

# Cover Page - Request for Quote

**TO BE COMPLETED BY AUTHORIZED USER**

**RFQ Title:** Actuarial Services **RFQ Number** C000457

**Authorized User Information:**  
New York State Department of Financial Services  
One Commerce Plaza, Suite #1850  
Albany, NY 12257

**Authorized User Delivery Information**  
New York State Department of Financial Services  
One Commerce Plaza, Suite #1850  
Albany, NY 12257

**Special Instructions:** This Quote is being conducted under Section 163.6 of the NYS Finance Law. Please submit final quotes to: [RFP@dfs.ny.gov](mailto:RFP@dfs.ny.gov) or by mail to the authorized user listed above.

**DESIGNATED CONTACTS**

Name(s)	E-Mail(s)
Dyane McGee	RFP@dfs.ny.gov

**Authorized User shall indicate if Procurement Lobbying Law/Restricted Period is in effect:**  Yes  No  
*Executive State agencies and certain other entities are required to comply with Procurement Lobbying Law which requires the inclusion of a Restricted Period in procurements. If an Authorized User is not certain whether or not they are required to include a Restricted Period, please use the below link for additional information resources. Where Procurement Lobbying Law is deemed applicable by the Authorized User, by signing, Contractor affirms that it understands and agrees to comply with the Authorized User's policies and procedures relative to permissible contacts.*

Information may be accessed at: Procurement Lobbying:  
<http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>

**KEY EVENTS/ DATES**

Event	Date	Time
RFQ Release Date	5/14/2018	N/A
Questions Due	5/21/2018	
Answers to Questions Issued	5/28/2018	
Vendor Response Due Date	6/5/2018	4pm EST

**BASIS FOR AWARD**  Lowest Price Meeting Specified Technical Requirements  
 Lowest Price Meeting Specified Technical Requirements **and** Mandatory Pass/Fail Requirements  
 Best Value with Technical and Financial Score

**ATTACHMENTS** Attachment 1 Proposal Quote Form  
Attachment 2 Exhibits 1-3  
Attachment 3 Preliminary Agreement

The Authorized User will not be held liable for any cost incurred by the Contractor for work performed in the preparation of a response to this RFQ or for any work performed prior to the formal execution of an Authorized User Agreement. Responses to the RFQ must be received by the deadline specified above. Contractors assume all risks for timely, properly submitted deliveries. A Contractor is strongly encouraged to arrange for delivery of RFQ responses prior to the date of the RFQ opening. LATE RFQ responses may be rejected. The received time of a RFQ response will be determined by the Authorized User.

**All purchases resulting from this RFQ shall be in accordance with terms and conditions of New York Procurement Law.**

## A. PURPOSE

This RFQ is being distributed to Minority and Women Owned Business Enterprises (MWBE) and Service-Disabled Veteran Owned Business (SDVOB) Contractors to acquire the following:

A responsive and responsible vendor to provide a comprehensive report on the costs associated with approaches to improve access to health insurance coverage in New York for In Vitro Fertilization (IVF) to treat infertility as defined in Insurance Law Sections 3221(k)(6) and 4303(s) and for Fertility Preservation (FP) services. FP services include standard services to preserve fertility when a necessary medical treatment, including surgery, radiation, chemotherapy or other medical treatment, may directly or indirectly impair a person's fertility.

## B. MINIMUM QUALIFICATIONS

The quote must include the services of an actuary who is a member of the Society of Actuaries, with a concentration in health insurance. Verifiable credentials must be included with the quote.

## C. SCOPE/MANDATORY REQUIREMENTS

### C.1 A Work Plan must be included with each proposal.

The Work Plan must provide sufficient detail to permit the Department to:

- Assess the Bidder's degree of understanding of the requirements and deliverables;
- Provide a clear understanding of the Bidder's proposed management strategies to ensure the success of the project; and
- Assess the ability of the bidder to plan and manage the daily operations of the project, for the duration of the term of the Contract.

The Bidder is encouraged to describe any innovative management techniques that will be employed.

