



DIVISION OF FINANCIAL ADMINISTRATION

**Addenda No. 3**

**To**

**RFP No. 1714**

Date: September 5, 2012

Subject: Eligible Proposers, Clarifications, Additions, Revisions, Questions and Answers

Title: New York State Office of General Services for Real Estate Services on Behalf of New York

Group: 71018-Class Code: 80

Proposal Due Date: See Key Event Dates

Address Bid Inquiries to the Designated Contact:

Warren Joscelyn- Purchasing Officer 1  
NYS Office of General Services  
Corning Tower, 40<sup>th</sup> Floor  
Empire State Plaza  
Albany, New York 12242  
Phone: 518-474-5981  
Fax: 518-473-2844  
Email: [warren.joscelyn@ogs.state.ny.us](mailto:warren.joscelyn@ogs.state.ny.us)

**Eligible Proposers:** {Alphabetical Order}

The following companies attended the Mandatory Pre-bid Conference and therefore are eligible to propose on this solicitation.

Bluegrass Services  
Carrow  
Cassidy Turley  
CBRE  
Cornerstone Group  
Corporate Valuation Advisors Inc.  
CRESA  
Cushman and Wakefield  
EMCOR  
JRT  
Jones Lang Lasalle  
Laudair  
NAI Global  
Navigant Consulting  
OR&L  
Parisi Coan & Saccocio, PLLC  
Sperry Van Ness  
Studley  
SVN

**Clarifications:**

C1. There is no minimum or maximum guaranteed amount of work from this solicitation.

C2. On any additional services, (services not covered by the base contract), the State further retains the right to have such services completed as deemed to be in the State's best interests whether it be by utilizing the time and material rates bid herein, by utilizing in-house personnel, or by separate procurement.

C3. Regarding Section 5.3 Facility Management Processes, it is the State's intention for the awarded vendor to provide consulting and advisory services as described in Section 5.3 and not facility management services.

**Additions:**

**Section 6.8 General Requirements shall include the following addition:**

- During the term of the contract it is agreed that any employee performing work shall not be re-assigned or transferred without the prior written consent of the Commissioner of General Services. Any proposed new employee must first be authorized by prior written consent of the Commissioner of General Services prior to any work being performed on this contract.

## **Revisions:**

R1. {Section 4 Evaluation and Selection Process is amended to read as follows}

### **4.0 Overview**

OGS intends to award one contract based upon an evaluation of all aspects of the proposals. Proposals will be evaluated and scored based upon the method and criteria set forth in this Section to determine the proposal that best fits the needs of OGS and the best interests of the State of New York.

The award will go to the contractor whose proposal provides the best value as determined by OGS. If two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient.

#### **Overall Breakdown of Points:**

- ✓ Cost      –30% (300 points)
- ✓ Technical –60% (600 points)
- ✓ Executive –10% (100 points)

### **4.1 Evaluation Committee**

OGS has established evaluation committees to perform the evaluation. The following teams have been created for this process:

Team A: OGS Financial Administration

Team B: OGS Technical Evaluation Team

Team C: Executive Review Team

Note: Team A and B's personnel shall be non-overlapping with any other team.

### **4.2 Stage 1 Vendor Qualifications**

At Stage 1, vendors' submissions will be reviewed by Team A on a pass/fail basis, described below, in order to determine that a vendor meets the minimum qualifications to perform the scope of work.

#### **4.2.1 Check for Completeness**

Members of the evaluation Team A - OGS Financial Administration will review the submissions for completeness including compliance with the cost proposal form. Deviations from the cost proposal form will result in immediate rejection and no further consideration will be given to the proposal.

#### 4.2.2 Qualifying Review

Firms will be passed or failed on the basis of meeting the following minimum bidder criteria:

1. To be a qualified bidder for this RFP, the proposing firm must have at least five (5) years of recent experience providing the services required in Section 1.2 to one or more clients with complex real estate portfolios consisting of owned and leased assets.
2. The bidder must be a duly licensed real estate broker in the State of New York and able to perform all brokerage services.
3. Bidders must have a full service office in New York State. All records with respect to examinations described in this RFP must be available at such office.
4. Bidders must be able to service the entire state in a timely manner. Bidder must have regional offices and/or staff available to service all areas of the state.

#### 4.3 Stage 2 Evaluations

**All qualifying proposals will be evaluated and scored in stage 2.** At Stage 2, OGS Team B will review each proposal that cleared Stage 1 and initially re-confirm whether it is responsive to the requirements of the RFP.

##### 4.3.1 Evaluation of Technical Proposal

60% (600 points) of the Stage 2 evaluation's total 1,000 available points will be allocated for the scoring of the Technical Proposal.

**a. BIDDER EXPERIENCE (20%)**

Each bid will be evaluated as to the quality and extent of the bidder's relevant experience (including that of its proposed employees) and length of service in the industry demonstrating its ability to perform the required services.

**b. SCOPE OF SERVICES (40%)**

Each bid will be evaluated as to the completeness of accomplishing the scope of services and the extent to which the bidder meets the goals and requirements of this RFP

##### 4.3.2 Preliminary Technical Score

For each technical proposal, the preliminary technical scores of each evaluator will be averaged to yield a preliminary technical score for each proposal.

##### 4.3.3 Evaluation of Cost Proposal

Up to 30% (300 points) of the total 1,000 available points will be allocated for the scoring of the Cost Proposal. The cost evaluation will be conducted separately from the Technical evaluations. Each tab of the excel spreadsheet attached (Attachment 1 Cost Proposal) has been assigned a commensurate value for evaluation purposes.

The Grand Total price shown on each tab of Attachment 1 Cost Proposal will be used for evaluation purposes. Each tab of the vendor's cost proposal (Grand Total) will be evaluated in relation to the other proposers' bid for that tab. For each tab the proposal most advantageous to the State will receive the full points for that tab. Subsequent proposals will receive proportionate points.

#### **4.4 Identifying Finalists**

Team A will determine those finalist firms eligible to provide presentations to the evaluation team by calculating each firm's total preliminary score according to the following formula: Preliminary technical score + cost score = total preliminary score. The finalists will be the firms with the five highest total preliminary scores and any additional firms within or equal to 50 points of the highest total preliminary score.

#### **4.5 Presentations by Finalists**

A post-proposal presentation/demonstration will be required of the five finalists and/or any other additional eligible firms as outlined in (Section 4.4). The purpose is to provide an overview of the proposed technical solution and provide clarification on any aspect of the technical proposal, including its proposed solution, the companies' capabilities and experience.

Members of Team B may adjust their technical scores following the finalist presentations. The presentation shall cover the major points of the vendor's proposal. The presentations will be given on a date, time, and location to be designated by OGS. The revised technical scores of each evaluator will be averaged to yield a final technical score

#### **4.6 Recalculating Cost Proposals**

The cost proposal scoring will be recalculated. This recalculation will only include the finalists and will yield a final score for each of the finalists' cost proposals.

#### **4.7 Executive Committee Scoring**

The Executive Committee will be privy to all pertinent proposal and evaluation, materials and up to 10% (100 points) may be assigned to each finalist firm. This review is intended to evaluate the overall viability of the proposals and will be based on all factors encompassing quality, cost, and efficiency.

#### **4.8 Final Scoring and Ranking**

Team A will determine each firm's final score using the following formula: Final Technical Score + Final Cost Score + Executive Committee Score = Final Score. Finalist firms will be ranked according to their final scores. A firm will be selected for award based upon having the highest final score.

#### **4.9 Notification of Award**

After the evaluation, all Proposers will be notified of the name of the selected Proposer and debriefings will be offered per Section 6.13. The selected Proposer will be notified that their submitted proposal has been selected and that a contract will be forthcoming for execution. The original proposal, and any additions or deletions to the proposal become part of the contract.

Public announcements or news releases pertaining to any contract resulting from this Solicitation shall not be made without prior approval from the Issuing Office.

## **Revisions (continued):**

### **R2. {Section 6.7 Iran Divestment Act is amended to read as follows}**

#### **IRAN DIVESTMENT ACT**

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should OGS receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OGS 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 OGS shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

OGS 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.

### **R3. {Section 6.10 Subcontractors is amended to read as follows}**

#### **6.10 Subcontractors**

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. Known or planned use of subcontractors shall be disclosed in detail with bid submission by the proposer. If subcontractors are to be used for base scope services, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed. If subcontractors are to be used for Additional Services, they will be subject to the Additional Services clause, and associated markup provision herein. The total of all Subcontractor work during the term of the Contract, exclusive of M/WBE subcontracted work as established in the approved utilization plan, shall not exceed **20%** of the total contract value.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this IFB or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor/subcontractor's employee(s) who carry out any of the provisions of any contract resulting from this IFB.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the OGS Project Manager, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The

Contractor shall promptly furnish such information as OGS may require concerning the proposed subcontractor's ability and qualifications.

In the event that subcontractors must be used during the term of this contract for Additional Services work, the following guidelines shall apply.

- A. The Contractor shall procure services using commercially reasonable and prudent practices to obtain the most favorable price and terms. The Contractor will make his/her best efforts and shall document same to obtain written proposals or bids from at least three (3) responsible service providers before selecting the best price and terms. Prior OGS approval is required for all Additional Services. The following conditions apply to competitive bidding for subcontracted additional services:
- 1) Each bid will be solicited in a form and manner conducive to uniformity in all bids. The Contractor will maintain documentation of the solicitation and results.
  - 2) If the Contractor desires to accept other than the lowest bidder, or where competitive bids are not possible, adequate justification must be provided to the State for required prior approval.
  - 3) The OGS shall be free to accept or reject any proposal/subcontract submitted for State's approval, and Contractor shall provide OGS with copies of all documentation OGS may request in relation to such approval rights.

#### **Questions and Answers:**

Q1. Could you please send me the document or link for the timeline for the above referenced RFP?

A1. Please see link here: <http://www.ogs.ny.gov/purchase/Bidcalendarlv.asp> the timeline can be found in Section 1.6.

Q2. If those who intend to bid and the Q&A portion of the bid process have been completed we request that information.

A2: This Addendum #3 contains the information.

Q3. In reviewing the RFP, we do not find the text of the UGL recommendations nor a link to them. As they are critical in responding to this RFP, please let us know how to access them.

A3. The UGL recommendations are not completed, and therefore, cannot be released. Bidders should use their best judgment of industry practices and the services they can provide in order to respond.

Q4. I saw in the bid RFP 1714 and am considering submitting a proposal but I see that you want a brokerage license. I have my series 6, 63, 66 & 7. I manage real estate and own (a company) but I do not hold a real estate license.

A4. The bidder must be a duly licensed real estate broker in the State of New York and able to perform all brokerage services.

Q5. We're a mover and I was wondering where the locations of these services will be needed?

A5. The contractor will be requested to provide services throughout the State.

Q6. If the bidder is to have experience in surveying, architecture and engineering (Section 1.2) then wouldn't the bidder have to be licensed in those professions (education law requirement) as well as holding a Real Estate license?

A6. The primary contractor is responsible for ascertaining, verifying and monitoring any required certificates and complying with all applicable licensure requirements.

Q7. We noted the changes on the cover sheet and page 9, but also noted that the new TOC listed the 'Inspection of Books' on page 28 instead of 29. This raised a concern that there may have been additional text changes that were not noted. Would you please clarify whether this change resulted from amended text or a formatting change?

A7. Formatting change

Q8. How are we to respond to the following if we don't have the recommendations: "Primary Services: Describe how the bidder will assist the State and UGL in implementing a strategic real estate plan for leased, state-owned and surplus properties; Describe how the bidder would implement policies and procedures designed to streamline control, management and oversight of assets from an enterprise perspective."

A8. Bidders should use their best judgment of industry practices and the services they can provide in order to respond.

Q9. Can the State provide a list of owned and leased buildings that includes building type and size?

A9. No.

Q10. For services that are not traditionally compensated on an hourly basis, is the State open to alternative pricing models where such models offer advantages to the State?

A10. No.

Q11. For Disposition and other work paid for by the State, does the percentage stipulated in the cost proposal include the amount that would be paid to the purchaser's agent or representative?

A11. In the event the purchaser also has a broker the commission would be split between the two representatives.

Q12. What types of documents and reports will the contractor be examining as part of the task of assisting with environmental reviews?

A12. The contractor may be asked to review documents such as those related to SEQRA process.

Q13. With respect to the information about the preferred software system in Section 5.2.3.1, are full project management financial capabilities desired, including accounting, commitments and budgeting?

A13. See Section 5.2.3.1. The RFP remains unchanged.

Q14. With respect to the information about the preferred software system in Section 5.2.3.1, what are the number of "projects" contemplated, including project cost, size and duration?

A14. See A53. A decision has not been made on specific project assignments.

Q15. How does the State currently monitor the performance of its energy programs?

A15. OGS monitors the performance of its energy programs through the use of the Web Enabled Advanced Metering (WEAM) program. This application is an innovative “intelligent” energy management solution used to monitor energy assets and consumption in OGS-managed properties statewide.

Q16. Who currently handles the processing, tracking and payment of the State’s utility bills?

A16. Each individual Agency in leased locations. In State owned buildings OGS Financial Administration.

Q17. Pertaining to section 3.3.1 on p. 21. Are the base year operating expenses included within the base rent? If the base year operating expenses are included must they be backed out prior to calculating the commission?

A17. See Section 3.3.1. The RFP remains unchanged.

Q18. Pertaining to Attachment 1: Commission on Leases Statewide-What does the figure in the projected lease expenditure box represent (IE-the cost of leases annually or over the five year term of the contract?)

A18. All estimates are for 5 years.

Q19. Pertaining to Attachment 1: Commission on Leases Statewide-What does the figure in the projected renewals box pertain to?

A19. See A18

Q20. Pertaining to Attachment 1: Commission on Leases Statewide-What is the meaning of “15 of 30 percent”?

A20. An excel spreadsheet will be provided to the eligible bidders named above. Each tab of the spreadsheet is weighted.

Q21. Pertaining to Attachment 1: Commission on Leases Statewide-What is the meaning of “A12 + C12”

A21. See A20.

Q22. Pertaining to Attachment 1: Additional Services Statewide-What do these hours reflect?

A22. See A18.

Q23. Pertaining to Attachment 1: Additional Services Statewide-What is the meaning of “2 of 30 percent”?

A23. See A20.

Q24. Pertaining to Attachment 1: Disposition-What does the figure in the total sales box represent?

A24. See A18.

Q25. Pertaining to Attachment 1: Disposition-What is the meaning of "9 of 30 percent"?

A25. See A20.

Q26. Pertaining to Attachment 1: Commission on Lease Audit Savings Realized-What do the figures in the boxes Estimated Lease \$ To Audit and Estimated Savings Realized pertain to?

A26. See A18.

Q27. Pertaining to Attachment 1: Commission on Lease Audit Savings Realized-What is the meaning of "1 of 30 percent"?

A27. See A20.

Q28. Pertaining to Attachment 1: Earned Credit Statewide-We assume that this pertains to section 3.6 on p. 24. Can you provide a definition of the concept of "earned credit"?

A28. See Section 3.6.

Q29. Pertaining to Attachment 1: Earned Credit Statewide-What do the figures in the boxes Projected Lease Expenditures and Projected Renewals represent?

A29. See A18.

Q30. Pertaining to Attachment 1: Earned Credit Statewide-What is the meaning of "3 of 30 percent"?

A30. See A20.

Q31. Pertaining to Attachment 1: Earning Credit Statewide-What is the meaning of A8 + C8?"

A31. See A20.

Q32. Pertaining to section 3.7.1 on p. 25. Will the State of New York act, in any fashion, to protect the Contractor in the event that a landlord's broker acts to circumvent (IE-proceed without) the Contractor?

A32. No, the contractor will look solely to the landlord for the payment of its commission.

Q33. Pertaining to section 3.3.1 on p. 22. Will NYS exercise any control over a landlord's broker?

A33. No.

Q34. Pertaining to p. 5 paragraph 4. Is the RFP meant to encumber a broker to provide services for all NYS agencies, authorities, boards, committees, etc. (IE-SUNY, OMH, DOC, etc.)

A34. The contractor will be providing services for at least all NYS executive branch agencies and potentially other state entities.

Q35. Will commissions be paid for any improved terms that the Contractor may be able to negotiate during the renewal of existing leases?

A35. The commission rates shall be calculated on Base Rent only as set forth in the lease/license executed by the State.

Q36. Can you provide us with your portfolio of properties, or asset list to include: The precise nature of the properties, the user groups who occupy the properties, the location of the properties, their size, their age, the term of the current leases and anticipated renewals and relocations that may occur during the contract?

A36. No.

Q37. Will plans of the facilities be available for teams conducting condition assessments?

A37. At the time of the project assignment a determination will be made as to the availability of property plans and/or previous condition assessments.

Q38. What might the annual volume of facility assessment condition assessments be?

A38. Currently there are 53 OGS operated facilities/buildings statewide. Therefore, the successful contractor could be asked to perform assessments on these properties. Beyond that a decision has not been made regarding other assessments to be performed by the successful contractor.

Q39. Have condition assessments been performed in the past and, if so, will those reports be made available should our team be selected?

A39. See A37.

Q40. Has UGL established a strategic real estate plan, policies or provided recommendations to OGS? If so, are these available for review prior to submitting a proposal?

A40. See A3.

Q41. Has UGL produced any planning templates or manuals for the facility management process? If so, are these available for review prior to submitting a proposal?

A41. See A3.

Q42. Will UGL be bidding on this same scope of work?

A42. No. Pursuant to its contract with the State, UGL and its subcontractors are prohibited from responding to and bidding on any subsequent broker services solicitations related to the value of the State's real estate portfolio for a period of no less than three years from the date of termination of services.

