

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



REQUEST FOR PROPOSALS

RFP #24-07

PROFESSIONAL AUDITING SERVICES

FOR

NEW YORK STATE'S ANNUAL FINANCIAL STATEMENTS AND eMEDNY

ISSUED: NOVEMBER 12, 2024

TABLE OF CONTENTS

(Hyperlinked; click to go directly to desired topic.)

TABLE OF CONTENTS	2
1.0 CALENDAR OF EVENTS	5
2.0 EXECUTIVE OVERVIEW	5
2.1. Overview	5
2.2. Important Information	5
2.3. Term of the Agreement	6
2.4. Single Source of Responsibility	6
3.0 MINIMUM QUALIFICATIONS TO PROPOSE	6
4.0 BACKGROUND	7
5.0 SCOPE OF SERVICES	7
5.1. Statement of Work	7
5.2. Financial Statements to be Audited	7
5.3. eMedNY Audit	8
5.4. Other Reports	8
5.5. Matter of Public Record	9
5.6. Progress Reports	9
5.7. Questions of Materiality	9
5.8. Annual Audit Report Time Schedule	9
5.9. Single Audit	10
5.10. Additional Assistance Required of the Auditor	10
5.11. Assistance Available During Audit	10
5.12. Reliance on Work of State Accountability Staff	11
5.13. Assistance Available from the Current Independent Auditor	11
5.14. Documentation	11
5.15. Special Audit Considerations	11
5.16. Cybersecurity Risk Assessment	12
6.0 ADMINISTRATIVE INFORMATION	13
6.1. Procurement Integrity/Restrictions on Communication	14
6.2. Questions	14
6.3. Right to Modify RFP	15
6.4. Minority and Woman-Owned Business Enterprise Requirements	15
6.5. Service-Disabled Veteran-Owned Businesses	16
6.6. Sales and Compensating Use Tax Certification (Tax Law, §5-a)	16
6.7. Workers' Compensation, Disability and Paid Family Leave Benefits Certifications	17
6.8. OSC's Reserved Rights	18
6.9. Freedom of Information Law	18
6.10. State Ethics Law Provision	19
6.11. State Finance Law Consultant Disclosure Provisions (Appendix G)	19
6.12. OSC Executive Order Relating to Auditor Independence (Appendix I)	20
6.13. Debriefings	20
6.14. Protests	20
6.15. Background Investigations	20
6.16. Staff Integrity	21
7.0 PROPOSAL CONTENT	21
7.1. Administrative Proposal	22
7.2. Technical Proposal	24
7.3. Cost Proposal	27
8.0 PROPOSAL SUBMISSION	27
8.1. Submission of Proposal Components	28
9.0 EVALUATION PROCESS/CRITERIA	29
9.1. General Information	29
9.2. Submission Review	30

9.3.	Technical Evaluation	30
9.4.	Cost Evaluation	30
9.5.	Preliminary Composite Score.....	31
9.6.	Finalists	31
9.7.	Interviews	31
9.8.	Reference Checks.....	31
9.9.	Final Composite Score.....	31
9.10.	Award Recommendation.....	31
ATTACHMENT A		33
PROPOSER'S CERTIFIED STATEMENTS.....		33
ATTACHMENT B		37
PROPOSAL DOCUMENTS CHECKLIST		37
ATTACHMENT C COST PROPOSAL		39
ATTACHMENT D		40
PROOF OF COMPLIANCE WITH MINIMUM QUALIFICATIONS		40
ATTACHMENT E		41
PROPOSER QUALIFICATION RESPONSE FORM.....		41
ATTACHMENT F		42
QUALIFICATION SUMMARY		42
ATTACHMENT G.....		46
AUDIT PLAN HOURS		46
ATTACHMENT H		48
REFERENCES		48
ATTACHMENT I.....		49
STATE STRUCTURE AND RESPONSIBILITIES		49
ATTACHMENT J.....		56
EMEDNY AUDIT – SCOPE OF WORK.....		56
ATTACHMENT K		59
DRAFT CONTRACT		59
APPENDIX A.....		72
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS.....		72
APPENDIX B.....		78
PROPOSER AND CONTRACTOR COMPLIANCE REQUIREMENTS AND PROCEDURES.....		78
FOR PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO OSC		
CONTRACTS.....		78
NEW YORK STATE OFFICE OF THE STATE COMPTROLLER		89
A. PROPOSER'S M/WBE UTILIZATION PLAN.....		90
B. PROPOSER'S/CONTRACTOR'S M/WBE UTILIZATION PLAN.....		91
C. PROPOSER'S M/WBE SUBCONTRACTORS/SUPPLIERS NOTICE OF INTENT TO		
PARTICIPATE.....		92
D. PROPOSER'S M/WBE SUBCONTRACTORS/SUPPLIERS NOTICE OF INTENT TO		
PARTICIPATE.....		93
E. REQUEST FOR WAIVER.....		94
F. CONTRACTOR'S M/WBE UTILIZATION PLAN.....		96
G. CONTRACTOR'S M/WBE UTILIZATION PLAN.....		97
NEW YORK STATE OFFICE OF THE STATE COMPTROLLER		98
H. M/WBE EXPENDITURE REPORT		98
NEW YORK STATE OFFICE OF THE STATE COMPTROLLER		99
I. CONTRACTOR'S QUALITY ASSURANCE REPORT/CHECKLIST		99
APPENDIX C		100
OSC POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL		
HARASSMENT		
APPENDIX D		102
OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY		102
OSC PROCUREMENT INTEGRITY PROCEDURES		104
APPENDIX E.....		107

CONTRACTOR'S CERTIFICATIONS/ACKNOWLEDGEMENTS 107
APPENDIX F 108
DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS..... 108
APPENDIX G 109
OSC CONSULTANT DISCLOSURE REPORTING REQUIREMENTS 109
APPENDIX H 113
PROPOSER/CONTRACTOR COMPLIANCE REQUIREMENTS AND PROCEDURES..... 113
APPENDIX I 118
EXECUTIVE ORDER 118
INDEPENDENCE OF AUDITORS PERFORMING SERVICES FOR THE OFFICE OF THE STATE
COMPTROLLER AND THE COMMON RETIREMENT FUND 118

1.0 CALENDAR OF EVENTS

<u>EVENT</u>	<u>DATE</u>
Issuance of Request for Proposals	November 12, 2024
Deadline for Submission of Written Questions	December 4, 2024 4:00 p.m. ET
Responses to Written Questions Posted (on or about)	December 18, 2024
Deadline for Submission of Proposals	January 3, 2025 4:00 p.m. ET
Anticipated Start of Interviews (if determined to be necessary)	March 5, 2025
Anticipated Notification of Award	March 26, 2025
Anticipated Approval of Contract	June 2, 2025
Anticipated Commencement of Work	October 1, 2025

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 (“Proposers”) to conduct annual audits of the State’s combined financial statements and eMedNY (the web-based health exchange administered by the New York State Department of Health (“DOH”)) as further detailed in Section 5.0 (Scope of Services) and Attachment J (eMedNY Audit – Scope of Work).

OSC is the authorized, issuing entity for this RFP and will be the executing agency for any resulting contract (“Agreement”); however, as DOH is a specified beneficiary of the Services, references to OSC in this RFP shall also mean DOH, where applicable.

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 (OSC Executive Order on Procurement Integrity and 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 encouraged to review Appendix A (Standard Clauses for New York State 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 encouraged to review and have Legal counsel review Attachment K (Draft Contract), as the Proposer must be willing to enter into a contract substantially in accordance with the terms of Attachment K should the Proposer be selected for contract award.

2.3. Term of the Agreement

The term of the agreement resulting from this RFP (“Agreement” or “Contract”) shall commence on October 1, 2025 and shall continue for a period of five years.

2.4. Single Source of Responsibility

OSC requires that each proposal will be submitted by a Prime Proposer (the “Prime”). The Prime will serve as the single source of responsibility for the delivery of all contract deliverables and Services (described below in Section 5.0). While Services may be provided by the Prime, its subcontractors, and/or via a joint venture (a partnership or a consortium with other vendors), the Prime is responsible for the efforts of any subcontractors/partners/joint venturers (collectively, “Subcontractor(s)”), including their compliance with contract provisions.

No entity may disclose competitive pricing information in the development of any bid. The prices in each proposal must have been arrived at a) independently, and b) without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.

A subcontractor may participate in multiple proposals as a subcontractor as long as there is no collusive bidding or improper disclosure of competitive pricing that could restrict competition among or between bids. A joint venturer may not participate in more than one proposal.

Proposed subcontractors must be identified on Attachment F (Qualification Summary) at the time of proposal submission and are subject to OSC approval (see Attachment K for additional information).

Note: Partnerships/joint ventures/consortiums and subcontracting relationships may be used to satisfy M/WBE and SDVOB goals and/or to ensure the necessary availability of consultants. While M/WBE and SDVOB goals are established in this RFP, the manner in which proposers meet such goals is not mandated by OSC.

3.0 MINIMUM QUALIFICATIONS TO PROPOSE

Proposers must meet the following Minimum Qualifications in order to be eligible to submit a proposal:

- 3.1.** Be a Certified Public Accounting (“CPA”) firm that is in good standing with the State Board of Accountancy where licensed;
- 3.2.** Be registered to practice public accounting in New York State;
- 3.3.** Have, within the last five years, audited the financial statements of at least one government entity with annual governmental fund expenditures of \$10 billion or greater. The audited financial statements must have been prepared in accordance with generally accepted accounting principles (“GAAP”); and
- 3.4.** Be independent of OSC in accordance with the American Institute of Certified Public Accountants (“AICPA”) and government auditing standards.

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

4.0 BACKGROUND

The State is required to prepare basic financial statements with supporting schedules in conformance with GAAP for State and local governments and to have those statements and schedules audited in accordance with generally accepted government auditing standards (“GAGAS”) promulgated by the Comptroller General of the United States.

In June 1981, the New York State Legislature passed legislation to amend the State Finance Law (“SFL”) and provide for adoption by the State of the nationwide standards embodied in GAAP. SFL § 8(9) requires the State Comptroller, for fiscal years commencing on or after April 1, 1982, to issue within 120 days following the close of the fiscal year an annual report containing financial statements prepared in conformance with GAAP. In addition, SFL § 8(9)(c), as amended, requires that the annual financial statements be audited by an independent certified public accounting firm selected by OSC (“Auditor” or “selected Proposer”). The State Comptroller and the Legislative Audit Committee receive a report on the results of the Auditor’s examination in accordance with SFL § 8(9)(c) and SFL § 122-a.

5.0 SCOPE OF SERVICES

This Section describes the professional auditing services (“Services”) that are required to be provided by the selected Proposer. Proposer must be able to provide all these Services throughout the Contract term.

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

5.1. Statement of Work

OSC is seeking qualified Proposers to conduct an independent audit of the annual financial statements of the State for each of the five fiscal years ending March 31, 2026, 2027, 2028, 2029, and 2030 (see Section 5.2, below) and of eMedNY (see Section 5.3, below). Each examination that is part of this engagement is to be conducted in accordance with GAGAS. The audit should be planned so as to preclude the necessity for an exception arising from scope limitations and should include: i) the issuance of a report on the State’s internal control over financial reporting (see below, Section 5.4.A (The Report on Internal Control)); ii) a report on compliance with applicable State and/or Federal laws and regulations, contracts, and grant agreements; and iii) instances of fraud, if any (see below, Section 5.4.B (The Compliance Report)). Such audits shall not, however, include a review of economy and efficiency or program results. The scope of the audit, as detailed in a formal audit plan to be submitted after the award of a contract, must conform with and accomplish the objectives of this RFP and any resulting contract, and satisfy the requirements of SFL or Code of Federal Regulations (“CFR”) (as applicable to the eMedNY audit).

OSC may also require the Auditor to provide cybersecurity risk assessment services (as more fully detailed in Section 5.16, below) for one or more State agencies, as designated by OSC. If OSC determines a specific need for cybersecurity risk assessment services, OSC will develop a work plan with the Auditor that will include the statement of work, term of the assignment, anticipated hours and hourly rates of each staff title necessary to complete the assignment (as set forth in Attachment C), and the total not-to-exceed cost for the cybersecurity risk assessment. Such work plan will be incorporated into the contract by written amendment.

5.2. Financial Statements to be Audited

The Auditor’s examination shall cover the basic financial statements and all of the supplementary information and supporting schedules required by GAAP to be included in an annual comprehensive financial report as described below.

The State’s financial statements are required to be prepared in conformance with GAAP as prescribed by the Governmental Accounting Standards Board (“GASB”). The Auditor’s report will be directed toward the fairness of presentation of the financial statements of the State of New York in accordance with GAAP.

SFL § 8(9) establishes the statutory requirements relating to the content and timing of the Annual Financial Report of the State Comptroller. A copy of the 2023 Annual Comprehensive Financial Report of the Comptroller including the 2023 GAAP Financial Statements is available via the following link: <https://www.osc.ny.gov/files/reports/finance/pdf/annual-comprehensive-financial-report-2023.pdf>.

The State's financial statements include certain data concerning public benefit corporations and authorities and certain other organizations that are separately constituted legal entities and which are subject to separate, independent audits. To the extent financial data on these organizations are included in the State's financial statements, the Auditor should become satisfied regarding the audit procedures of other independent public accountants and may place reliance on their reports where appropriate.

