 3239-A** (Proposer's EEO Staffing Plan of Anticipated Workforce);
3. **M/WBE Participation Forms:**
 - o **Form AC 3239-C** (M/WBE Goal Requirements – Certification of Good Faith Efforts);
 - o **Form AC 3239-D** (Proposer's M/WBE Utilization Plan); **and**
 - o **Form AC 3239-E** (Proposer's M/WBE Subcontractor's/Suppliers Notice of Intent to Participate).
 - o Proposers may apply for a partial or total waiver of M/WBE participation requirements by submitting **Form AC 3239-F** (Request for Waiver) contained in **Appendix B** of this RFP, and including all required documentation. Waivers will be granted by OSC only where it appears that the Proposer cannot, after a good faith effort, comply with the M/WBE participation requirements set forth under this procurement.

Proposers should note that if selected for contract award they will be required to submit further information as set forth in **Appendix B**.

B. SDVOB Requirements

Proposers are required to comply with SDVOB participation requirements as stated in **Section 5.5** of this RFP. As part of your proposal, submit the following documents (forms required are provided with **Appendix H**), as appropriate.

1. **Form AC 3322-1** (Proposed Use of SDVOBs in Contract Performance);

Proposers may apply for a partial or total waiver of SDVOB participation requirements by submitting **Form AC 3322-3** (Request for Waiver) contained in **Appendix H**, and including all required documentation. Waivers will be granted by OSC only where it appears that the Proposer cannot, after a good faith effort, comply with the SDVOB participation requirements set forth under this procurement.

Proposers should note that if selected for contract award they will be required to submit further information as set forth in **Appendix H**.

C. Meeting Goals Through Submission of Joint Proposal

If you are meeting the M/WBE goals and/or SDVOB goals through the use of strategic alliances, joint ventures, or partnerships, report the participation of M/WBEs and SDVOBs on **Appendix B** and **Appendix H** forms in the spaces provided for reporting the use of subcontractors/suppliers.

D. Proposer's Certification/Acknowledgements

Submit a completed and signed **Appendix E** (Proposer's Certification/Acknowledgements).

Policies referenced in **Appendix E** can be found in **Appendix C** (OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment) and **Appendix D** (The OSC Executive Order on Procurement Integrity and the OSC Procurement Integrity Procedures).

E. Proposer's Disclosure of Prior Non-Responsibility Determinations

Submit a completed and signed **Appendix F** (Proposer's Disclosure of Prior Non-Responsibility Determinations).

F. Requirements Concerning Compliance with Comptroller's Executive Order on Independence of Auditors (Appendix I)

i. Proposers with Existing Audit Contracts

Each Proposer that has existing auditing contractual relationships with OSC must submit one original and two copies of a statement signed by an individual authorized to bind the Proposer (1) setting out the reasons that the firm could perform services under both contracts without any impairment of independence under GAO standards, (2) attesting that the proposed activity is not one which, if the services were subject to the provisions of the Sarbanes-Oxley Act, would be precluded under the auditor independence provisions of section 201 of the Act, and (3) attesting that the engagements would comply with any additional written standards promulgated by the Board in advance of the solicitation for services to prevent an impairment or the appearance of an impairment of independence from arising from two contracts with the same firm.

ii. Other Proposers

All other Proposers (i.e., Proposers that do not have existing auditing contractual relationships with OSC) must submit one original and two copies of a statement signed by an individual authorized to bind the Proposer stating that either: (i) the Proposer has no existing contractual relationship with OSC; or (ii) the only existing contractual relationships with OSC is for the rendition of non-auditing services. If the Proposer states that his/her only existing contractual relationship with OSC relates to non-auditing services, he/she shall also identify, with reasonable detail, the identity (including contract number), and nature of such contractual relationships.

G. Vendor Responsibility Questionnaire

Proposers and any subcontractors providing services in excess of \$100,000 must complete, certify, and file a **New York State Vendor Responsibility Questionnaire**. OSC recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions at www.osc.state.ny.us/vendrep/index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the OSC Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.ny.gov.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website, www.osc.state.ny.us/vendrep, or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form.

H. Freedom of Information Law – Proposal Redactions

While not required, Proposers may submit their written statements of the necessity for the claimed proprietary information exceptions at the time of submission of their proposals. See **Section 5.8** (Freedom of Information Law).

I. Additional Forms (Optional Administrative Proposal Submissions)

While the following information is not required until notification of selection of award (See Sections noted), Proposers are encouraged to submit the forms with their Administrative Proposal.

1. ST-220 CA, Sales and Compensating Use Tax Certification (**Section 5.6**)
2. Workers' Compensation Documentation (**Section 5.7.A**)
3. Disability Documentation (**Section 5.7.B**)
4. OSC Consultant Disclosure Reporting – Form A (**Section 5.11 and Appendix G**)

6.2. Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Proposer to perform the Services. The Technical Proposal should demonstrate the qualifications of the Proposer and of the staff to be assigned to provide Services.

A Technical Proposal that is incomplete in any material respect may be eliminated from consideration. The following outlines the required information to be provided, in the following order, by Proposers. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy.

While additional data may be presented, the following should be included. Provide the information in the same order in which it is requested. A proposal must contain sufficient information to assure OSC of its accuracy. Failure to follow these instructions may result in disqualification.

Cost information must not be included in the Technical Proposal documents.

A. Title Page

Submit a Title Page providing the RFP subject and number; the Proposer's name and address, the name, address, telephone number, and email address of the Proposer's contact person; and the date of the proposal.

B. Table of Contents

The Table of Contents should clearly identify all material (by section and page number) included in the proposal.

Specific attention is directed to the list of requirements provided in **Attachment B**. Each proposal must contain an index that cites each tab number in the proposal where the requested information can be found using the tab numbers found in **Attachment B** for the corresponding RFP Section. The proposal should provide satisfactory evidence of the Proposer's ability to meet, and expressly respond to, each requirement and information request in this RFP.

C. Proposer's Certified Statements – Attachment A

Submit **Attachment A, Proposer's Certified Statements**, which includes information regarding the Proposer. **Attachment A** must be signed by an individual authorized to bind the Proposer contractually. Indicate the title or position that the signer holds with the Proposer. OSC reserves the right to reject a proposal that contains an incomplete or unsigned **Attachment A**. **Failure to include Attachment A may result in your proposal being considered non-responsive.**

D. Further Attachments

The Technical Proposal must also include the following items and should be in the designated sections and clearly labeled:

- i. Section 1 – Information in Support of Minimum Qualifications to Propose:
 - a. **Attachment A**, as described above;

- b. Proof that your firm is an independent CPA firm that is registered and in good standing with the New York State Board for Accountancy, or with the State Board for Accountancy where licensed;
 - c. A copy of your firm's current registration to practice public accounting in New York State;
 - d. On **Attachment D**, list ALL internal control audits completed by your firm on a governmental client within the last five years. The internal control audits may have been completed separately or as part of a larger governmental audit, but, in either case, must have been conducted in accordance with GAGAS. Governmental entities may include, but are not limited to: Federal agencies, State agencies, public authorities, county and municipal governments, and school districts. The following items should be indicated for each engagement listed: auditee name and amount of annual budget, principal client contact with name, telephone number, and email address, Partner-In-Charge, total hours including subcontractor hours (do not use hour ranges or FTE counts), scope of work, and engagement outcomes;
 - e. Audit report resulting from one of the engagements described above;
 - f. A statement signed by an authorized signatory that states that your firm is independent of OSC in accordance with the AICPA and government auditing standards and is able to conduct the proposed audit; and
 - g. A statement signed by an authorized signatory that, collectively, the team assigned to the audit is qualified to provide an opinion on whether OSC's system of internal control are established and functioning in a manner that provides reasonable assurance that it meets the objectives of internal controls as defined in the Executive Law and as prescribed in the Standards.
- ii. Section 2 – Engagement:
- a. Description, in detail, of how the experience of your firm and the professional staff that that will be available to perform the Scope of Work will satisfy the needs as described in **Section 3.0**. Describe any relevant techniques to be used in conducting the proposed audit; and
 - b. Proposed audit plan describing your overall approach to the audit as stated in **Section 3.0**.
- iii. Section 3 – Staffing:
- a. Using **Attachment E**, list each staff member to be assigned to the 2019 audit, and each subcontractor staff likely to be assigned, their title, years of total auditing experience, years of experience in government auditing, certifications (e.g., CPA, CFE, CICS, COSO), and any other qualifications enabling them to render an opinion on whether OSC's system of internal control is established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal controls as defined in Executive Law and prescribed in the Standards. Proposers should identify the Engagement Partner, Audit Manager, and other staff, including any and all subcontractors likely to be assigned to the engagement. For each subcontractor(s) staff member also identify the subcontractor firm name.
 - b. The firm resume and the bios of the professional staff to be assigned to this engagement, including a description of any special recognition that professional staff anticipated to be assigned to this engagement have received for expertise in the areas contemplated by this RFP, including published articles, books, papers, teaching memberships in professional organization, etc. Included should be

subcontractor staff who are likely to work on the engagement, and the New York State CPA licensure status of each person requiring a license as described in the Cost Proposal.

- c. Using **Attachment F**, provide a staffing plan identifying all the staff, including titles, to be assigned to the 2019 audit. The staffing plan is to include appropriate totals so that OSC can identify total hours expended per title per Deliverable, and for the entire 2019 audit. The staffing plans titles and hours should agree with what is in the Cost Proposal for the 2019 audit (hourly rates must not be included in the Technical Proposal; rates must be included in the Cost Proposal only).
- d. Describe the Proposer's methods and procedures for monitoring and ensuring the quality of work completed by subcontractors. These methods and procedures must be provided. even if the Proposer does not include subcontractors in this proposal. If the subcontractor(s) assigned to this engagement have previously performed work for the Proposer, provide a summary of the past work completed.

E. References

Provide references using **Attachment G** (References) for three clients for whom you have performed similar work, at least one of whom is a government agency. Provide client names, addresses, contact names, telephone numbers, and email addresses.

6.3. Cost Proposal

Submit a completed and signed **Attachment C** (Cost Proposal). The Cost Proposal shall comply with the mandatory format and content requirements as detailed in this document and in **Attachment C**. Failure to comply with the mandatory format and content requirements may result in disqualification.

The Cost Proposal must be submitted in a separate sealed envelope, not included with the Technical or Administrative Proposals. The Cost Proposal must contain all pricing and staffing information relative to accomplishing the audit scope described in this RFP. Staff levels and hours provided in **Attachment C** for the 2019 audit should agree with staff levels and hours provided in the Technical Proposal in response to **Section 6.2.D.iii.c**. Prior to the 2022 audit, as part of the selected Proposer's detailed audit plan, the selected Proposer will provide a staffing plan similar to **Attachment F**. The staff levels and hours provided in the 2022 staffing plan should agree with the staff levels and hours provided in **Attachment C** for the 2022 audit.

OSC will not be responsible for expenses incurred in preparing and submitting the Technical, Administrative, or Cost Proposals. Such costs should not be included in the Proposal. Submit a completed and signed **Attachment C**. The Cost Proposal shall comply with the mandatory format and content requirements as detailed in this document and in **Attachment C**. Failure to comply with the mandatory format and content requirements may result in disqualification.

The Cost Proposal includes:

- A. The name of the proposing firm;
- B. Staff Titles (or equivalent Staff positions), Hourly Rates by Title, Total Hours by Title, and Total Cost by Title;
- C. The Total Not to Exceed Cost; and
- D. The signature of an individual authorized to contractually bind the firm, the name and title of such individual, and the date.

The above costs are based on Proposer's estimate of the number of hours required to provide the deliverables. If fewer hours are actually provided, compensation will be less than the Total Not to Exceed Cost. If more hours are actually provided, compensation will be limited to the Total Not to Exceed Cost.

Hourly rates must be inclusive of all support services, travel, supplies, meals, lodging, and expenses related to the

performance of Services. **The majority of field work must be conducted at OSC’s offices at 110 State Street, Albany, NY.**

OSC will not be responsible for costs incurred by a Proposer in preparation, production, and submission of the Administrative, Technical, or Cost Proposals, or any expenses incurred by the Proposer related to the interview process or the costs of any services performed prior to the selection of a Proposer and the contract start date.

7.0 PROPOSAL SUBMISSION

All proposals must be submitted in hard copy and on compact disc (see **Section 7.1**) and received by the date and time indicated for Deadline for Submission of Proposals as specified in **Section 1.0**. Proposals received after the Deadline for Submission of Proposals may be rejected.

To be considered eligible, the Proposer should submit a complete response to this RFP in conformance with the format and content requirements set forth herein. A proposal that does not provide all the information requested may be subject to rejection. The proposal must contain sufficient information to assure OSC of its accuracy. No information beyond that specifically requested is required and Proposers are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications.

Administrative, Technical, and Cost Proposals must be clearly labeled and submitted, by U.S. Mail, by courier/delivery service (e.g., FedEx, UPS, etc.) or by hand as noted below, in separately sealed packages to:

**Office of the State Comptroller (RFP19-03)
Attention: Director of Financial Administration
110 State Street – Stop 13-2
Albany, NY 12236-0001**

Due to security procedures at 110 State Street, proposals that will be hand-delivered **must be taken to the Receiving Area on Howard Street** during OSC’s normal receiving hours, which are **Monday through Friday, from 8:00 a.m. to 4:00 p.m. ET. Proposals will not be accepted at any other location in 110 State Street other than the receiving area** (i.e. proposals will not be accepted in the lobby, at the Security Desk, etc.). The phone number for the Receiving desk is (518) 474-3438. There is 15 minute parking available across from the Receiving entrance. **Hand-deliveries to 110 State Street outside of the stated hours and location will not be accepted.**

NOTE: Proposers should request a receipt containing the time and date received and the initials of the receiver for all hand-deliveries and ask that this information also be written on the package(s). Receipts may not be available between 11:45 a.m. and 2:00 p.m. ET.

Submission of proposals in a manner other than as described in these instructions (e.g., fax, electronic transmission) will not be accepted.

A Proposer may withdraw a proposal at any time prior to the Deadline for Submission of Proposals by written notification to OSC as set forth in **Section 5.1** of this RFP. An authorized agent of the company must sign the notice of withdrawal. The proposal may thereafter be resubmitted, but not after the Deadline for Submission of Proposals specified in **Section 1.0**. Modification offered in any other manner, oral or written, will not be considered.

7.1. Submission of Proposal Components

Each Proposer must submit SEPARATE Administrative, Technical, and Cost Proposals, as follows:

A. Paper Proposals:

Administrative Proposal	Submit ONE paper original (labeled as original on the cover page), and TWO paper copies.

Technical Proposal	Submit ONE paper original (labeled as original on the cover page) and FIVE paper copies.
Cost Proposal	Submit ONE paper original (labeled as original on the cover page) and TWO paper copies.

Submit each of the complete Administrative, Technical, and Cost Proposals in its own separate sealed package, all of which may be submitted within one complete package.

Note: Original documents requiring signature must be signed with an ink pen (i.e., wet signature). Digital or scanned copies of signatures will not be accepted as original. Failure to submit appropriately signed original documents may result in disqualification.

B. USB Flash Drive:

In addition to the paper proposals above, submit each of the complete Administrative, Technical, and Cost Proposals **as separate files** on a single USB flash drive. An acceptable format for the files is unlocked Adobe PDF. OSC prefers that such files be searchable. The files must be representative copies of the original documents, **including signatures.**

The Proposer should scan the USB flash drive prior to submission to ensure there is no malicious software (i.e., malware) on the drive. OSC will perform a security scan on the USB flash drive prior to accessing the stored files. In the event the security scan identifies malicious software on the drive, OSC will destroy the device and request a replacement USB flash drive from the Proposer. The content of the replacement drive must be identical to the original submission and will be compared to the paper proposals submitted in accordance with the due date.

OTHER TYPES OF DATA STORAGE DEVICES WILL NOT BE ACCEPTED.

Clearly mark the outside envelope of your sealed Proposals, the original, each copy, and the USB flash drive as “RFP19-03 for Professional Auditing Services for the Audit of OSC’s System of Internal Control – (Administrative) (Technical) or (Cost) Proposal submitted by (Proposer’s name).”

8.0 EVALUATION PROCESS/CRITERIA

8.1. General Information

OSC will evaluate each proposal based on the “Best Value” concept. This means that the proposal that best “optimizes quality, cost, and efficiency among responsive and responsible offerers” shall be selected for award (State Finance Law, Article 11, §163[1][j]).

OSC, at its sole discretion, will determine which proposal(s) best satisfies its requirements. OSC reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this document may be eliminated from consideration. The evaluation process will include separate technical and cost evaluations, and the result of each evaluation shall remain confidential until both evaluations have been completed and a selection of the winning proposal is made.

The evaluation process will be conducted in a comprehensive and impartial manner, as set forth herein, by an Evaluation Committee. The Technical Proposal and compliance with other RFP requirements (other than the Cost Proposal) will be weighted 70% of a proposal’s total score and the information contained in the Cost Proposal will be weighted 30% of a proposal's total score.