Q43. Pertaining to section 1.2 on p. 7, "Use of applicable software systems." What software systems does NYS currently have in place?

A43. OGS currently utilizes RealNet and there are other software systems used by other agencies.

Q44. Pertaining to section 2.2.3 Technical Proposal on p. 12, first numeral 4. "Resumes." Our response to this is highly depending upon the volume of work. What information can you provide to use regarding the volume of work?

A44: There is no guaranteed volume of work. Estimates are in the cost proposal form.

Q45. Pertaining to section 5.2.3 Software and Data Collection Management on p. 33. Does NYS see this as a repository for condition assessment data as well?

A45. Yes.

Q46. Pertaining to section 5.3 Facility Management Processes on p. 35 at line 3, "...annual facility assessments..." How many square feet on an annual basis would this be?

A46. See A38.

Q47. Has OGS established and prioritized the capital planning for the owned and leased assets?

A47. Yes for OGS managed buildings. The State does not have a comprehensive, unified, long-term process for evaluating and prioritizing capital projects within its own budget process. The State does not perform capital planning for leased assets. OGS does not review or prioritize capital planning for other agency's assets.

Q48. Is there a list of the parking requirements for the owned and leased assets?

A48. There is not a consolidated list of parking requirements.

Q49. Has OGS reviewed the possibility of a private/public venture for its parking requirements?

A49. No.

Q50. Has OGS established a time line for planning, negotiating, designing, construction and implementation for its owned and leased assets? If so, will the time line be available for review prior to submitting a proposal?

A50. The timeline for lease projects begins 14 months prior to the expiration of the current lease. In the case of State owned property the project timeline is established at project commencement.

Q51. Pertaining to section 1.2 on p. 6. Will the optional services set forth on p. 7 be paid via hourly compensation?

A51. These services can be paid in compliance with the provisions of section 3.3.4 or by use of Earned Credits.

Q52. Pertaining to section 6.3 on p. 38. Is the crime insurance requirement set forth in paragraph 6 on p. 43 meant to indemnify the state solely against the actions of the Primary Contractor, their employees and sub-contractors, or is the intent that it also extend to the actions of such parties as members of the state workforce and the general public that may visit state workplaces during the pendency of an assignment?

A52. The coverage is for the actions of the Primary Contractor, their employees and sub-contractors.

Q53. With respect to lease audit requirements, and aside from expense reimbursements, does OGS desire a deeper examination of other costs associated with the leases?

A53. The decision will be made at the time of project assignment.

Q54. What system do you currently employ for lease administration?

A54. See A43.

Q55. Multiple sections of the RFP request services that are consultative in nature and for which hourly rates seem to be the most appropriate way to quote fees – see specifically sections 5.2, 5.3, 5.5 and 5.6. However Attachment 1 Cost Proposal appears to have a section for quoted hourly rates for services provided under section 5.6 “Additional Services” only, and not these other sections. How should quotes for services under these sections be submitted?

A55. Section 5.2 - see Section 3.3.1; Sections 5.3, 5.5 and 5.6 - see Section 3.3.4.

Q56. Data collection, management and analysis services are called for throughout the proposed scope of work – see specifically sections 5.2.3.1 “Software,” 5.2.3.2 “Data Collection and Management”, and 5.3 “Facility Management Processes.” Could you clarify the distinctions among these services and the services called for in section 5.6 “Additional Services” related to “lease data collection and analysis?”

A56. The RFP remains unchanged.

Q57. Section 5.2.3 references the common problem of interface among disparate software for collecting, maintaining and analyzing real estate related data. Does the state currently have unique property identifiers for individual properties that are consistent across these systems? In other words, is the same facility/location tagged with the same identifier across multiple systems?

A57. There is no central repository of information pertaining to the State’s real estate assets.

Q58. Are invoices limited to landlord related charges or will facility invoices such as utilities and other service agreements be required?

A58. See A53.

Q59. Have leasehold cost allocations been established in (current system) or will they have to be developed?

A59. Each lease has an allocation of costs under each specific contract.

Q60. Is an incumbent format in place for monthly activity status reports and, if so, can we receive copies of a standard monthly activity status report?

A60. No.

Q61. Is there a preference that the provision of services be provided in any specific market or can services be provided from one of {Selected Contractor’s} lease administration offices within the US?

A61. See Section 1.4.

Q62. Are current documents scanned, bookmarked and OCR-ready? If not, are all documents in one location and how are they organized? Generally, we need to have an understanding of the incumbent lease files so we can properly estimate what it will take to perform a data collection effort.

A62. No.

Q63. Will the interface to the Client accounts payable system be required and, if so, what is the financial application?

A63. No.

Q64. Has Client completed any lease audit program within the past three calendar years?

A64. Yes.

Q65. What is the incumbent model to track and receive tenant improvement allowances? For example, is there a separate and distinct financial account used to book and track TI receivables?

A65. No.

Q66. Has UGL's assignment resulted in any changes to the governance structure and real estate process improvements as it relates to portfolio administration?

A66. See A3.

Q67. Will a listing of all properties be provided?

A67. For a list of the leased facilities expiring during the proposed term of the contract please see attached.

Q68. What have been UGL's recommendations as identified in Section 1.2 of the RFP?

A68. See A3.

Q69. What software systems are in place to manage lease administration and owned properties and what functions are each responsible for?

A69. See A43.

Q70. What types of projects as identified in Section 5.2.2 can be expected?

A70. See Section 5.2.2.

Q71. Please provide clarity regarding Section 6.10 Subcontractors. If we were to "Team", or form a "Strategic Partnership" with another firm for performing in accordance with the subject RFP, does that fall under subcontracting as defined in section 6.0? The purpose of the question is that in some cases, one firm on its own may not be in a position to offer the complete service solution

as defined in the RFP, or may have a conflict in doing so. Specifically, a broker cannot, in some states, provide appraisal services and conversely, an appraisal firm cannot provide brokerage services, however, as a team, can meet the services provided while maintaining the degree of independence necessary. If such a relationship as noted above falls under the 10% subcontracting guidance, then those fees (10%) may not be sufficient to complete the entire task(s).

A71. See R3 above.

Q72. Could you please provide a list of all bidders and their associated contact details?

A72. See above. We do not provide contact information for potential proposers.

Q73. By way of Paragraph 3.10 of RFP, a bidder can request to waive any requirement -- can that waiver be requested for something under primary or optional services?

A73. Yes, by the questions due date. Waivers/exceptions written into proposals may lead to rejection.

Q74. Cost Proposal Form - Additional Services - Strategic Planning/Policy Development- Do the estimated 1,000 hours reflect the strategic planning and policy implementation requested in the primary service or rather account for the hours for the continued assistance of strategic planning in the optional services?

A74. See Section 5.6 Additional Services.

Q75. In section 2.2.4, the RFP states that the bidder shall provide hourly rates for services set forth in Sections 5.3 (Facilities Management), 5.5 (Real Property Services), and 5.6(Additional Services), however it is not clear where the Facilities Management or Real Property Services rates should be reflected. Please advise where in our response these rates should be captured?

A75. See Section 3.3.4

Q76. In the Cost Proposal Form for Commissions, an estimated number is given for both the Projected Lease Expenditures and the Project Renewals. How many leases did OGS use in order to get those estimates? - In other words, how many leases roll up to the Projected Lease Expenditure estimate and how many to the Project Renewals estimate? Also, please provide additional information outlining exactly what the Projected Lease Expenditures and Projected Renewal numbers represent – are they annual or totals for the five years. Do they represent year 1 revenues, total payments under the respective leases or something else?

A76. See C1, A18 and A67. See Section 3.5.

Q77. In 3.3, exclusions are outlined on how the commission is calculated. Please clarify if tenant improvements that are amortized into the rent payments are included or excluded in the calculation of earned commission.

A77. No, excluded. See Sections 3.3.1 and 3.6.

Q78. In order to assess staffing needs and provide a more tactical plan (also for planning for lease administration), can OGS give us more detailed information geographically on where the majority of leasing and sales assignments will be performed? A list of properties would be helpful, or at a minimum, the number and types of properties and geographic location.

A78. See A67.

Q79. Were the software systems currently in place developed internally, were they off the shelf products, or some hybrid between the two? Please specify the name of the system if from the market place? Any information on these systems and whether you would like to salvage some piece of them or seek a completely new system would be useful.

A79. See A43. Bidders should use their best judgment of industry practices and the services they can provide in order to respond.

Q80. What State agencies does this solicitation cover, which are excluded, and which are not required to use this contract?

A80. See A34.

Q81. How does the State anticipate the selected contractor working with the three major departments: REPD, RPM and D&C? What will be the point of interface between each of these departments?

A81. It is anticipated that the selected vendor will interface with these business units and the point of contact will be the State's designated project manager.

Q82. Will the State appoint a primary contact that will work with the selected bidder? If so, will this person likely be a State employee or a UGL employee?

A82. Yes a State employee will be the primary contact.

Q83. In section 1.2 of the RFP, many of the bullets for requested services refer to the implementation of policies, procedures, plans and strategies, etc. Will the selected bidder have the ability to recommend policies and procedures, etc, as appropriate?

A83. Yes.

Q84. How much time is the State anticipating the transition to working with the selected bidder will take?

A84. A project timeline will be developed upon approval of the contract by The Office of the State Comptroller.

Q85. Please clarify the certification deadline in section 6.15, NYS Vendor Responsibility Questionnaire For-Profit Business Entity: Paragraph 4 states that the bidder is to complete and certify the Questionnaire no more than 6 months prior to the bid due date. When is the last day the Questionnaire can be certified by the vendor?

A85. Section 6.15 remains unchanged.

Q86. What software systems is the State using now for tracking information regarding owned or leased space?

A86. See A43.

Q87. Understanding that there is no centralized information repository and the use of systems is varied at the agency level, has NYS or UGL made any assessment concerning the validity of data in any system for any geographic territory or agency? If so, which ones?

A87. This information will be discussed with the selected vendor.

Q88. Are any currently used software tools expected to be continued even if new software solutions are agreed upon and introduced?

A88. See A53. The State is looking for recommendations on this subject.

Q89. Does the State intend to have new software integrated with accounting systems?

A89. Yes but not integrated with the State's accounting system (SFS) at this time.

Q90. For Disposition and other work paid for by the State, does the percentage stipulated in the cost proposal include the amount that would be paid to the purchaser's agent or representative?

A90. See Section 3.3.2.

Q91. P 23—The Commissioner has the authority to "fix" commission rates—how does this impact the pricing we propose to the State?

A91. See Section 3.3.2. The proposer should use their best judgment when proposing commission rates.

Q92. Please describe the portfolio in terms of lease and owned property records to be managed in an ongoing lease administration program. Please use the table below.

Number of Payable Leases	
Number of Receivable Leases	
Number of Total Leases	
Number of Owned Properties	
Total Leased and Owned Records	

A92. The State does not currently have a centralized lease administration program.

Q93. Please list the names of the State agencies or departments that you would want to be able to report on within the information platform for square footage, critical dates, rents, etc. and for key metrics by agency or department. For reporting purposes, it would be helpful to know how many organizational units there are.

A93. See A34 and A67.

Q94. With respect to geographic organization, how many levels deep would you want to see this organization? For example, we could see something like Region, County, City as geographic organizational components. Would there be a need to organize the real estate under any special geographic format?

A94. We want to be able to perform queries within the database to sort multiple data fields. (i.e. geographic.) The State is looking for recommendations from the proposers.

Q95. Can the State provide the following information for the key sites (facilities greater than 50,000 SF or facilities targeted for efficiency improvements)?

Property data

Churn rate information including the frequency and costs (including relocation of furniture and partitions) associated with the physical relocation of business units/departments

Existing space use

Floor plans for all areas included within the study. To include work setting ID's departmental affiliation, and occupant surname labeled

Real Estate database information and/or CAFM reports

Space guidelines and standards

Schedule of operating expenses by building

Previous workplace improvement recommendations and reports

Security access data to describe the frequency of space use by user and department

Building stacking diagrams

Background data

Policy and documentation (goals, successes, hurdles) on flexible work programs sponsored by HR

Findings from any current State assessments (via focus groups, interviews, pre move and post move surveys)

Departmental and personnel information

Department staffing plans and growth projections

Organizational charts for candidate functions

Information from HR and/or CRE that includes a listing of staff by function, band level, and business unit/departmental affiliation

A95. No. Much of this proprietary information will be shared with the successful proposer.

Q96. We understand that in addition to payable and receivable leases for space, there may be other types of leases as well. Please describe these other leases and the volumes by type. Are

these other leases included in the outsourcing? If so, is the scope of work required for them consistent with the real estate leases? Please elaborate.

A96. See Section 1.1.

Q97. Where are the lease documents for this portfolio located? Are they all in one place or disbursed regionally and, if so, in how many locations?

A97. Leases entered into by the Commissioner of OGS on behalf of NYS Executive Branch agencies are located in Albany.

Q98. What percentage of all legal documents have been scanned?

A98. See A62.

Q99. How is lease administration work performed today?

A99. It is performed by individual Executive agencies in concert with OGS.

Q100. How many people are involved with this service program?

A100. We do not have an accurate number.

Q101. Does the State use any technology systems / software in delivery of these services? If so, which ones?

A101. See A43.

Q102. Are there any of these systems that the State either likes or dislikes?

A102. This is immaterial to the solicitation. The State is looking for recommendations from proposers.

Q103. Can you describe the relative size of the portfolio supported by each separate technology system?

A103. See A67.

Q104. Is there well developed data generated from existing leases that could be transferred to another system?

A104. Yes.

Q105. Can you provide a sample copy of a lease abstract report or other reporting generated from each of your current systems?

A105. This will be provided to the successful vendor.

Q106. Does the State typically force landlords to use a standard State form lease or are most leases written in multiple landlord forms?

A106. The OGS boilerplate lease can be viewed at <http://www.ogs.ny.gov/BU/RE/Leases/2012/Docs/LeaseBoilerplate.pdf>

Q107. What is the typical term of most leases? Do most leases have options to renew and, if so, is there a preferred term there?

A107. Terms are set in accordance with Section 3 of the Public Buildings Law.

Q108. What percentage of leases rolling annually are renewed?

A108. It varies year to year based on individual agency program requirements.

Q109. Is the State tracking the utilization of space in any consistent manner? If so, is this data incorporated into lease administration reporting and metrics?

A109. Yes.

Q110. What are the key goals or improvements desired with respect to lease administration?

A110. Proposers should use their best judgment of industry practices and the services they can provide in order to respond.

Q111. Is there any preference with respect to where the back office processing work for lease administration is performed (abstraction, invoice review, scanning, etc.)?

A111. It is expected that the successful vendor will have an onsite presence in Albany at OGS.

Q112. Under 5.2.3.2 Data Collection and Management:

Please expand upon and provide examples of the type of data the contractor will be asked to manage and collect-- beyond lease data. Is the data static portfolio information or activity based (i.e. project management, facilities work orders, or deferred maintenance, project mgmt tracking dates?) As much information on the breadth and depth of the data would be appreciated.

A112. See Section 5.2.3.1

Q113. Can the State identify the services from the list below that it would like to see performed on an ongoing basis:

Lease and other document abstraction / population to a database

Document management / web document availability / document enhancement for OCR

Reporting and metrics on the portfolio and individual records

Review of landlord pass through statements: desktop reviews of annual reconciliations of operating costs and lease audits where appropriate.

Review of all landlord billings, recurring and nonrecurring.

Management of rent payable and rent receivable. If this service is desired and the State desires to pay the rent via a feed of payable data from your provider, how many feeds would be necessary?

Accounting services to actually pay rent to landlords and to bill and receive payments from AR tenants of the State.

A113. See Section 5.2.3.1

Q114. Will UGL be involved in evaluating bids? If yes, will firms be able to protect competitor-sensitive information from review by UGL?

A114. No.

Q115. Will space be provided in the State's Albany offices for Contractor staff to co-locate with OGS?

A115. It is anticipated that some office space will be provided for the successful vendor.

Q116. How does the State define a "renewal?"

A116. Renewals are defined in accordance with the terms of a particular lease.

Q117. Does a "renewal", as contemplated by the State, include tours, space planning, soliciting multiple offers and identifying comparable space?

A117. Yes.

Q118. Please describe in more detail the scope activities of that the State includes in 'lease audit' and 'lease administration.' For instance, does lease audit include examining for anything other than review of the data in the State's system? Must the contractor reconcile that data to source documents? Specifically, Section 1.2, the Discussion Topics, and Section 5.5.2 refer to Lease Administration while the Cost Proposal instructions refer to pricing Lease Audit in Section 3.3.3 and 3.7.4.

A118. See Section 5.2.2.

Q119. How does the State currently manage lease administration?

A119. See A99.

Q120. What system do you use today to track lease data? Is this system owned by the State of NY?

A120. See A43.

Q121. What are the lease/sublease/owned location counts?

A121. See A38 and A67.

Q122. Is the State looking for the service provider to review ongoing invoices and costs on a monthly basis?

A122. Yes.

Q123. How is the State currently tracking and reporting on critical dates?

A123. See A43.

Q124. What Accounts Payable systems do you use; is it integrated with your lease administration system?

A124. [www.sfs.ny.gov](http://www.sfs.ny.gov); no

Q125. Is the State looking to have the system used to track lease data also feed that data to any other system(s)?

A125. Potentially. The State is looking for recommendations from proposers.

Q126. Please clarify the State's position on ownership of technology, specifically post-contract.

A126. See Section 5.2.3.1, last paragraph.

Q127. Sections 1.1 and 1.2, pages 5-6. With regard to implementation of UGL recommendations, will the selected offeror be permitted to review and identify additional alternatives for State consideration?

A127. Yes.

Q128. Section 1.2, page 6. Can the State please clarify what is meant by "Implementation of policies and procedures designed to streamline control, management and oversight of assets from an enterprise perspective"? (emphasis added) Specifically, is the State seeking policies and procedures for technology tools?