In accordance with SFL § 122, the scope of the independent audit to be performed during the period covered by this RFP shall be as follows:

The basic financial statements and all of the supporting schedules required by GAAP to be included in the Annual Comprehensive Financial Report ("ACFR") shall be audited. For the fiscal year beginning April 1, 2025 and every year thereafter, the financial statements to be audited will be prepared in accordance with GAAP for governments.

For the purpose of this RFP, "all of the supporting schedules" shall mean the combined and individual fund financial statements as required by GAAP. The Auditor's report on the supporting schedules should indicate whether such schedules are fairly presented in all material respects in relation to the basic financial statements taken as a whole.

5.3. eMedNY Audit

The scope of the eMedNY audit, detailed in Attachment J (eMedNY Audit – Scope of Work), consists of documenting and testing CSRA State and Local Solutions, LLC, A General Dynamics Information Technology Company ("CSRA"), or a successor Auditor's controls in the following three categories of controls: entity level controls, general information technology controls, and application controls. At the conclusion of the audit, the Auditor will issue a financial statement audit report on the information technology internal control for eMedNY to the DOH. A review shall be conducted, and the report issued, annually. At a minimum, the report shall satisfy the requirements contained in 45 CFR § 95.621, including an evaluation of system security encompassing physical and data security operating procedures, and personnel practices.

5.4. Other Reports

The financial statement audit will also include reports on internal controls of State agencies and compliance with State laws and regulations prepared in accordance with GAGAS as described below.

A. The Report on Internal Control

The Report on Internal Control will report on the State government's internal control over financial reporting, findings related to any cybersecurity risk assessment(s), as well as other material matters that the Auditor believes are appropriate to bring to management's attention. AICPA Professional Standards should guide the Auditor in drafting the internal accounting control portion of this report.

B. The Compliance Report

The Compliance Report will conform with GAGAS and AICPA Professional Standards and will report on compliance with laws and regulations, contracts and grant agreements, and instances of fraud which have a material effect on the State's financial statements or the financial management systems specified in Section V (State Accounting Systems) of Attachment I (State Structure and Responsibilities). The Compliance Report for each year covered by this RFP will provide positive and negative assurances on compliance with:

1. SFL;
2. appropriation acts in force during the fiscal year (including dollar amounts and specific provisions restricting the use of such amounts); and
3. other applicable finance-related constitutional and statutory provisions.

5.5. Matter of Public Record

The Auditor's report on the financial statements, the Report on Internal Control, the Compliance Report, and eMedNY audit, as well as any State responses will be matters of public record, available to government bond rating agencies and other interested parties by request.

5.6. Progress Reports

Communication during the audit is of the utmost importance given the State's desire to resolve promptly any issues that may affect the Auditor's opinion. Accordingly, the Auditor and OSC staff will meet as required to discuss audit-related concerns. Reports on the progress of the audit shall be provided to OSC through designated staff, and Auditors' attendance at scheduled meetings will be expected.

The Auditor will provide an oral presentation of the proposed detailed audit plan and time schedule to OSC for review and approval no later than 45 days following the date of the approval of the contract awarded in response to this RFP by the OSC Bureau of Contracts. In addition, the Auditor will provide an oral presentation of the proposed detailed audit plan and time schedule for each successive year thereafter for the Agreement. The fiscal year audit plans and corresponding time schedules will conform to GAGAS and statutory reporting requirements.

During the audit, written progress reports are to be provided by the Auditor explaining (1) any progress to date not consistent with the fiscal year audit plan and time schedule, and (2) any accounting or auditing concerns that have come to the Auditor's attention that would have an impact on the opinion on the financial statements for the fiscal year being examined. Oral presentations to OSC covering the Auditor's progress reports may be required.

Upon completion of each year's audit and after all services have been received, an exit conference will be held with OSC staff. The exit conference will provide the Auditor an opportunity to report on the audit and discuss the content of the Auditor's reports and any other significant observations and/or issues identified during the audit.

5.7. Questions of Materiality

Materiality is typically considered in terms of a percentage of certain amounts. Because of the magnitude of amounts in this audit, and the exposure given to the State's financial affairs, the typical criteria might not be appropriate. Other factors, such as possible citizen reaction, political sensitivity, and the concern for proper use of resources, will also be important. Thus, it is desirable that there be a common understanding of how materiality should be viewed. The Auditor should be prepared to discuss the criteria to be used in making materiality judgments at their first meeting with OSC staff. The Auditor's evaluation of questionable items should be from the perspective of the higher level of disclosure required of a governmental entity.

5.8. Annual Audit Report Time Schedule

Taking into consideration the annual financial reporting requirements of the SFL (which mandates the submission of audited annual financial statements by the State Comptroller to the State Legislature within 120 days after the close of the fiscal year, i.e., July 29), the Auditor shall provide drafts of the following annual audit reports to OSC staff for review and further distribution. All of these audit reports will conform in form and content with GAGAS.

A. The Auditor’s Report on the Basic Financial Statements and Supporting Schedules

Drafts shall be provided annually for the term of the Agreement at a date agreed upon by OSC and the Auditor.

B. The Report on Internal Control Over Financial Reporting and the Compliance Report

Drafts shall be provided annually for the term of the Agreement at a date agreed upon by OSC and the Auditor.

5.9. Single Audit

The New York State Division of the Budget (“DOB”) is responsible for securing the additional audit work required by the Federal Single Audit Act. The fulfillment of the additional Single Audit testing and reporting requirements is not within the scope of this RFP; however, the Auditor should provide as much detail as possible to DOB’s selected auditor about the level of testing that will be performed during the financial statement audit particularly with regard to Federal funds. Such testing may be used as part of the Single Audit.

Copies of the audit reports delivered by the Auditor will be provided to DOB for its use in ensuring that the State fulfills Federal requirements for the submission of the State’s Single Audit reports.

5.10. Additional Assistance Required of the Auditor

The Auditor must make available to OSC, any significant analysis that is prepared or made available during the drafting of the audit reports described in Section 5.0. Such analysis, which should be reviewed for comment in draft as appropriate by contributing agencies, might include but would not be limited to an analysis of financial statement captions and a review of the executive budget request documents, assuming such review and analysis are a part of the Auditor’s overall audit efforts.

The audited basic financial statements may be included, by reference only, in both the Annual Information Statement and Official Statements issued by the State and/or its conduit issuers.

5.11. Assistance Available During Audit

A. Staff Assistance

Relevant State agency and OSC staff will be available during the audit to assist the Auditor by providing information and explanations. Such staff will pull documents, reproduce files and respond to Auditor inquiries, however, they cannot be expected to prepare schedules or otherwise provide full-time assistance.

B. Information Technology Resources

OSC will make information technology (“IT”) resources, including access to virtual desktops available to the Auditor as reasonably necessary for the performance of Services. OSC IT staff will be available to provide support and documentation for access to OSC’s IT systems. The Auditor should have computer software compatible with that of OSC and should provide all necessary audit software.

The Auditor shall not connect any non-State computer, electronic storage device (i.e., USB drives), or telecommunications equipment to the internal OSC network without the express written permission of OSC; personal and corporate laptop computers, personal and corporate USB devices, smartphones, and tablets are included in this prohibition. Access for the engagement will be provided via a virtual desktop.

The Auditor 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. Such policies and procedures will be provided to the Auditor.

C. Work Area

Work areas, telephones, desks, chairs, and copiers will be provided to the Auditor in OSC, if required, and in departments and agencies selected for tests during the audit. OSC will provide limited computers for access to workpapers related to the financial statements prepared by the OSC Bureau of Financial Reporting and Oil Spill Remediation. Equipment such as binders, personal computers, calculators, etc., is to be provided by the Auditor.

D. Representation Letters

OSC will provide a representation letter for the financial statements as a whole. Representation letters, if required, for certain accruals, inventory valuations, contingent liabilities, potential litigation, investments, etc., will be provided to the Auditor by the head of the department or agency responsible for the subject area. The Auditor should include in the audit plan developed after the award of the contract, the specific areas for which representation letters would be required.

5.12. Reliance on Work of State Accountability Staff

Brief overviews of the audit offices in OSC and internal staff in other State agencies is presented in Attachment I (State Structure and Responsibilities). OSC conducts audits of State agencies and Public Authorities. It is expected that the Auditor will maximize the opportunity to rely on OSC audits that address State financial practices as part of the examinations. Reports covering OSC's audits are available at www.osc.state.ny.us and also in the Office of State and Local Government Accountability, 11th Floor, 110 State Street, Albany, New York.

While they cannot be expected to be available full-time to assist the Auditor in the examination, OSC's audit staff will provide assistance in identifying reports related to areas of interest to the Auditor and in responding to inquiries concerning the State's fiscal controls.

5.13. Assistance Available from the Current Independent Auditor

The Auditor engaged for the fiscal year ended March 31, 2025 was KPMG, LLP ("KPMG"). KPMG is responsible to (1) respond fully to all inquiries from the successor Auditor for information obtained during the course of its engagement, and (2) allow a review by the successor Auditor of its State government audit working papers relating to this engagement.

5.14. Documentation

All working papers and reports with respect to each audit of the State's financial statements must be retained in accordance with Appendix A. Upon request, the working papers must be made available to OSC or its designee.

5.15. Special Audit Considerations

Special accounting, reporting, and budgetary matters that influence the scope of an audit of the State's financial statements follow.

A. GAAP for State and Local Governments

The GASB establishes GAAP for governmental units. Because of the magnitude of implementing GAAP in a state government as complex and large as New York, matters associated with

interpretations of changes in GAAP will require consultation with the Auditor. Although the Auditor must render its opinion as to whether or not the State's financial statements are prepared in accordance with GAAP, its advice will be solicited throughout the term of the Agreement concerning the preparation of the State's financial statements, including note disclosure. Likewise, it is expected that accounting issues identified by the Auditor involving interpretation and application of GAAP for governments relative to the State's financial statements will be brought promptly to the attention of OSC management to permit timely resolution, with the assistance of the Auditor.

In this regard, the Auditor should discuss with OSC management the form and content of the financial statements, the related note disclosures and the Auditor's report thereon. In such discussions, particular emphasis should be placed on the Auditor's opinion on:

1. The conformity of the State's accounting system and financial reports with GAAP;
2. The appropriateness of statement format and mode of presentation of financial data;
3. The adequacy of disclosures;
4. The resolution of conflicts among GAAP, legal requirements and accounting practices followed during the year under examination; and
5. The effects of current developments in accounting and financial reporting on the financial statements.

B. Reliance on Other Audits

State authorities and public benefit corporations are required to obtain independent audits of their financial statements, although in some cases their fiscal years vary from the State's. As discussed in Section 5.1 (Statement of Work), the Auditor should rely on these audits to the extent possible in accordance with audit standards. A listing of these public benefit corporations appears in Note 14 of the State Comptroller's Annual Comprehensive Financial Report for 2023 (<https://www.osc.ny.gov/files/reports/finance/pdf/annual-comprehensive-financial-report-2023.pdf>).

In addition, independent auditors examine, on an annual basis, financial statements submitted by the New York State and Local Retirement System, the New York State Lottery, the State University of New York, and the City University of New York Senior Colleges. Reliance on such independent auditor's reports should be taken into consideration in preparing the audit plan. Accordingly, the audit plan may rely on the work and reports of other independent auditors in accordance with professional standards.

C. The Entity

For the financial statement audit, the audited entity is the State government, which means the State governmental reporting entity as defined by GAAP and particularly by the GASB's Statement 14 as revised by GASB Statement 39 and GASB Statement 61, and includes all funds and account groups of the State as well as agencies, boards, commissions, public benefit corporations and other organizational entities determined to be includable in the State's financial reporting entity.

5.16. Cybersecurity Risk Assessment

OSC may require the Auditor to provide cybersecurity risk assessment services for one or more State agencies, as designated by OSC. When OSC determines a specific need for cybersecurity risk assessment services, OSC will develop a work plan with the Auditor that will include the scope of work, term of the assignment, anticipated hours and hourly rates of each staff title necessary to complete the assignment (as

set forth in Attachment C), and the total not-to-exceed cost for the cybersecurity risk assessment. Such work plan will be incorporated into the Agreement by written amendment.

Each cybersecurity risk assessment should consider the cybersecurity risks that could have a material effect on the State's financial statements. Additionally, the cybersecurity risk assessment(s) should include a review of the contingency plan in place to address a cyber incident should such occur, including potential timeliness for remediation and escalation to senior management.

A cybersecurity risk assessment may include but may not be limited to the following:

1. Does the State have a comprehensive inventory management process for hardware, software, and system interconnections?
2. Does the State maintain baseline configurations and approved standard configuration settings for information systems, and conduct routine reviews to ensure systems maintain compliance with established configurations?
3. Does the State have an organizational Identity Access Management ("IAM") strategy, and ensure that a standard process is implemented for all individuals with access?
4. Does the State conduct regular IT security training programs? Are there gaps in IT security training needs?
5. Has the State conducted a risk assessment of any outsourced IT financial services, including cloud computing and storage, information confidentiality, information integrity and system availability?
6. Has the State assessed its "trusted third-party" vendor relationships for potential cyber vulnerabilities?
7. Does the State conduct continuous security monitoring on its financial information systems?
8. Does the State have a security response plan in place consistent with the Federal Information Security Management Act ("FISMA") and financial institution standards?
9. Does the State routinely test contingency plans and conduct practice exercises?
10. Does the State have adequate internal controls over automated business processes, including automated payment processes?