Proposers may be requested by OSC to clarify the contents of their proposals. Other than to provide such information as may be requested by OSC, no Proposer will be allowed to alter its proposal or add information,

except as provided in **Section 5.8.F** above, after the Deadline for Submission of Proposals.

8.2. Submission Review

OSC will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in **Section 6.0** (Proposal Content) and **Section 7.0** (Proposal Submission), and include the proper documentation, including all documentation required for the Administrative Proposal, as stated in this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of OSC, may be rejected.

8.3. Technical Evaluation

The evaluation process will be conducted in a comprehensive and impartial manner. A Technical Evaluation Committee comprised of OSC staff will review and evaluate all proposals.

All proposals will undergo a preliminary technical evaluation to verify Minimum Qualifications to Propose (**Section 4.0**).

The Technical Evaluation Committee members will independently score each Technical Proposal that meets the submission requirements of this RFP. The individual Committee Member scores will be averaged to calculate the Technical Score for each responsive Proposer.

The technical evaluation is 70% (**up to 70 points**) of the final score.

8.4. Cost Evaluation

The Cost Evaluation Committee will examine the Cost Proposal documents. The Cost Proposals will be opened and reviewed for responsiveness to cost requirements. If a cost proposal is found to be non-responsive, that proposal may not receive a cost score and may be eliminated from consideration.

Each proposal that meets the submission requirements, passes the Preliminary Evaluation, and meets the cost proposal requirements will receive a cost score. The Cost Proposals will be scored based on a maximum cost score of 30 points. The maximum cost score will be allocated to the proposal with the lowest not-to-exceed total cost. All other responsive proposals will receive a proportionate score based on the relation of their Cost Proposal to the proposals offered at the lowest not-to-exceed total cost, using this formula:

Cost points awarded = 30 potential points x (Lowest Cost Proposal / Cost of Proposal Being Evaluated).

The cost evaluation is 30% (**up to 30 points**) of the final score.

8.5. Preliminary Composite Score

A preliminary composite score will be calculated by the OSC Finance Office by adding the preliminary Technical Proposal points and the Cost Proposal points. Finalists will be determined based on preliminary composite scores.

8.6. Finalists

The proposals with the two highest preliminary composite scores will be deemed Finalists. Finalists may be interviewed at the discretion of the Technical Evaluation Committee. In the event that the Finalists do not include the proposal with the maximum cost score, the cost scores for the Finalists will be re-calculated by awarding the maximum cost score to the Finalist with the lowest combined cost. The remaining Finalists will receive a proportionate score based on the relation of their cost proposal to the proposal of the Finalist with the lowest cost, using the formula in **Section 8.4** (Cost Evaluation). The composite scores will be adjusted accordingly.

8.7. Interviews

Interviews, if determined to be necessary, will be held for all Finalists in person at 110 State Street, in Albany, NY or, at the discretion of the Technical Evaluation Committee, by telephone or videoconference. Finalists who cannot

be contacted via telephone to arrange the interview after three attempts by OSC may be disqualified.

The purpose of an interview is to allow the evaluators to validate the Proposer's experience and qualifications.

Each Finalist will be notified of the date, place, and time of their interview to be held not earlier than the Interview date designated in **Section 1.0** at the Offices of the State Comptroller, 110 State Street, Albany, New York. The interview should confirm the Proposer's ability to provide the required Services. The Proposer, including any key personnel, should be present and participate in the interview. **No new material will be permitted to be introduced during the interview.**

8.8. Reference Checks

The Proposer will submit references using **Attachment G** (References) for three clients, at least one of whom is a government agency. At the discretion of the Technical Evaluation Committee, references may be checked at any point during the process.

8.9. Final Composite Score

A Final Composite Score will be calculated by the OSC Finance Office by adding the Final Technical Proposal points, reflecting any adjustments that may result from interviews, and the Cost Proposal points.

8.10. Award Recommendation

The Technical Evaluation Committee will submit to OSC's Internal Control Officer a recommendation for award to the Finalist with the highest composite score whose experience and qualifications have been verified. The Internal Control Officer will then submit the recommendation to OSC's Inspector General for acceptance. If the recommendation is accepted, it will be forwarded to OSC's Finance Office for review. The award recommendation will only become final after approval by the Director of Financial Administration.

A responsibility review, conflict review, and Procurement Integrity review will be required, and if applicable, a review in accordance with the Comptroller's Executive Order relating to Auditor Independence may be required before the award recommendation is final. The Director of Financial Administration will notify the awarded Proposer and Proposers not awarded. The awarded Proposer will enter into a written Agreement substantially in accord with the terms of **Attachment J**, Draft Contract, to provide the required Services. The resultant contract shall not be binding until fully executed and approved by the New York State Office of the Attorney General and the Office of the State Comptroller's Bureau of Contracts.

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**ATTACHMENT A
PROPOSER'S CERTIFIED STATEMENTS**

(MANDATORY SUBMISSION: to be completed and included in the Technical Proposal documents)

RFP19-03 – Professional Auditing Services for the Audit of OSC's System of Internal Control
1. Information with regard to the Proposer
A. Provide the Proposer's name, address, and telephone number.
Name:
Address:
City, State, ZIP Code:
Telephone Number (including area code):
B. Provide the name, address, telephone number, and email address of the Proposer's Primary Contact with OSC with regard to this proposal.
Name:
Address:
City, State, ZIP Code:
Telephone Number (including area code):
Email Address:
C. Provide the name, address, telephone number, and email address of the person authorized to bind the Proposer contractually, if different from (B).
Name:
Address:
City, State, ZIP Code:
Telephone Number (including area code):
Email Address:
D. In accordance with paragraph 6 of the OSC Procurement Integrity Procedures included in this RFP as Appendix D, provide the name, address, telephone number, email address, place of principal employment and occupation of any person authorized to represent the Proposer. This requirement applies not only to Proposer's employees involved in the submission of the proposal, but also to every individual or organization employed or designated by the Proposer to attempt to influence the procurement process. If there is none, state that. This information must be updated if, after the Deadline for Submission of Proposals, the Proposer retains an individual or organization to attempt to influence the procurement process. Indicate also whether the individual or organization has a financial interest in the procurement.

Name:	
Address:	
City, State, ZIP Code:	
Telephone Number (including area code):	
Email Address:	
Place of Principal Employment:	
Occupation:	
This individual/organization has a financial interest in the procurement:	<input type="checkbox"/> Yes <input type="checkbox"/> No
No such individual/organization is authorized to represent the Proposer:	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Minimum Qualifications to Propose (Section 4.0):	
A. The Proposer is an independent Certified Public Accounting (“CPA”) firm that is registered and in good standing with the New York State Board for Accountancy, or with the State Board for Accountancy where licensed.	<input type="checkbox"/> Yes <input type="checkbox"/> No
B. The Proposer is registered to practice public accounting in New York State and has provide a copy of the firm’s current registration.	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. The Proposer has previously conducted a government audit within the last five years that included the review of internal controls, using Generally Accepted Government Audit Standards (“GAGAS”). A list of client(s) and dates demonstrating this fact has been attached to the proposal. A sample audit report resulting from one of the government audits conducted within the last five years has also been attached to the proposal.	<input type="checkbox"/> Yes <input type="checkbox"/> No
D. The Proposer is independent of OSC in accordance with the American Institute of Certified Public Accountants (“AICPA”) and government auditing standards and is able to conduct the proposed audit. A statement signed by an authorized signatory has been included with this proposal.	<input type="checkbox"/> Yes <input type="checkbox"/> No
E. The Proposer certifies collectively, the team assigned to the audit is qualified to provide an opinion on whether OSC’s system of internal control is established and functioning in a manner that provides reasonable assurance that it meets the objectives of internal controls as defined in the Executive Law and as prescribed in the Standards. A statement signed by an authorized signatory attesting to this fact has been included in this proposal.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Proposer’s Acknowledgement of Proposal Requirements: [Please note: alteration of any language contained in this section may render your proposal non-responsive.]	
A. The proposal, including the Technical, Administrative, and Cost Proposals, constitutes a firm and irrevocable offer for a period of 180 days from the date of submission to OSC.	<input type="checkbox"/> Yes <input type="checkbox"/> No
B. By submission of a proposal, the Proposer agrees not to make any claims for or have a right to any damages because of any misrepresentations or misunderstanding of the specifications or because of any lack of information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. The Proposer agrees to fully comply with the OSC Executive Order on Procurement Integrity and the OSC Procurement Integrity Procedures attached to this RFP as Appendix D.	<input type="checkbox"/> Yes <input type="checkbox"/> No
D. The Proposer certifies that it can and will provide and make available, at a minimum, all services as described in the RFP if selected for award.	<input type="checkbox"/> Yes <input type="checkbox"/> No

E. The Proposer certifies that staff provided to perform Services possesses the necessary integrity and professional capacity to meet OSC's reasonable expectations. Subsequent to the commencement of Services, whenever the selected Proposer becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OSC no longer possesses the necessary integrity or professional capacity, the Proposer agrees to immediately discontinue the use of such staff and notify OSC.	<input type="checkbox"/> Yes <input type="checkbox"/> No
F. The selected Proposer agrees to undertake a background investigation of any new/replacement staff during the term of the Agreement.	<input type="checkbox"/> Yes <input type="checkbox"/> No
G. The Proposer certifies that it will maintain records related to the background investigations performed during the term of the Agreement. In accordance with the terms of Appendix A (Section 10, Records).	<input type="checkbox"/> Yes <input type="checkbox"/> No
H. The Proposer certifies that all information provided in connection with its proposal is true and accurate.	<input type="checkbox"/> Yes <input type="checkbox"/> No
I. The Proposer has read, understands, and accepts all provisions of Appendix A – Standard Clauses for NYS Contracts. Appendix A contains important information related to the contract to be entered into as a result of this RFP and will be incorporated, without change or amendment, into the contract entered into between OSC and the selected Proposer. By submitting a response to the RFP, the Proposer agrees to comply with all the provisions of Appendix A.	<input type="checkbox"/> Yes <input type="checkbox"/> No
J. The Proposer's Legal representation has reviewed and understands Attachment J (Draft Contract), and the Proposer is willing to enter into an Agreement substantially in accord with the terms of Attachment J (Draft Contract), should the Proposer be selected for contract award.	<input type="checkbox"/> Yes <input type="checkbox"/> No
K. The Proposer agrees that OSC shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractor(s) of the Proposer prior to their performance of services under the Agreement.	<input type="checkbox"/> Yes <input type="checkbox"/> No
L. The Proposer agrees that it shall be fully responsible for performance of work by its staff and by its subcontractor's staff. OSC reserves the right to request removal of any Proposer staff or subcontractor's staff if, in OSC's discretion, such staff is not performing in accordance with the Agreement.	<input type="checkbox"/> Yes <input type="checkbox"/> No
M. The Proposer agrees to provide all mandatory deliverables as stated in Section 3.2.	<input type="checkbox"/> Yes <input type="checkbox"/> No

* A "No" Response in Sections 2 or 3 of this attachment will result in disqualification.

4. Information Required:

A. The Proposer is (check as applicable):

- A New York State Certified Minority-Owned Business Enterprise
- A New York State Certified Woman-Owned Business Enterprise
- A New York State Certified Minority- and Woman-Owned Business Enterprise (Dual Certified)
- A New York State Certified Service-Disabled Veteran-Owned Business Enterprise
- None of the above

B. Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the contract entered into as a result of this procurement. See Section IV of the Draft Contract (Attachment J), NOTICES.

Name:

Title:

Address:

City, State, ZIP Code:

Telephone Number (including area code):

Email Address:

C. Proposer's Taxpayer Identification Number:

D. Proposer's NYS Vendor Identification Number as discussed in Section 6.1.E, if enrolled:

By my signature on this Attachment A, I certify that I am authorized to bind the Proposer contractually.

Typed or Printed Name of Authorized Representative of the Proposer

Title/Position of Authorized Representative of the Proposer

Signature of Authorized Representative of the Proposer

Date

ATTACHMENT B
PROPOSAL DOCUMENTS SUBMITTED

RFP18-14 – Professional Auditing Services for the Audit of OSC’s System of Internal Control			
FOR THE ADMINISTRATIVE PROPOSAL			
TAB	RFP §	REQUIREMENT	INCLUDED
N/A	§ 7.1.A	ONE Original and TWO Copies of the Complete Administrative Proposal, containing the Tabs listed in this Section	<input type="checkbox"/>
1	§ 6.1.A	<u>M/WBE Participation Requirements:</u>	<input type="checkbox"/>
		The Proposer’s EEO Policy Statement, as described in Clause 12 of Appendix A – Standard Clauses for NYS Contracts	<input type="checkbox"/>
		Form AC3239-A – Proposer’s EEO Staffing Plan of Anticipated Workforce	<input type="checkbox"/>
		Form AC3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts	<input type="checkbox"/>
		Form AC3239-D – Proposer’s M/WBE Utilization Plan	<input type="checkbox"/>
		Form AC3239-E – Proposer’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate	<input type="checkbox"/>
		Form AC3239-F – Request for Waiver, <u>with all required documentation</u> , if applicable	<input type="checkbox"/>
2	§ 6.1.B	<u>SDVOB Participation Requirements:</u>	<input type="checkbox"/>
		Form AC3322-1 (Proposed Use of SDVOBs In Contract Performance)	<input type="checkbox"/>
		Form AC3322-3 (Proposer’s/Contractor’s SDVOB Request for Waiver)	<input type="checkbox"/>
2	§ 6.1.D	Appendix E – Proposer’s Certification/Acknowledgements, completed and signed	<input type="checkbox"/>
3	§ 6.1.E	Appendix F – Disclosure of Prior Non-Responsibility Determinations, completed and signed	<input type="checkbox"/>
4	§ 6.1.F	Appendix I – Executive Order on Independence of Auditors Submission	<input type="checkbox"/>
5	§ 6.1.G	Vendor Responsibility Questionnaire, certified within six months of the Proposal due date (<u>unless filed and certified online</u>)	<input type="checkbox"/>
		If Vendor Responsibility Questionnaire was completed and certified online, check here and do not attach a paper copy.	<input type="checkbox"/>
INCLUDE IN THE ADMINISTRATIVE PROPOSAL, IF SUBMITTING: See Section 6.1.I – Additional Forms While these forms are not required until notification of selection is made, Proposers are <u>strongly encouraged</u> to submit the following forms with their Administrative Proposal.			
6	§ 6.1.I(1)	Section 5.6: Sales and Compensating Use Tax Certification	
		• ST-220 CA, Sales and Compensating Use Tax Certification	<input type="checkbox"/>
7	§ 6.1.I(2)	Section 5.7.A: Workers’ Compensation Documentation	
		• Form C-105.2 – Certificate of Workers’ Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or	<input type="checkbox"/>
		• Form SI-12 – Certificate of Workers’ Compensation Self-Insurance (or Form GSI-105.2 Certificate of Participation in Workers’ Compensation Group Self-Insurance); or	<input type="checkbox"/>
		• Form CE-200 – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.	<input type="checkbox"/>
8	§ 6.1.I(3)	Section 5.7.B: Disability Documentation	
		• Form DB-120.1 – Certificate of Disability Benefits Insurance; or	<input type="checkbox"/>
		• Form DB-155 – Certificate of Disability Benefits Self-Insurance; or	<input type="checkbox"/>
		• Form CE-200 – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.	<input type="checkbox"/>
9	§ 6.1.I(4)	Section 5.11 and Appendix G: OSC Consultant Disclosure Reporting	
		• Form A, completed and signed	<input type="checkbox"/>
10	§ 6.1.H	Section 5.9 Freedom of Information Law	

		• Written statements of the necessity for claimed proprietary information exceptions	<input type="checkbox"/>
FOR THE TECHNICAL PROPOSAL			
TAB	RFP §	REQUIREMENT	INCLUDED
N/A	§ 7.1.A	ONE Original and Five Copies of the Technical Proposal	<input type="checkbox"/>
1	§ 6.2.A - B	Title Page and Table of Contents	<input type="checkbox"/>
2	§6.2.C	Attachment A – Proposer’s Certified Statements, completed and signed	<input type="checkbox"/>
3	§ 6.2.D.i.d	Attachment D - Section 6.2.D.i.d Response Form	<input type="checkbox"/>
4	§ 6.2.D.iii.a	Attachment E – Section 6.2.D.iii.a Response Form	<input type="checkbox"/>
5	§ 6.2.D.iii.c	Attachment F – Section 6.2.D.iii.c Response Form	<input type="checkbox"/>
6	§ 6.2.E	Attachment G (References)	<input type="checkbox"/>
FOR THE COST PROPOSAL			
TAB	RFP §	REQUIREMENT	INCLUDED
1	§ 7.1.A	One Original and TWO Copies of the Cost Proposal (Attachment C)	<input type="checkbox"/>
FOR ALL PROPOSALS			
TAB	RFP §	REQUIREMENT	INCLUDED
N/A	§ 7.1.B	Submit a single USB flash drive that has been scanned for malware and contains each of the complete Administrative, Technical, and Cost Proposals <u>as separate files</u> as stated in Section 7.1.B.	<input type="checkbox"/>

**ATTACHMENT C
COST PROPOSAL**

RFP19-03 Professional Auditing Services for the Audit of OSC's System of Internal Control

The Proposer must propose costs for audit year 2019 and audit year 2022. The majority of field work must be conducted at OSC's offices at 110 State Street, Albany, NY. Hourly rates must be inclusive of all support services, travel, supplies, meals, lodging, and expenses related to the performance of Services.