### C.2 The Work Plan must provide:

- A summary of the strategies and methods the Bidder will use to achieve the purpose of this project.

### C.3 A Detailed Project Schedule, which includes:

- a timeline to complete all deliverables, no later than 6 months after the Agreement is fully executed;
- a strategy for the most rapid and cost-effective implementation of these deliverables;
- at a minimum, the project schedule must describe the logical progression of the project, and must include all phases, deliverables, milestones and dates when those milestones will be completed;
- the detailed project schedule must also include periodic review and approval checkpoints prior to the completion of each deliverable;
- the name and a description of the project management tool or technique that will be used to track the progress of the project, which may include Gantt chart and critical path charts that describe all the tasks, durations, predecessors, and resources/DFS roles allocated;
- the Bidder's commitment of management resources to be devoted to this project;
- the names, titles, resumes, and locations of all key personnel to be dedicated to this project (i.e., personnel whose credentials meet the qualifications to bid as outlined in this RFQ);
- an organization chart;
- specifications as to the amount of time and specific functions that each key person will dedicate to this project;

- the qualifications and details of any anticipated personnel to be hired to work on this project;
- a description of any local or sub-offices, including location of staff members assigned to this project;
- a description of the required roles activities and time commitment of DFS staff, including communication and frequency of meetings.

C.4 The Contractor shall provide a report examining the following topics in detail:

With the assistance of DFS:

- a. Determine the extent to which IVF and FP services are covered in the large group, small group, and individual markets in New York.
- b. Gather and compare the premium attributable to the IVF and FP services and the experience of multiple New York insurers with those benefits, including the NYS Empire Plan, for each market (individual, small group, and large group).
- c. Gather and compare the coverage, experience, and premiums of insurers in other states with the IVF and FP services benefit, e.g., New Jersey, Connecticut, and Massachusetts, against other insurers without the IVF and FP services benefit in those states, highlighting any demographic similarities and disparities for each market (individual, small group, and large group) to the extent the information is available.
- d. Provide a first draft of the actuarial models comparing the premium impact and costs to the State if it mandates (1) unlimited IVF coverage, (2) a maximum of three cycles, and (3) a maximum of one cycle for each market (individual, small group, and large group). For each model, compare the premium impact and costs to the State if the definition of infertility is expanded and/or if the age limit for coverage is removed.
- e. Identify any potential cost saving measures caused by increased access to the IVF services (e.g., by circumventing other procedures) for each market (individual, small group, and large group).
- f. Identify the impact of pent-up demand on premiums for IVF and FP services, respectively, in the individual and small group markets, and whether that effect will dissipate over a period of time.
- g. Describe the impact, if any, that a mandate for IVF and FP services would have on the provider networks of insurers. Consider that insurers would be required to have providers in-network that can render the services, and that insurers would be required to permit members to obtain IVF and FP services from a non-participating provider at the in-network cost-sharing if there was not an accessible in-network provider. Describe the likelihood of insureds having to obtain the services from a non-participating provider and the corresponding impact on premiums.
- h. Propose methods by which the state may increase access to IVF and FP services without incurring any (or at least minimizing) cost.

Deliverables:

Deliverable 1. Work with the Department to gather the information. Provide the Department with an outline of the report, along with an initial first Draft of the report.

Deliverable 2. Submit revised Drafts of report to the Department. Depending on the quality of the initial Draft, there may be multiple drafts for this phase.

Deliverable 3. Incorporate the Department's comments and submit Final Draft to the Department. This version should be as close to the Final Report as possible.

Deliverable 4. Final Report accepted by Department.