Findings resulting from each cybersecurity risk assessment will be included in the report on internal control. Such findings must be expressly marked by Auditor as follows:

"Cybersecurity Risk Assessment for [name of applicable State Agency/business unit/division] – MAY CONTAIN SENSITIVE INFORMATION EXEMPT FROM FOIL DISCLOSURE PURSUANT TO PUBLIC OFFICERS LAW §87(2)."

6.0 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 this RFP 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.

6.1. 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 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 Finance or 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 OSC Director of Finance as Contracting Officer, or designee(s), via email (preferred) to RFP@osc.ny.gov or via hard copy mail to:

Director of Finance
Questions for RFP24-07
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 6.1 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.

6.2. 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 must be submitted via email (preferred) or by hard copy mail to the Contracting Officer as indicated in Section 6.1 (Procurement Integrity/Restrictions on Communication), 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 K (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.

6.3. 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 6.1) 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.

6.4. 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 (“M/WBE”) 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.

Such participation may be as partners, joint venturers, subcontractors, suppliers, protégés or other roles. Any joint proposal (submitted by partners or joint ventures) must describe the legal relationship and demonstrate how the firms propose to provide Services required in this 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 7.1.A for submission requirements with regard to Appendix B.

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 **32% MWBE** 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 MBE and WBE participation by reviewing the requirements of Appendix B. See Section 7.1.A for submission requirements with regard to Appendix B.

6.5. Service-Disabled Veteran-Owned Businesses

Article 3 of the Veterans' Service 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 Services required by this 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 7.1.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 **4%** 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.

6.6. 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) 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

6.7. Workers' Compensation, Disability and Paid Family Leave 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 and paid family leave benefits insurance coverage is produced. Prior to entering into a contract with OSC, the selected Proposer must verify for OSC, on forms authorized by the New York State Workers' Compensation Board, the fact 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 workers' compensation, disability, or paid family leave benefits coverage should be directed to the New York State Workers' Compensation Board, Bureau of Compliance at (866) 298-7830. Failure to provide verification of any of these types of insurance coverage by the time the contract is ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

The selected Proposer must submit the following documentation upon notification of selection for award:

A. Proof of Workers' Compensation Coverage:

Upon notification of award, the selected Proposer must 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 Coverage.

B. Proof of Disability and Paid Family Leave Benefits Coverage:

Upon notification of award, the selected Proposer must submit **ONE** of the following forms as Disability documentation:

- i. **Form DB-120.1** – Certificate of Insurance Coverage – Disability and Paid Family Leave Benefits Law; or
- ii. **Form DB-120.2** – Certificate of Participation in Disability or Disability and Paid Family Leave Benefits Group Self-Insurance; or
- iii. **Form DB-155** – Certificate of Self-Insurance Coverage – Disability and Paid Family Leave Benefits Law; or
- iv. **Form CE-200** – Certificate of Attestation of Exemption from New York State Disability and Paid Family Leave 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, Disability and Paid Family Leave Benefits certifications as:

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

6.8. 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, if the fees or costs in two or more proposals are not comparable, 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 if the Proposer who had achieved best value prior to contract award cannot satisfy the requirements as stated in this RFP.

6.9. 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 is encouraged to 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.

6.10. 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. The person signing 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 the proposal does not violate either provision;
- C. The person signing 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;
- E. This certification is material to the proposal; and
- F. The person signing understands that OSC intends to rely on this certification.

The Proposer must 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:

Commission on Ethics and Lobbying in Government
540 Broadway
Albany, NY 12207
Telephone #: (518) 408-3976

6.11. 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 Proposer 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.

¹ <https://www.nysenate.gov/legislation/laws/PBO/73>

6.12. 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 7.1.F for submission requirements.

6.13. Debriefings

Consistent with New York State Finance Law § 163(9)(c), any 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 6.1.

A Proposer will be accorded fair and equal treatment with respect to its opportunity for debriefing. The debriefing shall be scheduled within a reasonable time after receipt of the Proposer's written request by the Bureau of Finance.

6.14. Protests

Any interested party may file a protest concerning the contract award with OSC's Director of Finance 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: <https://www.osc.state.ny.us/files/state-agencies/pdf/xi-17-att-2.pdf>.

6.15. Background Investigations

OSC policy requires that background investigations be conducted on Auditor 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 Auditor 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 Auditor agrees to undertake a background investigation of any new/replacement staff during the term of the Agreement.

OSC's Inspector General may audit the results of the background investigations, unless prohibited by law.

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 Auditor 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 (upon OSC's request) shall be assigned to provide Services to OSC under this Agreement. During the term of the Agreement, the Auditor must maintain records related to the background investigations performed.

During the term of the Agreement, and in accordance with Attachment K (Draft Contract) and Appendix A (Section 10, Records) thereto, the Auditor must maintain records related to the background investigations performed.

In Attachment A (Proposer's Certified Statements), confirm the extent to which Proposer's background checks satisfies the requirements above.

The background investigation requirements set forth in this Section are requirements of the OSC Inspector General. Requests for waivers of these requirements are subject to approval by the OSC Inspector General.

For the purposes of this RFP, "staff" includes employees, owners, officers, directors, and/or agents of the Proposer and of any of the Proposer's subcontractors.

6.16. Staff Integrity

The successful 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 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 shall immediately discontinue the use of such staff and notify OSC.

7.0 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 Checklist). 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.

7.1. **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 6.4 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 New York State Contracts);
2. Form AC 3239-A (Proposer's EEO Staffing Plan of Anticipated Workforce);
3. M/WBE Participation Forms:
 - 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-E (Proposer's M/WBE Subcontractor's/Suppliers Notice of Intent to Participate).
 - 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 6.5 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. Contractor's Certifications/Acknowledgements

Submit a completed and signed Appendix E (Contractor's Certifications/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 (OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures).

E. Disclosure of Prior Non-Responsibility Determinations

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

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

1. 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.

2. 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 its only existing contractual relationship with OSC relates to non-auditing services, the Proposer 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 ITServicesDesk@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 6.9** (Freedom of Information Law).

7.2. 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 the staff to be assigned to provide the 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 should 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.

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. Proof of Compliance with Minimum Qualifications

Submit Attachment D (Proof of Compliance with Minimum Qualifications) demonstrating how the Proposer satisfies each of the Minimum Qualifications stated in Section 3.0.

E. Technical Submission

1. Proposer Qualifications

Provide the following:

- (a) Attachment E (Proposer Qualification Response Form), listing governmental financial statement audit assignments performed within the last five years and on a GAAP-basis for clients with annual governmental fund expenditures of \$10 billion or greater. Include the client(s) name(s), the dates the audit was completed, and the client's annual expenditures.
- (b) Additional available professional resources, or subject matter experts not assigned to the engagement, with experience relevant to the RFP scope, particularly government auditing and information technology auditing. Preference will be given to Proposers who have access to subject matter experts who participated in task forces and advisory committees at the national level and have experience in one or more of the following areas:
 - Governmental accounting;
 - Financial reporting related to GASB standards;
 - Financial reporting related to investments;
 - Financial reporting related to debt;
 - Financial reporting related to pension and other post-employment benefits ("OPEB");
 - Financial reporting related to actuarial science; and
 - Financial reporting related to information technology.
- (c) A detailed description of the Proposer's training activities, quality control systems relevant to governmental auditing, and participation in national research projects related to governmental accounting.
- (d) A detailed description of the Proposer's experience using advanced auditing techniques, including information technology auditing.

- (e) A detailed description of the Proposer's (or if applicable, Proposer's subcontractor's) experience providing cybersecurity risk assessment services.
- (f) Copies of the firm's two latest peer review reports along with any other clarifying documents.
- (g) Copies of the firm's responses to GASB documents (e.g., exposure drafts and discussion memorandums) submitted within the last two years.

2. Staff and Supervisory Qualifications and Experience

Complete Attachment F (Qualification Summary), identifying the principal supervisory and management staff, including engagement partners, managers, and other supervisors to be assigned to the engagement. For each individual listed on Attachment F, indicate the title (i.e., partner, manager, or supervisor), New York State CPA licensure status, certifications (e.g., CPA, CFE, CICS, CGFM, CGAP, or COSO), years of auditing experience and brief description of other relevant financial or technical experience. Additionally, submit a short biography that details the relevant auditing, financial, or technical experience gained in the years listed in Attachment F, including examples of work completed for any governmental auditing engagements, as applicable. Do not refer to website links (e.g., LinkedIn) as evidence or support of an individual's qualifications or work experience. If Proposer intends to rely on information on any such site, Proposer must provide an un-editable pdf version of the site for each individual for whom it intends to use such site in support of a person's qualifications. To the extent that experience or qualifications are listed on any such website that differ from what is contained in the pdf version submitted at the time of the proposal, any such supplemental information will not be considered.

Staff titles provided in the Technical Proposal should reconcile to staff titles provided in Attachment C (Cost Proposal). **Do not provide any cost information in this Section.**

3. Audit Plan

Submit a preliminary audit plan for performance of the scope of Services described in Section 6.0. Where applicable, indicate:

- (a) Proposed audit segmentation (which may include but should not be limited to eMedNY, financial reporting, expenditures, revenue, information risk management, capital assets);
- (b) Staff (title, number) to be assigned and an estimate of the annual staff hours, provided on Attachment G (Audit Plan Staff and Hours);
- (c) Information technology auditing techniques to be employed;
- (d) Sampling methodology and utilization, including a description of factors used to establish levels of materiality;
- (e) Timing considerations, including critical dates and time estimates (e.g., commencement of audit, interim, and year-end work); and
- (f) Plan for project management structure and supervision.

F. References

Provide three references using Attachment H (References). At least one reference must be a government entity for which you completed a financial statement audit engagement within the last five years. Provide firm names, addresses, contact names, telephone numbers, and email addresses. These references may be contacted as part of the evaluation process.

7.3. Cost Proposal

Submit a completed 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 necessary to complete the Services:

- A.** The name of the Proposer;
- B.** The all-inclusive not-to-exceed cost to complete the Services; and
- C.** The signature of an individual authorized to contractually bind the Proposer, the name and title of such individual, and the date.

On Attachment C, for each fiscal year to be audited (“Audited Fiscal Year”) provide the following:

- All-inclusive not-to-exceed costs for:
 - the OSC Audit
 - the eMedNY Audit
- Total cost for each Audited Fiscal Year
- Grand total for all costs

The Proposer must support the costs proposed for each Audited Fiscal Year listed by providing hours and rates for staff based on titles assigned. Staff titles and planned hours per Audited Fiscal Year provided in Attachment C should agree with staff titles and estimated hours provided in response to Section 7.2.E (Technical Submission).

The hourly rates quoted must be all-inclusive. There will be no additional reimbursement for travel, administrative support services, overhead, etc.

Compensation for each Audited Fiscal Year will be based on actual hours worked per staff title provided, at the hourly rates proposed on Attachment C. If more hours are actually provided, compensation will be limited to the Fiscal Year Total Cost.

The Proposer must also provide hourly rates for each staff title to provide cybersecurity risk assessment services for each year of the Agreement.

NOTE: OSC may elect not to require Auditor’s completion of cybersecurity risk assessment(s) in any or every year of the Contract term.

8.0 PROPOSAL SUBMISSION

Proposals must be received by the date and time indicated for the Deadline for Submission of Proposals as specified in Section 1.0. Proposals received after the Deadline for Submission of Proposals may be rejected.

Administrative, technical, and cost proposals must be clearly labeled and submitted by U.S. Mail or by courier/delivery service (e.g., FedEx, UPS) in separately sealed packages to:

Attn: Director of Finance
Office of the State Comptroller (RFP24-07)
110 State Street, Mail Stop 13-2
Albany, NY 12236-0001

IMPORTANT: OSC **strongly encourages** the use of package tracking so as to provide an independent and verifiable record regarding the timeliness of Proposer's bid submittal if there are mail delivery issues.

OSC will not accept hand delivery of proposals at 110 State Street.

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 before the Deadline for Submission of Proposals by written notification to OSC (see Section 6.1). An authorized agent of the Proposer 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.

8.1. Submission of Proposal Components

Each Proposer must submit SEPARATE administrative, technical, and cost proposals, via one of the submittal options identified below.

Note: Documents requiring signature should be signed with an ink pen (i.e., wet signature). OSC will accept scanned copies of wet signed documents. If scanned copies are submitted, Proposers should retain the original proposal documents in their records.

A. Option #1: USB Flash Drive (Preferred)

The Proposer may 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**.

Clearly mark the envelope and your USB flash drive as "RFP24-07 [Proposer's name]."

It is the Proposer's responsibility to ensure that the USB drive is free from any and all malicious software and that the files are accessible and uncorrupted. The Proposer should scan the USB flash drive before submission to ensure there is no malicious software (i.e., malware) on the drive and that all files are accessible and uncorrupted. OSC will perform a security scan on the USB flash drive before accessing the stored files. If the security scan identifies malicious software, or the files are inaccessible or corrupted, OSC will reject the submission and disqualify the Proposer from further consideration.

Proposers may mitigate the risk associated with submitting via USB flash drive by providing one paper copy of each of the administrative, technical, and cost proposals along with its USB flash drive submission.