Proposer:			
AUDIT YEAR 2019			
Cost of all Audit Deliverables as stated in Section 3.2 (Mandatory Deliverables). All titles and hours should agree with titles and hours submitted on Attachment F (6.2.D.iii.c Response Form).			
Staff Title (or equivalent Staff position)	Hourly Rate	Total Hours	Total Cost
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
TOTALS:		Total Staff Hours	Total Not-to-Exceed Cost
			\$

AUDIT YEAR 2022

Cost of all Audit Deliverables as stated in Section 3.2 (Mandatory Deliverables). All titles and hours submitted on the future 2022 staffing plan should agree with titles and hours on this Attachment C.

Staff Title (or equivalent Staff position)	Hourly Rate	Total Hours	Total Cost
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
TOTALS:		Total Staff Hours	Total Not-to-Exceed Cost
			\$

Name of Authorized Representative of the Firm

Title/Position of Authorized Representative of the Firm

Signature

Date

ATTACHMENT D

Section 6.2.D.i.d Response Form

In the table below, list ALL internal control audits completed by your firm on a governmental client within the last five years. The internal control audits may have been completed separately or as part of a larger governmental audit, but, in either case, must have been conducted in accordance with GAGAS. Governmental entities may include, but are not limited to: Federal agencies, State agencies, public authorities, county and municipal governments, and school districts.

Proposers are strongly advised to complete each field as required below. Fields left blank or incorrectly completed will not be evaluated in the Proposer's favor. The information provided will be scored in the technical evaluation. Add rows as necessary.

Auditee Name and Amount of Annual Budget	Principal Client Contact (Name, Telephone Number, and Email Address)	Partner In Charge	Total Hours, Including Subcontractors (Do not use hour ranges or FTEs)	Scope of Work	Engagement Outcomes (type of report)

ATTACHMENT E

6.2.D.iii.a Response Form

List each staff member to be assigned to the 2019 Audit, along with each subcontractor staff likely to be assigned, in the tables below. Specify their title, years of total auditing experience, years of experience in government auditing, certifications (e.g., CPA, CFE CICS, COSO Certificate), and any other qualifications which enables them to complete the Services. **Proposers are limited to using the following titles for their staff on this form: Partner, Manager, Supervisor, or Staff Auditor. Proposers should choose the title that most accurately reflects the staff member's actual title.** Add rows if necessary.

Proposers are strongly advised to complete each field as required below. Fields left blank or incorrectly completed will not be evaluated in the Proposer's favor. The information provided will be scored in the technical evaluation. Add rows as necessary.

A. Proposer Staff

Name	Title [Partner, Manager, Supervisor, or Staff Auditor]	Years of Total Auditing Experience	Years of Experience in Government Auditing	Certifications	Other Qualifications

B. Subcontractor Staff

Name	Title [Partner, Manager, Supervisor, or Staff Auditor]	Subcontractor Firm Name	Years of Total Auditing Experience	Years of Experience in Government Auditing	Certifications	Other Qualifications

ATTACHMENT F
6.2.D.iii.c Response Form

For the 2019 audit only, provide the number of hours assigned to each deliverable under the appropriate staffing titles. Insert titles in the "other" column(s) for titles not listed. Add additional space and description as needed. The staffing plans titles and hours should agree with what is in the Cost Proposal for the 2019 audit (hourly rates must not be included in the Technical Proposal; rates must be included in the Cost Proposal only).

Deliverables	Hours Per Staffing Title						Total Hours
	Partner	Manager	Supervisor	Staff	Other: _____	Other: _____	
#1: Detailed Audit Plan							
#2: Audit Work							
#3 & 4: Draft and Final Reports							
Total Hours							

**ATTACHMENT G
REFERENCES**

Submit a total of **THREE** references, at least one of whom is a government agency (Section 6.2.E) using this form.

Expand fields and duplicate this page as necessary.

RFP19-03 – Professional Auditing Services for the Audit of OSC’s System of Internal Control	
PROPOSER:	
Provide the following information for each reference submitted. Fields will expand as you type.	
Reference #1:	
Industry Type:	
Contact Person:	
Address:	
City, State, Zip:	
Telephone Number:	
Email Address:	
Number of years Proposer provided services to this entity:	
Brief description of the services provided:	
Reference #2:	
Industry Type:	
Contact Person:	
Address:	
City, State, Zip:	
Telephone Number:	
Email Address:	
Number of years Proposer provided services to this entity:	
Brief description of the services provided:	
Reference #3:	
Industry Type:	
Contact Person:	
Address:	
City, State, Zip:	
Telephone Number:	
Email Address:	
Number of years Proposer provided services to this entity:	
Brief description of the services provided:	

ATTACHMENT H
NEW YORK STATE EXECUTIVE LAW – ARTICLE 45
INTERNAL CONTROL RESPONSIBILITIES OF STATE AGENCIES

Section 950. Definitions.

Section 951. Internal control responsibilities.

Section 952. Internal audit responsibilities.

Section 953. Independent audits of the executive chamber and the division of the budget.

Section 954. Independent audits of the department of audit and control and the department of law.

§ 950. Definitions.

As used in this article, the following terms shall have the following meanings:

1. "Internal control". A process that integrates the activities, plans, attitudes, policies, systems, resources and efforts of the people of an organization working together, and that is designed to provide reasonable assurance that the organization will achieve its objectives and mission. The objectives of an internal control system include, but are not limited to: the safeguarding of assets; checking the accuracy and reliability of accounting data and financial reporting; promoting the effectiveness and efficiency of operations; ensuring compliance with applicable laws and regulations; and encouraging adherence to prescribed managerial policies. Internal control review processes are used periodically to evaluate the ongoing internal control system and to assess and monitor the implementation of necessary corrective actions.

2. "Internal audit". An appraisal activity established by the management of an organization for the review of operations as a means of assuring conformance with management policies and the effectiveness of internal control, and conducted in conformance with generally accepted standards for internal auditing.

3. "State agency". Any state department, state university of New York, city university of New York, board, bureau, division, commission, committee, council, office or other governmental entity performing a governmental or proprietary function for the state, or any combination thereof as provided in subdivision two of section nine hundred fifty-one of this article, except any public authority or public benefit corporation, the judiciary or the state legislature.

4. "Judiciary". The courts and court-related programs, including the office of court administration, of the state-funded portion of the unified court system and all components thereof as provided in subdivision two of section two hundred forty-nine-a of the judiciary law.

5. "State legislature". The legislature of the state of New York, including all components thereof as provided in subdivision two of section ninety of the legislative law.

6. "Covered authority". Any public authority or public benefit corporation, other than a bi-state authority or public benefit corporation, a majority of whose members are appointed by the governor or serve as members by virtue of holding state offices to which they were appointed by the governor, or any combination thereof.

§ 951. Internal control responsibilities.

1. The head of each state agency shall:

a. establish and maintain for the agency guidelines for a system of internal control that are in accordance with this article and internal control standards;

b. establish and maintain for the agency a system of internal control and a program of internal control review. The program of internal control review shall be designed to identify internal control weaknesses, identify actions that are needed to correct these weaknesses, monitor the implementation of necessary corrective actions and periodically assess the adequacy of the agency's ongoing internal control;

c. make available to each officer and employee of the agency a clear and concise statement of the generally applicable management policies and standards with which the officer or employee of such agency shall be expected to comply. Such statement shall emphasize the importance of effective internal control to the agency and the responsibility of each officer and employee for effective internal control;

d. designate an internal control officer, who shall report to the head of the agency, to implement and review the internal control responsibilities established pursuant to this section;

e. implement education and training efforts to ensure that officers and employees within such agency have achieved adequate awareness and understanding of internal control standards and, as appropriate, evaluation techniques; and

f. periodically evaluate the need for an internal audit function.

2. In order to identify all state agencies and their responsibilities for the purposes of implementing the provisions of this article, the director of the division of the budget shall issue and update as necessary a schedule which lists all covered state agencies.

§ 952. Internal audit responsibilities.

1. The director of the division of the budget, after reviewing the evaluation of the head of each state agency as to the need for an internal audit function, shall issue and, at the director's discretion, periodically revise a schedule of state agencies (other than the department of audit and control and the department of law) which are required to establish and maintain an internal audit function. The comptroller and the attorney general or their designees shall determine, and periodically review such determination of, whether an internal audit function within their respective departments is required. Establishment of such function shall be based upon an evaluation of exposure to risk, costs and benefits of implementation, and any other factors that are determined to be relevant. The head of each state agency listed in the budget director's schedule, and the comptroller and the attorney general if they or their designees so determine, shall establish an internal audit function which operates in accordance with generally accepted professional standards for internal auditing. Any such internal audit function shall be directed by an internal audit director who shall report directly to the head of such state agency. Notwithstanding any other provision of law, each internal audit director shall be appointed by the head of the state agency based on appropriate internal auditing credentials of the proposed appointee, consistent with generally accepted standards for internal auditing, including internal auditing education and experience. The position of internal audit director shall be an exempt position and except in the case of the department of audit and control and department of law, such appointment shall be subject to the approval of the director of the budget. For agencies for which an independent audit is not required pursuant to sections nine hundred fifty-three and nine hundred fifty-four of this article, the internal audit function shall evaluate the agency's internal controls and operations. The internal audit function shall also identify internal control weaknesses that have not been corrected and make recommendations to correct these weaknesses.

2. In the event the head of a state agency does not establish an internal audit function pursuant to subdivision one of this section, he or she shall nevertheless establish and maintain the program of internal control review required by section nine hundred fifty-one of this article.

§ 953. Independent audits of the executive chamber and the division of the budget.

1. At least once every three years, the independent certified public accountant or accountants selected pursuant to this section shall conduct audits of the internal controls of the executive chamber and the division of the budget, either as a single audit or separately. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the executive chamber and division of the budget's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in section nine hundred fifty of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to the entity, the independent auditor shall so state. The governor and the director of the budget shall make available to the public the results of such audits, including any related management letters. The governor and director of the budget and any officer or employee of the executive chamber and the division of the budget shall make available upon request to such independent certified public accountants all books and records relevant to such independent audits.

2. The governor and the director of the budget, either separately or jointly, shall request proposals from independent certified public accountants for audits of the internal controls of the executive chamber and the division of the budget. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The governor and the director of the budget shall select such independent auditor or auditors in accordance with a competitive procedure including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals.

§ 954. Independent audits of the department of audit and control and the department of law.

1. At least once every three years, the independent certified public accountants selected pursuant to this section shall conduct audits of the internal controls of the department of audit and control and the department of law, respectively. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the departments' internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in section nine hundred fifty of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to such departments, the independent auditors shall so state. The comptroller and the attorney general shall make available to the public the results of such audits, including any related management letters. The comptroller and attorney general and any officer or employee of such departments shall make available upon request to such independent certified public accountants all books and records relevant to such independent audits.

2. The comptroller and the attorney general shall request proposals from independent certified public accountants for audits of the internal controls of their respective departments. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The comptroller and attorney general shall select such independent auditors in accordance with a competitive procedure including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals.

3. Whenever the comptroller or the comptroller's appointee is a member of any board, commission, committee, council, or corporation, which constitutes a state agency, the governing body of such board, commission, committee, council, or corporation shall select an independent auditor for the purpose of conducting audits of internal controls in accordance with this section.

ATTACHMENT I

Attachment I (OSC's 2015 Internal Control Report) is being provided separately on the OSC website available at: <https://www.osc.state.ny.us/procurement/>

ATTACHMENT J

DRAFT CONTRACT

STATE OF NEW YORK

OFFICE OF THE STATE COMPTROLLER

AGREEMENT WITH

[Contractor Name]

NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C00XXXX

THIS AGREEMENT ("Agreement") is by and between the New York State Office of the State Comptroller ("OSC"), by the Department of Audit and Control, whose main office and principal place of business is 110 State Street, Albany, New York, 12236, and [Contractor Name] (the "Contractor") whose office is located at [Contractor Address] (OSC and the Contractor are collectively referred to as the "Parties") and is effective as of the date of approval by the New York State Office of the State Comptroller's Bureau of Contracts after execution by all Parties.

W I T N E S S E T H

WHEREAS, Article 45, Section 954, of the New York State Executive Law ("Executive Law") requires an independent audit of the Department of Audit and Control's system of internal control once every three years;

WHEREAS, to meet this responsibility OSC issued a Request for Proposals dated [] ("RFP"), which is attached hereto as Exhibit A soliciting proposals from vendors to conduct an independent audit of existing internal controls at OSC and to provide the services and deliverables as further detailed in the RFP;

WHEREAS, the Contractor, among others, responded to the RFP with a proposal dated [] ("Proposal") which is attached hereto as Exhibit B, confirming its ability to perform the necessary audit services; and

WHEREAS, based upon the evaluation of the various proposals submitted in response to the RFP, OSC determined that the Contractor's proposal offers the best value and that it is in the best interests of OSC to retain the Contractor to perform the Services (defined below) in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the terms and the mutual covenants and obligations of the Parties as set forth herein, the Parties do hereby agree as follows:

I. TERM

This Agreement shall be for a period commencing on approval by the OSC Bureau of Contracts and shall continue for a period of four years, subject to earlier termination as provided for in Section XVIII "Termination and Suspension."

II. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES

This Agreement shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed a part of this Agreement. Conflicts between these documents shall be resolved in the following order of precedence:

1. Appendix A – Standard Clauses for NYS Contracts;
2. Agreement – (This Document), including Appendices B through H as herein described:

- Appendix B – Proposer and Contractor Compliance Requirements and Procedures for Participation by Minority Group Members and Women With Respect to OSC Contracts;
 - Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
 - Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
 - Appendix E – Proposer’s Certifications/Acknowledgements;
 - Appendix F – Proposer’s Disclosure of Prior Non-Responsibility Determinations;
 - Appendix G – OSC Consultant Disclosure Reporting Requirements;
 - Appendix H – Proposer/Contractor Compliance Requirements and Procedures for Participation by Service-Disabled Veteran-Owned Businesses;
 - Appendix I – Executive Order on Independence of Auditors;
3. Exhibit A – The RFP number 19-03, including the Questions and Answers [and any Addenda or Amendments (if applicable)]; and
 4. Exhibit B – The Proposal (Exhibits B1 – Technical Proposal, B2 – Cost Proposal, and B3 – Administrative Proposal), including any clarifications thereto.

III. COMPENSATION

Compensation shall be payable upon the acceptance of each of the final reports on OSC’s system of internal control (i.e., 2019 and 2022) as outlined in Section 3.2 (Mandatory Deliverables) of Exhibit A. Compensation is based on Proposer’s actual number of hours utilized to provide the Services and Deliverables, limited by the Total Not to Exceed Cost, i.e., if fewer hours are actually utilized than those set forth in Exhibit B2, compensation will be less than the Total Not to Exceed Cost; if more hours are actually utilized, compensation will be limited to the Total Not to Exceed Cost.

Compensation is inclusive of all support services, travel (including for all audit work to be completed in Albany, NY or any other OSC location), supplies, meals, lodging, and expenses related to the performance of Services.

Total compensation under this Agreement shall not exceed \$XX.

IV. PAYMENT AND INVOICE

- A. The approved invoice for payment will be processed in accordance with Article 11-A of the New York State Finance Law.
- B. The invoice for each engagement will be submitted upon completion of each Final Report and must include the following information:
 1. OSC’s Agreement #C00[], Contractor’s taxpayer identification number, and Contractor’s New York State Vendor Identification Number;
 2. The total amount billed;
 3. The name and title of each person for whom time is billed; the dates and number of hours worked by each such person; a description of the services performed by such person, and the hourly fee rate of each such person;

4. Any additional information necessary in order for OSC to properly process the invoice. OSC shall provide advance notice to the Contractor of any additional information required to be included in the invoice.
- C. In order to track utilization of minority or women-owned business enterprise (M/WBE) participation goals as required by New York State Executive Law Article 15-A and 5 NYCRR 142.11, the invoice shall include **AC 3239-H M/WBE Expenditure Report of Appendix B**, which shall include the actual total cost of the contract work performed by each certified M/WBE for the work relating to the submitted invoice and the actual amounts of any payments made by the Contractor to each certified M/WBE as of the date the invoice is submitted. Failure to comply with the M/WBE participation goals set forth in the RFP may result in penalties as delineated in **Appendix B**.
 - D. The invoice shall be subject to OSC's acceptance of the Deliverable for which billing is being made and are to be submitted via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

**Office of the State Comptroller
Financial Administration
Contract Payment Unit
110 State Street, Stop 13-2
Albany, NY 12236-0001**

With a copy via email (preferred) to [REDACTED] or via hard copy mail to:

**Office of the State Comptroller
Office of Internal Control
110 State Street, Mail Stop 10-3
Albany, New York 12236-0001
ATTENTION: Internal Control Officer**

V. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REPORTING

Contractor agrees to comply with applicable federal, State, and local requirements concerning equal employment opportunities for minorities and women, including but not limited to Executive Law § 312 and its implementing regulations. In addition to the requirements stated in **Appendix A Clause 12 (Equal Employment Opportunities for Minorities and Women)**, and to ensure complete compliance with such requirements (and with Executive Law § 312 and the regulations adopted pursuant thereto) Contractor agrees to submit to OSC its EEO Policy Statement, and **Form AC 3239-A Proposer's EEO Staffing Plan of Anticipated Workforce**. Further, Contractor shall submit on a semi-annual basis **Form AC 3239-B Contractor's/Subcontractor's EEO Workforce Utilization Report** and shall require each of its Subcontractors, if any, to submit such Report on a quarterly basis during the term of the Agreement.