A128. 'Enterprise' is equated with comprehensive and/or statewide. No the State is not seeking policies and procedures for technology tools, but the State is seeking technology solutions as described in the RFP.

Q129 Section 1.2, page 7. Can the State please clarify what types of governance policies and procedures are required for the term of the contract?

A129. Proposers should use their best judgment of industry practices and the services they can provide in order to respond.

Q130. Section 2.2.4 (Cost Proposal), page 17. Can the State please clarify the intent of limiting commissions?

A130. Section 2.2.4 remains unchanged.

Q131. The current policy may incentivize recommendations counter to the State's best interest. To ensure that the Contractor is incentivized to recommend the most cost effective, lowest risk alternatives, will the State re-consider its policy regarding payment of commissions for

relocations, consolidations that result in disposal of excess space, and other related solutions that are currently not commissionable events? For example, would the State consider performance payments or other forms of non-commission payments that reward solutions that result in measurable savings to the State?

A131. The RFP remains unchanged.

Q132. Section 2.2.4 (Cost Proposal), page 17. Will the State provide the full leased and owned portfolio for review by bidders? If not, will the State provide a percentage of leases expiring and potential building sales by region?

A132. See A44.

Q133. Section 3.6 (Accounting for Fees), page 25. Can the State please clarify what is meant by this statement: "The percentage of the fee that is to be used on State projects must be accounted for separately? As the State requests the contractor to perform tasks which will utilize these fees, the contractor will account for the usage of these fees as if the hourly rates were being used."

A133. Section 3.6 is titled 'Accounting for Earned Credits' and remains unchanged.

Q134. Section 3.6 (Accounting for Fees), page 25. Will State funds available to pay for additional services prior to the Earned Credits account being funded or is the selected bidder expected to fund the account until commission-based revenue is recognized?

A134. Additional Services can be paid for directly or by use of earned credits.

Q135. Section 4 (Evaluation and Selection Process), Page 30. Please describe the formula for evaluation of each section (i.e., technical, cost and executive management review), how points will be assigned to bidders and how a proportionate share will be assigned to lower-rated bidders within each section.

A135. See Revision Above. The proportionate calculation only applies to cost See Section 4.3.2 above.

Q136. Section 4 (Evaluation and Selection Process, Cost Proposal Evaluation), Page 31. The cost proposal asks for blended rates by certain categories for numbers of hours specified by the State for each category but section 5.6 of the RFP requires the Contractor to justify prices broken down by title/rate and number of hours, and description of deliverables. Please clarify.

A136. Section 5.6 remains unchanged. Proposals submitted for additional services need to be justifiable regarding the proposed titles / rates / hours to affect the additional service.

Q137. Section 4 (Evaluation and Selection Process, Cost Proposal Evaluation), Page 31. Portions of the State's scope related to the Facility Management Processes (Sect 5.3, page 34) are not reflected in the cost proposal sheet. Are bidders expected to include pricing for all scope items or only those included on the cost proposal sheet?

A137. See Section 3.3.4 in the RFP and Section 4.2.1 above.

Q138. Section 5.2 (Leasing/Licensing Processes), Page 32. Please clarify whether this contract is for the Executive Agencies or if it is extended to Authorities and Universities.

A138. See A34.

Q139. Section 5.2 (Leasing/Licensing Processes), Page 32. Please clarify whether the State intends on self-performing any transactions during the term of this contract.

A139. The State always reserves the right to utilize the expertise of its in-house personnel.

Q140. Section 5.6 (Additional Services), page 36 and Sections 6.5 and 6.10. Can the State please clarify what is meant by this statement? "...in no case shall the amounts paid to all subcontractors (exclusive of any M/WBE subcontracted work as established in the approved utilization plan) during the Contract term exceed ten percent (10%) of the total contract amount."

A140. The RFP remains unchanged.

Q141. What subcontractor work would be included in an "approved utilization plan" that would not also be included under work provided for additional services and how will this information be tracked?

A141. The utilization plan only applies to MWBE firms being utilized as a subcontractor for all services including but not limited to those listed in the Additional Services Section of the RFP. It is tracked by our MWBE office through the submittal of the MWBE 102 form (Contractor's Monthly Payment Report).

Q142. Please confirm that the amount is calculated as a percent of total subcontract dollars versus a percent of total contract dollars, consistent with the requirement under Section 6.5 of the solicitation.

A142. The percentages contained in Section 6.5 apply to the total contract value.

Q143. Can the State please provide a copy of (or a URL link to) the controlling provision in 5 N&CRR 142.8, as we are unable to find a current version of that provision still in effect.

A143. [http://www.esd.ny.gov/MWBE/Data/122210\\_MWBE15-ARegs.pdf](http://www.esd.ny.gov/MWBE/Data/122210_MWBE15-ARegs.pdf)

Q144. Section 6.5 (M/WBE & EEO Requirements), pages 45-48. Can the State please confirm where bidders should include the Plan with the bid? Page 46 of the RFP refers to Form #MWBE 100 but this form is not included in the bid package.

A144. <http://www.ogs.ny.gov/MWBE/Forms.asp>

Q145. Attachment 1, Page 57. Does the Commission box on the Cost Proposal Sheet refer to the bidder's commission or the total deal commission?

A145. See Section 3.3.1 and Section 3.7.1.

Q146. Attachment 1, Page 57. Do the projected lease expenditures shown on the worksheets/bid form represent an estimate of lease expenditures over the term of the brokerage contract or over the term of the lease?

A146. The projections are for leases that will expire or renew during the term of a contract resulting for this solicitation. The terms of the lease are inconsequential.

Q147. Attachment 1, Page 57. Do the projected lease expenditure and projected renewal numbers represent five-year totals or an annual numbers?

A147. See A18.

Q148. Attachment 1, Page 57. Is the Lease Renewal projection number, \$54,715,650.38, part of the Projected Lease Expenditures or in addition to?

A148. The Lease Renewals are no longer included as a separate item in the Cost Proposal form.

Q149. Can NYS OGS please provide a list of all properties (owned and leased) included under this contract, with the following information: address, size (SF or other), type (office, industrial, special purpose, other), status (owned or leased), if leased, lease expiration date, NYS agency tenant. If you do not wish to provide the entire list, could you please provide the list of all properties whose leases expire within the next 3 to 5 years?

A149. No.

Q150. Is it the State's intent to hire one broker for the entire State?

A150. See Section 1.2

Q151. Will the resulting representation be exclusive?

A151. See Section 5.2.

Q152. Are there any properties where the State intends to "self-perform" any of the brokerage activities (lease, sale, renewal) or will the contractor perform all of the brokerage activities on behalf of the State?

A152. See A139.

Q153. Exclusive representation: are the State agencies required to use the services of the selected provider for all of their real estate requirements? If not, why not?

A153. See A139.

Q154. Does State have any tenants or subtenants? If so, can you provide a listing of each? If so, is it State's intent to have the service provider handle the actual billing and collection of rents for these?

A154. Yes. No. Yes.

Q155. Is it the State's intent to have the service provider process rent payments on their behalf for recurring and non-recurring rent charges invoiced by landlords?

A155. The State is looking for recommendations from proposers.

Q156. What is the intent for payment processing for other third party invoices such as utility invoices, real estate taxes, repair and maintenance billings, etc?

A156. The State is looking for recommendations from proposers.

Q157. Will service provider be granted access to historical payment information for auditing and validation purposes based on what you already have accumulated?

A157. Yes.

Q158. Are your lease documents currently imaged? If so, would provider be provided copies upon award of this assignment?

A158. No.

Q159. Are you looking for the service provider to review Estoppel and Subordination and Non Disturbance Agreements for final review/approval by your internal legal counsel?

A159. No.

Q160. What is the current process for reviewing rent, escalation, new estimates and reconciliation invoices? Are savings currently being tracked?

A160. See A99.

Q161. Does State have a preference to where the Lease Administration support team is located?

A161. See A111.

Q162. Can you please identify all the State's current real estate technology platforms? If more than one, are they integrated? Is the State pleased with their performance? Is the data accurate, complete and current in each system?

A162. See A43.

Q163. Is the current technology platform you use for lease management integrated with your accounting system(s)? If so, what accounting system(s)?

A163. No.

Q164. We understand that the State is using Sequentra as its main system for managing real estate information. Does the State prefer to continue using that system going forward, or would the State consider using other systems?

A164. See Section 5.2.3.1

Q165. Is NYS currently using a procurement platform? If so, what platform are you utilizing?

A165. No.

Q166. What financials system is NYS currently using?

A166. [www.sfs.ny.gov](http://www.sfs.ny.gov)

Q167. Is the Managepath system currently integrated for lease rent payments or other transactions?

A167. No.

Q168. Cost Proposal Forms, Commissions on Leases Statewide. Downstate market lease commissions are typically quoted on a sliding scale, rather than a flat percentage, as sought by OGS in this RFP. Would OGS consider permitting different leasing commission rates for upstate and downstate, which reflect standard market practices?

A168. No.

Q169. Similarly, in the commission credit sought by the State, it is a widely accepted practice to tranche payments based on transaction particulars (size, term, aggregate lease value). Again, we respectfully suggest that the State will benefit from a more accurate understanding of the exact amounts to be received by the State if we are allowed to tranche our offering. May we do so without being considered "non-responsive"?

A169. No.

Q170. Is it the intent of OGS that "all commissions will be limited to one full commission"...and that "in the event that the landlord also has a broker the commission would be split between the two representatives"? P 22 of RFP. In certain parts of NYS, the norm (including landlord-lender underwriting) is for a commission and a half to be paid if there is a cobroker, split 1.0 for tenant broker and 0.5 for listing agent. Therefore, OGS's identified language reduces the compensation that the OGS's broker would be paid as well as reduces OGS's earned credit pool, in certain geographies?

A170. The RFP remains unchanged.

Q171. P 51 indicates that "the total of all Subcontractor work during the term of the Contract, exclusive of M/WBE subcontracted work as established in the approved utilization plan, shall not exceed 10% of the total contract value." If the Prime Contractor partners with a brokerage firm(s) to better service more remote areas, would that firm(s) be defined as a subcontractor(s)?

A171. Yes.

Q172. Cost Proposal Forms, Additional Services Statewide. Hourly costs will vary by complexity and by required experience for the specific assignment/category sought by OGS. May we propose an average hourly rate between lowest and highest level employees, so that OGS can directly compare hourly rates between proposers?

A172. Sections 3.3.4; 3.7.3; 4.2.1 above and 5.6.

All other terms and conditions remain unchanged.

**If submitting a proposal, Addenda #3 for RFP # 1714 must contain an original signature, be dated, attached to, and made a part of your proposal.**

Company Name \_\_\_\_\_

Address (Include City, State, Zip) \_\_\_\_\_

Bidder's Name (please print) \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_



DIVISION OF FINANCIAL ADMINISTRATION

**Addenda No. 2**

**To**

**RFP No. 1714**

Date: August 1, 2012

Subject: Additional Designated Contacts

Title: New York State Office of General Services for Real Estate Services on Behalf of New York

Group: 71018-Class Code: 80

Proposal Due Date: See Key Event Dates

Address Bid Inquiries to the Designated Contact:

Warren Joscelyn- Purchasing Officer 1  
NYS Office of General Services  
Corning Tower, 40<sup>th</sup> Floor  
Empire State Plaza  
Albany, New York 12242  
Phone: 518-474-5981  
Fax: 518-473-2844  
Email: [warren.joscelyn@ogs.ny.gov](mailto:warren.joscelyn@ogs.ny.gov)

To Prospective Proposers:

The following individuals have been added as additional New York State Office of General Services designated contacts pursuant to the New York State Finance Law Section 139-j **ONLY** for the purposes of participating in the pre-bid meeting on August 14, 2012 at 10:00 am Eastern time and participating in oral interviews to be held the first week in October 2012 with bidders who submit accepted bids:

Joseph Rabito, Executive Deputy Commissioner

Franklin Hecht, Chief Financial Officer

Dan Brown, Special Assistant, Operations

Elizabeth Lee, Special Assistant, Real Estate

Eric McShane, Executive Director Real Property Management & Facilities

James Sproat, Executive Director – Real Estate Planning & Development

Robert Lazarou, Assistant Director – Real Estate Planning & Development

Bill Macey, Purchasing Team Leader – OGS Financial Administration

All other terms and conditions remain unchanged.

**If submitting a proposal, Addenda #2 for RFP # 1714 must contain an original signature, be dated, attached to, and made a part of your proposal.**

Company Name \_\_\_\_\_

Address (Include City, State, Zip) \_\_\_\_\_

Bidder's Name (please print) \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_



DIVISION OF FINANCIAL ADMINISTRATION

**Addendum No. 1**

**To**

**RFP No. 1714**

Date: June 26, 2012

Subject: Clarifications on Cover Page and Page 9 of RFP (highlighted)

Title: New York State Office of General Services for Real Estate Services on Behalf of New York

Group: 71018 - Class Code: 80

Proposal Due Date: See Key Event Dates

Address Bid Inquiries to the Designated Contact:

Warren Joscelyn – Purchasing Officer 1  
NYS Office of General Services  
Corning Tower, 40<sup>th</sup> Floor  
Empire State Plaza  
Albany, New York 12242  
Phone: 518-474-5981  
Fax: 518-473-2844  
Email: [warren.joscelyn@ogs.state.ny.us](mailto:warren.joscelyn@ogs.state.ny.us)

To Prospective Proposers:

REVISIONS – For consistency and accuracy the dates highlighted on the title page and page 9 have been changed.

All other terms and conditions remain unchanged.

**If submitting a proposal, this Addendum #1 for RFP #1714 must contain an original signature, be dated, attached to, and made a part of your proposal.**

Company Name \_\_\_\_\_

Address (include City, State, Zip) \_\_\_\_\_

Bidders Name (please print) \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_



**REVISED 6/26/12**

**REQUEST FOR PROPOSAL (RFP) 1714 SOLICITED BY THE  
NEW YORK STATE OFFICE OF GENERAL SERVICES**

**FOR**

**REAL ESTATE SERVICES**

**ON BEHALF OF**

**THE STATE OF NEW YORK**

**BID DUE DATE: SEPTEMBER 18, 2012 @ 2:00 P.M**

**ISSUE DATE: JUNE 22, 2012**

**Designated Contact:**

Warren Joscelyn

Voice: 518-474-5981

Fax: 518-473-2844

E-mail: [warren.joscelyn@ogs.ny.gov](mailto:warren.joscelyn@ogs.ny.gov)

**Alternate Contact:**

Michele Reale

Voice: 518-474-5607

Fax: 518-473-4973

E-mail: [michele.reale@ogs.ny.gov](mailto:michele.reale@ogs.ny.gov)

**Alternate Contact:**

Diane Robinson

Voice: 518-474-5981

Fax: 518-473-2844

E-mail: [diane.robinson@ogs.ny.gov](mailto:diane.robinson@ogs.ny.gov)

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# 1. Introduction

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## 1.1 Background

Pursuant to the New York State Public Buildings Law, the Office of General Services (OGS) is responsible for management of space owned and leased by the State, as well as for providing design and construction services for governmental entities. The OGS Real Estate Planning and Development (REPD) office provides a full range of core real estate services on behalf of other New York State agencies. These include identifying and providing public or private space for agency use, providing space planning and construction oversight, and managing the sale of state surplus lands and properties. REPD issues easements, grants, licenses and permits for the public or private use of uplands and lands under water. In accomplishing REPD's core responsibilities, OGS provides comprehensive real property services such as lease negotiations, space planning, appraisals, surveys, title research, and environmental assessments. The OGS Real Property Management (RPM) office is responsible for the administration and daily operations of all OGS-owned and managed state office buildings. The OGS Bureau of Design & Construction (D&C) provides a full range of high quality architectural, engineering and construction management services to state agencies.

New York State owns extensive real estate assets used for diverse purposes including, but not limited to, government office buildings; retail space; educational institutions; health care facilities; correctional facilities; parking facilities; conservation land; recreational parks; state right-of-ways; land abutting roads and highways and lands under water. Some of these properties are owned outright and others are bonded. In addition, the State also holds a sizeable portfolio of leases for additional office space, warehouses and storage facilities, parking facilities, airports and specialized spaces, including, but not limited to, laboratories and data centers.

These real estate assets support the services, activities and programs that New York State agencies provide. The investment in, management of and Sale of these assets is driven by programmatic needs and the need to maximize the State's investments in the most cost-effective way. Managing these assets means ensuring that they are properly utilized to their fullest potential, maintaining, preserving and protecting them and acquiring and selling of assets as needed in order to serve the State's mission.

Currently, real estate related tasks, procedures and the collection and use of information pertaining to the same are decentralized throughout numerous state agencies and there is no centralized approach to managing the State's real estate assets. Even within OGS the existence of a cohesive enterprise dedicated to real estate is missing. This decentralized approach leads to duplication of efforts and expenditures and prevents the State from implementing an overall strategy for its real estate portfolio management.

Over the past few years, the State has reviewed its real estate holdings and is currently undertaking a process of restacking and relocating State agencies to reduce vacancy rates. The goal of this initiative is to create efficiencies in state-owned buildings and existing leases, developing regional office centers and addressing agency needs for

modernization. In addition, a variety of State agencies own real estate that is no longer being utilized or is being underutilized. The State is currently engaged in the selling of or repurposing these real estate assets.

In March 2012, the New York State Division of the Budget entered into a contract with UGL Services Equis Operations Co. (UGL) to provide real estate management implementation services which will implement a governance structure and real estate process improvements to manage the State's real estate portfolio from an enterprise perspective in accordance with current industry best practices. This contract is in effect until September 22, 2013 and allows for an optional one-year extension.