- If a Proposer submits a paper copy with its USB submission and OSC is unable to access the proposal files on the USB flash drive, OSC will request a replacement USB drive from the Proposer and use the paper copies to verify the Proposer did not make any revisions to its proposal past the proposal due date.

- In the absence of a paper copy, if OSC is unable to access the proposal files on the USB flash drive, OSC will reject the submission and disqualify the Proposer as stated above.

NOTE: SUBMISSION OF OTHER TYPES OF DATA STORAGE DEVICES WILL NOT BE ACCEPTED.

B. Option #2: Paper

The Proposer may submit paper copies of the complete administrative, technical, and cost proposals as follows:

Administrative Proposal	Submit TWO paper copies.
Technical Proposal	Submit FIVE paper copies.
Cost Proposal	Submit TWO paper copies.

Submit the administrative, technical, and cost proposals in separate sealed envelopes, all of which may be submitted within one proposal package.

If the Proposer elects to submit paper proposals, OSC requests that the Proposer also submit a USB flash drive with scanned copies of the proposals.

Clearly mark the outside envelope of your sealed proposals, each copy, and USB flash drive (if applicable) as “RFP24-07 [Proposer’s name].”

9.0 EVALUATION PROCESS/CRITERIA

9.1. 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 6.8.H above, after the Deadline for Submission of Proposals.

9.2. 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 7.0 (Proposal Content) and Section 8.0 (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.

9.3. 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 3.0).

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.

9.4. 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 proposal with the lowest total overall cost for Professional Auditing Services for the New York State Annual Financial Statements and eMedNY will receive a score of 26.5 points and all other proposals will receive a proportionate score based on the following formula (the Cost Score will be carried out to two decimal places; e.g., 26.50):

Cost points awarded = 26.5 potential points x (Lowest Cost Proposal / Cost of Proposal Being Evaluated).

The proposal with the lowest total cost for Cybersecurity Risk Assessment Services will receive a score of 3.5 points and all other proposals will receive a proportionate score based on the following formula (the Cost Score will be carried out to two decimal places; e.g. 3.50):

Cost points awarded = 3.5 x (Lowest Total Proposal Cost/Cost of Proposal Being Evaluated)

The total cost points for Professional Auditing Services for the New York State Annual Financial Statements and eMedNY and Cybersecurity Risk Assessment Services will be added together to arrive at a total combined cost score.

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

9.5. 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.

9.6. Finalists

The proposals with the three highest preliminary composite scores will be deemed Finalists. Any proposal scoring within ten percent of the third highest preliminary composite scoring proposal will also be deemed a Finalist. Finalists may be interviewed at the discretion of the Evaluation Committee. If 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 9.4 (Cost Evaluation). The composite scores will be adjusted accordingly.

9.7. 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. Interviews are anticipated to start the week of the date listed in Section 1.0. 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.

The interview should confirm the Proposer's ability to provide the required services. The proposed lead staff member as well as any other key personnel (not to exceed 5 people), should be present and participate in the interview. **No new material will be permitted to be introduced during the interview.**

After the interview, the evaluators may adjust Proposers' preliminary technical scores to reflect their enhanced understanding of the Proposer's experience.

9.8. Reference Checks

The Proposer will submit references using Attachment H (References). At the discretion of the Evaluation Committee, references may be checked at any point during the process.

9.9. 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.

9.10. Award Recommendation

The Technical Evaluation Committee will submit to OSC's Deputy Comptroller for Payroll, Accounting, and Revenue Services a recommendation for award to the Finalist(s) with the highest composite score(s) whose experience and qualifications have been verified. 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 Finance.

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 Finance will notify the awarded

Proposer(s) and Proposers not awarded. The awarded Proposer(s) will enter into a written Agreement substantially in accord with the terms of Attachment E to provide the required services as specified in this RFP. 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)

RFP24-07 – Professional Auditing Services for New York State’s Financial Statements and eMedNY
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:

<p>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.</p>	
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 3.0):	
A. The Proposer is a CPA firm that is in good standing with the State Board of Accountancy where licensed.	<input type="checkbox"/> Yes <input type="checkbox"/> No
B. The Proposer is registered to practice public accounting in New York State.	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. The Proposer has, within the last five years, audited the financial statements of at least one government entity with annual governmental fund expenditures of \$10 billion or greater. The audited financial statements have been prepared in accordance with GAAP.	<input type="checkbox"/> Yes <input type="checkbox"/> No
D. The Proposer is independent of OSC in accordance with AICPA and government auditing standards.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Proposer's Acknowledgement of Proposal Requirements: [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 <u>180</u> 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 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 successful 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 Proposer certifies that all information provided in connection with its proposal is true and accurate.	<input type="checkbox"/> Yes <input type="checkbox"/> No
G. The Proposer has read, understands, and accepts all provisions of Appendix A (Standard Clauses for New York State 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 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
H. The Proposer's legal representation has reviewed and understands Attachment K (Draft Contract), and the Proposer is willing to enter into an Agreement substantially in accord with the terms of Attachment K (Draft Contract), should the Proposer be selected for contract award.	<input type="checkbox"/> Yes <input type="checkbox"/> No
I. 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
J. 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
K. The Proposer warrants that, if selected, it will execute an Agreement of Confidentiality wherein it agrees to protect confidential information accessed during the term of the contract from unauthorized disclosure.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>L. RFP Section 6.15 (Background Investigations) describes OSC policy on background investigations.</p> <p>RESPONSE REQUIRED:</p> <p>The Proposer is requested to confirm the extent to which its background checks comply with the background investigation requirements stated in Section 6.15.</p> <ol style="list-style-type: none"> 1. If Proposer's background investigation policy or practices do not include all of the background investigation requirements described in Section 6.15, identify the specific policy(ies) or practices that are not included and explain how Proposer's background investigation policy or process differs. Describe in detail the Proposer's background investigation policy and/or practices. 2. Explain in detail to what extent Proposer requests a waiver of the background investigation requirements that are not included in Proposer's background investigation policy and procedures. (Note: A request for a waiver from any of the background investigation requirements does not guarantee that such request will be granted by the Inspector General). 3. If Proposer's background investigation policy or practices comply with and/or satisfies background investigation standards set by governmental or certain regulating authorities, provide that information. 4. Attach a copy of Proposer's background investigation policy/procedure for OSC's review and consideration. 	
RESPONSE:	Check Yes or No to indicate whether copy of Proposer's background investigation policy/procedure is attached. <input type="checkbox"/> Yes <input type="checkbox"/> No
<p>* A "No" Response in Sections 2 or 3 of this attachment will result in disqualification.</p>	

4. Information Required:
A. The Proposer is (check as applicable):
<input type="checkbox"/> A New York State Certified Minority-Owned Business Enterprise <input type="checkbox"/> A New York State Certified Woman-Owned Business Enterprise <input type="checkbox"/> A New York State Certified Minority and Woman-Owned Business Enterprise (Dual Certified) <input type="checkbox"/> A New York State Service-Disabled Veteran-Owned Business <input type="checkbox"/> 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 V. of the Draft Contract (Attachment K), 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 7.1.G, if enrolled:
By my signature I affirm under penalty of perjury that I am duly authorized to legally bind the Proposer referenced above and I sign this Attachment A (Proposer's Certified Statements) as the legally binding act of the Proposer.

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 CHECKLIST

RFP24-07 - Professional Auditing Services for New York State's Annual Financial Statements and eMedNY			
FOR THE ADMINISTRATIVE PROPOSAL			
TAB	RFP §	REQUIREMENT	INCLUDED
1	§7.1.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	§7.1.B	<u>SDVOB Participation Requirements:</u>	<input type="checkbox"/>
		Form AC3322-1 – Proposer's Use of SDVOBs in Contract Performance	<input type="checkbox"/>
		Form AC3322-3 – Request for Waiver, with all required documentation, if applicable	<input type="checkbox"/>
2	§7.1.D	Appendix E – Contractor's Certifications/Acknowledgements, completed and signed	<input type="checkbox"/>
3	§7.1.E	Appendix F – Disclosure of Prior Non-Responsibility Determinations, completed and signed	<input type="checkbox"/>
5	§7.1.F	Appendix I – Executive Order on Independence of Auditors Submission	<input type="checkbox"/>
6	§7.1.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"/>
7	§7.1.H	Written statements of the necessity for protective treatment under Freedom of Information Law	<input type="checkbox"/>
FOR THE TECHNICAL PROPOSAL			
TAB	RFP §	REQUIREMENT	INCLUDED
1	§7.2.A - B	Title Page and Table of Contents	<input type="checkbox"/>
2	§7.2.C	Attachment A – Proposer's Certified Statements, completed and signed	<input type="checkbox"/>
3	§7.2.D	Attachment D – Proof of Compliance with Minimum Qualifications, completed	<input type="checkbox"/>
4	§7.2.E	Technical Submission – Proposal contents as described in the RFP	<input type="checkbox"/>
5	§7.2.E.1.	Attachment E – Proposer Qualification Response Form, completed	<input type="checkbox"/>
6	§7.2.E.2.	Attachment F – Qualification Summary, completed	<input type="checkbox"/>
7	§7.2.E.3.	Attachment G – Audit Plan Hours, completed	<input type="checkbox"/>
8	§7.2.F	Attachment H – References, completed	<input type="checkbox"/>
FOR THE COST PROPOSAL			
TAB	RFP §	REQUIREMENT	INCLUDED
1	§7.3	Attachment C (Cost Proposal), completed	<input type="checkbox"/>
FOR ALL PROPOSALS			
TAB	RFP §	REQUIREMENT	INCLUDED
N/A	§8.1.A OPTION 1	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 8.1.A. (preferred)	<input type="checkbox"/>
		Optional: Submit one paper copy of each complete Administrative, Technical, and Cost Proposals (recommended)	<input type="checkbox"/>

N/A	§8.1.B OPTION 2	TWO Copies of the Administrative Proposal	<input type="checkbox"/>
		FIVE Copies of the Technical Proposal	<input type="checkbox"/>
		TWO Copies of the Cost Proposal	<input type="checkbox"/>
		Submit a single USB flash drive that has been scanned for malware and contains each of the complete Administrative, Technical, and Cost Proposals as separate files as stated in Section 8.1.B. (requested)	<input type="checkbox"/>

**ATTACHMENT C
COST PROPOSAL
RFP24-07 NEW YORK STATE'S ANNUAL FINANCIAL STATEMENTS AND EMEDNY**

Attachment C is provided as a separate Excel file on OSC's website: <https://www.osc.ny.gov/procurement>

ATTACHMENT D

PROOF OF COMPLIANCE WITH MINIMUM QUALIFICATIONS

Complete the tables below, demonstrating how the Proposer meets the following minimum qualifications ("MQ"):

Proposer:		
MQ #1: The Proposer is a CPA Firm that is in good standing with the State Board of Accountancy where licensed.		
State Licensed	Standing with State Board for Accountancy	

MQ #2: The Proposer is registered to practice public accounting in New York State.	
Affirmative Statement ("Yes"): _____	
Attach a copy of the Proposer's current registration.	

MQ #3: The Proposer has, within the last five years, audited the financial statements of at least one government entity with annual governmental fund expenditures of \$10 billion or greater. The audited financial statements have been prepared in accordance with GAAP.	
Client Name and Dates of Engagement:	
Client's Annual Expenditures:	

MQ #4: The Proposer is independent of OSC in accordance with AICPA and government auditing standards.	
Affirmative Statement ("Yes"): _____	

**ATTACHMENT E
PROPOSER QUALIFICATION RESPONSE FORM**

Complete the table below as described in RFP Section 7.2.E.1 (Proposer Qualifications) listing governmental financial statements audit assignments performed within the last five years for clients with annual governmental fund expenditures of \$10 billion or greater. Add additional rows if necessary.

Client Name	Dates	Annual Expenditures	Type of Financial Audit	GAAP-basis
		\$		<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$		<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$		<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$		<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$		<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$		<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$		<input type="checkbox"/> Yes <input type="checkbox"/> No

**ATTACHMENT F
QUALIFICATION SUMMARY**

Complete the tables below as described in RFP Section 7.2.E.2 (Staff and Supervisory Qualifications and Experience), listing the principal supervisory and management staff, including engagement partners, managers, and other supervisors to be assigned to the engagement. Proposers are limited to using the following titles for their staff on this form: Partner, Manager, or Supervisor. Proposers should choose the title that most accurately reflects the staff member's actual title. Indicate the New York State CPA licensure status, certifications (e.g., CPA, CFE, CICS, CGFM, CGAP, or COSO), and years of relevant experience of each individual listed. Complete as many separate sections as necessary to distinguish between subcontractors. Add rows if necessary.