The Contractor/Subcontractor shall submit two originals and two copies of **Form AC 3239-B** to OSC at the following address:

Attn: Director of Financial Administration
New York State Office of the State Comptroller
Bureau of Financial Administration
110 State Street, Stop 13-2
Albany, NY 12236

These Reports are reviewed as part of OSC's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce and the Contractor's/Subcontractor's EEO Workforce Utilization Reports, the Contractor/Subcontractor may be subject to an in-depth EEO compliance review. If deficiencies are identified, OSC shall make every effort to resolve the deficiencies identified and to bring the Contractor/Subcontractor into compliance with such requirements. If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for the Division of Finance and Administration at OSC determines that the Contractor/Subcontractor is non-compliant, such Deputy Comptroller shall submit a written complaint to the New York State Department of Economic Development's Division of Minority and Women's Business Development

("DMWBD") regarding the Contractor's/Subcontractor's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Contractor/Subcontractor by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the Parties, the Parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law § 316) and regulation (5 NYCRR § 143.6).

VI. NOTICES

Any notice or other communication given pursuant to this Agreement shall be in writing and addressed to such party at the address set forth in this Agreement, and shall be effective:

- (i) When delivered personally to the party for whom intended;
- (ii) Upon five days following the deposit of the notice or other communication into the United States Postal Service mail (certified mail, return receipt requested, or first class postage prepaid); or
- (iii) Upon actual receipt by the intended party if such notice or other communication is sent by overnight mail service.

The following are the names and contact information for the OSC and the Contractor. The Parties shall notify each other, as soon as possible of any change.

OSC:

Title: Director of Financial Administration
Address: Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001
Telephone: (518) 474-7574

Contractor:

Name: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]
[REDACTED]
Telephone: [REDACTED]

VII. SERVICES, SCOPE OF WORK, AND DELIVERABLES

The Services and Deliverables to be provided by the Contractor are as set forth in Exhibit A, which is annexed hereto and fully incorporated herein.

VIII. COOPERATION

The Contractor and OSC and their respective agents, employees, and officers shall cooperate with each other to the fullest extent in connection with the Services. Pursuant to the terms and conditions of this Agreement and all appendices hereto, OSC shall supply and make available necessary information and personnel to assist the Contractor to perform the Services.

IX. STAFF

Contractor's "staff" includes employees, consultants, owners, officers, directors, subcontractors, subsidiaries, affiliates, partners and agents of the Contractor.

The principal supervisory and management staff, including engagement partners, managers, and other supervisors who will be assigned to the engagement (“key staff”) shall be those who are set forth in Attachment E of the Contractor’s Technical Proposal (see RFP Section 6.2). The replacement for any such key staff removed from, reassigned or who leaves the employ of the Contractor for any reason must match or exceed the replaced staff member in terms of skill level and experience. OSC reserves the right to approve or disapprove any proposed changes in key staff. OSC in each instance will be provided with a summary of the experience of the proposed key staff member and an opportunity to interview that person, prior to giving its approval or disapproval. Said approval shall not be unreasonably withheld.

The Contractor certifies that staff provided to perform Services possesses the necessary integrity and professional capacity (i.e., experience and knowledge) to meet OSC’s reasonable expectations. Subsequent to the commencement of Services, whenever the Contractor becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OSC no longer possesses the necessary integrity or professional capacity, the Contractor shall immediately discontinue the use of such staff and notify OSC.

OSC reserves the right to remove any of the Contractor’s staff if, in OSC’s discretion, such staff is not performing in accordance with this Agreement, or for any other reasonable work-related cause. The Contractor shall be fully responsible for performance of work by its staff and by subcontractor’s staff. OSC reserves the right to bar anyone from access to OSC’s premises and/or access to OSC’s information resources.

The Federal Immigration Reform and Control Act, as amended (8 USC §1324a et seq), obligates employers, such as the Contractor and its subcontractors, if any, to verify that their employees are legally entitled to work in the United States. In order to confirm that the employees are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to the legal entitlement to work in the United States of any Contractor or subcontractor employees assigned work under the Agreement. OSC does not provide sponsorship. The Contractor warrants to OSC that the employees assigned to OSC are eligible for employment in the United States. The Contractor is responsible for ensuring that the employees retain the authorization to legally work in the United States throughout the term of the Agreement. OSC does not discriminate against individuals on the basis of national origin or citizenship.

X. SUBCONTRACTORS

In the event that the Contractor utilizes subcontractors to perform any of the Services, OSC shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractors of the Contractor prior to their performance of Services.

The Contractor shall require all proposed subcontractors to complete such Appendices included in this Agreement as are deemed necessary by OSC prior to any such proposed subcontractor’s performance of Services. The Contractor acknowledges that this requirement is ongoing for the term of this Agreement, and the Contractor shall be required to disclose to OSC its intention to enter into any subcontracts for the performance of any Services.

Failure to disclose the identity of any and all subcontractors used by the Contractor together with a detailed description of their responsibilities may, at the sole discretion of OSC, result in a disqualification of the subcontractor or termination of this Agreement.

The Contractor shall be fully responsible to OSC for the acts and omissions of its subcontractors and of persons either directly or indirectly engaged by them in connection with the performance of this Agreement.

OSC reserves the right to remove any of the subcontractor’s staff if, in OSC’s discretion, such subcontractor’s staff is not performing in accordance with this Agreement, or for any other reasonable work-related cause. OSC reserves the right to approve or disapprove any proposed changes in subcontractor’s key staff. OSC in each instance will be provided with a summary of the experience of the proposed subcontractor’s key staff member and an opportunity to interview that person, prior to giving its approval or disapproval.

XI. RELATIONSHIP OF PARTIES; RIGHTS TO WORK PRODUCT

The relationship of the Contractor and its staff to OSC shall be that of an independent contractor, and not that of an agent or employee of OSC. The Contractor, as an independent contractor, shall not have the authority to contract for or bind OSC for any purpose whatsoever. The Contractor covenants and agrees that its staff will not hold

themselves out as agents, officers, or employees of OSC, and that they will not make any claim, demand, or application for any right or privilege applicable to any officer or employee of OSC, including but not limited to, Workers' Compensation coverage, Social Security coverage, or Retirement System benefits.

If the Contractor publishes a work related to any aspect of performance under this Agreement, or the results and accomplishments attained in such performance, OSC shall have, in addition to any rights and remedies it may have under this Agreement, a perpetual, royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

All work performed by Contractor and its employees and subcontractors for OSC under the Agreement is intended as work for hire. Such work is specially ordered and commissioned for use as contributions to a collective work, or is other such work as specified by Section 101(2) of the U.S. Copyright Act [17 U.S.C. 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York. Furthermore, OSC and the Contractor agree that the State of New York is the owner of all copyrights regarding such work. The Contractor warrants to the State of New York that it, and all of its employees and subcontractors, who have been, or may be used in regard to the Agreement, forfeit all past or future claims of title or ownership to the work produced under the Agreement.

Any and all reports and other materials (preliminary, final and otherwise), analyses and data (whether statistical or otherwise), transmitted to OSC by the Contractor shall become the sole and exclusive property of OSC for such use as OSC shall deem appropriate, other than Contractor's work papers, which Contractor may retain.

XII. GENERAL WARRANTY

Contractor warrants that the Services will be performed in a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances. Contractor shall re-perform, at its own expense, any work not in compliance with this warranty brought to its attention within 90 days of the initial performance/re-performance of such work.

XIII. CONFLICTS OF INTEREST

The Contractor hereby covenants and represents that it currently has no conflicts of interest with respect to Services and any other client engagements, consultant contract or employment, and that the Contractor shall immediately advise OSC whenever it becomes aware of any situation that involves or appears to involve such a conflict of interest or potential conflict.

XIV. CONFIDENTIALITY, SECURITY, AND BACKGROUND INVESTIGATIONS

A. Definition

The term "Confidential Information" shall mean any and all information which is disclosed by either party ("Owner") to the other ("Recipient") verbally, electronically, visually, or in written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).

B. Treatment

Owner's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than those in this Section and who have a justified business "need to know." This Agreement imposes no obligation upon the parties with respect to Confidential Information which either

party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by governmental or judicial order or applicable law provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

C. Confidentiality of OSC Information

The Contractor and its staff may view, or have access to, Confidential Information owned by OSC. Confidential Information shall include, but not be limited to:

- Personal information about individuals, e.g., home addresses, home telephone numbers, social security numbers, payroll information, account numbers, health status;
- OSC security procedures, topology, practices and policies;
- Computer codes or other electronic or non-electronic information, the disclosure of which could jeopardize the security of OSC's computer systems; and
- Any other material designated as being "Confidential."

The Contractor, on its own behalf, and on behalf of its staff, agrees to preserve the confidentiality of any and all Confidential Information viewed, accessed, or developed under the Agreement, and agrees:

- To view, access and use only the Confidential Information relevant and necessary to provide the Services to OSC;
- To use its best efforts to preserve the confidentiality of the Confidential Information;
- To use its best efforts to prevent disclosure of the Confidential Information to any person other than to OSC staff;
- To abide by all OSC and State confidentiality policies and procedures;
- That all reports and other materials, preliminary, final and otherwise, prepared for or relating to Services described herein (other than Contractor's work papers) shall be treated at all times as Confidential Information by the Contractor;
- All Confidential Information shall remain the property of OSC; and
- That all Confidential Information shall be returned or destroyed (using highest industry-standard secure disposal methods) within thirty (30) days after the expiration or termination of the Agreement and that upon such destruction, the Contractor will certify as to the method of destruction.

D. Security

The Contractor and its staff shall be required to comply with all applicable facility and information security policies, standards, and procedures, including any training required, both present and future, by OSC in performing the Services.

The Contractor may not connect any non-State computer, electronic storage device, or telecommunications equipment to OSC network; e.g., personal and corporate laptop computers, personal and corporate USB devices, smartphones, and tablets are included in this prohibition.

Where performance of Services involves use by the Contractor of State-owned or licensed, or OSC-owned or licensed, papers, files, computer disks or other electronic storage devices, data, or records at OSC or State facilities or offices, the Contractor shall not remove such records therefrom without the prior written approval from an authorized representative of OSC.

E. Background Investigations

OSC policy requires that background investigations be conducted on Contractor staff who will have access to OSC's IT systems, access to OSC confidential information/data, or routine access to any OSC facility. For purposes of this policy, "routine access" is defined as access to an OSC facility for five consecutive business days or 10 business days over the annual term of the engagement. Accordingly, with the signing of this Agreement, the Contractor certifies that it has or will conduct a background investigation on staff to whom the policy applies within the 12 months prior to the staff commencing Services under this Agreement. The Contractor agrees to undertake a background investigation of any new/replacement Staff during the term of the Agreement.

At a minimum, background investigations shall include a review/evaluation of the following:

- identity verification, including Social Security Number search;
- employment eligibility, including verification of U.S. citizenship or legal immigration status where appropriate;
- criminal history/court records (Federal, State and local for the past five years);
- work experience/history for the past five years;
- pertinent skills, qualifications, and education/professional credentials; and
- references.

The Contractor must obtain the consent of its Staff to allow OSC, upon request: (i) to review the background investigation records, including all supporting documentation, and (ii) to conduct its own background investigation.

Only Staff who have passed the background investigation, and provided such consent shall be assigned to provide Services to OSC under this Agreement. The Contractor must maintain records related to the background investigations performed during the term of the Agreement in accordance with the terms of Appendix A (Section 10, Records).

XV. INDEMNIFICATION AND LIABILITY

- A.** Neither the Contractor, OSC, nor the State shall be liable for any delay or failure in performance beyond its control resulting from acts of war, hostility or sabotage; act of God; electrical, internet, or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than 90 days, either party may terminate all or any agreed upon portion of the Services immediately upon written notice. This paragraph does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or OSC's obligation to pay for Services provided by the Contractor which have been approved by OSC.
- B.** The Contractor shall be fully liable for any act or omission of the Contractor and its staff. The Contractor shall fully indemnify, defend and hold harmless OSC and the State, their officials, agents and employees, without limitation, from suits, actions, damages and costs of every name and description (including reasonable attorney's fees and expenses) arising from any act or omission of the Contractor or its staff, including personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; provided however that the Contractor shall not be obligated to indemnify OSC for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of OSC.

For third party claims, OSC shall give the Contractor:

1. prompt written notice of any action, claim, suit, proceeding, or threat of such action relating to this Agreement;
2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Contractor's sole expense; and
3. reasonable assistance in the defense of any such action at the expense of Contractor.

Notwithstanding the foregoing, the State reserves the right to join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving a significant public interest.

- C. Notwithstanding the above, neither party 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 OSC, the Contractor, or by others.
- D. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due Contractor such moneys as may be necessary to satisfy any claim for damages OSC may have against Contractor.

XVI. RESPONSIBILITY TERMS

- A. The Contractor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Contractor's Vendor Responsibility Questionnaire ("Responsibility Questionnaire") provided to the Contractor by OSC prior to execution of this Agreement. The Contractor further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Responsibility Questionnaire.
- B. The Contractor shall provide to OSC updates to the Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information related to such Responsibility Questionnaire becomes available. The Contractor shall, on an annual basis from the anniversary date of execution of this Agreement, re-certify such Responsibility Questionnaire, noting any changes, whether material or non-material, or submit a certification of "no change" to OSC.
- C. Notwithstanding Subsection (B) hereinabove, OSC reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Responsibility Questionnaire, (ii) to inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) to require the Contractor to provide such information to OSC within a reasonable timeframe to be established at OSC's sole discretion.
- D. OSC reserves the right to make a final determination of the Contractor's non-responsibility ("Determination of Non-Responsibility") at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (ii) the Contractor's failure to disclose material information; or (iii) OSC's discovery of any other material information which pertains to the Contractor's responsibility.
- E. If OSC preliminarily determines the Contractor to be non-responsible, OSC shall provide written notice to the Contractor detailing the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard before the determination is finalized.
- F. Upon a Determination of Non-Responsibility of the Contractor, OSC reserves the right to terminate this Agreement for cause pursuant to Section XVIII "Termination and Suspension".

XVII. TRANSITION

Upon expiration or termination of this Agreement, the Contractor shall, upon the appointment of the successor contractor, provide access to such successor contractor all necessary records in the Contractor's possession relating to the Services provided under this Agreement. At OSC's request, the Contractor shall, at current (hourly)

rates, also make appropriate staff available to OSC and to the successor contractor during normal business hours to answer questions regarding such records and the Services which have been provided by the Contractor under this Agreement. The Contractor shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that the Services required are uninterrupted and are not adversely impacted by the change in contractor.

XVIII. TERMINATION AND SUSPENSION

- A. OSC may terminate or suspend this Agreement, or terminate or suspend the Services with respect to a specific matter or matters, with or without cause upon 15 days prior written notice.
- B. OSC reserves the right to terminate or suspend this Agreement, or to terminate or suspend the Contractor's Services with respect to a specific matter or matters immediately upon written notice to the Contractor, if OSC deems the Contractor's performance unsatisfactory at any time during the term of this Agreement, in OSC's sole discretion.
- C. In the event of termination, the Contractor shall be entitled to compensation for Services performed through the date of termination which are acceptable to OSC, in OSC's sole discretion. In the event of suspension, the Contractor shall be entitled to compensation for non-suspended Services which are acceptable to OSC, in its sole discretion.

XIX. MISCELLANEOUS PROVISIONS

A. WAIVER

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.

B. SEVERABILITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

C. PUBLIC COMMUNICATION

Neither the Contractor nor any of its staff, shall make any statement to the press or issue through any media of communication any statement bearing on the Services performed or data collected under this Agreement, without the prior written approval of OSC.

D. SURVIVAL

The provisions of Sections XII. "General Warranty," XIV. "Confidentiality, Security and Background Investigations," XV. "Indemnification and Liability," XVII. "Transition," and Appendix A shall survive the expiration or termination of this Agreement.

XX. ENTIRE AGREEMENT/APPROVALS

This Agreement and the appendices, exhibits and attachments hereto constitute the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties hereto. This Agreement and any amendment hereof shall not be deemed executed, valid, or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by the OSC Bureau of Contracts pursuant to § 112 of the State Finance Law, and filed in the Office of the State Comptroller.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

In addition to the acceptance of this Agreement, the OSC and Contractor signatures on this page also certify that originals of this signature page will be attached to all other originals of this Agreement.