The procedure for transmittal of all Deliverables shall be as follows:

- The Contractor shall provide Deliverables electronically, or as approved by the Department, with two copies of the signed **Deliverable Transmittal Form** (see **Exhibit #1**).
- The Department Project Manager shall sign and date both copies upon receipt and return one indicating receipt of the Deliverable(s).
- Following review of the Deliverable(s), the Department Project Manager will issue to the Contractor a **Letter of Deliverable Acceptance** (see **Exhibit #2**) or **Letter of Deliverable Rejection** (see **Exhibit #3**) of the Deliverable(s).
- If a Deliverable is rejected by the Department, the Department must identify in the Letter of Deliverable Rejection, the deficiencies or nonconformities of the Deliverable(s) and a time frame to correct such deficiencies or nonconformities.
- The Contractor shall correct the identified deficiencies or nonconformities, within the time frame specified in the Letter of Deliverable Rejection.
- The Contractor may continue to work on other tasks while Deliverable(s) deficiencies or nonconformities are rectified, unless the Department Project Manager notifies the Contractor, in writing, that a particular deficient or nonconforming task within a Deliverable must be fixed prior to proceeding with the other tasks.
- Once the Contractor has resolved the issues to the satisfaction of the Department Project Manager, the Contractor shall resubmit the Deliverable to the Department with two copies of the signed Deliverable Transmittal Form.

\*Acceptance or Accepted -- The written determination by the State that a Deliverable, including all of components thereof, satisfies all applicable Acceptance criteria. For non-written Deliverables, this includes successful completion of all testing, demonstrating that the Deliverable functions and performs in accordance with all Specifications and Requirements set forth in the RFP.

**Please note:** Prior to submitting a final written Deliverable for Acceptance by the Department, the Contractor will be required to submit a draft. Contractor shall submit one hard copy and one electronic copy.

The Department will review draft documents and return comments for revision of the draft to the Contractor. The Department Project Manager will send a memo to the Contractor, indicating any required changes. The Contractor will incorporate changes.

Draft written Deliverables shall demonstrate due diligence in meeting the scope and requirements of the associated final written Deliverable. All Deliverables shall:

- Satisfy the scope and requirements for that Deliverable; and
- Be presented in a format appropriate for the subject matter and depth of discussion.

## D. PROPOSAL EVALUATION CRITERIA

The Superintendent and/or her designee(s) shall evaluate the proposals and select the Bidder that has the requisite experience and staffing to support the work required by the Department and does not have any conflicts. It's the Department's intention to use the proposals received for guidance purposes and it may request further clarification if deemed necessary, but only from those Bidders determined to be technically proficient regarding certain points noted in the proposal.

D.1 Technical Submittal Evaluation

After completion of the Technical Evaluation, a composite score will be assigned to each proposal. Bidders must receive at least 60% (or 42 points) of the total possible technical points to pass the Technical Evaluation round to have their Cost Proposal evaluated. The criteria against which each proposal will be evaluated are described below.

(a) Technical Evaluation – (70%)
1) Work Plan.
2) Project Schedule.
3) Bidders Approach to the Report.

D.2 Cost Submittal Evaluation

After completion of the Cost Evaluation, a composite score will be assigned to each proposal. The criteria against which each proposal will be evaluated are described below.

(b) Cost Evaluation – (30%)
1) The Proposal Quote (i.e. price) for the term of the agreement.

The Department will evaluate all cost proposals that passed the Technical Evaluation from responsive Bidders. The proposal with the lowest total cost will be awarded the maximum cost score weighted at **30** points. The remaining cost proposals will receive a proportional number of points based upon the ratio of the proposal's total cost to the lowest total cost proposal as follows: (Lowest Total Proposal / Proposal being Evaluated) x **30**= Cost Score.

**New York State Department of Financial Services  
REQUEST FOR QUOTE (RFQ)  
PROPOSAL QUOTE FORM**

C000457

**NAME OF BIDDER:** \_\_\_\_\_

The cost/unit pricing shall cover all costs as outlined on the bid price page(s) herein. **All pricing submitted pursuant to this Request for Quote (RFQ) shall include all direct and indirect (physical and administrative) costs for the performance of services; including, but not necessarily limited to, all administrative, reporting or other requirements (such as current/future minimum wage levels, benefits, etc. set by law); overhead, fees, taxes, travel, profit and any other ancillary fees and costs including permits, licenses, insurance, etc.; and services not explicitly stated in the RFQ, but necessarily attendant thereto as and as applicable to the associated item for which the rate is being quoted.**