Example:

Name	Title [Partner, Manager, or Supervisor]	Years of Governmental Auditing Experience	Years and Brief Description of Other Relevant Financial or Technical Experience	CPA Licensure Status	Certifications/Other Qualifications
John Doe	Partner	10	5 years of [experience] 8 years of [experience]	Registered	CGFM (Certified Government Financial Manager)

Principal Supervisory and Management Staff Including Engagement Partners, Managers, and Other Supervisors

Proposer:	
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Name	Title [Partner, Manager, or Supervisor]	Years of Governmental Auditing Experience	Years and Brief Description of Other Relevant Financial or Technical Experience	CPA Licensure Status	Certifications/Other Qualifications

Name	Title [Partner, Manager, or Supervisor]	Years of Governmental Auditing Experience	Years and Brief Description of Other Relevant Financial or Technical Experience	CPA Licensure Status	Certifications/Other Qualifications

Subcontractor #1:	
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Name	Title [Partner, Manager, or Supervisor]	Years of Governmental Auditing Experience	Years and Brief Description of Other Relevant Financial or Technical Experience	CPA Licensure Status	Certifications/Other Qualifications

Subcontractor #2:	
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Name	Title [Partner, Manager, or Supervisor]	Years of Governmental Auditing Experience	Years and Brief Description of Other Relevant Financial or Technical Experience	CPA Licensure Status	Certifications/Other Qualifications

Subcontractor #3:	
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Name	Title [Partner, Manager, or Supervisor]	Years of Governmental Auditing Experience	Years and Brief Description of Other Relevant Financial or Technical Experience	CPA Licensure Status	Certifications/Other Qualifications

**ATTACHMENT G
AUDIT PLAN HOURS**

RFP24-07 Professional Auditing Services for New York State’s Annual Financial Statements and eMedNY					
Proposer:					
Hours for all Services as described in the RFP					
Audited Fiscal Year	Hours by Title				Fiscal Year Total Hours
	Partner	Manager	Supervisor	Staff Auditor	
April 1, 2025 to March 31, 2026					
April 1, 2026 to March 31, 2027					
April 1, 2027 to March 31, 2028					
April 1, 2028 to March 31, 2029					
April 1, 2029 to March 31, 2030					
GRAND TOTAL HOURS					

RFP24-07

Professional Auditing Services for New York State’s Annual Financial Statements and eMedNY

Proposer:

Number of Staff for all Services as described in the RFP

Audited Fiscal Year	Number of Staff by Title				Fiscal Year Total Staff
	Partner	Manager	Supervisor	Staff Auditor	
April 1, 2025 to March 31, 2026					
April 1, 2026 to March 31, 2027					
April 1, 2027 to March 31, 2028					
April 1, 2028 to March 31, 2029					
April 1, 2029 to March 31, 2030					
GRAND TOTAL NUMBER OF STAFF					

ATTACHMENT H

REFERENCES

Submit a total of **THREE** references (Section 7.2.F) using this form. At least one reference must be a government entity for which you completed a financial statement audit engagement within the last five years.

Expand fields and duplicate this page as necessary.

RFP24-07 – Professional Auditing Services for New York State’s Annual Financial Statements and eMedNY	
PROPOSER:	
Provide the following information for each reference submitted. Fields will expand as you type.	
Reference Company #1:	
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 Company #2:	
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 Company #3:	
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 I
STATE STRUCTURE AND RESPONSIBILITIES

In general, these are the basic operations that encompass State Financial Reporting. This document is provided as reference material only and is not intended to outline the complete structure of New York State and its responsibilities.

I. Description of the Entity and Records to be Audited

An outline and identification of the State's organization insofar as its fiscal activities are concerned, and of significant indicators of the level of these activities, is provided as background. Additional information on the flow of receipts and disbursements will be found in the State of New York Annual Comprehensive Financial Report for 2023, which includes the 2023 GAAP Financial Statements, the 2023 Cash Basis Financial Statements, and the Annual Information Statement. These documents contain both general and detailed information concerning the organization of the State government, its sources of revenues, its expenditures, the State's Financial Plan, litigation and other pertinent facts. These documents may be accessed via the links below:

- **2023 Annual Comprehensive Financial Report:**
<https://www.osc.ny.gov/files/reports/finance/pdf/annual-comprehensive-financial-report-2023.pdf>
- **2023 Cash Basis Annual Report on State Funds:**
- <https://www.osc.ny.gov/finance/cash-basis/2023-annual-cash-basis-report-state-funds2022-2023>
Annual Information Statement:

A. <https://www.budget.ny.gov/pubs/archive/fy23/ais/2022-ais.pdf> Organization of Executive Branch

The four statewide elected officials of the Executive branch, i.e., the Governor, the Lieutenant Governor, the State Comptroller and the Attorney General, oversee the twenty State departments and the many agencies and commissions that make up the Executive branch of State government. A broad range of programs and activities are administered by these organizations. While collection of revenues and initiation of expenditures may occur at almost any of the over 300 State departments or agency fiscal offices, the majority of the State's financial affairs are administered by three fiscal agencies: Division of the Budget, OSC, and the Department of Taxation and Finance.

B. Division of the Budget

The Division of the Budget ("DOB") is charged with the responsibility of advising the Governor in matters that affect the financial health of the State. DOB assists in formulating the Governor's budget proposal to the Legislature, offers policy recommendations on fiscal issues, and oversees the implementation of the final Enacted Budget.

Under the State Constitution, the Governor is also responsible for developing a revenue and expenditure plan for the State, which DOB prepares for the Governor's review. Additionally, DOB staff works closely with State agencies to coordinate the development and execution of their policy programs, ensuring the budget office is involved in every facet of New York State's government.

C. Office of the State Comptroller

OSC is constitutionally required to audit State agency vouchers before payment, to audit the accrual and collection of revenues and receipts and to prescribe such methods of accounting as are necessary for the performance of the two previous duties (New York State Constitution, Article V, Section 1). The State Comptroller is required by statute to superintend the fiscal concerns of the State (SFL, Section 8); to keep the State's books (SFL, Section 9); to serve as custodian of all State Treasury funds, including the General Fund (SFL, generally, Sections 70-106, specifically); to serve as Trustee of the State and Local Employees' Retirement System (Retirement and Social Security Law, Section 2); and to manage the State's cash (SFL, Section 98-a), including the management of its borrowing activities (SFL, Section 55 and 57) and

countersigning all checks signed by the Commissioner of Taxation and Finance or the head of the Division of the Treasury within such Department (SFL, Section 101). In addition, OSC conducts audits of State agencies and public benefit corporations (see SFL, Section 8 (2-b.a.), Section 8 (18), and Executive Law, Section 170, which references this audit function) and provides payroll services for all State agencies (see SFL, sections 200-209-b, generally). OSC includes the following:

1. **The Office of Operations** includes the Division of Contracts and Expenditures and the Division of Payroll, Accounting, and Revenue Services.

a. **The Division of Contracts and Expenditures** includes the Bureau of Contracts and the Bureau of State Expenditures:

(i) **The Bureau of Contracts** is charged with the responsibility for the pre-audit of certain State agency and Public Authority contracts. The Bureau of Contracts reviews and approves these contracts and contract amendments for commodities, technology, services, grant awards to not-for-profit provider agencies, inter-governmental agreements and construction projects.

(ii) **The Bureau of State Expenditures** carries out the Comptroller's responsibility to audit, prior to payment, travel vouchers, merchandise vouchers, purchase orders, contract payments and local assistance vouchers. The Bureau of State Expenditures' approach to auditing payment transactions is based on an evaluation of an agency, facility or institution's various processing systems. Audit staff review an agency's payment processing systems as a whole and look at the various factors that make up an agency's internal control systems. Assessments are made on an agency's control environment, risk assessment process, control activities, information and communication systems and monitoring of operations. The Bureau of State Expenditures evaluates an agency's internal controls against the Standards for Internal Control in New York State Government issued by OSC (currently available via the following link: www.osc.state.ny.us/agencies/ictf/docs/intcontrol_std.pdf).

Potential weaknesses that would allow improper transactions to be processed are identified. After all risk factors are identified, a judgment is made on how well agency systems will prevent or detect improper transactions. An agency is judged on how well it is following current requirements such as procurement guidelines. This evaluation is used to assess an agency's risk factors. An agency's risk factor(s) will then determine the level of source documentation required to audit agency transactions. Low-risk agencies are not required to submit the same level of documentation as a high-risk agency. An agency identified with good internal controls provides reasonable assurance that payments submitted through its systems are proper transactions. Agencies that have weaknesses in their systems will be required to submit a higher level of documentation to OSC auditors to provide assurance that the transactions are appropriate.

b. **The Division of Payroll, Accounting and Revenue Services** includes the Bureau of State Accounting Operations, the Bureau of Financial Reporting and Oil Spill Remediation, the Bureau of State Payroll Services, the Office of Unclaimed Funds and the Bureau of Analysis, Support and Knowledge Transfer:

(i) **The Bureau of State Accounting Operations** is responsible for approving transactions and maintaining accounting records related to tax collections, refunds, state revenues and receivables. In addition, the Bureau of State Accounting Operations executes the daily draw of federal funds to support state administered federal grants, manages the State's daily cash position available for investment, approves and manages the State's banking operations, and executes the budget through appropriation controls.

(ii) **The Bureau of Financial Reporting and Oil Spill Remediation** consists of three main sections (GAAP-basis Financial Reporting Section, Cash-basis Financial Reporting Section, and the New York Environmental Protection and Spill Compensation Fund

Section) and is responsible for fulfilling the combined duties of Financial Reporting and the Oil Spill Fund.

- **The GAAP-basis Financial Reporting Section** prepares the State's annual and interim financial reports on a GAAP basis and coordinates the preparation of the State's Financial Condition Report. This Section also reviews, comments on, and implements accounting and reporting standards for the State, prepares and reviews GAAP financial statements for other units in OSC, and performs system reconciliations.
 - **The Cash-basis Financial Reporting Section** produces reports which include the Comptroller's Monthly and Annual Report on State Funds Cash Basis of Accounting to the Legislature, quarterly disbursement and revenue reports by major function/source, the Annual Summary Report of State and Federal Spending by major services functions and receipts from major sources, and the publication of the Fund Classification Manual. This Section also performs system reconciliations and the general checking bank reconciliation.
 - **The New York Environmental Protection and Spill Compensation Fund Section**, in accordance with Article 12 of the Navigation Law, maintains responsibility for the administration of the New York Environmental Protection and Spill Compensation Fund ("Fund") and the State's oil spill program. In 1977, the State Legislature enacted Article 12 of the New York Navigation Law (Chapter 845, Laws of 1977). Article 12, which became effective on April 1, 1978, articulates three purposes. First, it establishes the authority and responsibilities of the Fund and makes it part of OSC. Under Article 12, the Fund must pay for cleanups, collect license fees and surcharges from the petroleum industry, obtain reimbursement of its cleanup costs, and handle claims from citizens who suffer financial injury from petroleum spills. Second, Article 12 protects the State's groundwater and surface waters by prohibiting the discharge of petroleum and by making the Fund and polluters strictly liable for petroleum spills that do occur. This provision means that the Fund must conduct cleanups when the polluter cannot or will not. Third, Article 12 provides for the licensing of major oil storage facilities with a total capacity of more than 400,000 gallons and mandates collection of license fees on petroleum imported for sale in the State.
- (iii) **The Bureau of State Payroll Services** is responsible for ensuring that New York State government employees are paid timely and accurately in accordance with appropriate laws, rules, regulations, and contractual provisions. The Bureau of State Payroll Services performs its responsibilities for employees of the New York State Executive, Legislative, and Judicial branches, the State University of New York, and the City University of New York senior colleges.
- (iv) **The Office of Unclaimed Funds** is responsible for ensuring that holders of unclaimed funds are in compliance with the provisions of the Abandoned Property Law, resolving disputed audit results, and collecting unreported assets. The Office of Unclaimed Funds is also responsible for promoting the maximum return of property to rightful owners through its unclaimed funds outreach effort.
- (v) The Bureau of Analysis, Support and Knowledge Transfer (ASK) provides internal and administrative support to the Office of Operations' Bureaus and provides training and business process support to external customers.
2. **The Office of Budget and Policy Analysis** issues public reports on proposed and enacted State budgets, fiscal issues affecting the State, and policies with implications for New York taxpayers. It serves as a resource not only for OSC but other government entities and community organizations by performing research and providing information about State finances, budget trends, public programs and proposals.

The Office of Budget and Policy Analysis analyzes revenue and economic forecasts and monitors debt. It provides the background necessary for the Comptroller to make informed decisions when his opinion is sought on budget and policy issues. Additionally, the Office of Budget and Policy Analysis monitors State and federal legislative developments, and identifies innovative approaches to fiscal and policy challenges to support the Comptroller in offering solutions.

- a. **The Bureau of Debt Management** is responsible for the activities associated with the sale and payment of debt service for general obligation bonds and notes of the State of New York. It approves the terms and conditions of note and bond sales by certain Public Authorities and municipalities. Acting through the Securities Coordinating Committee, the Bureau of Debt Management is responsible for coordinating the debt issuance of the State, the City of New York, and their Authorities.
3. **The Division of Pension Investment and Cash Management** is primarily responsible for implementing the Comptroller's fiduciary duty as the Trustee of the New York State Common Retirement Fund. In addition, the Division of Pension Investment and Cash Management coordinates and directs activities related to investments. This responsibility includes the investment of funds from within the State Treasury and other funds in the sole custody of the State Comptroller.
4. **The Office of State and Local Government Accountability** includes the Division of Local Government and School Accountability and the Division of State Government Accountability.
 - a. **The Division of Local Government and School Accountability** examines the fiscal affairs of local governments, prescribes systems of budgeting, accounting and reporting, and has various other approval and monitoring functions.
 - b. **The Division of State Government Accountability** is responsible for auditing all State and New York City agencies (including their associated facilities, institutions, boards and program activities), as well as State Public Authorities. The Division of State Government Accountability can also audit the records of private firms and not-for-profit organizations which are awarded contracts by, or receives funding from, these government entities.