CONTRACT NUMBER: [REDACTED]

[CONTRACTOR]

OFFICE OF THE STATE COMPTROLLER

SIGNATURE

SIGNATURE

PRINTED NAME

MARTHA ROSS

PRINTED NAME

TITLE

DIRECTOR OF FINANCIAL ADMINISTRATION

TITLE

DATE

DATE

CORPORATE ACKNOWLEDGEMENT

STATE OF _____ }
}

COUNTY OF _____ }
}

SS.:

On the _____ day of _____ in the year 20_____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she maintains an office at _____, and further that he/she is the _____ of _____, the corporation described in foregoing instrument; that, by authority of the Board of Directors of the corporation he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of the corporation as the act and deed of the corporation.

Notary Public
Registration No.

APPROVED AS TO FORM:
NYS ATTORNEY GENERAL

APPROVED:
THOMAS P. DiNAPOLI, COMPTROLLER

BY:

BY:

DATE

DATE

APPENDIX A

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov

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

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

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

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

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

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

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

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

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

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

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

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

January 30, 2014

APPENDIX B

PROPOSER AND CONTRACTOR COMPLIANCE REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO OSC CONTRACTS

In an effort to eradicate barriers that have historically impeded access by minority group members and women in State contracting activities, New York State Executive Law §310–318, (Article 15-A: Participation By Minority Group Members and Women With Respect To State Contracts – hereinafter “the Article”), was enacted to promote equality of employment and economic opportunities for minority group members and women.

To demonstrate its commitment to diversity and non-discrimination, and to remedy disparities caused by discrimination, the New York State Office of the State Comptroller (“OSC”) has enacted the following Executive Orders:

- Equal Opportunity, Non-Discrimination and Affirmative Action;
- Harassment (Including Sexual Harassment), and
- Minority/Women-Owned Business Enterprise (“M/WBE”) Procurements.

In keeping with the Comptroller’s Executive Orders, applicable federal, State and local laws, rules, regulations, and the requirements as set forth under the Article, OSC has developed compliance requirements, forms, and procedures to ensure that (i) all contractors (as defined under §310[3] (to include those who submit bids/proposals in an effort to be selected for contract award [hereinafter “Proposers”] as well as those successful bidders/proposers with whom OSC enters into State Contracts, as defined in §310[13] [hereinafter “Contractors”], as well as proposed or actual “Subcontractors”, as defined in §310[14]) shall comply with requirements to ensure Equal Employment Opportunities (“EEO”) for minority group members and women, and (ii) there are meaningful participation opportunities for certified M/WBEs in the OSC procurement process.

It is the expectation of OSC and the responsibility of all proposers and contractors participating in and/or selected for procurement opportunities with OSC that such proposers and contractors shall fulfill their obligations to comply with applicable federal, State, and local requirements concerning EEO and opportunities for M/WBEs, including but not limited to the Article and its implementing regulations.

I. EEO Requirements

A. Prior to the Award of a State Contract

In addition to the requirements stated in Appendix A, Clause 12 (*Equal Employment Opportunities for Minorities and Women*), and to ensure complete compliance with such requirements (and with the Article and the Regulations adopted pursuant thereto), as a precondition to being selected for contract award and entering into a valid and binding State Contract, the Proposer shall provide with its bid/proposal:

1. An **EEO Policy Statement**, as described in Appendix A, Clause 12.
2. **Form AC 3239-A (Proposer’s EEO Staffing Plan of Anticipated Workforce)**, which should document:
 - a. The workforce to be utilized on the State Contract; or
 - b. Where the workforce to be utilized in the performance of the State Contract cannot be separated out from the Proposer’s and/or proposed Subcontractor’s total work force (for example, certain commodities contracts), the Proposer’s and/or proposed Subcontractor’s total workforce including apprentices, broken down by specified ethnic background, gender, and federal occupational categories or other appropriate categories specified by OSC.

A Proposer’s failure to submit an EEO Policy Statement and **Form AC 3239-A – Proposer’s EEO Staffing Plan of Anticipated Workforce** shall result in the rejection of the Proposer’s bid/proposal, unless the Proposer provides OSC with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan where a Proposer has a work force of 10 employees or less), or makes a commitment to submit an EEO Policy Statement and an EEO Staffing Plan of Anticipated Workforce within the time frame specified in writing by OSC.

If, after scoring, a Proposer is selected for award, before that award is completed (e.g., during contract negotiations), OSC will conduct a review of the substance of the EEO Policy Statement and the EEO Staffing Plan of Anticipated Workforce to determine whether the Proposer appears to be in compliance with Appendix A, Clause 12 and the Article, i.e., whether such documents demonstrate that the Proposer is committed to Equal Employment Opportunity. If, upon review, OSC comes to the conclusion that such commitment to EEO principles is lacking, OSC shall contact the Proposer and make every effort to resolve the deficiencies identified in the bid/proposal and to bring the substance of the bid/proposal into compliance with such requirements. Failure to correct such deficiency within a time frame specified by OSC may result in the rejection of the Proposer's bid/proposal.

B. After the Award of the State Contract

After OSC's award of a State Contract and during the performance of the State Contract, the Contractor shall periodically¹ submit to OSC:

1. **Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report)**, which should document:
 - The workforce to be utilized and, thereafter, actually utilized on the State Contract, broken down by specified ethnic background, gender, and federal occupational categories or other appropriate categories specified by OSC.

In addition to general compliance monitoring of State Contracts, OSC shall conduct in-depth compliance reviews on selected State Contracts during the course of the year, in accord with 5 NYCRR §143.4.

The Contractor's/Subcontractor's EEO Workforce Utilization Reports shall be reviewed as part of OSC's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce submitted with a bid/proposal and the Contractor's/Subcontractor's EEO Workforce Utilization Reports, the Contractor/Subcontractor may be subject to an in-depth EEO compliance review.

If deficiencies are identified during OSC general contract compliance monitoring or during in-depth compliance reviews, OSC shall make every effort to resolve the deficiencies identified and to bring the Contractor/Subcontractor into compliance with such requirements.

If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for Human Resources and Administration at OSC agrees that the Contractor/Subcontractor is non-compliant, such Deputy Comptroller shall submit a written complaint to the New York State Department of Economic Development's Division of Minority and Women's Business Development ("DMWBD") regarding the Contractor's/Subcontractor's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Contractor/Subcontractor by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law §316) and regulation (5 NYCRR §143.6).

II. M/WBE Requirements

It is the policy of the State of New York and of OSC that M/WBEs (as defined under §310[7] and [15] and as certified pursuant to 5 NYCRR Part 144) shall be given the opportunity for meaningful participation in the performance of State Contracts. Accordingly, **Proposers and Contractors shall make good faith efforts** to solicit active participation by M/WBEs identified in the Empire State Development ("ESD") directory of certified businesses², which can be viewed at: www.nylovesmwbe.ny.gov/cf/search.cfm.

For the purposes of this Appendix B, the question of whether a proposer or contractor has engaged in and documented "good faith efforts" to solicit active participation by M/WBEs in the performance of State

¹ If the workforce utilized in the performance of the contract can be separated out from the Contractor's and/or Subcontractor's total workforce, quarterly reports are required. If the workforce utilized in the performance of the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, semi-annual reports are required.

² All M/WBE firms to be utilized are required to be certified by ESD or must be in the process of obtaining certification from ESD. Should the Proposer/Contractor identify a minority-owned or woman-owned firm that is not currently certified by ESD, the Proposer/Contractor should request that the firm submit a certification application to OSC for eligibility determination. OSC will work with ESD to expedite the application; however, it is the responsibility of the Proposer/Contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement in order to facilitate full M/WBE participation.

Contracts shall be determined by OSC after a thorough consideration of the factors listed in 5 NYCRR §142.8.

The separate MBE and WBE participation goals established by OSC for this procurement are based on the overall availability of M/WBEs that have been certified to perform the specific scope of work identified in this procurement. **For compliance purposes, these goals should not be construed as rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort** to make all aspects of the entire M/WBE Program work.

A. Prior to the Award of a State Contract

Bidders/Proposers shall document and/or demonstrate in their bids/proposals every good faith effort to solicit active M/WBE participation at least equal to the participation goals established by OSC. The M/WBE utilization should be measured by comparing (in detail) the dollar value of the component services/deliverables/materials provided/supplied by M/WBEs to the total dollar value of the services/deliverables/materials required by the State Contract. The following must be submitted with the bid/proposal:

- 1. Form AC 3239-C (M/WBE Goal Requirements – Certification of Good Faith Efforts)**, which should document:
 - Actions taken by the Bidder/Proposer to solicit M/WBEs as subcontractors and/or suppliers so that the Bidder/Proposer could achieve the overall prescribed M/WBE participation percentage goals set forth in the procurement in the performance of the contract to be awarded.
- 2. Form AC 3239-D (Proposer’s M/WBE Utilization Plan)**, which should document:
 - Actions taken and/or to be taken to meet established goals and the time frames need to achieve results which could reasonably be expected by putting forth every good faith effort to achieve the overall prescribed M/WBE participation percentage (%) goals set forth in the procurement.
- 3. Form AC 3239-E (Proposer’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate)**, which should document:
 - The names and signatures of certified MBEs and/or WBEs which have agreed to participate as Subcontractors if the Proposer is awarded the State Contract.

When M/WBE participation goals higher than 0% (zero percent) are included in OSC’s procurement documents, a Proposer’s failure to submit a completed **Form AC 3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts**, **Form AC 3239-D – Proposer’s M/WBE Utilization Plan**, and a completed **Form AC 3239-D – Proposer’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate** shall result in the rejection of the Proposer’s bid/proposal, unless the Proposer provides OSC with a completed **Form AC 3239-F (Request for Waiver)** or makes a commitment to submit a completed **Form AC 3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts**, **Form AC 3239-D – Proposer’s M/WBE Utilization Plan**, and **Form AC 3239-D – Proposer’s M/WBE Subcontractor’s/Suppliers Notice of Intent to Participate** within the time frame specified in writing by OSC.

If, after scoring, a Proposer is selected for award, before that award is completed (e.g., during contract negotiations), the “Successful Proposer” will be required to submit **Form AC 3239-G (Contractor’s M/WBE Utilization Plan)**. OSC will review the substance of such Plan and within twenty (20) days from the receipt thereof issue a written notice of acceptance or deficiency.

A Successful Proposer must provide OSC with a written remedy in response to a written notice of deficiency within seven (7) business days of receipt or within a reasonable time frame as specified by OSC to correct the specific deficiency. Failure to correct a deficiency and/or demonstrate compliance can result in (i) the necessity of the Successful Proposer to submit to OSC a completed **Form AC 3239-F (Request for Waiver)**, or (ii) disqualification of the bid/proposal.

B. After the Award of the State Contract

After OSC’s award of a State Contract and during the performance of the State Contract, except where OSC has granted the Contractor a total waiver³, the Contractor shall submit to the Program with every invoice:

³ If OSC has granted a partial waiver to the Successful Proposer, prior to award OSC must have approved a Contractor’s M/WBE Utilization Plan and a completed Contractor’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate, and after award the Contractor must still submit the Contractor’s Quality Assurance Report/Checklist.

1. Form AC 3239-H – M/WBE Expenditure Reports.

Failure to timely submit a **Form AC 3239-H – M/WBE Expenditure Reports** and/or other reports or information as requested may result in payments under the contract being delayed until such reports or other information have been received⁴.

OSC shall review the substance of the Contractor's **Form AC 3239-H – M/WBE Expenditure Reports** and shall be responsible for evaluating and determining whether the Contractor has demonstrated compliance with its previously approved **Form AC 3239-G – Contractor's M/WBE Utilization Plan**. In making such determination, OSC may review and investigate whether the participation goals are being achieved with certified minority- and women-owned business enterprises and whether information made available to OSC through monitoring, onsite inspections, progress meetings regarding work required by the State Contract, review of payrolls or other OSC actions provides evidence of compliance.

Where it appears that a Contractor cannot, after a good faith effort, comply with its previously approved **Form AC 3239-G – Contractor's M/WBE Utilization Plan**, such Contractor may submit a completed **Form AC 3239-F (Request for Waiver)** setting forth the reasons for such Contractor's inability to meet any or all of the participation requirements, together with an explanation and supporting documentation demonstrating the efforts undertaken by such Contractor to obtain the required M/WBE participation⁵.

If OSC determines that the Contractor has not demonstrated compliance with its previously approved **Form AC 3239-G – Contractor's M/WBE Utilization Plan** and has made no good faith effort to do so, OSC shall make every effort to resolve the deficiencies identified and to bring the Contractor into compliance with such requirements.

If OSC is unsuccessful in its efforts, and, upon review, the Deputy Comptroller for Human Resources and Administration agrees that the Contractor is non-compliant, OSC shall either:

- (i) submit a written complaint to the New York State Department of Economic Development's Division of Minority and Women's Business Development ("DMWBD") regarding the Contractor's/Subcontractor's noncompliance and recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Contractor/Subcontractor by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law §316) and regulation (5 NYCRR §142.12), including potential temporary debarment of the Contractor where the Contractor is found to have engaged in fraudulent or intentional misrepresentation or willful or intentional disregard of the M/WBE participation requirement in the State Contract; or

- (ii) withhold payment from the Contractor as liquidated damages in accordance with 5 NYCRR §142.13, if the Deputy Comptroller for Human Resources and Administration determines that the Contractor has breached the State Contract by willfully and intentionally failing to comply with the MWBE participation goals set forth in the State Contract. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the State Contract.

Nothing herein shall diminish or supersede OSC's authority and responsibility to enforce the requirements of its contracts.

All Affirmative Action, EEO, and M/WBE compliance forms required to be submitted along with bids and/or proposals for OSC procurements are attached hereto. These forms are to be submitted without change to participation goals specified in the procurement documents.

By submitting a bid/proposal, the Proposer/Contractor agrees to provide to OSC access to all documentation, records, reports, facilities, etc., which OSC may deem necessary to determine

⁴ Contractors will be requested to provide additional compliance reports and information (i) to verify payments made to M/WBEs, (ii) to verify M/WBE utilization and/or, (iii) as needed to evaluate any other aspect of Contractor compliance with the requirements set forth herein.

⁵ Requests for a partial or total waiver made subsequent to award of a State Contract may be made at any time during the term of the State Contract but prior to the submission of a request for final payment on that State Contract.

Proposer/Contractor compliance.

After the award of a State Contract, submit two originals and two copies of all required reports, forms, information, and Requests for Waivers (if applicable) to OSC the following address:

New York State Office of the State Comptroller
Bureau of Financial Administration
110 State Street, Stop 13-2
Albany, NY 12236
Attn: Director of Financial Administration

Requests for technical assistance in meeting these requirements can be obtained by contacting OSC at (518) 474-7574.

Forms attached to this Appendix B:

- **AC 3239-A – Proposer’s EEO Staffing Plan of Anticipated Workforce**
 - To be submitted with the Administrative Proposal
- **AC 3239-B – Contractor’s/Subcontractor’s EEO Workforce Utilization Report**
 - To be submitted as part of post-contract documents
- **AC 3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts**
 - To be submitted with the Administrative Proposal
- **AC 3239-D – Proposer’s M/WBE Utilization Plan**
 - To be submitted with the Administrative Proposal
- **AC 3239-E – Proposer’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate**
 - To be submitted with the Administrative Proposal
- **AC 3239-F – Request for Waiver**
 - To be submitted with the Administrative Proposal (if applicable)
- **AC 3239-G – Contractor’s M/WBE Utilization Plan**
 - To be submitted as part of post-contract documents
- **AC 3239-H – M/WBE Expenditure Reports**
 - To be submitted as part of post-contract documents on a per-invoice basis
- **AC 3239-I – Contractor’s Quality Assurance Report/Checklist**
 - To be submitted as part of post-contract documents

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE**

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this form as part of its Administrative Proposal.

Proposer Name:	Federal Identification Number:
Address:	Procurement Number:
City, State, Zip Code:	M/WBE Participation Goals: MBE ____% WBE ____%
Does the Proposer have an existing affirmative action program? (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (if Yes, attach current copy of EEO Policy Statement.)	Is the Proposer ESD Certified: (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, provide ESD Certification Number and Expiration Date.)
<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>can</u> be separated out from the Contractor's/Subcontractor's total workforce.	<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>cannot</u> be separated out from the Contractor's/Subcontractor's total workforce.

Enter in the following Job Categories the total number of staff by race, sex, and ethnic status to be utilized by the Proposer during the performance of this State Contract.