Rates/fees as quoted should be expressed in decimals, not to exceed two places for each item quoted. **All fields must be completed.** Additionally, **pricing shall be submitted only on, and in the form prescribed by, this Proposal Quote Form. No other (additional) charges beyond the services specified herein (those listed on this page) shall be permitted by the Contractor, nor will they receive any consideration.**

Item Description/Deliverable Estimated

Description	Cost
Deliverable 1 - Work with the Department to gather the information. Provide the Department with an outline of the report, along with an initial first Draft of the report.	\$
Deliverable 2 - Provide revised drafts of report submitted to the Department. Depending on the quality of the initial draft, there may be multiple drafts for this phase.	\$
Deliverable 3 - Incorporate the Department's comments and submit Final Draft to the Department. This version should be as close to the Final Report as possible. The Department will review the Final Draft, and provide a last round of comments, if necessary.	\$
Deliverable 4 – Final Report accepted by the Department	\$
<b>Total Cost</b>	<b>\$</b>

### Exhibit #1 – Deliverable Transmittal Form

Contractor Deliverable Information to be completed by Contractor			
Date Deliverable Presented for Acceptance:	Deliverable Title:	Deliverable #:	
Deliverable Due Date (per work plan):	Contact person(s):	Deliverable Status: Draft <input type="checkbox"/> Final <input type="checkbox"/>	
Date(s) Delivered to State Project Manager: - Hardcopies: - Electronic (soft) copy:	Electronic Copy: <input type="checkbox"/> Disk/CD/DVD Attached <input type="checkbox"/> File emailed to:		
Signature:		Date:	
Department Project Manager – Fill out and sign to indicate receipt			
<i>Below for State use only</i>			
Date Deliverable Received: - Hardcopies: - Electronic (soft) copy:	Received by:	Document Number:	Number(s) of related documents:
Did Deliverable meet requirements? <input type="checkbox"/> Yes <input type="checkbox"/> No		Department Project Manager Recommendation: <input type="checkbox"/> Approval <input type="checkbox"/> Disapproval	

Attachment 2

<b>Comments:</b>		
<b>Department Project Manager Signature:</b>	<b>Date:</b>	<b>Project Tracking Tool Updated?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<u>Before forwarding to Department Project Manager, does this package contain:</u>  <input type="checkbox"/> Copy of Deliverable? <input type="checkbox"/> Copies of all supporting documentation (email, comments, etc.)  <input type="checkbox"/> Draft letter of notification of approval/disapproval for Department Project Manager's signature		<b>Date sent to Department Project Manager:</b>
<b>Department Project Manager Review</b>		
<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	<b>Signature:</b>	<b>Date:</b>



Attachment 2

**Exhibit #2 - Letter of Deliverable Acceptance**

*Date*

**To: < Contractor >**

**From: < Department Project Manager >**

**Re: Acceptance of Deliverable < #XXX, Deliverable Name >**

*This letter serves as notification that your Deliverable < Deliverable name and number > is Accepted as of < Acceptance date >.*

**< Special instructions or next step specific to the Deliverable and/or vendor go here if applicable >**

*Please retain a copy of this letter for your records. Any questions can be directed to < Person Name >, < Contract Manager or State Administrative Manager >.*

*Thank you,*

**< Department Project Manager Name >**

**< Project Name > Department Project Manager**

### Exhibit #3 - Letter of Deliverable Rejection

Date

To: < Contractor >

From: < Department Project Manager >

Re: *Rejection of Deliverable* < #XXX, Deliverable Name >

*This letter serves as notification that your Deliverable < Deliverable name and number > is rejected as of < rejection date >. You have < xx days/weeks/months > to rectify the defects noted below.*

**< Specific reasons for rejection go here. Reference the Deliverable comment form as appropriate. >**

**< Special instructions or next step specific to the Deliverable and/or vendor go here. Describe the process to resubmit the corrected Deliverable. >**

*Please retain a copy of this letter for your records. Any questions can be directed to < Person Name >, < Contract Manager or State Administrative Manager >.*