D. Department of Taxation and Finance

The Department of Taxation and Finance administers the State tax laws, serves as the general tax collection agency of the State, and performs many of the treasury functions for the State. The majority of the State's tax revenues are processed through this Department, and the Department calculates the accruals of taxes receivable and tax refunds payable for the GAAP statements.

Its Division of the Treasury is responsible for: (1) sole custody of many Public Authority funds, (2) joint custody of all State Treasury Funds with the State Comptroller, (3) reconciliation of bank accounts and cosigning and issuance of State checks on warrants of the State Comptroller, and (4) purchase of securities for various State funds.

II. Description of the State Government's Internal Audit and Internal Control System

The State's internal audit system consists of audit functions performed by OSC and by internal audit units at several State agencies. The State's internal control systems are being evaluated and improved by State program managers in accordance with the New York State Governmental Accountability, Audit and Internal Control Act of 1987, which was amended by Chapter 510 of the Laws of 1999.

A. OSC Audit Functions

The Division of State Government Accountability conducts audits of State departments and agencies. These audits include financial and performance audits and evaluations of program economy and efficiency. Reports covering these audits are available on OSC's Internet web page (<http://www.osc.state.ny.us>) and in the offices of the Division of State Government Accountability, 11th Floor, 110 State Street, Albany, New York.

B. Agency Internal Audit Functions

The State's internal accounting controls have been supplemented by internal audit functions within a number of State agencies. Such internal audit units are generally located within agencies with a large number of facilities to administer (such as Mental Health) or extensive contractual or legal arrangements with third-party providers or contractors (such as the Department of Transportation).

C. Agency Internal Control Functions

The State Comptroller has promulgated internal control standards and offers technical assistance to agencies in their implementation and evaluation of internal controls. Every agency is required to maintain a system of internal control as required by the New York State Governmental Accountability Audit and Internal Control Act of 1987, as amended by Chapter 510 of the Laws of 1999.

III. Funds

For many years the State's fund structure has consisted of nearly 160 individual reporting funds, accounted for on a cash basis and centrally held in the joint custody of the State Comptroller and the Commissioner of Taxation and Finance. Approximately 100 of these funds handle the major portion of governmental financial activities and are consequently categorized as governmental funds. The majority of the remaining State Treasury funds are categorized as fiduciary in nature either because they comprise funds established to hold monies in the State's capacity as an agent or as a trustee.

In addition, there are approximately 60 "funds," comprised of several hundred cash accounts, maintained outside the State Treasury in the custody of various State departments and agencies. Virtually all such non-State Treasury sole custody accounts are held in a fiduciary capacity in agency funds or pension, investment and private-purpose trust funds. These sole custody funds are reported to the State Comptroller by those agencies administering the funds. Among the more significant activities conducted through sole custody funds (approximately ninety percent of activity) are pension system transactions for the State employees, for policemen and firemen, and for teachers.

The State has adopted and will utilize the following GAAP fund structure for financial reporting purposes and will report seven major funds in the GASB 34 Financial Reporting model in accordance with GASB 34:

GAAP Fund Structure

Governmental Funds:

- General Fund – Major Fund
- Federal Special Revenue Fund – Major Fund
- General Debt Service – Major Fund
- Other Governmental Funds – Non-Major Funds
 - Special Revenue
 - Debt Service
 - Capital Projects

Proprietary Funds:

- Unemployment Insurance Benefit Fund – Major Fund
- Lottery – Major Fund (prepared from independently audited financial statements)
- State University of New York – Major Fund (prepared from independently audited financial statements)
- City University of New York Senior Colleges – Major Fund (prepared from independently audited financial statements)

Fiduciary Funds:

- Pension (and Other Employee Benefit) Trusts

- Private Purpose Trusts
- Custodial Funds

While financial statement reporting uses the GAAP fund structure, accounting for the State's operations is currently accomplished under the fund structure outlined at the beginning of this Section.

OSC staff will identify the funds currently used to account for cash basis financial transactions that are classified as a different fund type for GAAP basis financial statement reporting purposes.

IV. Financial Statements

A main objective of the State's GAAP effort, as required by Chapter 405 of the Laws of 1981, was to produce auditable basic financial statements for the State. The State prepares an ACFR which contains (1) the basic financial statements, (2) combining statements by fund type (showing each fund individually), (3) schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, and (4) statistical data.

While much of the data for the financial statements will be available from the Statewide Financial System ("SFS") in the State Comptroller's Office, financial data for significant portions of specific accounts and columns will be obtained by that Office from other State organizations. For example, the majority of the information for component units will be drawn from the public benefit corporations. Selected accounts of the Governments Funds, such as receivables and tax refunds payable, represent composites of data from the SFS and from several State agencies. Coordination and accomplishment of this process is the subject of the OSC Guide to Financial Operations ("GFO") Section XVI Financial Reporting. The GFO, available at (<https://www.osc.state.ny.us/agencies/guide/MyWebHelp/>) describes the procedures necessary for OSC to obtain, prepare, analyze and report the required information in the financial statements.

Each State agency and quasi-independent organization included in the State's reporting entity is provided with an online, web-based reporting package at year-end, which includes guidelines and instructions to assist the agencies in fulfilling their responsibilities in the preparation of data required for completion of the State's annual financial statements in accordance with GAAP. The package describes procedures necessary for the agencies to develop and convey the required financial information in a timely manner to the State Comptroller.

V. State Accounting Systems

This section of the RFP presents a description of the current State government accounting system.

A. Statewide Financial System

"SFS is New York State government's accounting and financial management system. This enterprise resource planning ("ERP") system was built with the goal of enabling the State of New York to perform its fiscal and business management tasks more effectively, transparently and efficiently than ever before. The SFS facilitates the management and flow of information between and among state agencies, state control agencies (the Division of the Budget and the Office of the State Comptroller), the state legislature, vendors doing business with New York State, and the general public.

SFS was developed to support New York State's goal of a single, enterprise-wide accounting and financial management system that serves as one source of financial truth. The SFS is responsible for reporting transactions on a budgetary, cash, accrual, and modified accrual bases of accounting.

B. Financial Reporting

Using fund trial balances produced by SFS, off-line financial data, and adjusting/reclassifying transactions, the State's basic financial statements are prepared. SFS will produce some of the supporting schedules for the annual comprehensive financial report.

VI. Agency and Other Accounting Systems

A number of other systems outside OSC are also used to provide transactions and data to update the central systems. Numerous agencies either (1) maintain their own independent systems (the public benefit corporations,

for example); (2) maintain subsidiary systems to account for items such as income tax collections or certain revenues, including patient fees and SUNY tuition; or (3) maintain independent accounting records for items such as general fixed assets or accounts receivable. These systems vary in content and quality. Other than the public benefit corporations, the Lottery, State University of New York, and City University of New York, none of the systems produce financial statements for the agency and most are cash basis, single-entry systems that may or may not be reconciled with the SFS. Information needed for the State's financial statements is solicited at the end of the fiscal year by OSC using an "Agency Financial Reporting Package." The Auditor must become satisfied as to the correctness and completeness of this information. Certain agencies also have "sole custody bank accounts" which are not included in the SFS. It is estimated that there are more than 1,100 of these accounts. Information about these funds is also solicited from the agencies.

The Office of General Services ("OGS") administers a system to inventory capital assets of the State, including all land and buildings, land and building improvements costing in excess of \$100,000, and equipment and machinery costing in excess of \$40,000. The OGS system will also include all significant infrastructure assets (roads, bridges, sewer systems, etc.) of the State in conformance with GASB Statement 34. The Capital Asset System has been operational since the 1987-88 fiscal year and was upgraded in the late 1990s.

GASB Statement 14, as amended by GASB Statement 39 and GASB Statement 61, requires the inclusion of many public benefit corporations within the entity of the State for financial reporting purposes. OSC does not include public benefit corporations in the SFS except for State appropriations. Public benefit corporations maintain their own records and produce their own annual financial reports based on their own fiscal years, which vary in many instances from the State fiscal year. All significant public benefit corporations' financial statements are audited by independent certified public accountants. The State Insurance Fund and the Aggregate Trust Fund ("Funds") do not prepare financial statements in conformity with generally accepted accounting principles. Financial statements prepared by these Funds conform with accounting practices prescribed or permitted by the Insurance Department of the State of New York. It is expected that the State's independent Auditor will rely to the extent possible on the work of independent auditors of the public benefit corporations, but additional work may be required of the State's independent Auditor to restate and combine these statements as necessary.

VII. Audit of eMedNY

eMedNY, which is administered by the Department of Health, consists of the claims processing system for the New York State Medicaid program. The system, which became operational in late March 2005 and began paying claims in April 2005, allows New York Medicaid providers to submit claims and receive payments for Medicaid-covered services provided to eligible members. eMedNY offers several innovative, technical and architectural features, facilitating the adjudication and payment of claims, and providing extensive support and convenience for its users. The eMedNY is a significant component of the State's financial activities; each year, over \$98 billion in payments are made to providers. CSRA State and Local Solutions, LLC, A General Dynamics Information Technology Company ("CSRA") is the current eMedNY contractor and is responsible for its operation through approximately November 2024. CMA Consulting Services has taken over the data warehouse responsibilities with eMedNY and that contract will continue through November 30, 2024.

ATTACHMENT J

EMEDNY AUDIT – SCOPE OF WORK

The audit of eMedNY will consist of three broad categories of controls: entity-level controls, general information technology controls, and application controls.

The following is a brief description of the work to be performed in these three areas.

A. Entity-Level Internal Controls

Entity-level internal controls are high-level controls that affect the underlining business and process level controls that govern the organization. These controls were outlined and codified by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) and Statement on Auditing Standards (“SAS”) numbers 55, 78, and 94. The entity-level internal controls consist of the following: control environment, risk assessment, control activities, information and communication, and monitoring. The review of these areas will consist of interviews with management, reviews of policies, and supporting documentation.

B. General Information Technology Controls

Each of the areas of general information technology controls as well as application controls, policies and procedures will be reviewed. Policies will be reviewed to determine whether they provide adequate direction as to criteria of management. Procedures will be reviewed to determine whether an individual with knowledge of the area in question would be able to perform the tasks in the particular control area.

The Auditor will conduct a review of the general information technology controls related to the eMedNY system environment. This will include:

- Access to programs and data – including controls to determine if access to systems, applications and modules of applications is granted to appropriate and authorized personnel; access is commensurate with job responsibility; passwords and other security parameters are set to appropriate levels; the review of violation reports and follow-up is performed on a timely basis; the use of powerful IDs and utilities is monitored; the review of access rights is performed periodically; and physical access to computer hardware supporting the eMedNY application is restricted to properly authorized and appropriate individuals.
- Program Change Management for application and system changes – including the management of changes related to new system software releases; customization or enhancement of proprietary software; and development of special reports in order to determine if such changes are authorized, tested, approved, properly implemented and documented.
- Program Development – including the methodology utilized for new system development or acquisition; project management; and data migration to determine if new system developments or acquisitions are authorized, tested, approved, properly implemented and documented.
- Computer Operations – including job scheduling, maintenance of computer hardware and software, management of tape back-up and problem identification and resolution.
- Telecommunications – including encryption to determine whether the receipt of information over the Internet, leased lines, dial-ups, etc. are complete, accurate and authorized.

C. Application Controls

The Audit will include application control testing. The areas of review include: input, processing, including special processing and output. A more detailed listing of these controls follows:

- A Conditional Code indicates the successful execution of batch jobs run to transfer Welfare Management System (“WMS”) eligibility files onto the eMedNY mainframe;
- The WMS eligibility files contain header and trailer information that is utilized by the backup and application batch jobs to ensure completeness of the file transfer;
- The reference team, consisting of a limited number of authorized personnel, compares the file information within the email sent by the Rate Setting Agency to the information on the New York State Office of Information Technology Services (“ITS”) HealthCom server;
- A Conditional Code indicates the successful execution of batch jobs run to transfer Provider Rate files onto the eMedNY mainframe;

- A limited number of authorized users have access to update the rate tables;
- eMedNY is configured to automatically detect manual changes to the rate tables;
- The Control File records the pertinent control information associated with the file being processed and tracks the file through the states of eMedNY transaction processing;
- Special processing procedures have been defined, documented and are followed and inputs are approved by DOH;
- Special processing is restricted to a limited number of authorized users;
- A limited number of authorized users have access to update the deposits-in-transit checks;
- Licenses are automatically updated on a daily basis to mitigate improper payments;
- A limited number of authorized personnel have access to the fiscal directory that houses the financial data transferred from eMedNY;
- Manual rate schedule changes are reviewed and approved prior to release into production;
- Automated rate schedule output is reviewed and approved prior to release into production;
- eMedNY is configured to automatically detect changes made to the Provider Master Table;
- Access to the data center(s) supporting the DOH FTPSERV1 server is restricted to a limited number of authorized users through a key card access system;
- The DOH FTP server authenticates using the lightweight directory access protocol (“LDAP”) system and password rules have been established (i.e., minimum length, expiration, syntax, history, etc.);
- Access to powerful system-level IDs for the DOH FTPSERV1 is restricted to a limited number of authorized personnel based on job description;
- A backup schedule has been defined and is followed for the DOH FTPSERV1 service; and
- eMedNY reports are reviewed for accuracy and completeness.