## 1.2 Overview

OGS is issuing this Request for Proposals (RFP) in order to engage a contractor to enhance staff resources managing the State's real estate portfolio. The contractor will be required to implement industry best practices while complying with all applicable legal requirements. The contractor will partner with the State in lease negotiation and administration, portfolio and facility management, construction management, asset management, the Sale of surplus property and other additional services. The contractor will be asked to assist with the implementation of UGL recommendations and continue and build off of UGL's recommendations.

The contractor shall perform the following primary services as requested at the discretion of the State:

- Implementation of strategic real estate planning for leased, state-owned and surplus properties;
- Implementation of policies and procedures designed to streamline control, management and oversight of assets from an enterprise perspective;
- Implementation of policies and procedures designed to coordinate planning and decision making with state budget cycles;
- Implementation of space planning policies and strategies designed to optimize occupancy standards;
- Lease procurement, including market analyses, lease negotiations and the implementation of strategies designed to streamline the leasing process;
- Lease administration, including resolving issues of non-performance;
- Auditing of lease cost reimbursements and assistance with disputes;
- Marketing and Sale of surplus properties and the implementation of strategies designed to streamline the process;
- Facility assessments including, but not limited to, facility condition overviews and energy audits;
- Implementation of maintenance and operating costs reduction initiatives;
- Financial analysis and analysis of current facility maintenance practices;
- Implementation of plans for planning, budgeting and completion of capital projects and maintenance;
- Implementation of processes for managing government owned real property assets and maximizing revenue derived from these assets; and

- Use of applicable software systems.

In addition, the contractor may be asked to provide the following optional services as requested at the discretion of the State:

- Data collection and analysis and implementation of standardized data metrics;
- Relocation services, including, but not limited to, move coordination, furniture selection, acquisition and installation;
- Commercial and residential real estate appraisals;
- Title research and surveys;
- Environmental reviews;
- Architectural, engineering and construction project management services;
- Assistance with and continuation of transformation of technology platforms;
- Assistance with and continuation of capital planning;
- Assistance with and continuation of the creation of governance policies and procedures;
- Analysis of current parking management processes and development of recommendations designed to improve efficiencies and lower ongoing parking facility-related operating expenses;
- Assistance with and continuation of strategic planning; and
- Continuation of the development and implementation of best practices in the management and operation of the real estate assets.

The State anticipates awarding one contract. The contractor will be requested to provide services throughout the State. The strategic goals for this contract are:

1. Cost savings/avoidance;
2. Increased modernization and operational efficiencies;
3. Coordination of specific plans with overall priorities and initiatives;
4. Implementation of process improvement recommendations, including the implementation of industry best practices;
5. Recommendations for expediting and streamlining the Sale of surplus property; and
6. Implementation of UGL recommendations and establishment of a transition plan to continue and build off of UGL's efforts after the expiration of its contract.
7. Adherence to administration directives, executive orders and all applicable rules and laws.

In all matters concerning the awarded contract the Contractor's sole and absolute loyalty and fiduciary duty is to the State of New York.

### **1.3 Designated Contact**

In compliance with the New York State Procurement Lobbying Law, State Finance Law Section 139-j, Warren Joscelyn, Purchasing Officer, NYS Office of General Services, Division of Financial Administration has been designated as the PRIMARY designated

contact for this procurement solicitation and may be reached by e-mail, voice or fax for all inquiries regarding this solicitation.

Warren Joscelyn, Purchasing Officer  
NYS Office of General Services  
Financial Administration  
Corning Tower, 40<sup>th</sup> Floor, ESP  
Albany, New York 12242  
Voice: 518-474-5981  
Fax: 518-473-2844  
E-mail: [warren.joscelyn@ogs.ny.gov](mailto:warren.joscelyn@ogs.ny.gov)

In the event the PRIMARY designated contact is not available, the alternate designated contact is:

Diane Robinson, Purchasing Officer  
NYS Office of General Services  
Financial Administration  
Corning Tower, 40<sup>th</sup> Floor, ESP  
Albany, New York 12242  
Voice: 518-474-5981  
Fax: 518-473-2844  
E-mail: [diane.robinson@ogs.ny.gov](mailto:diane.robinson@ogs.ny.gov)

Michele Reale, Associate Attorney  
NYS Office of General Services  
Legal Services  
Corning Tower, 41<sup>st</sup> Floor, ESP  
Albany, New York 12242  
Voice: 518-474-5607  
Fax: 518-473-4973  
E-mail: [michele.reale@ogs.ny.gov](mailto:michele.reale@ogs.ny.gov)

For inquires related **specifically** to Minority Women-Owned Business Enterprises (MWBE) provisions of this procurement solicitation, the designated contact is:

Tryphina Ramsey, Compliance Specialist 2  
NYS Office of General Services  
Minority and Women-Owned Business Enterprises  
Corning Tower, 35<sup>th</sup> Floor, ESP  
Albany, NY 12242  
Voice: 518-473-7083  
Fax: 518-486-2679  
E-mail: [tryphina.ramsey@ogs.ny.gov](mailto:tryphina.ramsey@ogs.ny.gov)

## 1.4 Minimum Bidder Qualifications

1. To be a qualified bidder for this RFP, the proposing firm must have at least five (5) years of recent experience providing the services required in Section 1.2 to one or more clients with complex real estate portfolios consisting of owned and leased assets.
2. The bidder must be a duly licensed broker in the State of New York and able to perform all brokerage services.
3. Bidders must have a full service office in New York State. All records with respect to examinations described in this RFP must be available at such office.
4. Bidders must be able to service the entire state in a timely manner. Bidder must have regional offices and/or staff available to service all areas of the state.

## 1.5 Mandatory Pre-Bid Conference

Bidders intending to submit a bid will be required to attend a mandatory pre-bid conference to be held on:

**See Section 1.6 Key Event Dates**  
**Empire State Plaza, Meeting Room 5**  
**Albany, New York 12242**

Due to security restrictions, it is recommended that attendees arrive at the building at least thirty minutes prior to the scheduled start time with photo identification. **Prospective bidders arriving after the official start time of the pre-bid conference will be precluded from attending the pre-bid conference and therefore unable to submit a responsive bid.** This is the only date and time a pre-bid conference is scheduled. Alternate dates **will not** be available. Failure to attend the mandatory pre-bid conference will result in rejection of the bid. Please pre-register your attendance via email to Warren Joscelyn, Diane Robinson or Michele Reale on or before **August 13, 2012 at 2:00 p.m.** (see Section 1.3 for contact information). Attendees will be required to sign in and provide basic company and contact information. This information will be used to verify attendance and to communicate any changes to the solicitation (addenda). Therefore, it is imperative that the provided information be legible and accurate.

The purpose of the mandatory pre-bid conference is to discuss with prospective bidders the work to be performed and allow them to ask questions arising from their review of the RFP. If there are any questions bidders would like addressed at the pre-bid conference, bidders should submit them in writing as instructed in Section 2.1 – RFP Questions and Clarifications, to the designated contact(s) prior to the date of the conference. Questions during the pre-bid conference are encouraged, however it is suggested that the bidder note the question and ask it at the end of the conference. Verbal answers are not official answers. In order to be provided with an official answer, all questions must be submitted via e-mail to the designated contact(s) for this solicitation no later than the date and time indicated in Section 1.6 - Key Events. Official answers to all questions will be distributed in the form of an addendum via e-mail to all

attendees of the mandatory pre-bid conference. Only answers provided in writing by addendum are considered official.

In accordance with State Finance Law §139-j (3) (a) (3), this mandatory pre-bid conference is a permissible subject matter exception. Accordingly, a bidder is authorized to speak with State representatives other than Designated Contact(s) during the pre-bid conference.

## 1.6 Key Events

The Table below outlines the tentative schedule for important action dates. This schedule represents OGS' best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:00 p.m. Eastern Time.

OGS reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. OGS will communicate any adjustment to this schedule of events via e-mail to all potential bidders who have attended the mandatory pre-bid conference and register their contact information.

Action	Date
OGS Issues Request for Proposal (RFP) #1714	June 22, 2012
Mandatory Pre-Bid Conference – Date, Time, Location	August 14, 2012 @ 10:00 AM Eastern, Empire State Plaza, Meeting Room 5, Albany NY
Bidder's Questions Deadline	August 21, 2012, 4:00 PM Eastern
OGS Issues Responses to Questions	September 4, 2012
<b>Bids Due to OGS</b>	<b>September 18, 2012, 2:00 PM Eastern</b>
Oral Presentations	Week of October 1, 2012
Contract Start Date	Upon Approval of the Office of the State Comptroller

## 2. Bidding Information

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### 2.1 RFP Questions and Clarifications

OGS will not respond to questions and requests for clarification regarding this RFP received by telephone or visitation by bidders or their representatives. All questions and requests for clarification regarding this RFP are to be put in writing and submitted via e-mail to [warren.joscelyn@ogs.ny.gov](mailto:warren.joscelyn@ogs.ny.gov), no later than 4:00 p.m. Eastern time on Tuesday, August 21, 2012. Official answers to questions will only be provided via e-mail to all bidders who attend the mandatory Pre-Bid Conference and register their contact information. Verbal answers are not official answers.

### 2.2 Bid Format, and Content

In order for OGS to evaluate bids fairly and completely, bidders must follow the format set forth herein and must provide all of the information requested. The bidder should submit a clear and concise proposal. The bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the scoring process or may be deemed to be non-responsive which may necessitate rejection of the bid.

Proposals should consist of the following:

#### 2.2.1 Cover Letter

Bidders must submit a cover letter which includes the following:

- Confirmation that should the contract be awarded to your company, you would be prepared to begin services once the contract is approved by the Office of the State Comptroller;
- The full contact information of the person(s) OGS should contact regarding the bid (including name, title, telephone and facsimile number and e-mail address); and
- The signature of an officer, authorized to bind the company.

#### 2.2.2 Minimum Qualifications Submission

Bidders must submit proof that they meet the minimum qualifications set forth in Section 1.4. Proof shall include submission of applicable licenses, office locations and a description of experience which complies with Section 1.4(1).

### **2.2.3 Technical Proposal**

The purpose of the technical proposal is to provide bidders with an opportunity to demonstrate their qualifications, competence and capacity to undertake the services described herein, in a manner which complies with the requirements of this RFP. The technical proposal shall specifically detail the bidder's qualifications and experience in providing the services described herein.

The technical proposal shall include:

- **Statement of Business Organization:** The bidder shall provide the following:
  1. The full name and address of your organization and its branch office(s) and, if applicable, other subordinate(s) that will perform, or assist in performing, the work described herein;
  2. An organization chart for the organization;
  3. Any primary and secondary businesses performed by the bidder;
  4. The bidder's code of conduct and/or ethics protocols/program; and
  5. Information regarding whether or not subcontractors will be used. If subcontractors will be used, list all subcontractors including firm name and address, contact person, complete description of work to be subcontracted. Include descriptive information regarding the subcontractor's organization and abilities and a statement from the subcontractors that they are capable and willing to carry out the work.
- **Management Plan:** The bidder shall demonstrate adequate professional staff and experience to perform this contract by providing the following:
  1. A summary of the services that will be delivered. Include any recommended additional strategies that could result in significant increases in cost savings;
  2. A plan for accomplishing the services that will be delivered. The plan shall include a detailed narrative description of how the bidder will accomplish the objectives and tasks set forth herein;
  3. The number of executive and professional personnel by position, skill and qualification that will be employed on this contract. Indicate where these individuals will be physically located during the term of the contract and the percentage of each person's time that will be dedicated to this contract. Identify which individuals are key personnel on the contract by name and title. Specify the amount of dedicated management time that will be devoted to this contract and identify the project manager by name and title. Staffing levels must be sufficient to provide full service within required time frames, even in the event of illness or other causes preventing completion by initially assigned staff;

4. Resumes for each of the staff members that will be assigned to this contract. Resumes should include a detailed description of all applicable qualifications and relevant work experience; and
  5. Information regarding the project manager, including:
    - Length of career in providing real estate services;
    - Professional designations;
    - Discussion of successful completion of similar projects; and
    - Experience with the real estate portfolios of government entities.
- Bidder Experience: The bidder shall provide the following information:
    1. The number of years that the bidder has been in business;
    2. A summary of the bidder's expertise that describes the capabilities of the bidder and the individuals that will be assigned to the contract in providing the services requested herein;
    3. A description of all prior relevant experience during the last five (5) years. Descriptions shall include project descriptions that have similar scope and complexity, examples of work done for those clients and the results achieved by the client, and starting and completion dates. The descriptions should demonstrate the bidder's specific qualifications and experience providing the services set forth in Sections 1.2 and 5. Where applicable, the descriptions shall include specific facility data such as services provided and information on the location, type, size, age and ownership of the facility involved. If possible, the description should include work done for other entities comparable to New York State. Experience with a large government entity such as a medium to large state or a major metropolitan city is preferred. If possible, the description should discuss projects that the bidder has worked on in which they have worked with another consultant or implemented the recommendations of another consultant in a manner similar to the situation that will exist between the eventual contractor and UGL; and
    4. In addition, if possible, the bidder should include a description of exceptional examples of value-added services the bidder can provide if awarded the contract.
  - References: The bidder shall provide a minimum of three (3) references of similar scope which best represents their abilities to satisfy the requirements of this RFP. References from current clients (those with which the bidder has an existing contractual relationship) are preferred. References should include a brief narrative description of the project (discuss the scope of the services provided to the client). A minimum of three (3) references shall also be provided for any subcontractors listed as part of the bidder's proposal. References shall be able to document:
    1. The bidder's ability to manage large scale projects;
    2. The quality and scope of services provided by the bidder;

3. The following information:

- Name of the client;
- Name, title and telephone number for the contact at the client;
- Value, type and duration of contract with the client;
- Services provided, including geographic area involved; a description of how the bidder satisfied the client's requirements and improvements made to the client's systems as a result of the bidder's efforts; and
- If applicable, an explanation of why the bidder is no longer providing services to the client.

The inability to contact a reference provided by the bidder will be considered as part of the evaluation process and bidders may be asked for additional references. Individuals identified as references will be assured of anonymity to the fullest degree possible under the New York State Freedom of Information Law.

- Conflict of Interest: Any bidder offering to provide services pursuant to this RFP, as a contractor or subcontractor, shall attest that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor cause the bidder to breach any other contract currently in force with the State of New York.

Furthermore, bidders shall attest that they will not act in any manner that is detrimental to any State project on which the bidder is rendering services. Specifically, bidders shall submit with their proposal a letter, signed by an officer authorized to bind the company, attesting that:

- The fulfillment of obligations by the bidder, as proposed in the response, does not violate any existing contracts or agreements between the bidder and the State;
- The fulfillment of obligations by the bidder, as proposed in the response, does not or will not create any conflict of interest, or perception thereof, with any current role or responsibility the bidder has with regard to any existing contracts or agreements between the bidder and the State;
- The fulfillment of obligations by the bidder, as proposed in the response, does not and will not compromise the bidder's ability to carry out its obligations under any existing contracts between the bidder and the State;
- The fulfillment of any other contractual obligations that the bidder has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
- During the negotiation and execution of any contract resulting from this RFP, the bidder will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole, including but not limited to, any

action or decision to divert resources from one State project to another;  
and,

- In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the bidder will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as whole including, but not limited to, any action or decision to divert resources from one State project to another.

The State recognizes that conflicts may occur in the future because the contractor may have existing or newly established relationships. OGS will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its sole judgment, a real or potential conflict of interest cannot be cured.

For purposes of this RFP, a conflict of interest may include, among other things, being a landlord of the State or having an affiliation or a professional relationship with any entity that is a landlord of the State. The determination as to whether any situation, event, or relationship may constitute a conflict of interest shall be at the sole discretion of the State.

The State understands that bidders will have involvement with properties and business relationships outside of its possible contracts with the State. However, the State is very concerned that any such interests do not conflict, either in fact or even by appearance, with the duties and responsibilities undertaken on behalf of the State. The State is also concerned that neither ownership interest in a property by principals or employees of the bidder, nor that any current nor future agency agreement entered into by the bidder, shall influence, or appear to influence, the bidder's recommendations or negotiations. The bid submission shall identify areas of actual or potential conflict of interest and fully detail the program the bidder proposes to avoid any conflict of interest, or the appearance of any conflicts of interest. The bid submission should identify a salaried individual who is independent from all brokerage activities and who will be the bidder's Conflicts of Interest Officer. This person's job should be dedicated to preventing conflicts of interest, and the bid submission should describe in detail how she/he will monitor and safeguard against them.

- Discussion Topics: Bidders shall include written responses to the following as part of their proposal. In responding, bidders shall demonstrate an understanding of the complexity of need for the services described in Section 1.2, and an understanding of the requirements of this RFP. These topics and the responses provided will be addressed further during the oral interview process.

#### Primary Services:

- Describe how the bidder would assist the State and UGL in implementing a strategic real estate plan for leased, state-owned and surplus properties;
- Describe how the bidder would implement policies and procedures designed to streamline control, management and oversight of assets from an enterprise perspective;

- Describe how the bidder would implement policies and procedures designed to coordinate planning and decision making with state budget cycles;
- Describe how the bidder would implement space planning policies and strategies designed to optimize occupancy standards;
- Describe how the bidder would carry out lease procurement, including market analyses, lease negotiations and the implementation of strategies designed to streamline the leasing process;
- Describe how the bidder would carry out lease administration, including resolving issues of non-performance;
- Describe how the bidder would carry out auditing of lease cost reimbursements and assistance with disputes;
- Describe how the bidder would carry out the marketing and sale of surplus properties and the implementation of strategies designed to streamline the process;
- Describe how the bidder would carry out facility assessments including, but not limited to, facility condition overviews and energy audits;
- Describe how the bidder would implement maintenance and operating cost reduction initiatives;
- Describe how the bidder would assist with financial analysis and analysis of current facility maintenance practices;
- Describe how the bidder would assist the State in implementing plans for planning, budgeting and completion of capital and maintenance plans for existing assets;
- Describe how the bidder would assist the State in implementing processes for managing government assets and maximizing revenue derived from these assets; and
- Describe how proposed software systems meet the requirements of this RFP and be prepared to demonstrate its functionality as part of the interview process. Bidders must describe the ownership structure of the proposed system and identify specifically how the State will be able to continue use of the system if the contract is terminated or after contract expiration.