*Thank you,*

< Department Project Manager Name >

< Project Name > Department Project Manager

Agreement Between  
**New York State Department of Financial Services**  
and

**[Fill in Contractor Name]**

Contract Number C000457  
For: (Fill in goods/services needed)

The **New York State Department of Financial Services** (the “Department”), with a place of business at One Commerce Plaza, Albany, New York 12257, and (the “Contractor”), with a place of business at \_\_\_\_\_ hereby agree as follows:

1. Contractor shall provide at Department’s location at One Commerce Plaza, Albany, NY 12257 (and/or at One State Street, New York, NY 10004): a report examining the following topics in detail:

**Cost Analysis**

- a. Determine the extent to which IVF and FP services are covered in the large group, small group, and individual markets in New York.
- b. Gather and compare the premium attributable to the IVF and FP services and the experience of multiple New York insurers with those benefits, including the NYS Empire Plan, for each market (individual, small group, and large group).
- c. Gather and compare the coverage, experience, and premiums of insurers in other states with the IVF and FP services benefit, e.g., New Jersey, Connecticut, and Massachusetts, against other insurers without the IVF and FP services benefit in those states, highlighting any demographic similarities and disparities for each market (individual, small group, and large group) to the extent the information is available.
- d. Provide actuarial models comparing the premium impact and costs to the State if it mandates (1) unlimited IVF coverage, (2) a maximum of three cycles, and (3) a maximum of one cycle for each market (individual, small group, and large group). For each model, compare the premium impact and costs to the State if the definition of infertility is expanded and/or if the age limit for coverage is removed.
- e. Identify any potential cost saving measures caused by increased access to the IVF services (e.g., by circumventing other procedures) for each market (individual, small group, and large group).
- f. Identify the impact of pent-up demand on premiums for IVF and FP services, respectively, in the individual and small group markets, and whether that effect will dissipate over a period of time.

- g. Describe the impact, if any, that a mandate for IVF and FP services would have on the provider networks of insurers. Consider that insurers would be required to have providers in-network that can render the services, and that insurers would be required to permit members to obtain IVF and FP services from a non-participating provider at the in-network cost-sharing if there was not an accessible in-network provider. Describe the likelihood of insureds having to obtain the services from a non-participating provider and the corresponding impact on premiums.
- h. Propose methods by which the state may increase access to IVF and FP services without incurring any (or at least minimizing) cost.

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**Please note:** Prior to submitting a final written Deliverable for Acceptance by the

Department, the Contractor will be required to submit a draft. Contractor shall submit one hard copy and one electronic copy.

The Department will review draft documents and return comments for revision of the draft to the Contractor. The Department Project Manager will send a memo to the Contractor, indicating any required changes. The Contractor will incorporate changes.

Draft written Deliverables shall demonstrate due diligence in meeting the scope and requirements of the associated final written Deliverable. All Deliverables shall:

- Satisfy the scope and requirements for that Deliverable; and
  - Be presented in a format appropriate for the subject matter and depth of discussion.
2. The costs, fees and disbursements, including travel, associated with the provision of services by the Contractor shall not exceed the following:

Description	Cost
Deliverable 1 - Work with the Department to gather the information. Provide the Department with an outline of the report, along with an initial first Draft of the report.	\$
Deliverable 2 - Provide revised drafts of report submitted to the Department. Depending on the quality of the initial draft, there may be multiple drafts for this phase.	\$
Deliverable 3 - Incorporate the Department's comments and submit Final Draft to the Department. This version should be as close to the Final Report as possible. The Department will review the Final Draft, and provide a last round of comments, if necessary.	\$
Deliverable 4 – Final Report accepted by the Department	\$
<b>Total Cost</b>	\$

(Show itemized unit costs here, if any, to show how we get to grand total)

3. No Department employee, including the Project Manager, [Name of Project Manager], has the authority to request that the Contractor perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth herein.
4. The Contractor shall provide complete and accurate itemized statements monthly to be reviewed and approved by the Department. Invoices containing all required information and supporting documentation must be submitted to: New York State Department of Financial Services, Attn. Accounts Payable Unit, One Commerce Plaza, Suite #1850, 99 Washington Ave., Albany, NY 12257; or by email to: [accountspayable@dfs.ny.gov](mailto:accountspayable@dfs.ny.gov). Payment by the Department will be made in accordance with the State Finance Law, upon receipt of such statements and upon approval by the Department, in accordance with State procedures and practices.