JOB CATEGORIES (as defined in the Instructions attached)	RACE/ETHNICITY OF ANTICIPATED WORKFORCE (Report employees in only one category as defined in the Instructions attached.)														Total Columns A – N
	Hispanic or Latino		(NOT HISPANIC OR LATINO)												
			White		Black or African-American		Native Hawaiian or Other Pacific Islander		Asian		American Indian or Alaska Native		Two or more races		
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	
		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Executive/Senior Level Officials and Managers															
First/Mid-Level Officials and Managers															
Professionals															
Technicians															
Sales Workers															
Administrative Support Workers															
Craft Workers															
Operatives															
Laborers and Helpers															
Service Workers															
TOTAL:															

Prepared by (signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE

Location and Description of Work to be Performed (expand as necessary):

[Empty box for providing location and description of work to be performed]

INSTRUCTIONS FOR COMPLETING PROPOSER'S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE FORM

RACE AND ETHNIC IDENTIFICATION*	
For the purpose of completing this form, OSC has adapted the race and ethnic designations used and obtained in accordance with the requirements administered by the Equal Employment Opportunity Commission, which do not denote scientific definitions of anthropological origins. Definitions of the race and ethnicity categories are as follows:	
Hispanic or Latino	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
White	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
Black or African-American	A person having origins in any of the black racial groups of Africa.
Native Hawaiian or Other Pacific Islander	A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
Asian	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
American Indian or Alaska Native	A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment
Two or More Races	All persons who identify with more than one of the above five races.
<p>Submission of this form constitutes the Proposer's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.</p> <p>By submitting a bid/proposal, the Proposer/Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Proposer/Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.</p> <p>Failure to submit complete and accurate information may result in non-compliance and bid/proposal disqualification.</p> <p>*The Equal Employment Opportunity Commission's Description of Job Categories and Instructions for assigning employees can be viewed at www.eeoc.gov/employers/eeo1survey/2007instructions.cfm.</p>	

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S/SUBCONTRACTOR'S EEO WORKFORCE UTILIZATION REPORT**

PART A – INSTRUCTIONS: All Contractors/Subcontractors must complete and submit this form within thirty (30) days after award of a State Contract.

Contractor/Subcontractor Name:	
Address:	Federal Identification Number:
City, State, Zip Code:	Procurement Number:
Does the Proposer have an existing affirmative action program? (Check one): <input type="checkbox"/> Yes (if Yes, attach current copy of EEO Policy Statement.) <input type="checkbox"/> No	
Does the Proposer have an existing affirmative action program? (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (if Yes, attach current copy of EEO Policy Statement.)	Is the Proposer ESD Certified: (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, provide ESD Certification Number and Expiration Date.)
<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>can</u> be separated out from the Contractor's/Subcontractor's total workforce.	<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>cannot</u> be separated out from the Contractor's/Subcontractor's total workforce.

PART B – WORKFORCE UTILIZATION: Check box if workforce is the same as reported on Proposer's EEO Staffing Plan of Anticipated Workforce (AC 3239-A) and skip to PART C.

Enter in the following Job Categories the total number of staff by race, sex, and ethnic status to be utilized by the Proposer during the performance of this State Contract.

JOB CATEGORIES (as defined in the Instructions attached)	RACE/ETHNICITY OF ANTICIPATED WORKFORCE (Report employees in only one category as defined in the Instructions attached.)														Total Columns A – N	
	Hispanic or Latino		(NOT HISPANIC OR LATINO)													
			White		Black or African-American		Native Hawaiian or Other Pacific Islander		Asian		American Indian or Alaska Native		Two or more races			
	A	B	C	D	E	F	G	H	I	J	K	L	M	N		
Male		Female		Male		Female		Male		Female		Male		Female		
Executive/Senior Level Officials and Managers																
First/Mid-Level Officials and Managers																
Professionals																
Technicians																
Sales Workers																
Administrative Support Workers																
Craft Workers																
Operatives																
Laborers and Helpers																
Service Workers																
TOTAL:																

PART C – Prepared by (signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

CONTRACTOR'S/SUBCONTRACTOR'S EEO WORKFORCE UTILIZATION REPORT

Description of Services or Supplies to be Provided (expand as necessary):

[Empty box for description of services or supplies]

INSTRUCTIONS FOR COMPLETING CONTRACTOR'S/SUBCONTRACTOR'S EEO WORKFORCE UTILIZATION REPORT FORM

RACE AND ETHNIC IDENTIFICATION*	
For the purpose of completing this form, OSC has adapted the race and ethnic designations used and obtained in accordance with the requirements administered by the Equal Employment Opportunity Commission, which do not denote scientific definitions of anthropological origins. Definitions of the race and ethnicity categories are as follows:	
Hispanic or Latino	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
White	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
Black or African-American	A person having origins in any of the black racial groups of Africa.
Native Hawaiian or Other Pacific Islander	A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
Asian	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
American Indian or Alaska Native	A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment
Two or More Races	All persons who identify with more than one of the above five races.
CONTRACTOR'S/SUBCONTRACTOR'S EEO WORKFORCE UTILIZATION REPORT SUBMISSION REQUIREMENTS	
Please submit completed Form AC 3239-B within thirty (30) days after award of a State Contract to:	
<p style="margin-left: 40px;">New York State Office of the State Comptroller Bureau of Financial Administration, Attn: M/WBE Specialist 110 State Street, Stop 13-2 Albany, NY 12236</p>	
Submission of this form constitutes the Contractor's/Subcontractor's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.	
By submitting a bid/proposal, the Proposer/Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Proposer/Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.	
Failure to submit complete and accurate information may result in non-compliance and bid/proposal disqualification.	
*The Equal Employment Opportunity Commission's Description of Job Categories and Instructions for assigning employees can be viewed at www.eeoc.gov/employers/eeo1survey/2007instructions.cfm .	

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
M/WBE GOAL REQUIREMENTS – CERTIFICATION OF GOOD FAITH EFFORTS**

Bidders/Proposers must document “good faith efforts” to provide meaningful participation by New York State Certified Minority and Women-Owned Business Enterprises (“M/WBE”)s as subcontractors and/or suppliers in the performance of this State Contract.

The undersigned hereby certifies under penalty of perjury that he/she has taken the following actions on behalf of the Bidder/Proposer to demonstrate the aforesaid good faith efforts:

- a) The Bidder/Proposer attended any pre-bid meetings that were scheduled by OSC or the NYS Department of Economic Development (“DED”) or its designee to inform M/WBEs of contracting and subcontracting opportunities available on the project;
- b) The Bidder/Proposer identified economically feasible units of the project that could be contracted or subcontracted to M/WBEs in order to increase the likelihood of participation by such enterprises;
- c) The Bidder/Proposer advertised in general circulation, trade association and trade-oriented, minority and women-focused publications, if any, concerning the contracting or subcontracting opportunity;
- d) The Bidder/Proposer solicited and provided written notice to a reasonable number of M/WBEs identified from current certified lists of such business enterprises provided or maintained by the NYS Empire State Development’s (“ESD”) Division of Minority and Women-Owned Business Development (“DMWBD”), or its designee, of the contracting or subcontracting opportunity in sufficient time to allow the M/WBEs to participate effectively;
- e) The Bidder/Proposer followed up initial solicitations by contacting the M/WBEs to determine whether the M/WBEs were interested in such contracting or subcontracting opportunity;
- f) The Bidder/Proposer provided interested M/WBEs with adequate information about the plans, specifications, and requirements for the contracting or subcontracting opportunity;
- g) The Bidder/Proposer used the services of community organizations, contractor groups, State and federal business assistance offices and other organizations identified by DED or its designee that provide assistance in the recruitment and placement of M/WBEs; and
- h) The Bidder/Proposer negotiated in good faith with M/WBEs submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals, or quotations prepared by any M/WBE. “Good faith” negotiating means engaging in good faith discussions with M/WBEs about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the M/WBEs, including sharing with them any cost estimates from the procurement documents, if available.

I have provided information on the above as requested for (Procurement #) in Attachment A, Proposer’s Certified Statements, Section 4.

Signature

Printed or Typed Name and Title

Procurement Number

Date

STATE OF NEW YORK)

) ss:

COUNTY OF _____)

On the _____ day of _____ in the year 2011 before me personally came _____ to me known, who, being by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____ which executed the above instrument; and that (s)he signed his/her name thereto as the _____ thereof.

Notary Public

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S M/WBE UTILIZATION PLAN**

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this M/WBE Utilization Plan as part of its Administrative Proposal. Proposers must submit a separate M/WBE Utilization Plan for each M/WBE utilized.

Contractor Name:	Federal Identification Number:
Address:	Procurement Number: _____
City, State, Zip Code:	M/WBE Participation Goals: MBE _____% WBE _____%

LIST ALL M/WBE SUBCONTRACTORS AND/OR SUPPLIERS TO BE UTILIZED (ATTACH ADDITIONAL SHEETS IF NECESSARY).

M/WBE Name, Address, Email Address, and Telephone Number	Certification Classification (check all that apply.)	Federal ID No.	Estimated Dollar Value of Work/Supplies	Please provide a brief description of services or supplies to be provided by each M/WBE identified here on Page 2.
A.	NYS ESD Certified: <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD Certified: <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
C. ESD Certification Number:	D. ESD Certification Expiration Date:			

If Contractor will not be utilizing an M/WBE, check here and attach Form AC 3239-F, Request for Waiver, and supporting documentation.
 If Contractor has previously submitted AC 3239-F, Request for Waiver, for this procurement, check here and enter date submitted: _____.

Prepared by (Signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

Submission of this form constitutes the Contractor's/Subcontractor's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.

THIS SECTION FOR OSC USE ONLY

Reviewed by:	Date Received:	Utilization Plan Approved <input type="checkbox"/> Yes <input type="checkbox"/> No	Date Approved:	M/WBE Certification Status: MBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No WBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No				
Deficiencies Identified: MBE <input type="checkbox"/> Yes <input type="checkbox"/> No / WBE <input type="checkbox"/> Yes <input type="checkbox"/> No	Notice of Deficiency Issued: <input type="checkbox"/> Yes <input type="checkbox"/> No	Date of Notice of Deficiency:	Waiver Requested: <input type="checkbox"/> Yes <input type="checkbox"/> No (Partial <input type="checkbox"/> Total <input checkbox"="" type="checkbox/>)</td> </tr> <tr> <td>Waiver Granted
<input type="/> Yes <input type="checkbox"/> No		If Waiver Granted Total Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No Partial Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No		Waiver Approved by (Signature):	

NOTES:

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S/CONTRACTOR'S M/WBE UTILIZATION PLAN

Provide a brief description of the services or supplies to be identified by the subcontractor(s) identified above:

Submission of this form constitutes the Contractor's/Subcontractor's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.

By submitting a bid/proposal, the Proposer/Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Proposer/Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S M/WBE SUBCONTRACTORS/SUPPLIERS NOTICE OF INTENT TO PARTICIPATE**

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this form as part of its Administrative Proposal. Part A must be completed and signed by the Proposer. Parts B and C must be completed and signed by each of the M/WBE subcontractors/suppliers identified on Form AC 3239-D (Proposer's M/WBE Utilization Plan).

PART A – TO BE COMPLETED BY THE PROPOSER FOR EACH M/WBE IDENTIFIED ON AC 3239-D

Proposer Name:		Federal Identification Number:		
Address:		Procurement Number: _____		
City, State, Zip Code:		M/WBE Participation Goals: MBE _____% WBE _____%		
Telephone Number:		Email Address:		
Name of Proposer's Preparer	Title of Preparer	Date	Telephone Number	Email Address

PART B – TO BE COMPLETED BY EACH MBE/WBE IDENTIFIED ON AC 3239-D ACKNOWLEDGING THAT THE NAMED VENDOR INTENDS TO PROVIDE SERVICES OR SUPPLIES IN CONNECTION WITH THE ABOVE CONTRACTOR AND PROCUREMENT.

Name of Subcontractor/Supplier:		Federal Identification Number:		
Address:		NYS ESDC Certification Status (Check one): <input type="checkbox"/> MBE <input type="checkbox"/> WBE (attach copy of ESD Certification) <input type="checkbox"/> Have applied to ESDC for certification as <input type="checkbox"/> MBE <input type="checkbox"/> WBE		
City, State, Zip Code:		Provider type (Check one): <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier		
ESD Certification Number:		ESD Certification Expiration Date:		

Please provide a brief description of services or supplies to be provided on Page 2.

The undersigned is prepared to provide the services or supplies described on Page 2 and will enter into a formal agreement to do so with the Proposer named above upon execution of a State Contract between the Proposer and the Office of the State Comptroller.

Signature of Authorized Representative of the M/WBE Firm: _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

Estimated Total Dollar Value of the Agreement to be entered into with the Subcontractor/Supplier: \$ _____

THIS SECTION FOR OSC USE ONLY

Reviewed by	Date	Utilization Plan Approved	Date	Certification Verified
		<input type="checkbox"/> Yes <input type="checkbox"/> No		MBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No WBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No

NOTES:

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S M/WBE SUBCONTRACTORS/SUPPLIERS NOTICE OF INTENT TO PARTICIPATE**

Description of Services or Supplies to be Provided (expand as necessary):

[Empty box for description of services or supplies]

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
REQUEST FOR WAIVER**

INSTRUCTIONS AND SUBMISSION REQUIREMENTS: PROPOSERS/CONTRACTORS MUST FOLLOW THE INSTRUCTIONS ON PAGE 2 OF THIS FORM TO REQUEST A WAIVER OF THE M/WBE PARTICIPATION GOALS INCLUDED IN THIS PROCUREMENT. THIS FORM MAY BE USED PRIOR TO AND/OR AFTER AWARD OF A STATE CONTRACT.

Proposer/Contractor Name:	Federal Identification Number:
Address:	Procurement/Contract Number: _____
City, State, Zip Code:	M/WBE Participation Goals: MBE _____% WBE _____%

COMPLETE THIS SECTION ONLY IF THIS WAIVER IS REQUESTED AFTER AWARD OF A STATE CONTRACT.

Contract Award Date: _____ **Contract Start Date:** _____ **Contract End Date:** _____

All Requests for Waiver (AC 3239-F) submitted prior to or after award of a State Contract must be accompanied by the information requested on Page 2 of this form, Instructions and Submission Requirements.

Proposer/Contractor is requesting a Waiver of the following M/WBE participation goals as follows (check as appropriate):

<input type="checkbox"/> MBE Waiver – A waiver of the MBE participation goal for this procurement is requested.	<input type="checkbox"/> Total Waiver	<input type="checkbox"/> Partial Waiver
<input type="checkbox"/> WBE Waiver – A waiver of the WBE participation goal for this procurement is requested.	<input type="checkbox"/> Total Waiver	<input type="checkbox"/> Partial Waiver

Prepared by (Signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

SUBMISSION OF THIS FORM CONSTITUTES THE PROPOSER'S ACKNOWLEDGMENT AND AGREEMENT TO ADHERE TO THE M/WBE REQUIREMENTS AND PROCEDURES SET FORTH UNDER THIS PROCUREMENT AND OSC'S RIGHT TO EVALUATE AND DETERMINE CONTRACTOR/SUBCONTRACTOR ADHERENCE OR COMPLIANCE DURING THE BID AND AWARD OF SAID STATE CONTRACT, PURSUANT TO NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A AND THE IMPLEMENTING REGULATIONS SET FORTH UNDER 5 NYCRR. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN NON-COMPLIANCE AND PROPOSAL DISQUALIFICATION.

THIS SECTION FOR OSC USE ONLY

Date Waiver Request Received	Reviewed by	Date
Waiver Requested	Waiver Granted	If Waiver Granted
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE	Total Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE Partial Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE

Signature of OSC Reviewer: _____

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
REQUEST FOR WAIVER

PLEASE READ THESE INSTRUCTIONS AND DOCUMENT SUBMISSION REQUIREMENTS CAREFULLY.

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS FOR REQUEST FOR WAIVER OF M/WBE PARTICIPATION GOALS

PART 1. INSTRUCTIONS FOR PROPOSER/CONTRACTOR REQUEST FOR WAIVER (AC 3239-F):

- I. **(PRIOR TO AWARD OF A STATE CONTRACT):** Proposers requesting a waiver of M/WBE Participation Goals must submit the information listed in PART II as part of its Administrative Proposal.
- II. **(AFTER AN AWARD OF A STATE CONTRACT):** Contractors may request a waiver of M/WBE Participation Goals at any time during the term of the contract but prior to the submission of a request for final payment on that contract. Contractors requesting a waiver of M/WBE Participation Goals must submit the information listed in PART II.

All waiver requests must be submitted to:

New York State Office of the State Comptroller
Bureau of Financial Administration, Attn: M/WBE Specialist
110 State Street, Stop 13-2
Albany, NY 12236

PART II. DOCUMENTATION SUBMISSION REQUIREMENTS FOR REQUESTING WAIVERS

1. The names of general circulation, trade association, and minority and women oriented publications in which bids/proposals were solicited for purposes of complying with participation goal requirements established for certified M/WBE participation;
2. The dates bid solicitations for certified M/WBE participation were published in any of the publications listed in #1;
3. List of certified M/WBEs appearing in the directory which were solicited in writing to provide bids/proposals for purposes of complying with participation goal requirements established for certified M/WBE participation;
4. Proof of dates on which such solicitations were made in writing and copies of solicitations made, or a sample copy of the solicitation if an identical solicitation was made of all certified M/WBEs;
5. Copies of responses made by certified M/WBEs to solicitations made by the Proposer/Contractor;
6. A description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids/proposals, and the dates and manner in which these documents were made available;
7. Documentation of any negotiations between the Proposer/Contractor and certified M/WBEs undertaken for the purposes of complying with participation goal requirements established for certified M/WBE participation;
8. Any other information determined relevant by OSC; and
9. A statement setting forth the Proposer's/Contractor's basis for requesting a partial or total waiver of M/WBE participation goals.