#### Optional Services:

- Describe how the bidder will assist with data collection and analysis and implementation of standardized data metrics;
- Describe how the bidder will assist with relocation services, including, but not limited to, move coordination, furniture selection, acquisition and installation;
- Describe how the bidder will assist with commercial and residential real estate appraisals;
- Describe how the bidder will assist with title research and surveys;

- Describe how the bidder will assist with environmental reviews;
- Describe how the bidder will assist with architectural, engineering and construction project management services;
- Describe how the bidder would assist the State with and continue the transformation of technology platforms;
- Describe how the bidder would assist the State with capital planning;
- Describe how the bidder would assist the State with the creation of governance policies and procedures;
- Describe how the bidder would assist with the analysis of current parking management processes and the development of recommendations designed to improve efficiencies and lower ongoing parking facility-related operating expenses;
- Describe how the bidder would assist with and continue strategic planning; and
- Describe how the bidder would continue the development and implementation of best practices in the management and operation of the State's real estate assets.

#### **2.2.4 Cost Proposal**

The bidder shall provide its commission rates for leases/licenses and sales of properties. Commission percentages bid shall be inclusive of all costs, including licenses, insurance, travel, administrative costs, overhead and profit. All commission rates quoted in the bidder's response to this RFP will be firm for the duration of the contract. No increase in commissions will be permitted.

If the contractor recommends a relocation of a state agency to state owned space from leased space no commission will be paid to the contractor.

If the contractor recommends a relocation of a state agency to contractor owned or operated space no commission will be paid to the contractor and the conflict of interest processes discussed in Section 2.2.3 must be complied with.

If the contractor recommends a sale of surplus property to another governmental entity, whether federal, state or local no commission will be paid to the contractor.

Bidders shall bid a percentage fee of savings realized through the performance of lease audit services as provided for in Section 3.3.3. Percentages quoted must be inclusive of all costs including travel, licenses, insurance, administrative, profit and other ancillary costs and be fixed for the five (5) year term. Note that bidders must bid a single fixed percentage. Sliding scales or ranges are not acceptable and will result in rejection of proposal. Contractors will be paid a percentage of the total savings realized and/or reimbursed to the state agency based upon the contractor's audit of the lease.

Contractors will not be paid for projected savings for future lease costs that will be billed for the remainder of the lease term.

The bidder shall provide hourly rates for the services set forth in Sections 5.3, 5.5 and 5.6. This hourly rate shall be inclusive of all costs including travel, licenses, insurance, administrative, profit and other ancillary costs. If the bidder chooses to provide these additional services at no charge, bidders shall place a \$0 in Attachment 1-Cost Proposal form. Blanks on the Cost Proposal form will be evaluated as no cost.

In all matters relating to this contract, the contractor's sole and absolute loyalty and fiduciary duty is to the State of New York. All recommendations and actions should be based upon that duty and without regard to whether the contractor is paid or not. (See Section 4.1.4)

### **2.3 Bid Preparation**

All bids must be completed in ink or machine produced. Handwritten bids will be disqualified.

### **2.4 Packaging of RFP Response**

Technical Proposals, Cost Proposals and other documents must be submitted in separately sealed packages, as follows:

Bidders shall submit four (4) originals of Attachment 1 - Cost Proposal Form clearly marked **"Cost Proposal" in a separate, sealed envelope** from the Technical Proposal. No overt statements about costs shall be included in the technical proposal.

Bidders shall also submit a total of eight (8) copies of the Technical Proposal.

Bidders shall also submit (4) originals of all other documents found in Appendix B – Required Forms, as well as any signed bid addenda.

Note: The sealed, separate proposal packages may be submitted within one complete package for mailing.

The bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- Bidder's complete name and address
- Solicitation Number – 1714
- Bid Due Date and Time: **See Key Event Dates Section 1.6**
- Bid for Real Estate Services

**Failure to complete all information on the bid envelope and / or packages may necessitate the premature opening of the bid and may compromise the submission of the bid.**

## 2.5 Instructions for Bid Submission

Note that these instructions supersede the generic instructions posted on the OGS website bid calendar.

Only those bidders who furnish all required information and meet the mandatory requirements will be considered. A complete package (Technical Proposal, Cost Proposal and all Other Documents) must be received before **see Key Event Dates Section 1.6** Proposals are to be sent to the following address:

OGS Financial Administration, Contract Unit  
Empire State Plaza, Corning Tower, 40th Floor  
Albany, NY 12242  
Attn: Warren Joscelyn

**E-MAIL OR FAX BID SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.**

Bidders assume all risks for timely, properly submitted deliveries.

The received time of bids will be determined by the clock at the above noted location.

**NO CONSIDERATION WILL BE GIVEN TO BIDS RECEIVED AFTER THE STATED DATE AND TIME.**

Bidders mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the bidder shall not excuse late bid submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late bid submissions. Bidders are cautioned that receipt of bids in the OGS Mailroom is NOT sufficient, and that at least historically, one overnight carrier has been known to deliver its packages to the OGS Mailroom. OGS cannot be responsible for the actions of your chosen carrier.

### Important Building Access Procedures for Delivered Bids:

Building access procedures are in effect at the Corning Tower. Photo identification is required. All visitors must register for building access in order to deliver bids. Vendors are encouraged to pre-register for admittance by contacting Warren Joscelyn or Diane Robinson, OGS Finance Office, at 518-474-5981 or Michele Reale, OGS Legal Services, 518-474-5607 at least 24 hours prior to the bid opening. Pre-registered visitors are to report to the visitor desk located at the concourse level of the Corning Tower. Upon presentation of appropriate photo identification, the visitor will be allowed access to the building.

Upon arrival at the visitor desk, visitors that have not pre-registered will be directed to a designated phone to call Warren Joscelyn or Diane Robinson, OGS Finance Office, at 518-474-5981 or Michele Reale, OGS Legal Services, 518-474-5607. The visitor's information will then be entered into the building access system. Access will not be allowed until the system has been updated which takes some time. Visitors are encouraged to pre-register to ensure timely access to the building. Vendors who intend

to deliver bids or conduct business with OGS should allow extra time to comply with these procedures. These procedures may change or be modified at any time.

Visitor parking information can be viewed at the following OGS web site:

<http://www.ogs.ny.gov/BU/BA/Parking/Visitor>

Bids must remain open and valid for 120 days from the due date, unless the time for awarding the contract is extended by mutual consent of OGS and the bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 day period until either tentative award of the contract(s) by OGS is made or withdrawal of the bid in writing by bidder. Tentative award of the contract(s) shall consist of written notice to that effect by OGS to the successful bidder. This RFP remains the property of the State at all times, and all responses to this RFP, once delivered, become the property of the State.

### **3. Administrative Information**

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#### **3.1 Issuing Office**

This RFP is being released by the New York State Office of General Services Division of Financial Administration on behalf of the New York State Office of General Services Bureau of Real Estate Planning and Development, hereinafter (REPD).

#### **3.2 Method of Award**

Award shall be made to the responsive and responsible vendor who offers the best value to the State. Best value means optimizing quality, cost and efficiency.

Upon determination of the best value bid, a contract will be delivered to the successful bidder for signature and shall be returned to the OGS Division of Financial Administration for all necessary State approvals. Upon final approval, a completely executed contract will be delivered to the contractor. A contract defining all deliverables, costs, and the responsibilities of the selected contractor will be developed by OGS based on this solicitation and the bidder's bid.

OGS reserves the right to award part, all or none of this RFP in its sole discretion.

#### **3.3 Price**

##### **3.3.1 Commissions on Leases/Licenses**

The contractor will look solely to the landlord for the payment of its commission on brokered leases/licenses. Said proposed commission rates (percentages) shall be as set forth in the bidder's proposal. Commission percentages shall be inclusive of all costs, including licenses, insurance, travel, administrative, overhead and profit. All commission rates will be firm for the duration of the contract. No increase in commissions will be permitted.

If the contractor recommends a relocation of a state agency to state owned space from leased space, the State will pay no commission to the contractor.

If the contractor recommends a relocation of a governmental entity to contractor owned or operated space no commission will be paid to the contractor and the conflict of interest processes discussed in Section 2.2.3 must be complied with.

In all matters relating to this contract, the contractor's sole and absolute loyalty and fiduciary duty is to the State of New York. All recommendations and actions should be based upon that duty and without regard to whether the contractor is paid or not.

The commission rates shall be calculated on Base Rent only as set forth in the lease/license executed by the State. Excluded from base rent are any additional rent, operating expenses paid directly by the State, operating expense escalations, real estate taxes paid directly by the State, real estate tax escalations, electricity costs, tenant alteration costs reimbursed by the State directly to the landlord, and the like.

Rental adjustments negotiated as an incentive to the State will be averaged over the term of the lease for the purpose of calculating the commission.

Prior to commencing any negotiations with any prospective landlord, the contractor will be required to inform the landlord in writing that should the State enter into a lease or license, the landlord will be required to pay a commission in the aggregate equal to the Contractor's proposed commission rate as provided in (Attachment 1 Cost Proposal). Unless otherwise agreed to in writing by OGS, all commissions will be limited to one full commission. In the event that the landlord also has a broker the commission would be split between the two representatives. It is understood that the only remuneration for the successful contractor for the services performed in accordance with the contract shall be commission rate which has been negotiated with landlords, property owners, or owner's representatives. The potential commissions resulting from a commission split with the landlord's representatives can vary from substantial to minimal. Each bidder that may be considering a response to this RFP should carefully evaluate these factors.

In the event that a prospective landlord offers a commission to the contractor greater than the agreed upon rates, the contractor will immediately give OGS notice of the higher proposed commission, and will negotiate, in conjunction with OGS, to have the excess amount credited to the particular lease/license for the benefit of the OGS as, for example, an increased work letter allowance or reduced rent.

Note: If OGS requests the contractor to market and sub-lease existing leased space, the total commission charged to and payable by OGS shall not exceed 1.5 times the commission contained in the Cost Proposal for new leases/licenses of which the contractor will receive no more than .50 (one-half) of such commission.

### **3.3.2 Sales**

The contractor's sole compensation for services rendered in connection with the sale of surplus properties will be payment of the commission rates (percentages) as set forth in the bidder's proposal. Commission percentages shall be inclusive of all costs, including licenses, insurance, travel, administrative, overhead and profit. All commission rates will be firm for the duration of the contract. No increase in commissions will be permitted.

If the contractor recommends a sale of surplus property to another governmental entity, whether federal, state or local the State will pay no commission to the contractor.

In all matters relating to this contract, the contractor's sole and absolute loyalty and fiduciary duty is to the State of New York. All recommendations and actions should be based upon that duty and without regard to whether the contractor is paid or not.

Property sale services for State agencies will be governed by § 33(1) of the New York State Public Lands Law which provides as follows:

Upon such sales of unappropriated state land to a purchaser procured by any licensed real estate broker and the payment of the purchase price in the amount offered by such broker on behalf of the purchaser, the Commissioner of General Services is authorized to pay, subject to such

terms and conditions as the Commissioner may prescribe, a commission to such broker out of monies available therefor. Uniform rates of commission shall, from time to time, be fixed by the Commissioner but shall not exceed six percentum of the purchase price. No commission shall be paid for the procuring of any sale unless (1) written authority of the broker to make such offer on a form acceptable to the Commissioner, signed by the person for whom he is acting, shall be filed with the Commissioner before the day of the sale and unless (2) the broker shall furnish to the Commissioner evidence in such form and extent as she may require establishing that the purchaser was procured as the result of the broker's services. In no event shall a broker who is paid a commission by the Commissioner as herein provided accept any other commission or fee from any person or source for brokerage services relating to the sale of such unappropriated state land.

Notwithstanding the foregoing, commission rates shall not exceed the actual payment percentage listed on Attachment 1 Cost Proposal.

### **3.3.3 Lease Audit Services**

In connection with lease audit services, the contractor will be paid a percentage of the total savings realized and/or reimbursed to the state agency based upon the contractor's audit of the lease. Contractors will not be paid for projected savings for future lease costs that will be billed for the remainder of the lease term. Percentages quoted must be inclusive of all costs including travel, licenses, insurance, administrative, profit and other ancillary costs and be fixed for the five (5) year term. Contractors will be paid a single fixed percentage for each audit type –sliding scales or ranges are not acceptable.

### **3.3.4 Hourly Rates**

If the contractor provides the services set forth in Sections 5.3, 5.5 and 5.6, it will be paid on an hourly basis in accordance with the rates provided in its bid. These rates shall be inclusive of all costs including travel, licenses, insurance, administrative, profit and other ancillary costs.

## **3.4 Price Adjustment (Escalation / De-escalation)**

### **This clause shall apply to the hourly labor rate bid for additional services.**

The contractor is to submit a bid that will be fixed for one (1) year only. On each anniversary date of the contract, the Contractor will be granted an increase or decrease in their bid, dependent upon fluctuations in the Consumer Price Index for All Urban Consumers (CPI-U), Northeast Region, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Visit their website at [www.bls.gov/ro2/home.htm](http://www.bls.gov/ro2/home.htm).

The 'base' month for determining adjustments will be the third month prior to the start date of the contract. The base month is fixed and will not be adjusted year to year. The adjustments will be based on the difference in the base month CPI for each applicable year and will become effective in the anniversary month. For example, if the contract is

awarded in September 2006, the 'base' month will be June. If the contract allows for an adjustment after the first year, it would be based on the difference between the June 2006 CPI and the June 2007 CPI and become effective in September 2007. If the contract price is fixed for three years and allows an escalation thereafter, it would be based on the difference between the June 2008 CPI and the June 2009 CPI and become effective September 2009.

The consumer price index is published around the middle of each month for the prior month (i.e. the January figure is not published until mid February). The Contractor has the sole responsibility to request, in letter form, an adjusted rate and shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease with the request. This request and documentation must be received at the below address within three months of the base month. To ensure timely delivery, certified mail is recommended. As long as the request is submitted and received within the required time frame, the adjustment will be processed using the base month Consumer Price Index. Once approved, the contractor will be notified in writing. **Request and documentation must be sent to the OGS Purchasing Unit, Corning Tower, 40<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12242.**

Should a contractor fail to submit the request and supporting documentation to the proper location within three months of the applicable base month date, contractor shall be deemed to have waived its right to any increase in price, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

### **3.5 Term of Contract**

The State of New York will not be held liable for any cost incurred by bidders for work performed in the preparation and production of a bid or for any work performed prior to the formal execution and approval of a contract.

The contract resulting from this RFP will become effective on the date on which final approval of the contract is given by the Office of the State Comptroller, and will continue for a term of five (5) years with an optional five (5) year renewal if mutually agreed upon. The contractor is responsible for completing all work assigned prior to the termination of the contract, even if that requires the contractor to continue work after the termination of the contract.

No later than thirty (30) days prior to the expiration of the contract, OGS and the contractor will develop a list of pending assignments on which the contractor will continue its efforts. The final determination of those assignments will be in the sole discretion of OGS.

### **3.6 Accounting for Earned Credits**

With each deal brokered, the contractor must attest to the percentage and amount of commission that the contractor received. The percentage of the fee that is to be used on state projects must be accounted for separately. As the state requests the contractor to perform tasks which will utilize these fees, the contractor will account for the usage of

these fees as if the hourly rates were being used. If these fees are to be used for purchases, all items must be accounted for to the state. For the purposes of this contract, the contractor shall provide accounting for all the goods or services as a single performance obligation.

Any credit balance in favor of OGS at the time of expiration or termination of this contract shall at the direction of OGS be applied to commissions earned on account of any transactions then in progress or other additional services rendered by the contractor for which compensation may be or become due.

### **3.7 Method of Payment**

#### **3.7.1 Commission Payments on Leases/Licenses**

The Contractor will look solely to the landlord for the payment of its commission for all leasing/licensing projects. Payments will be based on a commission rate as bid in the Cost Proposal Attachment (1). Payment for each lease/license will be calculated based upon the lease term and using factors described in Section 3.3.1.

#### **3.7.2 Sale Payments**

Payments for brokering and marketing the Sale of surplus properties will be based on a commission rate as bid in the Cost Proposal Attachment (1). This payment will be billable upon receipt of a proper invoice and final disposition of sale and receipt of monies.

Invoices will be processed in accordance with established procedures of OGS and the Office of the State Comptroller, as applicable. Payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

Each invoice must be itemized and include the following information: Contract ID number (i.e.: C00XXXX); NYS Vendor ID, contractor FEIN; date; time and location; actual number of hours worked; a detailed description of services performed; and itemized costs for services provided.

Invoices without the above stated information will be returned to contractor to be completed as required in the paragraph above. Payment will not be issued and will not be due and owing until a corrected invoice is received and approved.

#### **3.7.3 Other Payments**

Additional services must be preapproved in writing by OGS and will be compensated at the hourly rates bid. Such approval must accompany invoices for payment. Invoices will be processed in accordance with established procedures, as applicable. Payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

Each invoice must be itemized and include the following information: Contract ID number (i.e.: C00XXXX); NYS Vendor ID, contractor FEIN; date; time and location; actual number of hours worked a detailed description of services performed; and itemized costs for services provided.