Payment shall be made electronically unless payment by paper check is expressly authorized by the Superintendent of Financial Services, in his sole discretion, due to extenuating circumstances. Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Superintendent of Financial Services has expressly authorized payment by paper check as set forth above.

5. Department shall only pay for work that is performed pursuant to Paragraph 1 herein, and fees that are within the fee schedule set forth in Paragraph 2 herein. No Department employee, including the Project Manager, has the authority to request that the Contractor perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth herein.
6. Any and all Department communications, records, documents, written, oral or electronic communication, or other information of any kind are confidential. Contractor shall not copy, transmit, deliver or communicate in any way to any other person or entity any such communications and/or information without the prior written consent of the Department.
7. All information and materials received hereunder by Contractor from Department are and shall remain the sole and exclusive property of Department, and Contractor shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by Contractor.
8. All intellectual property, created by the Contractor hereunder as a product or as a service to the Department shall be the sole and exclusive property of the Department. The Contractor hereby transfers and assigns to the Department all proprietary and intellectual property rights in such property.
9. Effective upon their creation pursuant to Paragraph 1 of this Agreement, the Contractor conveys, assigns and transfers to the Department the sole and exclusive rights, title and interest in all documents, electronic databases, and custom programs, whether preliminary, final or otherwise, including all trademarks and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the custom products are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of the Contractor's business.
10. The Contractor grants to the Department a perpetual, nonexclusive, royalty-free, unlimited use license to use, execute, reproduce, display, modify and distribute any

pre-existing software, tools or techniques delivered by the Contractor under this Agreement.

11. Any written reports, opinions and advice rendered by the Contractor shall become the sole and exclusive property of the Department, and the Contractor shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Contractor.
12. Contractor represents and warrants that it has no conflict, actual or perceived, that would prevent it from performing its duties and responsibilities under the Agreement.
13. No staff member, officer, director or person employed by Contractor in connection with this Agreement shall be considered or deemed to be an employee of the State of New York or represent him or herself as an employee of the State of New York.
14. Contractor shall procure insurance for liability for damages imposed by law, covering all operations under this Agreement, whether performed by the Contractor or by its subcontractors. The amounts of such insurance shall be no less than \$1,000,000.00 combined bodily injury and property damage single limit per occurrence, and \$3,000,000.00 combined in the aggregate. Before commencing work under this Agreement, the Contractor shall furnish to the Department a certificate of insurance naming: the People of the State of New York; the New York State Executive Department; the New York State Department of Financial Services; its Superintendents, officers, agents and employees as additional insureds under such policy.
15. The Contractor assumes all risks in the performance of all its activities authorized by this Agreement. The Contractor hereby covenants and agrees to defend, indemnify and hold harmless the People of the State of New York; the New York State Executive Department; the New York State Department of Financial Services; its Superintendents, officers, agents, employees and assigns against all liabilities, claims, suits, actions, judgments, costs, expenses, demands, losses, damage or injury, arising out of this agreement, of whatsoever kind and nature including death or injury to person, damage or loss of property, all attorneys' fees and other costs of investigating and defending against such claims, liabilities, losses, damages, expenses, accidents or occurrences. The Contractor shall be responsible for such liabilities that arise at any time prior to termination of this Agreement, whether direct or indirect, and whether caused or contributed to by the Contractor, its subcontractors, agents, or employees. The Contractor's responsibility under this section shall not be limited to the required or available insurance coverage.
16. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein except as to those matters or agreements expressly incorporated herein by reference. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Agreement. This Agreement

supersedes any and all prior agreements, whether written or oral, relating to the subject matter contained herein. This Agreement shall not be amended, changed, assigned or otherwise modified except in writing, signed by both parties.