ANTICIPATED CONTROL OBJECTIVES

A. General Information Technology Controls

General Information Technology Controls provide reasonable assurance that:

- Access to programs and data is restricted to properly authorized individuals.
- Program changes to existing systems/applications are authorized, tested, approved, properly implemented and documented.
- New systems/applications which are developed or acquired are authorized, tested, approved, properly implemented and documented.
- System/application processing is appropriately authorized and scheduled, and deviations from scheduled processing are identified and resolved.

B. Application Controls

Application Controls provide reasonable assurance that:

- Claims are received from authorized sources and are processed completely and accurately.
- Disbursements are made for the correct amounts to qualified providers for eligible participants.
- Tables and edits are secured, updated by authorized personnel and approved by management.
- Provider files are setup and maintained by authorized personnel in an accurate and timely manner.
- Transactions are accurately and timely recorded.

- Output reports are complete and accurate, and distributed to authorized recipients on a timely basis.
- Checks and wire transfers/ACHs are distributed accurately and timely.

**ATTACHMENT K
DRAFT CONTRACT
STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
AGREEMENT FOR PROFESSIONAL AUDITING SERVICES FOR THE STATE’S ANNUAL FINANCIAL
STATEMENTS AND EMEDNY
WITH
[Auditor Name]
NEW YORK STATE COMPTROLLER’S CONTRACT NUMBER C000XXX**

THIS AGREEMENT ("Agreement") is made 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, and is by and between the New York State ("State") Office of the State Comptroller, by the Department of Audit and Control ("OSC"), whose main office and principal place of business is 110 State Street, Albany, New York, 12236, and [Auditor Name] (the "Auditor" or "Contractor") whose office is located at [Auditor Address].

W I T N E S S E T H

WHEREAS OSC is responsible for conducting an audit of the combined financial statements of the State and eMedNY for the fiscal year ending on March 31, 2026, and for each of the four succeeding fiscal years; and

WHEREAS, to meet this responsibility OSC issued a Request for Proposals RFP24-07 dated [] ("RFP") and attached hereto as Exhibit A soliciting proposals from vendors to act as an auditor and provide all auditing services as detailed in RFP Section 5.0 (Scope of Services) and Attachment J (eMedNY Audit – Scope of Work) ("Services"); ("Services"); and

WHEREAS, the Auditor, among others, responded to the RFP with a proposal dated [] ("Proposal") and attached hereto as Exhibit B indicating its willingness to perform the necessary Services; and

WHEREAS, based upon the evaluation of the various proposals submitted in response to the RFP, the Auditor’s proposal offered the best value and that it would be in the best interests of OSC to retain the Auditor to perform the Services in accordance with the terms and conditions of this Agreement.

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

I. TERM

This Agreement shall commence on October 1, 2025 and shall continue for a period of five years, subject to earlier termination as provided for in Section XVIII. (Termination and Suspension).

II. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES

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

1. Appendix A – Standard Clauses for New York State Contracts;
2. Agreement – (This Document):
 - 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 – Contractor’s Certifications/Acknowledgements;
 - Appendix F – 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 24-07, 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.
 5. Exhibit C – Annual Engagement Letter (draft to be proposed by Auditor, subject to review and approval by OSC; provided, however, that the annual engagement letter shall be substantially in accord with the terms of this Agreement).

III. COMPENSATION

OSC shall compensate the Auditor pursuant to this Agreement in accordance with the Fee Schedule as set forth in Exhibit B2 (Cost Proposal). The Auditor will not be reimbursed for travel expenses, including travel time to and from the OSC facility.

Total compensation under this Agreement, must not exceed \$XXX.XX.

IV. PAYMENT AND INVOICES

- A. The compensation for Services provided for pursuant to this Agreement shall be payable by OSC in the ordinary course of State business upon OSC’s receipt of the Auditor’s invoice. Approved invoices for payment will be processed in accordance with Article 11-A of the New York State Finance Law.
- B. All invoices must include the following information:
 1. OSC’s Agreement #C00[], Auditor’s taxpayer identification number, and Auditor’s New York State Vendor Identification Number;
 2. a detailed description of Services provided, including;
 - the total number of hours or fraction thereof devoted to each such service, the hourly rate of each person performing such Services, and a comparison of the total hours billed by individual hourly rates.
 - the total amount billed for Services and expenses for the invoice period;
 - the beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement; and
 3. During the term of the contract resulting from this RFP, the Auditor must include Form AC 3239-H (M/WBE Expenditure Report of Appendix B) with each invoice submitted to OSC. Form AC 3239-H must include (i) the actual total cost of the contract work performed by each certified M/WBE for the invoiced services, and (ii) the actual amounts of payments made by the Auditor to each certified

M/WBE as of the invoice submission date. Failure to comply with the M/WBE participation goals set forth in this RFP may result in penalties as delineated in Appendix B.

4. During the term of the contract resulting from this RFP, the Auditor must include Form AC 3322-2 (Contractor's SDVOB Utilization Report) with each invoice submitted to OSC. Form AC 3322-2 must include (i) the actual total cost of the contract work performed by each certified SDVOB for invoiced services, and (ii) the actual amounts of payments made by the Auditor to each certified SDVOB as of the invoice submission date. Failure to comply with the SDVOB participation goals set forth in this RFP may result in penalties delineated in Appendix H.
- C. Billings for all Services rendered in connection with the audit of the New York State Medicaid Program (eMedNY) will be invoiced separately from other billings, and shall contain the same information provided for in the foregoing subparagraph (A and B).
 - D. Billings for all Services rendered in connection with any cybersecurity risk assessment(s) will be invoiced separately from other billings, and shall contain the same information provided for in the foregoing subparagraph (A and B).
 - E. All invoices shall be subject to OSC's acceptance of the Services 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
Bureau of Finance
Contract Payment Unit
110 State Street, Stop 13-2
Albany, NY 12236-0001

With a copy via email (preferred) to FinRep@osc.ny.gov or via hard copy mail to:

Office of the State Comptroller
Bureau of Financial Reporting & Oil Spill Remediation
110 State Street, Floor 9-7
Albany, New York 12236-0001
ATTENTION: Debbie Hilson

V. **NOTICES**

Any legal notice or other legal 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; or
- (ii) Upon actual receipt by the intended party if such notice or other communication is sent by overnight mail service, or United State Postal Service mail (certified mail, return receipt requested, or first-class postage prepaid).

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

OSC:

Title: Director of Finance
Address: Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

Auditor:

Name: [Redacted]
Title: [Redacted]
Address: [Redacted]
[Redacted]
[Redacted]
Telephone: [Redacted]

VI. SERVICES

- A. OSC hereby retains the Auditor to perform the Services, and the Auditor hereby agrees to perform the Services, which shall include all deliverables, work and/or work products as described in Section 5.0 (Scope of Services) of the RFP.
- B. Nothing contained herein shall prohibit OSC from contracting at any time with third parties or from performing any of the work itself or through other State entities, for any Services that otherwise may be requested or required of the Auditor pursuant to this Agreement, and the Auditor shall not assert an exclusive right to perform such Services.

VII. COOPERATION

The Auditor 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 Auditor to perform the Services.

VIII. STAFF

Auditor’s “staff” includes employees, consultants, owners, officers, directors, subcontractors, subsidiaries, affiliates, partners and agents of the Auditor.

- A. The principal supervisory and management staff, including engagement partners, managers, and other supervisors who will be assigned to provide the Services, shall be those who are set forth in the Auditor’s Technical Proposal. The Auditor shall notify OSC prior to a change in designation of any of these persons. Any person substituted for any such staff shall possess at least the equivalent level of skill and experience, and shall fulfill the same requirements, as the person replaced. Such change in staffing shall be subject to the approval of OSC, which approval shall not be unreasonably withheld.
- B. The Auditor shall make principal supervisory and management staff, including engagement partners, managers, and other supervisors who will be assigned to provide Services, available at all reasonable times to discuss matters under this Agreement with authorized representatives of OSC.
- C. The Auditor specifically represents and agrees that its partners, members, employees, agents, consultants, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties to be performed hereunder.
- D. The Auditor 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 Auditor 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 Auditor shall immediately discontinue the use of such staff and notify OSC.
- E. OSC reserves the right to remove any of the Auditor’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 Auditor 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.

- F. The Federal Immigration Reform and Control Act, as amended (8 USC § 1324a et al.), obligates employers, such as the Auditor 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 Auditor or subcontractor employee assigned work under the Agreement. OSC does not provide sponsorship. The Auditor warrants to OSC that the employees assigned to OSC are eligible for employment in the United States. The Auditor 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.

IX. SUBCONTRACTORS

If the Auditor uses 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 Auditor prior to their performance of Services.

The Auditor 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 Auditor acknowledges that this requirement is ongoing for the term of this Agreement, and the Auditor 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 Auditor 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 Auditor 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 the Services.

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.

X. RELATIONSHIP OF PARTIES; RIGHTS TO WORK PRODUCT

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

All work performed by Auditor and its personnel 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 Auditor agree that the State of New York is the owner of all copyrights regarding such work. The Auditor warrants to the State of New York that it, and all of its staff, 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 Auditor shall become the sole and exclusive property of OSC for such use as OSC shall deem appropriate, other than Auditor's work papers, which Auditor may retain.

XI. AUDITOR INDEPENDENCE AND PROFESSIONAL STANDARDS

A. [The Auditor has entered into contracts with]

Based upon the determination of the OSC Audit Oversight Review Board (“Board”), made pursuant to the Comptroller’s Executive Order on the Independence of Auditors Performing Services for the Office of the State Comptroller and the Common Retirement Fund (Appendix I), and in reliance upon certain representations made by the Auditor in its Proposal, the Auditor may serve as the Auditor of the System’s financial statements, conditioned upon:

- i. The Auditor will comply with applicable independence rules and professional standards. The Auditor shall notify OSC of any conflict with independence or professional rules, prior to providing or continuing to provide, Services under this Agreement.
 - ii. The Auditor shall strictly abide by the principles of the Generally Accepted Government Auditing Standards (“GAGAS”) as promulgated by the United States Government Accountability Office (“GAO”), as such principles relate to audit organizations’ performance of non-audit functions. The Auditor shall not provide any non-audit services prohibited by Sarbanes-Oxley Act of 2002, and shall adhere to any and all Executive Policies promulgated by the Comptroller regarding the independence of auditors.
 - iii. The Auditor shall not audit its own work in any of its engagements with OSC, or provide non-audit services hereunder. The Auditor shall not assign any personnel to the engagement team on this Agreement who are assigned or have been assigned to the contracts listed in Section XI.A, above.
- B.** The Auditor represents and covenants that it has, and will maintain during the term of this Agreement, quality control systems designed to achieve compliance with the requirements of this Section XI, and that it maintains, and will maintain during the term of this Agreement, adequate safeguards designed to achieve compliance with these requirements.
- C.** The Auditor shall take all reasonable steps to avoid creating a violation of independence rules and/or professional standards that would result in rendering the Auditor’s performance of Services herein illegal or otherwise unlawful or in conflict with independence or professional rules. If the Auditor creates such a violation and the Auditor or OSC terminates this Agreement or performance of any part of the Services based upon such violation, the Auditor shall compensate OSC for any and all reasonable documented costs OSC may incur, including the cost of re-procuring a new auditor and costs attributable to any delays suffered by OSC in the audit, up to but not exceeding the annual fee for the year of the contract termination. The requirement to compensate OSC under this Section XI, subsection C shall not apply if the Auditor terminates the Agreement in accordance with Section XVIII.D (i).

XII. GENERAL WARRANTY AND REPRESENTATIONS

The Auditor hereby warrants and represents 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. Auditor shall re-perform, at its own expense, any work not in compliance with this warranty. Such re-performance of Services will be completed within 90 days of notification to the Auditor of non-compliant work.

XIII. CONFLICTS OF INTEREST

The Auditor 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 Auditor 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 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 Auditor 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 Auditor on its own behalf, and on behalf of its employees, directors, officers, agents, and subcontractors 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 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 Auditor’s work papers)–shall be treated at all times as Confidential Information by the Auditor;
- 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 Auditor will certify as to the method of destruction.

D. Security

The Auditor 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 Auditor may not connect any non-OSC computer, electronic storage device, or telecommunications equipment to the OSC internal 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 Auditor 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 Auditor 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 Auditor 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 Auditor 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 Auditor agrees to undertake a background investigation of any new/replacement staff during the term of the Agreement prior to their commencement of Services.

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 Auditor 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 Auditor must maintain records related to the background investigations performed.

XV. DISPUTES AND DISSATISFACTION

If OSC or the Auditor is dissatisfied with the other's performance under this Agreement, either party must so notify the other in writing. The other party must then make every good faith effort to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result. Nothing herein shall limit a party's ability to pursue all available remedies.

XVI. INDEMNIFICATION AND LIABILITY

- A.** Neither the Auditor, OSC, nor the State shall be liable for any delay or failure in performance beyond its control resulting from acts of war (which shall not include network security breaches or other cyber-related incidents), 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 event. 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 Auditor which have been approved by OSC.
- B.** The Auditor shall be fully liable for any act or omission of the Auditor and its staff and 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 attorneys' fees and expenses) arising from any act or omission of the Auditor or its staff, including bodily or 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 Auditor 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 Auditor:
 - 1.** prompt written notice of any action, claim, suit, proceeding, or threat of such action;
 - 2.** the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Auditor's sole expense; and
 - 3.** reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of Auditor.