Invoices without the above stated information will be returned to contractor to be completed as required in the paragraph above. Payment will not be issued and will not be due and owing until a corrected invoice is received and approved.

### **3.7.4 Lease Audit Savings Payments**

Percentage bid by bidder will be paid based on actual savings realized and/or reimbursed to the state agency based upon the contractor's audit of the lease, not on cost avoidance by occupying tenant. Contractors will not be paid for projected savings for future lease costs that will be billed for the remainder of the term. Percentages quoted must be inclusive of all costs including travel, licenses, insurance, administrative, profit and other ancillary costs. Contractors will be paid a single percentage for each audit type-sliding scales or ranges are not acceptable.

Invoices will be processed in accordance with established procedures, as applicable. Payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

Each invoice must be itemized and include the following information: Contract ID number (i.e.: C00XXXX); NYS Vendor ID, contractor FEIN; date; time and location; actual number of hours worked and cost of materials (if work was pre-approved on a time and materials basis); a detailed description of services performed; and itemized costs for services provided.

Invoices without the above stated information will be returned to contractor to be completed as required in the paragraph above. Payment will not be issued and will not be due and owing until a corrected invoice is received and approved.

## **3.8 Electronic Payments**

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the Office of the State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the agency, in the agency's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by phone at 518-474-4032.

The contractor acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new Statewide Financial System, the Office of the State Comptroller requires all vendors

doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go to [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm) and complete the Substitute W-9 form and submit following the instructions provided.

### **3.9 Past Practice**

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of the contract shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived. No waiver of any breach of the contract at any time in the past shall constitute a waiver of subsequent breach.

### **3.10 Bid Exceptions**

OGS will consider all requests to waive any bid requirement. However, Bidders should be aware that failure to obtain a waiver of any bid requirement in advance of bid submission could result in rejection of the bid and disqualification from the bidding process. Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the "Questions Due Date" indicated in Section 1.6. The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, via e-mail, either through an addendum if the response results in a change to the RFP, or directly to the requesting vendor.

### **3.11 Dispute Resolution**

It is the policy of the Office of General Services' Division of Financial Administration to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations or contract awards. OGS Financial Administration encourages vendors to seek resolution of disputes through consultation with OGS Financial Administration staff designated as the designated contact person for this procurement. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the designated contact person identified on the front of the bid document.

In the event OGS is dissatisfied with the contractor's performance of the contract, including but not limited to a breach of the contract on the part of the contractor, OGS shall notify the contractor of the dispute in writing. In the event the contractor has any disputes with OGS, the contractor shall notify OGS in writing. Such notification in both cases shall hereinafter be referred to as "Notice of Conflict," or in the case of contract breach, "Notice of Default."

If either OGS or the contractor notifies the other of such dispute or dissatisfaction, the party receiving the notification shall then make good faith efforts to amicably resolve the problem or settle the dispute, including meeting with the notifying party's representatives to diligently attempt to reach a mutually satisfactory result.

In the event of a dispute, both parties will continue to fulfill their performance obligations under the contract.

Nothing shall limit either party's ability to pursue all legal remedies. If the parties are unable to amicably resolve the dispute after the steps described above, then either party may seek legal or equitable relief in a court of competent jurisdiction.

### **3.12 Examination of Contract Documents**

- Each bidder is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may select, of the character, quality and extent of the work to be performed and the conditions under which the contract is to be executed.
- Each bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the state as an excuse for any failure or omission on the part of the bidder to fulfill every detail of all the requirements of the documents governing the work. The bidder, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such bidder might have fully informed itself prior to bidding.
- Any addendum issued prior to the bid due date must be acknowledged by signature, dated and be submitted on or before the bid due date. In awarding a contract any written addenda will become a part thereof.
- Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, shall become a part of the contract.

### **3.13 Prime Contractor Responsibilities**

OGS will contract only with the successful bidder who is the prime contractor. OGS considers the prime contractor, the sole contractor with regard to all provisions of the RFP, and the contract resulting from the RFP.

No subcontract entered into by the contractor shall relieve the contractor of any liabilities or obligations in this RFP or the resultant contract. The contractor accepts full responsibility for the actions of any employee or subcontractor who carry out any of the provisions of any contract resulting from this RFP.

### **3.14 Inspection of Books**

It is expressly understood and agreed that OGS and the New York State Comptroller shall have the right to inspect and audit the contractor's records covered under this contract, in accordance with all applicable statutory responsibilities to examine the books and accounts of every agency. The New York State Comptroller requires, and the contractor agrees to, the retention of all material that is pertinent to an audit of the operations under any contract resulting from this RFP for a full six-year period.

### **3.15 Glossary of Terms**

“Contractor” shall mean a successful company awarded a contract pursuant to this RFP.

“Request for Proposal” or “RFP” shall mean this document.

The “State” shall mean The People of the State of New York, which shall also mean the New York State Office of General Services.

“Commissioner” shall mean the Commissioner of General Services or duly authorized representative.

“Bidder” shall mean any person, partnership, firm, corporation or other authorized entity submitting a bid to the State pursuant to this RFP.

### **3.16 Rules of Construction**

Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this RFP, refer to this RFP.

## 4. Evaluation and Selection Process

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### 4.1 Proposal Evaluation

Bids will be evaluated for best value as described in Section 3.2 and scored based upon the criteria set forth in this section.

#### 4.1.1 Submission Review

A committee of OGS employees will evaluate each bid for responsiveness to the requirements of this RFP. Bids that are nonresponsive, in the sole opinion of OGS, may be rejected. All bids passing the submission review requirements for responsiveness will be evaluated.

Bidders are encouraged to include all information that may be deemed pertinent to their bid. Bidders may be requested to provide clarification based on the State's evaluation procedure. Any clarification will be considered a formal part of the bidder's original bid. If further clarification is needed during the evaluation period, OGS will contact the bidder.

#### 4.1.2 Interviews

Bidders submitting responsive proposals will be requested to provide oral presentations in Albany, NY, covering the major points of their proposals. The discussion topics set forth in Section 2.2.3 will serve as the basis for these interviews. The presentations will be given on a date, time and location to be designated by OGS (See Key Events). The interview schedule will be determined based on alphabetical order of the bidder's legal company name. Information provided during the oral presentation will be considered as part of the technical evaluation. Key corporate personnel, as well as key personnel assigned to this contract should represent the bidder at the oral presentation. Bidders may present a brief PowerPoint presentation. If a PowerPoint is utilized, then a handout of all slides should be provided. Six (6) copies of any handouts are sufficient for distribution to the State's representatives.

#### 4.1.3 Technical Evaluation

**60%**

The technical evaluation committee will independently evaluate and score each responsive Technical Proposal based upon the following:

**a. BIDDER EXPERIENCE (25%)**

Each bid will be evaluated as to the quality and extent of the bidder's relevant experience (including that of its proposed employees) and length of service in the industry demonstrating its ability to perform the required services.

**b. SCOPE OF SERVICES (35%)**

Each bid will be evaluated as to the completeness of accomplishing the scope of services and the extent to which the bidder meets the goals and requirements of this RFP.

Technical evaluation committee members will score Technical Proposals to identify bidders with the highest probability of satisfactorily providing the specific services described in Section 1.2 of this RFP.

#### **4.1.4 Cost Proposal Evaluation**

**30%**

OGS' Division of Financial Administration will examine all Cost Proposal documents for responsiveness to cost requirements. If a Cost Proposal is found to be non-responsive, that proposal will be eliminated from consideration. The Cost Proposal with the lowest total fee will be awarded the maximum possible points. Each subsequent proposal will receive a proportionate number of points. Each of the Cost Proposal points will be added to the score from the Technical Evaluation Committee. (See Attachment 1 Cost Proposal)

#### **Note:**

Each tab of the excel spreadsheet attached (Attachment 1 Cost Proposal) has been assigned a commensurate value for evaluation purposes.

#### **4.1.5 Executive Management Review Evaluation**

**10%**

The final 10 possible points will be awarded by an OGS Executive Management Review Committee, the membership of which will be designated by the OGS Commissioner or her designated representative. This will be based upon factors that include the Executive Management Review Committee's appraisal of the bidder's level of experience, flexibility, presentation format of the bid and acceptability of proposed scope of services. In addition, consideration will be made to whether the bidder can perform for the proposed costs while maintaining adequate levels of service and quality service over the full term of the contract.

The points awarded by the Executive Management Review Committee will be added to each bidder's score.

#### **4.1.6 Final Composite Score**

Scores from each of the bidders will be totaled and the bidder having the highest score will be ranked number one; the bidder with the second highest total score will be ranked number two and so on.

## **4.2 Notification of Award**

After evaluation of all proposals, all bidders will be notified of the name of the selected contractor. The selected contractor will be notified that their bid has been selected and that a contract will be forthcoming for execution. The original submitted bid and any additions or deletions to the same become part of the contract.

Public announcements or news releases pertaining to any contract resulting from this RFP shall not be made without prior approval from OGS.

## 5. Scope of Work

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### 5.1 Background

OGS will partner with the contractor to enhance staff resources as discussed in Section 1.2 and Section 2.2.5 of this RFP. The contractor will also partner with UGL to carry out recommendations and process improvements that UGL has proposed. Upon the expiration of the UGL contract, the contractor will continue to implement and build off of the UGL recommendations.

The budgetary position of the State, OGS and affected agencies will dictate the funds available to carry out the contractor's recommendations. OGS, at its sole discretion, from time to time, may withdraw any assignment(s) with no liability to the State. OGS may also add other assignments for which the contractor will be compensated under the payment structure set forth above.

### 5.2 Leasing/Licensing Processes

The contractor shall be granted exclusive rights to represent OGS with respect to all real property leases/licenses. For projects that are assigned to the contractor, OGS will not employ or retain any other person or selling agency to solicit or secure a lease upon an agreement or understanding for a commission, percentage, brokerage, contingent fee or other compensation.

#### 5.2.1 *Lease Creation*

OGS has a portfolio of leased space across the state that encompasses small and large spaces used for a variety of functions (e.g. office space, storage, parking, data centers and retail space). The contractor will provide assistance with the following services:

1. Implement programming requirements for leased space in conformance with strategic plans developed by UGL and consistent with best practices for space standards and utilization;
2. Prepare Requests for Information in compliance with all applicable laws, rules, regulations, policies and procedures;
3. Building off of the work being done by UGL, review requests for leased space to determine if the request is a good use of funds and provide a cost benefit analysis which prioritizes all proposed projects in terms of efficiency, need and return on investment;
4. Review suitability of existing space and other proposed space for conformance with the occupying agency's needs and overall plans and the recommendations of the State's strategic plan;
5. Review and analyze proposals to determine what is the best value to the State;
6. Prepare market surveys;
7. Conduct site visits with State personnel;

8. Inspect proposed sites to determine if they meet the occupying agency's needs in terms of electrical power capacity, HVAC and floor loads, access requirements, structural requirements, parking requirements, etc.;
9. Assist with vendor responsibility reviews in compliance with State law;
10. Negotiations of new leases/licenses and renewals, extensions and modifications;
11. Move coordination;
12. Emergency relocations; and
13. Implementation of strategies to streamline the leasing process. This will include implementing processes for leasing projects that shorten the time involved and ensure that occupying agencies have a new lease in place before the expiration of an existing lease.

No later than thirty (30) days prior to the expiration of the contract, OGS and the contractor will develop a list of pending assignments on which the contractor will continue its efforts. The final determination of those assignments will be in the sole discretion of OGS.

With each project the contractor must provide an affidavit disclosing any true or apparent conflicts of interest or indicating that no true or apparent conflict exists.

The contractor will be required to provide documentation for and assist with the creation of periodic reports which evaluate performance measures.

### **5.2.2 Lease Administration**

The contractor will provide assistance throughout the term of a lease to ensure that the landlord is fully complying with lease requirements and assist with the review of payments to the landlord, audits of landlord expenses including, but not limited to, those submitted in escalation billings and resolution of occupying agency complaints and disputes with the landlord.

The contractor will be assigned projects by OGS on an as needed basis.

### **5.2.3 Software and Data Collection/Management**

#### **5.2.3.1 Software**

State agencies currently utilize various software programs to maintain information. This has created a decentralized approach to data management and planning. In addition, the approach to maintaining and updating this software differs among agencies. As a result, there is no central repository of information pertaining to the State's real estate assets. The State's goal is to centralize and standardize its software systems and data management.

The contractor will work with UGL to evaluate all software systems currently used by the State to determine what aspects should be retained and what aspects are not useful. The contractor will then provide a web-based system for statewide lease inventory, project management and drawings, etc. that incorporates the useful aspects of the State's current systems. This new system should utilize, maintain and manage a web-

based project/information management control system utilizing a central data bank to monitor and control all aspects of the project. The system should allow for Internet based information exchange with State agencies/client access to include, but not be limited to:

- Project accounting, including overall total project costs, allowances, and unit pricing;
- Communication including a project tracking system, correspondence and meeting minutes exchanges;
- Scheduling capability;
- Exchange of digital photos and drawings;
- Ability to develop reports that can be customized to meet various agency programmatic requirements; and
- Lease Inventory System – The contractor will be responsible for maintaining, updating, and tracking the State’s inventory of leases.

The system must provide full project management functionality as well as the ability to track the lease portfolio. A document management system with no project management functionality will not be acceptable. Bidders must describe how the proposed system meets the above requirements and may need to demonstrate its functionality as part of the interview process.

Bidders must describe the ownership structure of the proposed system and identify specifically how the State will be able to continue use of the system if the contract is terminated or after contract expiration. In addition, included in the cost of their bid, the contractor will be responsible for the migration of all existing data currently stored in database systems that the State currently uses and for determining the best solution for transitioning to a single database and project management system.

#### **5.2.3.2 Data Collection and Management**

The contractor will be asked to assist with the implementation and use of a centralized data collection and management system for the State. The system should focus on ensuring that the data is collected in a consistent manner. The system should allow for analysis at both the agency level and the statewide level and should allow for review and analysis of data in a manner that allows for centralized decision-making.

### **5.3 Facility Management Processes**

The contractor will work with UGL to evaluate current State owned properties using annual and strategic planning templates and manuals developed by UGL in order to analyze the costs, benefits and return on investment associated with the utilization of each property or building.

The contractor will be asked to provide services and expertise relating to financial analysis and the analysis of current facility management practices and suggest best practices and guidance for optimizing those processes.

The contractor will be asked to implement immediate and long-term processes and data management tools developed by UGL that allocate capital resources in a manner that

aligns with capital planning schedules. The contractor will be expected to assist with the implementation of capital planning and maintenance recommendations.

The contractor will also be asked to conduct annual facility assessments during which they physically assess the condition of the facility and analyze the value of the facility versus the cost of the facility. This contractor may then be asked to use this information to make and update recommendations as to what the State should do with the facility.

The contractor will be asked to assist with the implementation and use of a centralized data collection and management system for the State. The system should focus on ensuring that the data is collected in a consistent manner. The system should allow for analysis at both the agency level and the statewide level and should allow for review and analysis of data in a manner that allows for centralized decision-making. (Payment per Section 3.3.4)

## **5.4 Sale of Surplus Real Property**

The State has properties that may no longer be utilized or may be underutilized. These properties are located across the state and encompass small and large spaces used for a variety of functions (e.g. office space, storage space, correctional facilities, residential facilities, health facilities and military armories). The contractor will provide assistance with the following services, as requested:

Plan for Property Sale: The contractor will prioritize properties that have the greatest potential for sale in a manner which will maximize revenue in a short amount of time. This will include proposing strategies for sale which will utilize social media and other technologies in a modern, cost efficient way. The contractor shall also work to implement strategies that are a best value to the State. This may mean a wholesale change in the statutory framework and processes pertaining to property sales and the contractor should feel free to make such recommendations. For example, selling a property in order to avoid continued costs for maintenance and upkeep rather than retaining the property because no offers were received which met the appraised value of the property or revisions to applicable laws.

Representation: The contractor will assist with preparation and review of bid documents and communication with potential and actual bidders. Specifics will be unique to each sale and will be determined in accordance with all applicable laws, rules, regulations, policies and procedures.

For projects that are assigned to the contractor, the State will not employ or retain any other person or selling agency to solicit or secure a sale upon an agreement or understanding for a commission, percentage, brokerage, contingent fee or other compensation. (Payment per Section 3.3.2)

## **5.5 Real Property Services**

OGS issues easements and grant licenses and permits for the public or private use of antennas, uplands and lands under water. The contractor will be asked to provide the following support, as requested:

Analysis of Assets: The contractor will analyze current licenses, permits and easements and the costs associated therewith and provide recommendations for the

best uses of these assets. These determinations should be based upon the State's overall goals and objectives and the interest's location and value.

Best Practices: The contractor will identify best practices related to real property management that would be beneficial to the State.

Analysis of the Fee Structures: The contractor will be asked to:

1. Analyze the current fee structure for permits and easements for uplands and lands under water and make recommendations for changes to the structure that will be effective and efficient;
2. Assess current practices regarding the granting of riparian rights and easements for pipelines and make recommendations for changes;
3. Analyze the current fee structure for granting licenses and easements for antennas and make recommendations for cost-effective changes; and
4. Create strategies to streamline processes for granting rights in real property. (Payment per Section 3.3.4)

## **5.6 Additional Services**

The contractor may be asked to provide other services such as energy efficiency management; architectural and engineering services; construction management services; analysis of current practices pertaining to parking management; commercial and residential appraisal preparation and review; survey and title services; lease data collection and analysis; relocation services, including, but not limited to, move coordination, furniture selection, acquisition and installation; environmental reviews; and assistance with, continuation of and further development of strategic planning and policy development being undertaken by the State and/or UGL.

The level of services required by the contractor is dependent on available resources.