17. The Contractor and the Department may mutually agree, in writing, to terminate this Agreement at any time. The Department may also terminate this Agreement at any time and for any reason by mailing written notice to Contractor at least ten (10) days prior to the termination date.
18. Contractor shall at all times during the contract term remain responsible. Contractor agrees, if requested by the Superintendent of Financial Services, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
  - a) The Superintendent of Financial Services, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Superintendent of Financial Services, or his or her designee, issues a written notice authorizing a resumption of performance under the Contract.
  - b) Upon written notice to Contractor, and a reasonable opportunity to be heard with appropriate Department of Financial Services officials or staff, the Contract may be terminated by the Superintendent of Financial Services, or his or her designee, at Contractor's expense where Contractor is determined by the Superintendent of Financial Services to be non-responsible. In such event, the Superintendent of Financial Services, or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
19. Contractor, its subcontractors, agents and employees shall comply with the terms of Appendix A – Standard Clauses for all New York State Contracts, which is attached hereto, incorporated herein by reference and made a part hereof.
20. The requirements of New York State Finance Law Sections 139-j and 139-k are hereby incorporated into this Agreement. The Contractor is required to comply with all requirements thereof as found in the Procurement Lobbying Law Information and Forms attached hereto, incorporated herein by reference and made a part hereof. The Department reserves the right to terminate this Agreement in the event it is found that the Procurement Lobbying certifications are found to be intentionally false or intentionally incomplete.
21. Contractor shall include in its information security program the establishment and maintenance of a security system covering its computers, including any permitted



wireless system, that, at a minimum, adheres to the New York State Cyber Security policy, available at <http://its.ny.gov/eiso>. At the request of the Department, Contractor shall demonstrate compliance with said policy.

22. *(This language is required for consulting contracts only.)* The requirements of New York State Finance Law Sections 8 and 163 regarding Consultant Disclosure are hereby incorporated into this Agreement. The Contractor is required to comply with all requirements thereof as found in the Consultant Disclosure Information and Forms attached hereto, incorporated herein by reference and made a part hereof.

**(If this signature section ends up on blank page like this, please add these two**

**lines):** Contract Number C000457

For: (fill in goods/services being provided)

**NYS DEPARTMENT OF FINANCIAL SERVICES**

**[FILL IN CONTRACTOR NAME]**

**BY:** \_\_\_\_\_  
Signature

**BY:** \_\_\_\_\_  
Signature

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT**

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

SS: \_\_\_\_\_ )  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared

\_\_\_\_\_, to me known and known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at \_\_\_\_\_, and further that:

**[CHECK ONE]**

**(If an Individual):** he/she executed the foregoing instrument in his/her name and on his/her own behalf.

**(If a Corporation):** he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said 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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

January 2014

TABLE OF CONTENTS

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

## **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](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable,

Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

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

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.**

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of

the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state

agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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



executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

**(If a Partnership):** he/she is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he/she is authorized to execute the foregoing instrument on behalf of the partnership 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 said partnership as the act and deed of said partnership.

**(If a Limited Liability company):** he/she is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that, he/she is authorized to execute the foregoing instrument on behalf of the limited liability company 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 said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

**Registration Number:** \_\_\_\_\_ **State of** \_\_\_\_\_

## Appendix B

### **PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**

#### **I. General Provisions**

- A. DFS is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to DFS, to fully comply and cooperate with DFS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to DFS pursuant to the Contract and applicable law.