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.** For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, the Auditor shall be liable for any act or omission of the Auditor or any of its officers, directors, employees, subsidiaries, affiliates, partners, agents or subcontractors, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges paid to the Auditor. The Auditor shall not be responsible for loss of records or data unless the Auditor is required to back-up the records or data.
- D.** 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 Auditor, or by others.

- E. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due Auditor such moneys as may be necessary to satisfy any claim for damages OSC may have against Auditor.

XVII. RESPONSIBILITY TERMS

- A. The Auditor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Auditor's Vendor Responsibility Questionnaire ("Responsibility Questionnaire") provided to the Auditor by OSC prior to execution of this Agreement. The Auditor 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 Auditor 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 Auditor 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 Auditor 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 Auditor'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 Auditor's failure to disclose material information; or (iii) OSC's discovery of any other material information which pertains to the Auditor's responsibility.
- E. If OSC preliminarily determines the Auditor to be non-responsible, OSC shall provide written notice to the Auditor detailing the reason(s) for the preliminary determination, and shall provide the Auditor with an opportunity to be heard before the determination is finalized.
- F. Upon a Determination of Non-Responsibility of the Auditor, OSC reserves the right to terminate this Agreement for cause pursuant to Section XVIII (Termination and Suspension).

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. If the Agreement is terminated, the Auditor shall be entitled to compensation for Services performed through the date of termination which are acceptable to OSC, in its sole discretion. If the Agreement is suspended, the Auditor shall be entitled to compensation for non-suspended Services which are acceptable to OSC, in its sole discretion.
- B. OSC reserves the right to terminate or suspend this Agreement, or terminate or suspend the Services, with respect to a specific matter or matters immediately upon written notice to the Auditor, if OSC in its sole discretion, deems the Auditor's performance unsatisfactory at any time during the term of this Agreement. If the Agreement is terminated, the Auditor shall be entitled to compensation for Services performed through the date of termination which are acceptable to OSC, in its sole discretion.
- C. Either Party may terminate this Agreement or performance of any part of the Services if it reasonably determines that (i) a governmental, regulatory or professional entity (including, without limitation, the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board or the Securities and Exchange Commission) or entity having the force of law has introduced a new, or modified an existing, law, rule or regulation, the result of which would render the Auditor's performance of any part of the Services to be provided hereunder illegal or otherwise unlawful, or in conflict with independence or professional rules, or (ii) if in regard to an existing relationship, circumstances change such that the

Auditor's performance of any part of the Services would be illegal or otherwise unlawful or in conflict with independence or professional rules.

- D. If a violation of independence rules and/or professional standards develops that would render the Auditor unable to legally perform the Services, OSC may terminate this Agreement, in OSC's sole discretion.

XIX. TRANSITION

Upon expiration or termination of this Agreement, the Auditor shall, upon the appointment of the successor Auditor, provide access to such successor Auditor all necessary records in the Auditor's possession relating to the Services. At OSC's request, the Auditor shall, at current (hourly) rates for similarly situated government entities, also make appropriate staff available to OSC and to the successor auditor during normal business hours to answer questions regarding such records and the Services which have been provided by the Auditor under this Agreement. The Auditor shall cooperate to the fullest extent with any successor auditor 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 auditor.

XX. 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 Auditor 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.

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

No party grants any other party the right to use any of its trademarks, trade names, logos, seals, or other designations, whether in any promotion, publication, or otherwise, without the other party's prior written consent.

D. ETHICS COMPLIANCE

The Auditor, its officers, directors, employees, subsidiaries, affiliates, partners, and agents shall comply with the requirements of Public Officers Law §§73 and 74, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

E. SURVIVAL

The provisions of Sections XII. (General Warranty and Representations), XIV. (Confidentiality, Security and Background Investigations), XVI. (Indemnification and Liability), XIX. (Transition) and Appendix A shall survive the expiration or termination of this Agreement.

F. ENGAGEMENT LETTERS

If Auditor will request annual engagement letters to be executed by OSC, Auditor understands and agrees that no such engagement letter may amend any of the contract terms. Once OSC approves an engagement letter template, letter terms, scope, content, organization, and formatting must be maintained in any subsequent renewal years, and that Auditor shall make best efforts to minimize any proposed changes to such engagement letters from year to year, except to the extent that such changes are in conformance with applicable law, regulation, and/or professional auditing standards.

XXI. ENTIRE AGREEMENT/APPROVALS

This Agreement and the appendices, exhibits, and attachments hereto constitute the entire Agreement between the parties 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. 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 Section 112 of the State Finance Law, and filed in the Office of the State Comptroller.

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

(a) 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, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any

New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

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

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

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

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

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

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

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

(c) Contractor will include the provisions of (a), (b), and (c) above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal

law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of 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.

(d) 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.

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

- (f) NYS Department of Economic Development
- (g) Division for Small Business and Technology Development
- (h) 625 Broadway

(i)Albany, New York 12245
(j)Telephone: 518-292-5100

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

(l)NYS Department of Economic Development
(m) Division of Minority and Women's Business Development
(n) 633 Third Avenue 33rd Floor
(o) New York, NY 10017
(p) 646-8467364
(q) Email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

(r) The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(s) 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;

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

(u) 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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate

the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

(w) 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.

(x) 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.

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

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

June 2023

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 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.

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.

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-E – 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-E – 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:

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

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.

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 Proposer/Contractor compliance.

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.

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	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

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
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:	
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.	
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 202____ 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

A. 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
B. 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
C. 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

D. 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
E. 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
F. 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
G. 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
H. M/WBE EXPENDITURE REPORT**

INSTRUCTIONS: The Awarded Contractor is required to complete and submit this M/WBE Expenditure Report on a <u>per-invoice</u> basis upon award of the State Contract for <u>each</u> 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
I. 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 (5th) 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:

Current EEO Policy Statement was submitted on _____ (date)

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:

Contractor's M/WBE Utilization Plan (AC 3239-G) (A separate Utilization Plan is required for each M/WBE identified.)

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.)

Waiver of the MBE participation goal for the above procurement/contract. Date requested: _____

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? Yes 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 violence 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 in its workplace 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.

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 email or phone mail messages; suggestive or obscene letters, notes, or invitations; inappropriate discussions of a person’s physical appearance; or unwelcome gifts and attention.

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

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.

August 31, 2021

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 services⁷ 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 vendor⁸ 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 question⁹ 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 influence¹⁰ relating to the vendor's bid or proposal. Any OSC employee who has direct knowledge of any improper influence or 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

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.

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 process¹¹. 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 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

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.

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
CONTRACTOR'S CERTIFICATIONS/ACKNOWLEDGEMENTS

SIGNATURE AUTHORITY
The Contractor* and the person signing on behalf of the Contractor certify that such person is authorized to sign on behalf of the Contractor and has the express authority to contractually bind the Contractor.
ACKNOWLEDGEMENT OF RECEIPT OF OSC'S POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT
The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Policy on Discrimination and Harassment, Including Sexual Harassment (Appendix C), and each agrees to abide by the terms of Appendix C.
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 section two hundred one-g of the labor law."
NON-COLLUSIVE BIDDING CERTIFICATION
"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 to the best of [such persons] knowledge and belief: 1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other competitor; 2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder, directly or indirectly, to any other competitor; and 3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition."
CONTRACTOR'S ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY
The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures (Appendix D). By submission of this bid, the Contractor and the person signing on behalf of the Contractor each affirms, under penalty of perjury, that they understand and will comply with the terms of Appendix D.

* All reference to "bidders" within this Appendix E includes proposers and Contractors. Reference to "bids" includes proposals and other responses to solicitations.

**THE SIGNATURE(S) BELOW INDICATES AGREEMENT WITH EACH OF THE ABOVE CERTIFICATIONS/
ACKNOWLEDGEMENTS**

PROPOSER NAME	JOINT PROPOSER NAME (IF ANY)
SIGNATURE	SIGNATURE
PRINTED OR TYPED NAME	PRINTED OR TYPED NAME
TITLE	TITLE
DATE	DATE

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

October 24, 2023

APPENDIX F

DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Have you been found by any governmental entity to be non-responsible within the past four 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 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. The report must 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**, 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. 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: State Consultant Services – Contractor’s Planned Employment

Upon notification of contract award, complete Form A, 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: The O*NET database is available through the US Department of Labor’s Employment and Training Administration website at <https://www.onetonline.org>.)
- **Number of employees:** the total number of employees in the employment category 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 Contractor under the contract, for work by the employees in the employment category, for services to be provided during the contract term.

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

Form B: State Consultant Services Contractor's Annual Employment Report

Use Form B, attached to these Instructions, to report annual employment information. This form captures 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, 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: The O*NET database is available through the US Department of Labor's Employment and Training Administration website at <https://www.onetonline.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 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 Finance
Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

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

To the Bureau of Contracts:

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

By email: CDMOST@osc.ny.gov

To Department of Civil Service:

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

By email: SubmitformB@cs.ny.gov

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 Businesses in Contract Performance**

Article 3 of the Veterans' Services Law seeks to encourage and support eligible service-disabled veteran-owned businesses (SDVOBs) to play a greater role in the State's economy by providing for meaningful participation in New York State's contracting opportunities. It is the policy of the Office of the State Comptroller (OSC) to make every effort to use SDVOBs in accordance with State laws in the purchasing and contracting activities of OSC.

Article 3 sets a Statewide participation goal of 6% for SDVOBs on all contracts for commodities, services, and technology valued over \$25,000 and for all construction contracts valued over \$100,000. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, proposers/contractors are expected to consider SDVOBs in the fulfillment of the requirements of this procurement. Such participation may be as subcontractors, suppliers, consultants, joint ventures, or other type of partnering or supporting roles.

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

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

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

C. SDVOB Participation Requirements

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

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 or the "Utilization Plan") with its proposal. The Utilization Plan must document the SDVOBs that will perform work under the State contract.

Failure to submit a Utilization Plan will result in the rejection of a proposal, unless the proposer provides OSC with a reasonable justification in writing for such failure, or makes a commitment to submit a Utilization Plan within the timeframe specified in writing by OSC.

1. OSC will review the proposed Utilization Plan and issue a written notice of acceptance or deficiency before the contract award is complete.

If a notice of deficiency is issued, proposer must submit a written remedy to OSC. If the written remedy is inadequate or not timely, OSC will notify the proposer and work with the proposer to resolve the deficiency identified or direct the proposer to submit a request for either a partial or total waiver of the SDVOB participation goals. Failure to exercise good faith efforts, correct the deficiency, or file the waiver in a timely manner may be grounds for disqualification of the proposal.

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

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

E. After the Award of the State Contract

1. Contractor certifies that if awarded a contract, it will follow the submitted Utilization Plan for the performance of SDVOBs on the contract.
2. Contractor agrees to provide OSC access to all documentation, records, reports, facilities, etc. that OSC may deem necessary to determine Contractor compliance.
3. Contractor must include Form AC3322-2 (Contractor's SDVOB Utilization Report) with each invoice submitted to OSC during the contract term. Form AC3322-2 documents SDVOBs *actually used* on the Contract.

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.

- a. If deficiencies are identified during OSC general contract compliance monitoring or during in-depth compliance review, OSC will attempt 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.
- b. 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 contract goals and may withhold payment from the Contractor as liquidated damages, if the Deputy Comptroller for Finance 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.
- c. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the contract. Upon the occurrence of such a material breach, OSC shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Nothing herein shall be deemed to 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 3 of the Veterans' Services Law seeks to encourage and support eligible service-disabled veteran-owned businesses (SDVOBs) to play a greater role in the State's economy by providing for meaningful participation in the State's contracting opportunities. Proposers are expected to consider certified SDVOBs in fulfillment of the requirements of the attached contract. Such participation may be as subcontractors, suppliers, consultants, joint ventures, or other type of partnering or supporting roles. SDVOBs can be readily identified on the directory of certified businesses at:

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

Use of SDVOBs for non-commercially useful functions may not be counted towards contract SDVOB participation goals.

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	<i>If Yes, identify below the SDVOBs that will be used If No, see below re Request for Waiver</i>		Contract or Procurement #: _____
SDVOB Utilization Goals for this Procurement:		_____ %			

SDVOB Company Name	Business Address	DSDVBD Certification #	% 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 use SDVOB in the performance of this contract, attach Form AC3322-3, Request for Waiver, and include supporting documentation.

Additional information about the Veterans' Services Law can be found at: <https://ogs.ny.gov/veterans>

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

INSTRUCTIONS	
<p>Article 3 of the Veterans' Services Law seeks to encourage and support eligible service-disabled veteran-owned businesses (SDVOBs) to play a greater role in the State's economy by providing for meaningful participation in the State's contracting opportunities. SDVOBs can be readily identified on the directory of certified businesses at:</p> <p align="center">https://online.ogs.ny.gov/SDVOB/search</p>	
<p>All Contractors must complete and return this form with each invoice submitted to OSC during the contract term.</p>	
<p align="center">Failure to submit complete and accurate information may result in a determination of contract non-compliance.</p>	

Additional information about the Veterans' Services Law can be found at: <https://ogs.ny.gov/veterans>

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	<i>If Yes, identify below the SDVOBs that are being used</i> <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 Certification #	% 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:				

If Contractor is not using 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 and enter date submitted:

_____.

**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 Finance, 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 Act¹².

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

¹² 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.