In the event such services are requested, the contractor shall provide OGS with a detailed proposal that includes, at a minimum, a detailed statement of work, timeline, a detailed proposed compensation package including industry comparables to justify price broken down by title / rate and number of hours, and description of deliverables. Additional services shall be first pre-approved in writing by OGS. (Payment for these additional services shall be in compliance with the provisions of Section 3.3.4.)

Additional Services shall only be performed when pre-approved in writing by OGS, and shall be compensated at the rates bid, provided, however, that any subcontractor work shall be reimbursed at actual cost with the markup thereon being limited to five percent (5 %) of the actual cost. Further, in no case shall the amounts paid to all subcontractors (exclusive of any M/WBE subcontracted work as established in the approved utilization plan) during the Contract term exceed ten percent (10%) of the total contract amount. The following process shall apply:

The contractor shall prepare a quote for the project manager. For Additional Service work performed by Contractor's staff, the quote must detail the scope of services, whether any subcontractors will be used, proposed timeline for completion, number of hours times hourly rate bid, and any other information or options that the state should

consider. If subcontractors are to be used, the process detailed in the Subcontractors clause (Section 6.10) herein must be followed.

## **5.7 Project Administration and Reporting**

As part of the contractor's performance, the following apply to all projects assigned to the contractor pursuant to any contract issued as a result of this RFP and shall be provided, at no additional compensation:

1. The contractor will carry out assigned projects under the direction and control of OGS. OGS, with the commencement of this contract, shall designate representatives to oversee this contract. The representatives will request, oversee, supervise and accept performance of services provided by the contractor and shall receive any required submissions. Whenever an action is to be taken or approval for services given by OGS, such action or approval may be given only by the representatives designated pursuant to this section. All notices under this contract shall be directed to the representatives identified in this section, or their designees. OGS may on written notice designate other individuals as its representatives.
2. The contractor will be required to attend a "kick off" meeting and training/orientation sessions at a location determined by OGS at the commencement of a project in order to become familiar with OGS processes. OGS will schedule these meetings.
3. The contractor and OGS staff will have constant communication regarding projects, but there shall also be regular meetings, at times and locations as determined by OGS, with the contractor's project manager and applicable staff in order to review projects.
4. The contractor will submit weekly briefings updating OGS on projects. These reports should discuss the work accomplished during the reporting period, work to be accomplished in the next reporting period, problems and questions which should be brought to OGS' attention and any proposed deviations from agreed-upon work plans.
5. The contractor's performance will be assessed by OGS according to the achievement of contractor's contractual obligations in a timely and professional manner, as set forth herein. OGS will utilize the weekly briefings and project meetings discussed in this section to ensure that projects are carried out on a timely basis and result in effective recommendations and work products. The final acceptance of project deliverables will be made by the OGS representatives or their designees in their sole discretion.

## **6. Contract Clauses and Requirements**

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### **6.1 Appendix A / Order of Precedence**

Appendix A — Standard Clauses for New York State Contracts, dated December 2011, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein. The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A
2. Contract
3. OGS RFP Number 1714 (This Document), including any addenda
4. Selected Contractor's Bid

### **6.2 Procurement Lobbying Requirement**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest notice of intent to solicit bids through final award and approval of the contract by OGS and, if applicable, the Office of the State Comptroller ("Restricted Period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the bidder is debarred from obtaining governmental contracts. Further information about these requirements can be found on the OGS website:

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

### **6.3 Contractor Insurance Requirements**

Prior to the commencement of the work to be performed by the contractor hereunder, the contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of the contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York ("Admitted Carriers") with an A.M. Best Company rating of "A-," "Class VII" or better.

The contractor shall deliver to OGS, certificates of insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements contained in this Section in a form and substance acceptable to OGS. The policies evidenced in the certificates must be written in accordance with the requirements of the paragraphs below, as applicable.

**6.3.1 General Conditions:**

All policies of insurance required by this contract shall meet the following requirements:

1. **Coverage Types and Policy Limits:** The types of coverage and policy limits required from the contractor are specified below.
2. **Policy Forms:** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis. Under certain circumstances, OGS may agree to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the contract. If the policy is cancelled or not renewed during that time, the contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the three (3) year period after completion of the contract. Written proof of this extended reporting period must be provided to OGS prior to the policy's expiration or cancellation.
3. **Certificate of Insurance:** Contractor shall provide a certificate of insurance or certificates of insurance, in a form satisfactory to OGS, before commencing any work under this contract. Certificates shall reference the contract number and be mailed to:

Warren Joscelyn, Purchasing Officer  
NYS Office of General Services  
Financial Administration  
Corning Tower, 40<sup>th</sup> Floor, ESP  
Albany, New York 12242

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to OGS, attention:

Warren Joscelyn, Purchasing Officer  
NYS Office of General Services  
Financial Administration  
Corning Tower, 40<sup>th</sup> Floor, ESP  
Albany, New York 12242

In addition, if required by OGS, the contractor shall deliver to OGS within forty-five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

Certificates of insurance shall:

- a. Be in the form approved by OGS;
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract;

- c. Specify the additional insureds as required herein;
- d. Refer to this contract by number and any other attachments on the face of the certificate;
- e. Be signed by an authorized representative of the insurance carrier.

Only original documents will be accepted. E-MAIL OR FAX DOCUMENTS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.

4. **Primary Coverage:** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess basis as to any other insurance that may be available to OGS for any claim arising from the contractor's work under this contract, or as a result of the contractor's activities. Any other insurance maintained by OGS shall be excess of and shall not contribute with the contractor's insurance.
5. **Policy Renewal/Expiration:** At least two weeks prior to the expiration of any policy by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS at the following address:

Warren Joscelyn, Purchasing Officer  
NYS Office of General Services  
Financial Administration  
Corning Tower, 40<sup>th</sup> Floor, ESP  
Albany, New York 12242

If, at any time during the term of this contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the contract or proof thereof is not provided to OGS, the contractor shall immediately cease work. The contractor shall not resume work on the contract until authorized to do so by OGS. Any delay, time lost or additional cost incurred as a result of the contractor not having insurance required by the contract or not providing proof of same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the contractor fail to provide or maintain any insurance required by this contract, or proof thereof is not provided to OGS, OGS may treat such failure as a breach or default of the contract.

6. **Self-Insured Retention/Deductibles:** Certificates of insurance must indicate the applicable deductible/self insured retention on each policy. The contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
7. **Subcontractors:** Should the contractor engage a subcontractor, the contractor shall endeavor to impose the insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. Proof thereof shall be supplied to OGS.

**6.3.2 Specific Coverage and Limits:**

The types of insurance and minimum policy limits shall be as follows:

**1. Commercial General Liability**

Commercial General Liability Insurance (CGL) covering the liability of the contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract. The limits under such policy shall not be less than the following:

- Each occurrence limit-\$1,000,000.00
- General aggregate-\$2,000,000.00
- Products/completed operations-\$2,000,000.00
- Personal advertising injury-\$1,000,000.00
- Damage to rented premises-\$50,000.00
- Medical expense-\$5,000.00

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the contract;
- Explosion, collapse and underground hazards;
- Contractor means and methods;
- Liability resulting from Section 240 or 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent-Commercial General Liability Coverage Form; and
- b. CG 20 10 11 85, or an equivalent-Additional Insured-Owner, Lessees or Contractors (Form B)

Limits may be provided through a combination of primary and umbrella/excess liability policies.

Policies shall name The People of the State of New York as additional insureds, and such coverage shall be extended to afford additional insured status to those entities during the products/completed operations term.

The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respects to the coverage afforded the additional insureds, and such policies shall be primary to, and non-contributing with, any other insurance maintained by OGS. Any other insurance maintained by OGS shall be excess of and shall not contribute with the contractor’s or subcontractor’s insurance, regardless of the “Other Insurance” clause contained in either party’s policy of insurance.

## **2. Workers’ Compensation:**

ACCORD forms are **NOT** acceptable proof of workers’ compensation coverage. In order to provide proof of compliance with the requirements of the New York State Workers’ Compensation Law, contractors shall:

- A) Be legally exempt from obtaining workers’ compensation insurance coverage; or
- B) Obtain such coverage from insurance carriers; or
- C) Be a board-approved self-insured employer or participate in an authorized self-insurance plan.

With the submission of its bid, bidders shall provide one of the following forms to Warren Joscelyn, Purchasing Officer, NYS Office of General Services, Financial Administration, Corning Tower, 40<sup>th</sup> Floor, ESP, Albany, New York 12242:

- A) **Form CE-200**, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required which is available on the Workers’ Compensation Board’s website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- B) **Form C-105.2 (9/07)**, Certificate of Workers’ Compensation Insurance sent to OGS by the contractor’s insurance carrier upon request, or if coverage is provided by the State Insurance Fund, they will provide **Form U-26.3** to OGS upon request; or
- C) **Form SI-12**, Certificate of Workers’ Compensation Self-Insurance available from the New York State Workers’ Compensation Board’s Self-Insurance Office, or **Form GSI-105.2**, Certificate of Participation in Workers’ Compensation Group Self-Insurance available from the contractor’s Group Self-Insurance Administrator.

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

## **3. Disability Insurance**

With the submission of its bid, bidders shall provide one of the following forms to Warren Joscelyn, Purchasing Officer, NYS Office of General Services, Financial Administration, Corning Tower, 40<sup>th</sup> Floor, ESP, Albany, New York 12242:

A) **Form CE-200**, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));

B) **Form DB-120.1**, Certificate of Disability Benefits Insurance sent to the Governmental Entity by the contractor's insurance carrier upon request; or

C) **Form DB-155**, Certificate of Disability Benefits Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

#### **4. Commercial Auto Liability Insurance**

Commercial Auto Liability insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least two million dollars (\$2,000,000.00) and shall name The People of the State of New York as an additional insured. The limits may be provided through a combination of primary and umbrella/excess liability policies.

#### **5. Professional Liability**

The contractor and any professional subcontractor retained by the contractor to work on the contract shall procure and maintain during and for a period of three (3) years after the completion of this contract, Professional Liability Insurance in the amount of \$3,000,000.00 each claim, \$5,000,000.00 annual aggregate issued to and covering damage for liability imposed on the contractor by this contract or law arising out of any negligent act, error or omission in the rendering of or failure to render professional services required by this contract. The professional liability insurance may be issued on a claims-made policy form, in which case the contractor shall purchase at its sole expense, with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

#### **6. Crime**

Crime insurance on "loss sustained form" in an amount not less than \$1,000,000.00 including coverage for:

- Employee Theft
- Forgery or Alteration
- Inside the Premises-Theft of Money and Securities
- Inside the Premises-Robbery or Safe Burglary of Other Property
- Outside the Premises
- Computer Fraud
- Money Orders and Counterfeit Paper Currency

Policy must allow for reporting of circumstances or incidents that might give rise to future claims, the policy must include an extended reporting period of no less than three (3) years with respect to events which occurred but were not reported during the term of the policy.

The People of the State of New York must be included as loss payees as respects this specific amount as their interests may appear.

Any warranties required by this insurer must be disclosed and complied with. Said insurance shall extend coverage to include the principals.

### **7. Umbrella and Excess Liability**

When the limits of the Commercial General Liability, Commercial Auto Liability and/or Professional Liability policies procured are insufficient to meet the limits specified, the contractor shall procure and maintain Commercial Umbrella and/or Excess Liability policies with limits in excess of the primary; provided, however, that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall follow the same form as the primary. Any insurance maintained by OGS or any additional insured shall be considered excess of and shall not contribute with any other insurance procured and maintained by the contractor including primary, umbrella and excess liability regardless of the "Other Insurance" clause contained in either parties policy.

## **6.4 Tax and Finance Clause**

TAX LAW § 5-A:

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

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this RFP. Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be

filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Contractors/bidders may call DTF at **1-800-698--2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>

## **6.5 M/WBE & EEO Requirements**

### **CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

#### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A, OGS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises and the employment of minority group members and women in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establishes goals for maximum feasible participation of New York State Certified minority and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

## **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, OGS hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that OGS may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

For guidance on how OGS will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OGS may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan on Form #MWBE 100 with the bid or proposal. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the State contract and a description of the Contract scope of work that the Contractor intends to structure to meet the goals on the State contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract that the Contractor intends to be performed by a NYS Certified minority or woman-owned business. Any modifications or changes to the agreed participation by NYS Certified MWBEs set forth in the Utilization Plan submitted with the bid or proposal, after the Contract award and during the term of the Contract, must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- B. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS’ acceptance or issue a notice of deficiency within 20 days of receipt.

- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. OGS may disqualify a Bidder as being non-responsive under the following circumstances:
- a) If a Bidder fails to submit a MWBE Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If OGS determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Monthly M/WBE Contractor Compliance & Payment Report on Form MWBE 102 to OGS by the 10<sup>th</sup> day of the month during the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to OGS, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

**ALL FORMS ARE AVAILABLE AT:** <http://www.ogs.ny.gov/MWBE/Forms.asp>

## **6.6 Freedom of Information Law / Trade Secrets**

During the evaluation process, the content of each bid will be held in confidence and details of any bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Should you feel your firm's Bid contains any such trade secrets or other confidential or proprietary information, **you must submit a request to except such information from disclosure.** Such request must be in writing, must state the reasons why the information should be excepted from disclosure and must be provided at the time of submission of the subject information. Requests for exemption of the entire contents of a bid from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm.

## **6.7 Iran Divestment Act**

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a contract awarded hereunder, bidder/contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such contract any subcontractor that is identified on the prohibited entities list.

Additionally, bidder/contractor is advised that once the list is posted on the OGS website, any contractor seeking to renew a Contract or assume the responsibility of a contract awarded in response to the solicitation, certifies at the time the contract is renewed or assigned that it or its assignee is not included on the prohibited entities list.

During the term of the contract, should OGS receive information that a person is in violation of the above-referenced certification, OGS will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then OGS shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the contractor in default.

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

## **6.8 General Requirements**

- The bidder agrees to adhere to all state and federal laws and regulations in connection with the contract.
- The bidder agrees to notify the Office of General Services of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- The bidder agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
- It shall be mutually agreed that the contractor has included cost to remedy all deficient items in their proposal and they will be responsible for satisfactory functioning of the equipment without extra compensation. The contractor may at their option provide with their bid, a detailed explanation of work intended to be performed under this clause.
- The bidder agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Commissioner of General Services.
- For reasons of safety and public policy, in any contract resulting from this RFP, the use of illegal drugs and/or alcoholic beverages by the contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
- For purposes of any contract resulting from this RFP, the State will not be liable for any expense incurred by the contractor for any parking fees or as a consequence

of any traffic infraction or parking violations attributable to employees of the contractor. It is understood that travel expenses will not be allowed.

- The Commissioner's interpretation of specifications shall be final and binding upon the contractor.
- The Commissioner of General Services will make no allowance or concession to the bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
- Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the bidder has based its bid on the more expensive option. Final decision will rest with the Commissioner of General Services.
- INSPECTION – For purposes of any contract resulting from this RFP the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the Commissioner of the Office of General Services may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing contractor shall be liable to the State of New York for costs incurred on account thereof.
- STOP WORK ORDER - The Commissioner of General Services reserves the right to stop the work covered by this RFP and any contract(s) resulting there from at any time that it is deemed the successful bidder is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, the Office of General Services shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful bidder shall be liable to the State of New York for any such costs on account thereof. In the event that the Office of General Services issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective. Provided, however, that if an emergency situation exists, as reasonably determined by the Office of General Services, then the stop work order shall be effective immediately.
- It is the contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
- The Office of General Services reserves the right to reject and bar from the facility any employee hired by the Contractor.

## 6.9 Contract Terms

All provisions and requirements of Appendix A Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this RFP, and will be binding upon the parties to such contract.

All provisions and requirements, which are attached hereto and form a part hereof, will be incorporated into any contract resulting from this RFP, and will be binding upon the parties to such contract.

It is stipulated and agreed by the parties that the law of the State of New York shall solely and in all respects govern with relation to any dispute, litigation, or interpretation arising out of or connected with any contract resulting from this RFP.

Any contract resulting from this RFP shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the Comptroller of the State of New York.

## **6.10 Subcontractors**

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. Known or planned use of subcontractors shall be disclosed in detail with bid submission by the proposer. If subcontractors are to be used for base scope services, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed. If subcontractors are to be used for Additional Services, they will be subject to the Additional Services clause, and associated markup provision herein. The total of all Subcontractor work during the term of the Contract, exclusive of M/WBE subcontracted work as established in the approved utilization plan, shall not exceed 10% of the total contract value,

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this IFB or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor/subcontractor's employee(s) who carry out any of the provisions of any contract resulting from this IFB.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the OGS Project Manager, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as OGS may require concerning the proposed subcontractor's ability and qualifications.

In the event that subcontractors must be used during the term of this contract for Additional Services work, the following guidelines shall apply.

- A. The Contractor shall procure services using commercially reasonable and prudent practices to obtain the most favorable price and terms. The Contractor will make his/her best efforts and shall document same to obtain written

proposals or bids from at least three (3) responsible service providers before selecting the best price and terms. Prior OGS approval is required for all Additional Services. The following conditions apply to competitive bidding for subcontracted additional services:

- 1) Each bid will be solicited in a form and manner conducive to uniformity in all bids. The Contractor will maintain documentation of the solicitation and results.
- 2) If the Contractor desires to accept other than the lowest bidder, or where competitive bids are not possible, adequate justification must be provided to the State for required prior approval.
- 3) The OGS shall be free to accept or reject any proposal/subcontract submitted for State's approval, and Contractor shall provide OGS with copies of all documentation OGS may request in relation to such approval rights.