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S M/WBE UTILIZATION PLAN**

INSTRUCTIONS: After the award of a State Contract, Contractors must complete and submit this Contractor's M/WBE Utilization Plan as part of their compliance reporting. Contractors must submit a separate M/WBE Utilization Plan for each M/WBE utilized on the State Contract.

Contractor Name:	Federal Identification Number:
Address:	Contract Number: _____
City, State, Zip Code:	M/WBE Participation Goals: MBE _____% WBE _____%

LIST ALL M/WBE SUBCONTRACTORS AND/OR SUPPLIERS TO BE UTILIZED (ATTACH ADDITIONAL SHEETS IF NECESSARY).

M/WBE Name, Address, Email Address, and Telephone Number	Certification Classification (check all that apply.)	Federal ID No.	Estimated Dollar Value of Work/Supplies	Please provide a brief description of services or supplies to be provided by each M/WBE identified here on Page 2.
A.	NYS ESD Certified: <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD Certified: <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
C. ESD Certification Number:	D. ESD Certification Expiration Date:			

If Contractor will not be utilizing an M/WBE, check here and attach Form AC 3239-F, Request for Waiver, and supporting documentation.
 If Contractor has previously submitted AC 3239-F, Request for Waiver, for this procurement, check here and enter date submitted: _____.

Prepared by (Signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

Submission of this form constitutes the Contractor's/Subcontractor's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.

THIS SECTION FOR OSC USE ONLY

Reviewed by:	Date Received:	Utilization Plan Approved <input type="checkbox"/> Yes <input type="checkbox"/> No	Date Approved:	M/WBE Certification Status: MBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No WBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No				
Deficiencies Identified: MBE <input type="checkbox"/> Yes <input type="checkbox"/> No / WBE <input type="checkbox"/> Yes <input type="checkbox"/> No	Notice of Deficiency Issued: <input type="checkbox"/> Yes <input type="checkbox"/> No	Date of Notice of Deficiency:	Waiver Requested: <input type="checkbox"/> Yes <input type="checkbox"/> No (Partial <input type="checkbox"/> Total <input checkbox"="" type="checkbox/>)</td> </tr> <tr> <td>Waiver Granted
<input type="/> Yes <input type="checkbox"/> No		If Waiver Granted Total Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No Partial Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No		Waiver Approved by (Signature):	

NOTES:

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S M/WBE UTILIZATION PLAN

Provide a brief description of the services or supplies to be identified by the subcontractor(s) identified above:

Please submit completed Form AC 3239-G to:

New York State Office of the State Comptroller
Bureau of Financial Administration, Attn: M/WBE Specialist
110 State Street, Stop 13-2
Albany, NY 12236

Submission of this form constitutes the Contractor's/Subcontractor's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.

By submitting a bid/proposal, the Proposer/Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Proposer/Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
M/WBE EXPENDITURE REPORT**

INSTRUCTIONS: The Awarded Contractor is required to complete and submit this M/WBE Expenditure Report on a per-invoice basis upon award of the State Contract for each M/WBE Subcontractor/Supplier identified in its Utilization Plan (AC 3239-D and AC 3239-G).

Contractor Name:		Federal Identification Number:
Contract Start Date:	Projected End Date:	Contract Number:
Report for Period (MM/DD/YY) _____ to (MM/DD/YY) _____		Total Amount of Awarded Contract: \$

M/WBE SUBCONTRACTOR AND/OR SUPPLIER UTILIZED

M/WBE Name and Address, including Email Address and Telephone Number of Contact Person	Certification Classification	Federal ID No.	Brief Description of Work/Supplies
	NYS ESD Certified: - <input type="checkbox"/> MBE <input type="checkbox"/> WBE		
ESD Certification Number:		ESD Certification Expiration Date:	
Actual Payment for This Period	Total Payment Made To Date	Total Percentage of Participation Goal Paid to Date	
\$	\$	%	

Prepared by (Signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	E-mail Address

BY SUBMISSION OF THIS FORM, THE CONTRACTOR CERTIFIES THAT PAYMENT HAS BEEN MADE OR WILL BE MADE TO THE M/WBE NAMED ABOVE IN THE AMOUNT REPORTED, IN ACCORDANCE WITH THE TERMS OF THE M/WBE PARTICIPATION GOALS STATED IN THE CONTRACTOR'S PROPOSAL.

THIS SECTION FOR OSC USE ONLY

Reviewed by	Date	Utilization % to be Applied	Actual Utilization to date:
		MBE ____% WBE ____%	MBE ____% WBE ____%
Waiver Requested	Waiver Granted	If Waiver Granted	Notice of Deficiency Issued
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	Total Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No Partial Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

NOTES:

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S QUALITY ASSURANCE REPORT/CHECKLIST**

INSTRUCTIONS: Contractors/Subcontractors are required to submit a completed Form AC 3239-I (Contractor's Quality Assurance Report/Checklist and all submission documents required by the fifth (5 th) day of the month, beginning thirty (30) days following the award of a State Contract.				
Contractor Name:		Federal Identification Number:		
Address:		Procurement/Contract Number:		
		Contract Award Date:		
City, State, Zip Code:		Contract Start Date:		
		Contract End Date:		
SECTION I. WORKFORCE UTILIZATION				
1. Contractor's/Subcontractor's Checklist of EEO Compliance Documents for Submission:				
<input type="checkbox"/> Current EEO Policy Statement was submitted on _____ (date)				
<input type="checkbox"/> Contractor's/Subcontractor's EEO Workforce Utilization Report (AC 3239-B) was submitted on _____ (date)				
SECTION II. M/WBE UTILIZATION				
2. Contractor's/Subcontractor's Checklist of M/WBE Utilization Documents for Submission:				
<input type="checkbox"/> Contractor's M/WBE Utilization Plan (AC 3239-G) (A separate Utilization Plan is required for each M/WBE identified.)				
<input type="checkbox"/> Copy of Contractor's/Subcontractor's executed written agreement with the M/WBE Subcontractor/Supplier. (A separate Agreement is required for each M/WBE identified.)				
3. Has Contractor/Subcontractor requested any of the following? (Check all that apply.)				
<input type="checkbox"/> Waiver of the MBE participation goal for the above procurement/contract. Date requested: _____				
<input type="checkbox"/> Waiver of the WBE participation goal for the above procurement/contract. Date requested: _____				
4. Has Subcontractor's ESD Certification Number and Expiration Date been entered? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Prepared by (Signature):				
Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address
Submit completed forms and documentation to: New York State Office of the State Comptroller Bureau of Financial Administration, Attn: M/WBE Specialist 110 State Street, Stop 13-2 Albany, NY 12236				
FOR OSC USE ONLY				
RECEIVED DATE	WAIVER STATUS	OSC STATUS	WORKFORCE UTILIZATION PLAN	M/WBE UTILIZATION PLAN
	<input type="checkbox"/> Approved <input type="checkbox"/> Pending <input type="checkbox"/> Denied Date: _____	<input type="checkbox"/> Responsive <input type="checkbox"/> Non-Responsive	<input type="checkbox"/> Approved <input type="checkbox"/> Denied	<input type="checkbox"/> Approved <input type="checkbox"/> Denied

APPENDIX C

OSC POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT

DISCRIMINATION AND HARASSMENT

It is the policy of the Office of the State Comptroller (“OSC”) to provide a workplace that is free of discrimination and harassment based on race, color, sex (including sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender), creed or religion, age, national origin, disability, marital status, military or veteran status, predisposing genetic characteristics, domestic victim status or any other classification protected by state or federal law, rule or regulation or executive order.

Discrimination is defined as the failure or refusal to hire, promote, or train an individual or treat that individual equally with respect to compensation, terms, conditions or privileges of employment because of that individual’s membership in any one of the above classes. Harassment based upon a person’s membership in any of the above classes is included within the definition of discrimination.

In keeping with its policies, OSC reaffirms that it will not tolerate such discrimination or harassment of its employees and that it will take appropriate action to prevent and stop the occurrence of such conduct in its workplace. OSC employees and any third parties who interact with OSC employees in the workplace are expected to avoid any behavior or conduct that could be interpreted as discrimination/harassment based on membership in any of the above classes.

Examples of conduct that may constitute harassment based upon membership in one of the above classes include, but are not limited to:

- kidding or teasing related to membership in, or characteristic of one of the above classes, such as laughing at or mimicking someone’s physical or mental impairment, foreign accent, etc.;
- using ethnic or racial slurs;
- conduct that denigrates or shows hostility toward an individual because of protected class status, and that has the purpose or effect of creating an intimidating, hostile or offensive environment; and
- telling jokes that belittle a member or members of one of the above classes.

SEXUAL HARASSMENT

Sexual harassment, a form of discrimination, is defined as unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

- such conduct is made either explicitly or implicitly a term or condition of employment;
- submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment; or
- such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

A perpetrator of sexual harassment can be a superior, subordinate, co-worker or anyone in the workplace, including an independent contractor, contract worker, vendor, client, customer or visitor.

Examples of sexual harassment include, but are not limited to, sexual innuendo; suggestive comments; sexually-oriented kidding, teasing or practical jokes; jokes about gender-specific traits; jokes about sexual orientation, or perceived masculinity or femininity of individuals; foul or obscene language or gestures; display of foul, obscene or sexually suggestive printed or visual material; physical conduct such as touching or patting; sexually-oriented e-mail or phone mail messages; suggestive or obscene letters, notes, or invitations; inappropriate discussions of a person’s physical appearance; or unwelcome gifts and attention.

Questions about what behavior constitutes discrimination or harassment, including sexual harassment, or requests for OSC Executive Orders and policies on such matters may be directed to the OSC Division of Diversity Management at (518) 473-1368.

December 12, 2018

APPENDIX D

OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY

Whereas, it is the policy of the Office of the State Comptroller (OSC) and the New York State Common Retirement Fund (CRF) to procure goods and services in a fair, equitable and open manner and to protect the procurement process from improper influences; and

Whereas, procurement lobbying activities must be monitored and documented to assure the integrity of the procurement process;

Now, therefore, I, Thomas P. DiNapoli, Comptroller of the State of New York, in consideration of the foregoing, do hereby order as follows;

1. **Applicability.** This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller's fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller's fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller's fiduciary responsibilities.
2. **General Counsel.** The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. **Procedural Controls.** The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
 - a. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
 - b. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
 - c. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
 - d. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;

- e. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;
 - f. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
 5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
 6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

_____/s/_____
Thomas P. DiNapoli
Comptroller, State of New York

Last Revised Date: March 14, 2007
Original Date: February 14, 2002

OSC PROCUREMENT INTEGRITY PROCEDURES

In order to ensure that procurements of goods or services¹ by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

The General Counsel to the Comptroller shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF.

A copy of these Procurement Integrity Procedures will be given to every OSC employee, consultant, or other person assigned to any task related to an OSC or CRF procurement. A copy of these procedures will be incorporated into every Request for Information (RFI), Request for Proposals (RFP) or Invitation for Bids (IFB) issued by OSC or CRF.

Any OSC employee who violates these procedures may be subject to disciplinary action, such as a reprimand, suspension, demotion, or dismissal. Any vendor who violates these procedures may, after notice and an opportunity to be heard, be determined to be a non-responsible vendor, and on the basis of such a determination may be ineligible to receive a contract award.

Every reasonable effort will be made to assure compliance with these procedures, but a minor deviation from these procedures that does not impair the fairness and integrity of the procurement process will not require the invalidation of a contract award.

1. OSC employees must provide every interested vendor² with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question³ concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC's written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: RFP@osc.state.ny.us. OSC's Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.
3. A vendor may not exert or attempt to exert any improper influence⁴ relating to the vendor's bid or proposal. Any OSC employee who has direct knowledge of any improper influence or

¹ These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller's fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities.

² For the purposes of these procedures, the term "interested vendor" means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF.

³ For the purposes of these procedures, the term "substantive question" means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal.

⁴ For the purposes of these procedures, the term "improper influence" means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74.

attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.

4. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor's bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process⁵. If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.
11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior

⁵ For the purposes of these procedures, the term "attempt to influence the procurement process" means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract.

to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.

12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011

APPENDIX E

PROPOSER'S CERTIFICATION/ACKNOWLEDGEMENTS

PROPOSER'S ACKNOWLEDGEMENT OF RECEIPT OF OSC POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT	
The Proposer and each person signing on behalf of the Proposer acknowledges that he/she has the authority to sign on behalf of the Proposer, has received a copy of the OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment (Appendix C), and agrees to abide by the terms of that Policy Statement.	
CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW § 139(L) REGARDING SEXUAL HARASSMENT POLICY AND ANNUAL TRAINING	
"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of § 201-g of the NYS Labor Law." Note: Reference to bid includes proposals and other responses to solicitations. Reference to bidder includes proposers and Contractors.	
NON-COLLUSIVE BIDDING CERTIFICATION	
The Proposer and each person signing on behalf of the Proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief: 1. The prices in this Agreement 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 competitor; 2. Unless otherwise required by law, the prices which have been quoted in this Agreement have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer, directly or indirectly, to any other competitor; and 3. No attempt has been made or will be made by the Proposer to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.	
PROPOSER'S ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY	
The Proposer and each person signing on behalf of the Proposer acknowledges that he/she has received a copy of the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures (Appendix D) and affirms, under penalty of perjury, that he/she understands such Executive Order and Procedures and will comply with them.	
THE SIGNATURE(S) BELOW INDICATES AGREEMENT WITH EACH OF THE ABOVE	

PROPOSER NAME

SIGNATURE

PRINTED OR TYPED NAME

TITLE

DATE

JOINT PROPOSER NAME (IF ANY)

SIGNATURE

PRINTED OR TYPED NAME

TITLE

DATE

Add additional signature lines below for additional Joint Proposers, as necessary

December 3, 2018

APPENDIX F

DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Have you been found by any governmental entity to be non-responsible within the past four (4) years from the date of this bid due to:

1. Impermissible contacts or other violations of New York State Finance Law Section 139-j (e.g., conduct prohibited by the ethics provisions of the New York State Public Officers Law)?

Yes No

2. Intentional provision of false or incomplete information to a governmental entity?

Yes No

If your answer to either of the above is “Yes,” please attach a written explanation, indicating the date of the non-responsibility finding, the entity that found you to be non-responsible, and the circumstances surrounding such finding (including any written finding of non-responsibility issued by such entity).

By my signature on this form, I certify that all information disclosed to the State is complete, true, and accurate with regard to prior non-responsibility findings within the past four (4) years based on (i) impermissible Contacts or other violations of New York State Finance Law Section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.

Signature

Printed or Typed Name

Title

Procurement Number

Date

August 15, 2014

APPENDIX G

OSC CONSULTANT DISCLOSURE REPORTING REQUIREMENTS

CONTRACTOR INSTRUCTIONS

Background:

Pursuant to New York State Finance Law Section 163(4)(g), state agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract, such report to include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Contractors selected for award on the basis of a procurement issued by OSC (Request for Proposals, Request for Quotations, Mini-Bid, or Invitation for Bids) must complete **Form A, State Consultant Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term** upon notification of award. The completed **Form A** must include information for all employees that will be providing services under the contract, whether employed by the contractor or by a subcontractor.

Contractors selected for award are also required to complete **Form B, State Consultant Services Contractor’s Annual Employment Report** annually for each year of the contract term, on a State fiscal year basis. The first report is due May 15 for the period April 1 through March 31 of the most recently concluded State fiscal year or portion thereof.

Form A must be submitted to OSC as the contracting agency, and Form B must be submitted to OSC (as the contracting agency), the Department of Civil Service, and the Consultant Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in these instructions.

Instructions:

FORM A:

Upon notification of contract award, use Form A, State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term, attached to these instructions, to report the necessary planned employment information prospectively from the start date through the end of the contract term. This is a one-time reporting requirement.

Complete **Form A** for contracts for consulting services in accordance with the following:

- **Employment category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract. (Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration website at www.online.onetcenter.org.)
- **Number of employees:** the total number of employees in the employment category employed anticipated to provide services under the contract, including part time employees and employees of subcontractors.
- **Number of hours to be worked:** the total number of hours anticipated be worked by the employees in the employment category.
- **Amount payable under the contract:** the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services to be provided during the Report Period.

Submit completed Form A within 48 hours of notification of selection for award to OSC (as the contracting agency) at the address listed below.

FORM B:

Use **Form B, State Consultant Services Contractor’s Annual Employment Report**, attached to these Instructions, to report the annual employment information required by the statute. This form will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit **Form B** to OSC (as the contracting Agency), the Department of Civil Service (DCS), and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below.