#### **II. Contract Goals**

- A. For purposes of this Contract, DFS hereby establishes an overall goal of 100% for MWBE participation, 100% for New York State-certified minority-owned business enterprise (“MBE”) participation or 100% for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

## Appendix B

### **III. Equal Employment Opportunity (“EEO”)**

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
  
- B. In performing the Contract, the Contractor shall:
  - 1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. The Contractor shall submit an EEO policy statement to DFS within seventy-two (72) hours after the date of the notice by DFS to award the Contract to the Contractor.
  - 3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, DFS may require the Contractor or subcontractor to adopt a model statement (see Form – Equal Employment Opportunity Policy Statement).
  - 4. The Contractor’s EEO policy statement shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or

## Appendix B

marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. 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.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

### D. Form EEO-1 - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by DFS on a QUARTERLY basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.
3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The

## Appendix B

Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

## Appendix B

### **VII. Liquidated Damages - MWBE Participation**

- A. Where DFS determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to DFS liquidated damages.
  
- B. 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 Contract.
  
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by DFS, the Contractor shall pay such liquidated damages to DFS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

Appendix B

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

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

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

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

By \_\_\_\_\_

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

Appendix B

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

100 % Minority and Women's Business Enterprise Participation

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

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

\_\_\_\_\_  
(Authorized Representative)

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

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





## Appendix C

### Consultant Disclosure - Information and Forms

#### **Background:**

(A) The Office of the State Comptroller (OSC) is required under State Finance Law §163(14) to include in the Consulting Services Report (compiled annually on contracts issued by State agencies for consulting services during the previous fiscal year), certain additional information on employees providing services under such contracts;

(B) Contractors are required to annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and OSC; and

(C) OSC is required to include such employment information in the Procurement Stewardship Act Report it compiles annually.

#### **State Contractors Employment Information:**

State contractors for consulting services must disclose, by employment category: the number of persons employed to provide services under a contract; the number of hours worked; and the amount paid to the contractor by the State as compensation for work performed by these employees. This must include information on any persons working under any sub-contracts with the State contractor.

State Finance Law §163(14)(d) defines “contracts for consulting services” to include: any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services.

#### **Initial Report Requirements (Form A):**

To comply with the law, State contractors must provide the contracting agency with **Form A** (State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term), and State agencies must include it in the Procurement Record and submit to OSC for new consultant contracts. **Form A** is a one-time report and must include **planned employment information** for all employees (whether employed full/part-time by the contractor or by sub-contractor(s) providing services **for the entire term of a consulting contract on a projected basis**).

#### **Annual Report Requirements (Form B):**

The law also mandates State contractors submit **Form B** (State Consultant Services Contractor’s Annual Employment Report) providing employment information described above, including work performed by sub-contractors. **Form B** must be submitted by the contractor to the contracting agency, DCS and OSC. **Form B must** be submitted each year the contract is in effect and shall capture historical information, detailing **actual employment data for the most recently concluded State fiscal year (April 1 – March 31)**.

#### **Completing the Forms:**

**Employment Category (both Forms):** The specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees providing services under the contract. Access to the O\*NET database is available through the US Department of Labor’s Employment and Training Administration website at <http://online.onetcenter.org>

**Number of Employees:** Form A - total number planned in each employment category for the entire contract; and Form B – total number actually utilized in each employment category during the Report Period.

**Number of hours worked:** Form A - total number planned in each employment category for the entire contract; and Form B - total number actually in each employment category worked during the Report Period.

**Amount Payable under the Contract:** Form A - total amount planned to be paid by the State to the Contractor for the entire contract; and Form B – total amount actually paid under the contract, for work/services provided by the employees in each employment category during the Report Period.

**Scope of Contract (Form B only):** Check/select one category that best fits the predominate nature of the services provided under the contract.

**Send Form B (by mail and no later than May 15th of each succeeding year) as follows:**

**To OSC:**

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

**To Civil Service:**

NYS Department of Civil Service  
Alfred E. Smith Office Building  
Albany, NY 12239  
Attn: Executive Office

**To DFS:**

NYS Dept. of Financial Services  
Contracts Team, Suite #1850  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12257



Appendix C

**FORM B**

**OSC Use Only:**

Reporting Code:

Category Code:

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

Contracting State Agency Name: NYS Dept. of Financial Services      Agency Code: 350000  
 Contract Number:  
 Contract Term:    /    /        to    /    /  
 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:  
 Preparer's Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 Date Prepared:    /    /

Use additional pages if necessary)

Page      of