## 6.11 Procurement Rights

The State of New York reserves the right to:

1. Reject any and all proposals received in response to this solicitation.
2. Disqualify a bidder from receiving the award if the bidder, or anyone in the bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct bidders' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the bidder.
4. Adjust any bidder's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said bidder will cause the State to incur additional costs.
5. Utilize any and all ideas submitted in the proposals received.
6. Negotiate with bidders responding to this solicitation within the solicitation requirements to serve the best interests of the State.
7. Begin contract negotiations with another bidding contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected contractor within 21 days of selection notification.
8. Waive any non-material requirement not met by all bidders.
9. Not make an award from this solicitation.
10. Make an award under this solicitation in whole or in part.
11. Make multiple contract awards pursuant to the solicitation.
12. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
13. Seek clarifications of proposals.

14. If two or more offers are found to be substantially equivalent, the Commissioner of OGS, at her sole discretion, will determine award using established criteria.

**Note:** The State is not liable for any cost incurred by a bidder in the preparation and production of a proposal or for any work performed prior to the issuance of a contract.

## **6.12 Extent of Services**

OGS reserves the right to re-negotiate at its discretion, to reduce the amount of services provided under any contract resulting from this solicitation. This reduction in services shall be effectuated by written amendment to the contract and subject to approval by the Office of the State Comptroller.

## **6.13 Debriefings**

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's bid or bid. After contract award, OGS shall, upon request, provide a debriefing to any bidder that responded to the RFP, regarding the reason that the bid or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder within thirty days of contract approval as posted on the OSC website (web address below).

<http://www1.osc.state.ny.us/transparency/contracts/contractsearch.cfm>

## **6.14 Termination**

### **Termination**

The Office of General Services may, upon thirty (30) days notice, terminate the contract resulting from this RFP in the event of the awarded bidder's failure to comply with any of the proposal's requirements unless the awarded bidder obtained a waiver of the requirement.

In addition, OGS may also terminate any contract resulting from this RFP upon ten (10) days written notice if the contractor makes any arrangement or assignment for the benefit of the creditors.

Furthermore, OGS shall have the right, in its sole discretion, at any time to terminate a contract resulting from this RFP, or any unit portion thereof, with or without cause, by giving thirty (30) days written notice of termination to the contractor.

Any termination by OGS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this RFP and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

### **Procurement Lobbying Termination**

The Office of General Services reserves the right to terminate this agreement in the event it is found that the certification filed by the contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by

providing written notification to the contractor in accordance with the written notification terms of this agreement.

### **6.15 NYS Vendor Responsibility Questionnaire For-Profit Business Entity (hereinafter the “questionnaire”)**

OGS conducts a review of bidders to provide reasonable assurances that the bidder is responsive and responsible. A Questionnaire is used for non-construction contracts and is designed to provide information to assess a bidder’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, bidder agrees to fully and accurately complete the “Questionnaire.” The bidder acknowledges that the State’s execution of the contract will be contingent upon the State’s determination that the bidder is responsible, and that the State will be relying upon the bidder’s responses to the Questionnaire when making its responsibility determination.

OGS recommends each bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller’s (OSC) website, [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us> .

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm> . Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) .

In order to assist the State in determining the responsibility of the bidder, the bidder should complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A bidder’s Questionnaire cannot be viewed by OGS until the bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

The bidder agrees that if it is found by the State that the bidder’s responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the contract. In no case shall such termination of the contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the contractor as a result of such termination.

### **6.16 Ethics Compliance**

All bidders/contractors and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing the contract, the contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations,

etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

### **6.17 Extension of Use**

Any contract resulting from the solicitation may be extended to additional State Agencies upon mutual agreement between the requesting agency, OGS, and the contractor, and subject to applicable approvals. OGS reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

### **6.18 Indemnification**

The contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, subcontractors or agents, of any contract resulting from this solicitation and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claim, action or proceeding relating to or in any way connected with the performance of this agreement and covenants and agrees to indemnify and hold harmless the State of New York, its agents, officers and employees, from any and all claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any contract resulting from this solicitation, including negligence, active or passive or improper conduct of the contractor, its officers, agents, subcontractors or employees, or the failure by the contractor, its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed.

### **6.19 Force Majeure**

Neither party hereto will be liable for losses, defaults, or damages under any contract resulting from this solicitation which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this solicitation, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

Attachment 1- Cost Proposal Form

# STATEWIDE TENANT REPRESENTATIVE RFP 1714

## COMMISSION ON LEASES STATEWIDE

Bidders must provide a bid percentage of commissions.

Percentages bid may be extended no more than two decimal places (example: 4.25).

OGS will drop any extensions beyond two places.

<b>Commission on Lease's % Bid</b>
0.00%

<b>Commission on Lease Renewals % Bid</b>
0.00%

<b>Commission on Lease's \$ Bid</b>
\$ -

<b>Commission on Lease Renewals \$ Bid</b>
\$ -

<b>Projected Lease Expenditures</b>
\$218,862,601.50

<b>Projected Renewals</b>
\$54,715,650.38

\*Renewals at 25% of Portfolio

\*Percentage bid inclusive of Earned Credit.

15 of 30 percent

Total \$ to be evaluated shall be A12 + C12

**ADDITIONAL SERVICES - STATEWIDE**

Bidders must provide a blended hourly rate for additional services in the following categories (See Section 5.6). Estimated Hours are for evaluation purposes.

Category of Service	Hours	Hourly Rate	Cost
Energy Efficiency Management	500	\$0.00	\$0.00
Architectural & Engineering	2000	\$0.00	\$0.00
Construction Management	4000	\$0.00	\$0.00
Parking Management Analysis	500	\$0.00	\$0.00
Commercial / Residential Appraisal	1000	\$0.00	\$0.00
Survey & Title	100	\$0.00	\$0.00
Lease Data Analysis	500	\$0.00	\$0.00
Relocation	2000	\$0.00	\$0.00
Environmental Reviews	500	\$0.00	\$0.00
Strategic Planning / Policy Development	1000	\$0.00	\$0.00

2 of 30 percent

**STATEWIDE TENANT REPRESENTATIVE RFP 1714  
DISPOSITION**

Commission on Property Disposition			
	<b>*Percentage of Sale Bid</b>	<b>Est. Total Sales</b>	<b>Total Bid \$</b>
Dispositions	0.00%	\$ 150,309,223.00	\$0.00

**\*Per the Public Lands Law §33 #1 Bid Shall not Exceed 6%**

9 of 30 percent

**STATEWIDE TENANT REPRESENTATIVE RFP 1714  
COMMISSION ON LEASE AUDIT SAVINGS REALIZED**

<b>Commission on Lease Audit Savings Realized</b>			
<b>Estimated Lease \$ to Audit</b>	<b>Estimated Savings Realized</b>	<b>Percentage Bid of Savings</b>	<b>Total Commissions Bid by \$</b>
\$128,000,000.00	\$600,000.00	0.00%	\$0.00

1 of 30 percent

## **EARNED CREDIT STATEWIDE**

<b>Earned Credit Lease's % Bid</b>
0.00%

<b>Earned Credit on Lease Renewals % Bid</b>
0.00%

<b>Earned Credit on Lease's \$ Bid</b>
\$ -

<b>Earned Credit on Lease Renewals \$ Bid</b>
\$ -

<b><u>Projected Lease Expenditures</u></b>
\$218,862,601.50

<b><u>Projected Renewals</u></b>
\$54,715,650.38

Total \$ to be evaluated shall be A8 + C8

3 of 30 Percent

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or

reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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

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

this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce

Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

affect, the State's right to discovery in any pending or future litigation.

## **11. IDENTIFYING INFORMATION AND**

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

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

## **12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a

contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without

discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

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

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

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

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

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to

service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

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

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

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

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the

New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

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

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

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

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

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

**Appendix- B**

***RFP 1714 REQUIRED PROCUREMENT  
FORMS***

***NEW YORK STATE OFFICE OF  
GENERAL SERVICES***

**FOR**

**REAL ESTATE SERVICES**

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Contractor Information

SOLICITATION NUMBER 1714

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Federal I.D. Number)

\_\_\_\_\_  
(NYS Vendor I.D. Number)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(County)

\_\_\_\_\_ Ext. \_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_ Ext. \_\_\_\_\_  
(Toll Free Phone)

\_\_\_\_\_  
(Fax Number)

\_\_\_\_\_  
(Toll Free Fax Number)

\_\_\_\_\_  
(E-mail)

New York State Small Business Circle One:    Yes    No

New York State Certified Minority Owned Business Circle One:    Yes    No

New York State Certified Woman Owned Business  
Do you understand and is your firm capable of meeting  
the insurance requirements to enter into a contract with  
New York State?

Circle One: Yes No

Circle One: Yes No

Does your proposal meet all the requirements of this solicitation? Circle One: Yes No

**BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

Pursuant to Procurement Lobbying Law (SFL §139-j)

A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?  
If yes, please answer the following question:

\_\_\_\_\_ YES \_\_\_\_\_ NO

B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

\_\_\_\_\_ YES \_\_\_\_\_ NO

C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?  
If yes, please provide details regarding the finding of non-responsibility:

\_\_\_\_\_ YES \_\_\_\_\_ NO

Governmental Entity:

\_\_\_\_\_

Date of Finding of Non-responsibility:

\_\_\_\_\_

Basis of Finding of Non-Responsibility:  
(add additional pages if necessary)

\_\_\_\_\_

\_\_\_\_\_

D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?  
If yes, please provide details:

\_\_\_\_\_ YES \_\_\_\_\_ NO

Governmental Entity:

\_\_\_\_\_

Date of Termination or Withholding of Contract:

\_\_\_\_\_

Basis of Termination or Withholding:  
(add additional pages if necessary)

\_\_\_\_\_

\_\_\_\_\_

New York State Department of Taxation and Finance

**Contractor Certification (ST-220-TD)**

**Contractor Certification to Covered Agency (ST-220-CA)**



New York State Department of Taxation and Finance

Contractor Certification

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

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

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

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006), available at www.nystax.gov.

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

Mail completed form to:

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

Privacy notification

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

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

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

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

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

Need Help?

Internet access: www.nystax.gov (for information, forms, and publications)
Fax-on-demand forms: 1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931
To order forms and publications: 1 800 462-8100
Sales Tax Information Center: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities.

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

Make only one entry in each section below.

**Section 1 - Contractor registration status**

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

**Section 2 - Affiliate registration status**

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

**Section 3 - Subcontractor registration status**

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

Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)







# ST-220-CA

(6/06)

New York State Department of Taxation and Finance

## Contractor Certification to Covered Agency

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

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

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

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
 (name) (title)  
 of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:  
 (Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
 (insert contract number or description)  
 and, to the best of the contractor's knowledge, the information provided on that previously filed Form T-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

### Instructions

#### General Information

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

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

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

#### When to complete this form

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

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

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



**Bidder is required to sign both sections on this page.**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:  
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either: (answer yes or no to one or both of the following, as applicable:

1. Have business operations in Northern Ireland,

Yes     No

If yes:

2. Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes     No

\_\_\_\_\_  
(Contractor's Signature)

\_\_\_\_\_  
(Name of Business)

**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 his 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 bidder or with any 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 prior to opening, directly or indirectly, to any other bidder or to any 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 Signature)

\_\_\_\_\_  
(Name of Business)

**Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b)**

New York State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).

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

Name: \_\_\_\_\_

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

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# Offerer Disclosure of Prior Non-Responsibility Determinations

## Background:

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

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

## Instructions:

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

# Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

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

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

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

No Yes

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

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

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

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

Offerer Certification:

*I certify that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.*

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

Name: \_\_\_\_\_

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

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

**Procurement Lobbying Termination**

**The Office of General Services reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.**

Sample Contract  
**STATE OF NEW YORK**  
**OFFICE OF GENERAL SERVICES**  
**AGREEMENT FOR**  
**REAL ESTATE SERVICES**

**WITH**

**(CONTRACTOR NAME)**

**CONTRACT # C00**

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**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_ 2012 by and between the People of the State of New York, acting by and through Roann Destito, Commissioner of General Services, whose office is on the 41st Floor, Corning Tower Building, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "Commissioner", "OGS" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, OGS is responsible for negotiating cost effective leases on a timely basis which satisfy agencies' requirements while conforming to the State's policies and procedures and in fulfilling its responsibility deems it necessary to obtain Real Estate Consulting services to assist in the implementation of Real Estate Planning and Development (REPD's) mandate therefore and,

**WHEREAS**, OGS has determined after having solicited proposals from proposers willing to supply these services, that the Contractor submitted the proposal affording the State the best value for such services and that the Contractor possesses the necessary capacity, experience and expertise for provision of Real Estate Services, and that Contractor is ready, willing and able to perform such services on the terms hereinafter set forth.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

**1. CONSIDERATION**

OGS shall pay the Contractor for additional services, commission on lease audit savings realized and disposition in accordance with the amounts and rates put forth in the Contractor's proposal attached hereto as Appendix "C", which Appendix C is hereby incorporated by reference and made a part hereof as fully as if set forth as length herein.

**2. TERM**

This Agreement shall commence upon the approval of the New York State Comptroller's Office and will be in effect for five (5) years, unless sooner terminated as herein specified. The agreement may thereafter be renewed for an additional five (5) year period under mutual agreement.

**3. SERVICES**

The Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the Request for Proposals No. 1714, which is annexed as Appendix "B" hereto, and the Contractor's proposal, annexed as Appendix "C" hereto, except as such Appendices B and C have been revised by the terms hereof. Appendix B is hereby incorporated by reference and made a part hereof with the same force and effect as if set forth at length herein.

**4. TERMINATION**

This Agreement may be terminated in accordance with the termination provisions set forth in the RFP attached hereto as Appendix B hereof.

**5. RECORDS**

The Contractor will maintain accurate records and accounts of services performed and monies expended under this Agreement. Such records will be maintained for six (6) years following the close of the State fiscal year to which they pertain and will be made available to representatives of OGS or the New York State Comptroller, as may be necessary for auditing purposes, upon request.

**6. TAXES**

The Contractor will be responsible for all applicable Federal, State and Local taxes and all FICA contributions.

**7. INDEPENDENT CONTRACTOR**

It is understood and agreed that the legal status of the Contractor, its subcontractors, agents, officers and employees is that of an independent contractor and in no manner shall they be

deemed employees or agents of the State of New York and, therefore, are not entitled to any of the benefits associated with such employment or designation.

SAMPLE

**8. APPENDIX A**

Appendix A, Standard Clauses for New York State Contracts, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein.

**9. ASSIGNMENT**

Contractor agrees that it will not assign this Agreement, or any interest therein without the prior written consent of the Commissioner of General Services.

**10. LAW**

This Agreement shall be governed by the laws of the State of New York.

**11. CONDITIONS PRECEDENT**

This Agreement shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the State Comptroller.

**12. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto.

**13. EXECUTORY CLAUSE**

This Agreement shall be deemed executory only to the extent of money available to the State for performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for purposes thereof.

**14. INCONSISTENCIES**

In the event of any discrepancy, disagreement or ambiguity between this contract agreement and Appendix B "RFP" and/or Appendix C "Proposal", or between any Appendices, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

- (i) Appendix A
- (ii) This contract agreement
- (ii) Appendix B – Solicitation # 1714 including Addenda
- (iii) Appendix C – Contractor's Proposal

The parties understand and agree that any and all deviations or exceptions taken by Contractor to the State's Request for Proposal are hereby withdrawn except only to the extent that such exceptions or deviations have been explicitly incorporated into this contract agreement.

**15. FORCE MAJEURE**

Neither party hereto will be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

**16. ASSIGNMENT BY STATE**

The State agrees not to assign this Agreement without prior notice to and reasonable consent of the Contractor provided, however, that this Agreement may be assigned without such consent to another agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the pertinent functions of OGS as an agency are transferred to a successor agency or subdivision of the State.

**17. NOTICES**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, overnight carrier or hand delivered, (i) if to the State, addressed to the State at its address set forth above, and (ii) if to Contractor, addressed to Contractor at its address set forth above. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for the purposes of this Agreement.

**18. CAPTIONS**

The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**19. SEVERABILITY**

In the event that any one or more of the provisions of this Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

## **20. INFORMATION SECURITY BREACH**

In accordance with the Information and Security Breach Notification Act (ISBNA) (Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005), a Contractor with OGS shall be responsible for all applicable provisions of the ISBNA and the following terms herein with respect to any private information (as defined in the ISBNA) received by or on behalf of OGS under this Agreement.

- Contractor shall supply OGS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as OGS's notification policy.
- Contractor must encrypt any database fields and backup tapes that contain private data elements, as set forth in the ISBNA.
- Contractor must ensure that private data elements are encrypted in transit to / from their systems.
- In general, contractor must ensure that private data elements are not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.
- Contractor must monitor for breaches of security to any of its systems that store or process private data owned by OGS.
- Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from OGS.
- In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify OGS and commence an investigation in cooperation with OGS to determine the scope of the breach.
- Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
- Contractor shall immediately notify OGS following the discovery that OGS's system security has been breached.
- Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from OGS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the State Office of Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General's Office or any consuming reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.
- Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.
- This policy and procedure shall not impair the ability of the Attorney General to bring an action against the Contractor to enforce all provisions of the ISBNA or limit the Contractor's liability for any violations of the ISBNA.

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

Contract No. C00XXXX

**Agency Certification**

"In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

**(Company Name)**

**THE PEOPLE OF THE STATE OF NEW YORK**

By \_\_\_\_\_  
Name:  
Title:  
Federal I.D. No.:  
Date:

By \_\_\_\_\_  
Name:  
Title:  
Date:

APPROVED AS TO FORM  
Eric T. Schneiderman  
Attorney General

APPROVED  
Thomas P. DiNapoli  
State Comptroller



APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

[Text not included at this time because it is included elsewhere in the RFP. Will be added when contract is finalized]

**APPENDIX B**

Request for Proposals

**APPENDIX C**

**Contractor's Proposal**