Complete **Form B** for contracts for consulting services in accordance with the following:

- **Scope of Contract:** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, through the US Department of Labor’s Employment and Training Administration website at www.online.onetcenter.org.)
- **Number of Employees:** the total number of employees in the employment category employed that provided services under the contract during the Report Period, including part time employees and employees of subcontractors.
- **Number of hours worked:** the total number of hours **worked** during the Report Period by the employees in the employment category.
- **Amount Payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Submit the completed Form B by May 15 for the period April 1 through March 31, and annually by May 15th thereafter for each State fiscal year (or portion thereof) the contract is in effect, as follows:

To OSC (as the contracting Agency):

By mail: Bureau of Financial Administration
Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

By email: rfp@osc.state.ny.us

To the Consultant Reporting Section of the Bureau of Contracts at OSC:

By mail: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

By fax: (518) 474-8030 or (518) 473-8808

To DCS:

By mail: NYS Department of Civil Service
ESP, Agency Building 1
20th Floor
Albany, NY 12239

FORM A

New York State Consultant Services Contractor's Planned Employment From Contract Start Date Through The End Of The Contract Term

State Agency Name: Office of the State Comptroller	
State Agency Department ID: 3050000	Agency Business Unit: OSC01
Contractor Name:	Contract Number:
Contract Start Date: / /	Contract End Date: / /

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

Page of

FORM B

New York State Consultant Services Contractor's Annual Employment Report Report Period: April 1, to March 31,

Contracting State Agency Name: Office of the State Comptroller	
Contract Number:	Agency Business Unit: OSC01
Contract Term: / / to / /	Agency Department ID: 3050000
Contractor Name:	
Contractor Address:	
Description of Services Being Provided:	

Scope of Contract (Choose one that best fits):

Analysis Evaluation Research Training
 Data Processing Computer Programming Other IT consulting
 Engineering Architect Services Surveying Environmental Services
 Health Services Mental Health Services
 Accounting Auditing Paralegal Legal Other Consulting

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report: _____

Title: _____ Phone #: _____

Preparer's Signature: _____

Date Prepared: / / _____

(Use additional pages, if necessary) _____ Page of

APPENDIX H**PROPOSER/CONTRACTOR COMPLIANCE REQUIREMENTS AND PROCEDURES
FOR PARTICIPATION BY SERVICE-DISABLED VETERAN-OWNED BUSINESSES****Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance**

Article 17-B of the Executive Law acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, proposers/contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of this contract. Such partnering may be as subcontractors, suppliers, consultants, joint ventures, teaming agreements or other similar arrangements. Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure and maximize economic activity to the mutual benefit of the proposer/contractor and its SDVOB partners. SDVOBs can be readily identified on the directory of certified businesses at:

http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Proposers/contractors are reminded that they must continue to utilize small, minority- and women-owned businesses consistent with current State law and with the goals set forth in the attached procurement.

C. SDVOB Requirements

The SDVOB participation goals established by OSC for this procurement are based on the overall availability of SDVOBs that have been certified to perform the specific scope of work identified in this procurement. Requests for technical assistance in meeting these requirements can be obtained by contacting OSC at (518) 474-7574.

By submitting a proposal, the Proposer agrees to provide OSC access to all documentation, records, reports, facilities, etc., which OSC may deem necessary to determine Proposer compliance.

Requests for Waivers (if applicable) may be sent to OSC at the following address:

New York State Office of the State Comptroller
Bureau of Financial Administration: SDVOB Specialist
110 State Street, Stop 13-2
Albany, NY 12236

D. Prior to the Award of a State Contract

As a precondition to being selected for contract award and entering into a valid and binding State Contract, a Proposer must submit Form AC3322-1 (Proposed Use of SDVOBs in Contract Performance) with its proposal. Form AC3322-1 should document the SDVOBs *to be utilized* on the State Contract.

A Proposer's failure to submit Form AC3322-1 will result in the rejection of its proposal, unless the Proposer provides OSC with a reasonable justification in writing for such failure, or makes a commitment to submit Form AC3322-1 within the timeframe specified in writing by OSC.

Before an award of contract is completed (e.g., during contract negotiations), OSC will conduct a review of the substance of Form AC3322-1. If, upon review, OSC comes to the conclusion that Proposer's commitment to the use of SDVOBs is lacking, OSC shall contact the Proposer and make every effort to resolve the deficiencies identified. Failure to correct such deficiency within a timeframe specified by OSC may result in the rejection of the proposal.

E. After the Award of the State Contract

Beginning three months after Contract performance has begun, and thereafter with each invoice during the performance of the State Contract, the Contractor must submit to OSC Form AC3322-2 (Contractor's SDVOB Utilization Report). Form AC3322-2 should document the SDVOBs *actually utilized* on the State Contract.

If deficiencies are identified during OSC general contract compliance monitoring or during in-depth compliance reviews, OSC will make every effort to resolve the deficiencies identified and may request that the Division of Service-Disabled Veterans' Business Development (DSDVBD) within the New York State Office of General Services review and attempt to resolve the noncompliance matter.

Failure to timely submit Form AC3322-2 and/or other reports or information as requested may result in payments under the contract being delayed until such reports or other information have been received.

If OSC determines that Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals for participation by SDVOBs as established in the Contract, OSC may, after giving Contractor an opportunity to be heard, make a determination that the Contractor has failed to meet the Contract goals and may withhold payment from the Contractor as liquidated damages, if the Deputy Comptroller for Human Resources and Administration determines that the Contractor has breached the Contract by failing to comply with the SDVOB participation goals set forth in the Contract. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to SDVOBs had the Contractor achieved the contractual SDVOB goals; and (2) all sums actually paid to SDVOBs for work performed or materials supplied under the Contract. In addition, where a Contractor willfully and intentionally fails to comply with SDVOB requirements, the Contractor shall be liable to OSC for damages; such damages shall be calculated based on the actual cost incurred by OSC related to OSC's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing SDVOB programmatic goals.

Nothing herein shall diminish or supersede OSC's authority and responsibility to enforce the requirements of its contracts.

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSED USE OF SDVOBS IN CONTRACT PERFORMANCE**

INSTRUCTIONS

Article 17-B of the Executive Law acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, proposers are expected to utilize SDVOBs in the fulfillment of the requirements of this contract. Such utilization may be as subcontractors, suppliers, consultants, joint ventures, teaming agreements or other similar arrangements. SDVOBs can be readily identified on the directory of certified businesses at:

http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

All Proposers must complete and submit this form with their proposals.

Proposer Name					
Address					
City, State, Zip Code					
Federal Identification Number <small>(do not use Social Security Number)</small>			NYS Vendor ID Number <small>(do not use Social Security Number)</small>		
Is Proposer a NY Certified SDVOB?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, provide DSDVBD Certification Number		Expiration Date	
Will NYS-certified Service-Disabled Veteran-Owned Businesses (SDVOBs) be used in the performance of this contract?		<input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, identify below the SDVOBs that will be used <i>If No, see below re Request for Waiver</i>		Contract or Procurement #: _____
SDVOB Utilization Goals for this Procurement:		_____ %			

SDVOB Company Name	Business Address	DSDVBD Control #	% of Total Contract Work to SDVOB	Nature of SDVOB Participation: Describe commodities, services or technology
TOTAL				

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address
Preparer signature:				

If Proposer will not be utilizing an SDVOB in the performance of this contract, attach Form AC3322-3, Request for Waiver, and include supporting documentation.

Additional information about the Service-Disabled Veteran-Owned Business Act can be found at:
<http://www.ogs.ny.gov/Core/SDVOBA.asp>

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S SDVOB UTILIZATION REPORT**

INSTRUCTIONS	
<p>Article 17-B of the Executive Law acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, contractors are expected to utilize SDVOBs in the fulfillment of the requirements of this contract. Such utilization may be as subcontractors, suppliers, consultants, joint ventures, teaming agreements or other similar arrangements. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf</p>	
<p>All Contractors must complete and return this form beginning three months after commencement of the State Contract, and thereafter with each invoice.</p>	
<p>Failure to submit complete and accurate information may result in a determination of contract non-compliance.</p>	

Additional information about the Service-Disabled Veteran-Owned Business Act can be found at:
<http://www.ogs.ny.gov/Core/SDVOBA.asp>

All Contractors must complete and return this form with each invoice.						
Contractor Name						
Address						
City, State, Zip Code						
Federal Identification Number <small>(do not use Social Security Number)</small>				NYS Vendor ID Number <small>(do not use Social Security Number)</small>		
Is Contractor a NY Certified SDVOB?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, provide DSDVBD Certification Number		Expiration Date		
Are NYS-certified Service-Disabled Veteran-Owned Businesses (SDVOBs) being used in the performance of this contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, identify below the SDVOBs that are being used <i>If No, see below re Request for Waiver</i>			Total Anticipated \$ Value of this Contract	
SDVOB Utilization Goals on this Contract:	_____ %					

SDVOB Company Name	Business Address	DSDVBD Control #	% of Total Contract Work to SDVOB	\$ Amount to SDVOB	Nature of Participation: <small>Describe commodities, services or technology</small>
TOTAL					

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address
Preparer's Signature:				

<p>If Contractor is not utilizing an SDVOB, attach Form AC3322-3, Request for Waiver, and include supporting documentation. If Contractor has previously submitted Form AC3322-3 for this procurement, check here <input type="checkbox"/> and enter date submitted: _____.</p>

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S/CONTRACTOR'S SDVOB REQUEST FOR WAIVER**

Part I: INSTRUCTIONS

- Proposers responding to a solicitation and requesting a waiver of SDVOB participation goals must complete Part II and submit AC3322-3, the Request for Waiver form, as part of their solicitation response.
- Contractors may request a waiver of SDVOB participation goals at any time during the term of their contract with OSC, but prior to the submission of a request for final payment on that contract. Contractors requesting a waiver of SDVOB participation goals must complete Part II and submit the Request for Waiver form to.

New York State Office of the State Comptroller
Bureau of Financial Administration, Attn: SDVOB Specialist
110 State Street, Stop 13-2
Albany, NY 12236

Part II: DOCUMENTATION

Proposer/Contractor Name:			
Address:			
City, State, Zip Code:			
Federal Identification Number <small>(do not use Social Security Number)</small>		NYS Vendor ID Number <small>(do not use Social Security Number)</small>	
SDVOB Utilization Goals on this Contract:	_____ %	Contract or Procurement #:	

Proposer/Contractor must provide:

- A list of certified SDVOBs appearing on the Division of Service-Disabled Veterans' Business Development (DSDVBD) directory who were solicited in writing for the purpose of complying with SDVOB participation goal requirements;
- Proof of dates on which such written solicitations were made and copies of solicitations made, or a sample copy of the solicitation if an identical solicitation was made to all certified SDVOBs on the DSDVBD directory;
- Copies of responses made by certified SDVOBs to solicitations made by the Proposer/Contractor;
- A description of any contract documents, plans or specifications made available to certified SDVOBs for purposes of soliciting their participation, and the dates and manner in which those documents were made available;
- Documentation of any negotiations between the Proposer/Contractor and certified SDVOBs undertaken for the purposes of complying with SDVOB participation goal requirements;
- A statement setting forth the Proposer's/Contractor's basis for requesting a partial or total waiver of SDVOB participation goal requirements; and
- Any other information determined relevant by OSC or by the Proposer/Contractor.

THIS SECTION FOR OSC USE ONLY

Reviewed by:	Date Received:	Deficiencies Identified:	Utilization Plan Approved:	Date Approved:
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Waiver Requested:	Waiver Granted:	Waiver Type:		
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Partial <input type="checkbox"/> Total		
	Name	Signature		
Waiver Approved by:				

NOTES:

APPENDIX I

EXECUTIVE ORDER INDEPENDENCE OF AUDITORS PERFORMING SERVICES FOR THE OFFICE OF THE STATE COMPTROLLER AND THE COMMON RETIREMENT FUND

WHEREAS, improper and deceptive accounting practices by auditing firms and major corporations in recent years resulted in massive losses at a number of corporations, cost thousands of workers their jobs, as well as their retirement savings, and cost investors (both individuals and institutions) billions of dollars; and

WHEREAS, disclosures regarding these practices created a heightened concern over the ability of auditing firms to maintain audit independence when they are permitted to provide consulting services to the same client; and

WHEREAS, situations where the same audit partner is responsible for conducting or supervising the audit of a client in several successive years and situations where auditors are permitted to accept employment with audit clients were also identified as creating the risk of diminished audit independence; and

WHEREAS, the Comptroller General of the United States promulgated generally accepted government auditing standards expressly prohibiting auditors from providing certain non-audit services to an audit client; and

WHEREAS, Congress responded to these issues by enacting the Sarbanes-Oxley Act of 2002, which includes provisions creating an oversight board for accounting firms auditing publicly-traded companies, addressing auditor independence issues and expressly prohibiting an audit firm from performing certain non-audit services contemporaneously with an audit, and imposing certain governance requirements on publicly-traded companies; and

WHEREAS, it is impossible to specify all situations that could arise that would create a conflict of interest or the appearance of diminished audit independence in contracts between audit firms and the Office of the State Comptroller (OSC) or the New York State Common Retirement Fund (CRF);

NOW, THEREFORE, I, Thomas P. DiNapoli, as the administrative head of the OSC and Sole Trustee of the CRF, in order to: (i) prevent the potential conflict of interest presented when a firm providing audit services is in a position to gain financially from providing certain non-audit services to the same client; (ii) avoid the risk of a conflict of interest or the appearance of diminished audit independence where auditor-client relationships are longstanding or where auditors are permitted to accept employment with audit clients; (iii) preserve the independence necessary for sound and reliable financial review, and (iv) provide for an on-going process for review of proposed contracts with audit firms and provide the flexibility in a designated group of senior managers to promulgate additional audit independence standards for OSC and CRF, as appropriate, do hereby order and direct the following policy and procedures for OSC and CRF in connection with new procurements:

First, an Audit Oversight Board (the Board) is established for OSC and CRF, which will consist of the following members:

- First Deputy Comptroller;
- Executive Deputy Comptroller for State and Local Government Accountability;
- General Counsel;
- Executive Deputy Comptroller for Operations;
- Deputy Comptroller for Retirement Services.

Second, the Board shall oversee the procurement of all audit services and shall promulgate guidelines setting out auditor independence standards for OSC and CRF; the guidelines may impose auditor independence standards in addition to these set forth herein and may be amended from time to time.

Third, before any contract is entered into by OSC or CRF with an audit firm, the Board shall review the proposed contract in the context of any prior, current and pending contracts with such firm for compliance with legal and professional audit standards and with the terms of this Order and guidelines promulgated by the Board.

Fourth, no audit firm shall be hired to perform services for OSC or CRF unless the provision of such services is consistent with standards promulgated by the GAO.

Fifth, no audit firm shall be hired to perform services for OSC or CRF unless the provision of such services is consistent with the auditor independence provisions of section 201 of the Sarbanes-Oxley Act¹.

Sixth, no audit firm shall be hired to perform services for OSC or CRF unless the provision of such services is consistent with any additional auditor independence standards that may be issued by the Board, as amended from time to time.

Seventh, where any firm performing audit services for OSC or CRF seeks to respond to a solicitation for services by OSC or CRF for non-audit services to be rendered during the term of the audit contract, and where any firm performing non-audit services for OSC or CRF seeks to respond to a solicitation for services by OSC or CRF for audit services to be rendered during the term of the contract for non-audit services, the firm shall submit with its response a statement (1) setting out the reasons that the firm could perform services under both contracts without any impairment of independence under GAO standards, (2) attesting that the proposed activity is not one which, if the services were subject to the provisions of the Sarbanes-Oxley Act, would be precluded under the auditor independence provisions set out in section 201 of the Act, and (3) attesting that the engagements would comply with any additional written standards promulgated by the Board in advance of the solicitation for services to prevent an impairment or the appearance of an impairment of independence from arising from two contracts with the same firm; all such statements on independence submitted by any firm shall be reviewed by the Board prior to consideration of a proposal submitted in response to a solicitation for services by OSC or CRF and the Board shall determine whether the firm can be considered for the contract consistent with the requisite independence standards.

Eighth, the lead or coordinating partner having primary responsibility for the audit, or the audit partner having responsibility for reviewing the audit shall, not serve in such capacity for more than five consecutive years.

Ninth, no appointment or promotion to an exempt, policy-making position in OSC shall be approved for any partner or other professional employed by a firm that provided audit services to OSC or CRF during the two-year period preceding the date of the appointment or promotion.

TPD/s/

Thomas P. DiNapoli

Comptroller, State of New York

Last Revised Date: February 19, 2009

Original Date: February 14, 2002

¹ Section 201 expressly prohibits an audit firm from providing the following non-audit services contemporaneously with an audit:

- (1) Bookkeeping or other services related to the accounting records or financial statements of the audit client;
- (2) Financial information systems design and implementation;
- (3) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (4) Actuarial services;
- (5) Internal audit outsourcing services;
- (6) Management functions or human resources;
- (7) Broker or dealer, investment adviser, or investment banking services;
- (8) Legal services and expert services unrelated to the audit; and
- (9) Any other service that the Public Company Accounting Oversight Board determines, by regulation, is impermissible.