



DIVISION OF FINANCIAL ADMINISTRATION  
on behalf of the  
DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES  
OFFICE OF EMERGENCY MANAGEMENT

**ADDENDUM No. 1**

**Request for Proposal (RFP)  
No. 1719**

**Date:** March 23, 2012

**Subject:** Correction/Clarification/Additional; Questions/Answers; Intent to Submit

**Title:** RFP # 1719 - Disaster Relief Services

**Bid Due Date:** **Tuesday, April 3, 2012 @ 2:00 PM**

**Address Bid Inquiries to:** Jenny Fung  
NYS Office of General Services  
Empire State Plaza, Corning Tower, 40<sup>th</sup> Floor  
Albany, New York 12242  
Phone: 518.474.5981  
Email: [jenny.fung@ogs.ny.gov](mailto:jenny.fung@ogs.ny.gov)

**To Prospective Bidders:** NYS Office of General Services has issued this addendum to provide RFP updates, official answers to questions and the list of Vendors that have submitted the Intent to Submit.

**Correction / Clarification / Additional:**

**Clarification:** Section 5 – Detailed Scope of Work/Service Requirement and Bid Proposal Form:  
The Proposer should be aware that the Titles and the Title Descriptions shall remain firm and is not subject to Vendor modifications. In the event that the Proposer's firm has a different Title with similar duties / similar Title with different duties, the Proposer is required to submit their response formatted to the Titles and Descriptions as described in this RFP.

**Correction:** Section 2.2.3 – Plan of Operation / Staffing Plan:  
Removed language from Solicitation; this is not an option.  
'Any additional titles the bidder deems necessary should be included in their Plan of Operation / Staffing plan.'

Correction: Section 2.2.3 – Plan of Operation / Staffing Plan:

Bidders will be required to submit a listing of all On-Site & Off-Site personnel for Key Corporate Management Personnel **and** a list of Project Managers that will oversee the contract. Include resumes and Title of each.

Additional Requirement: Section 2.2.2 – Minimum Requirements:

Proposers must include the following *additional reference data* within the three (3) government projects:

- Strategic Advice
- Maximizing FEMA Reimbursement
- Were subcontractors utilized?
  - If yes, what was the staff ratio of Contractor to Subcontractor?
  - If yes, provide a list of Titles that were held by the Subcontractors.

Additional Requirement: The following sentence is hereby added to Section 4.1:

OGS / DHSES will not consider any Proposal with modifications/customizations/qualifiers/or exceptions deviating from the original content/format of this RFP unless a waiver has been issued per Section 3.9.

Questions/Answers:

1. **Question:** Does the prime contractor has to meet the intention to bid requirement or if the subcontractor has submitted the intention to submit then its prime contractor does not have to submit intention to bid.

**Answer:** The prime contractor submitting the proposal would need to meet the requirement set forth in Section 1.5.

2. **Question: 3.2** Method of Award- Line 7, The Grand Total bid amount - Let us say we estimated grand total amount to be \$40,000,000 (Forty Million), What if the estimated total goes up because actual hours required for particular title(position) is more than estimated hours we are basing on our grand total. Example: State project officer estimated annual need is 26000 hours. What if the need has gone up higher than 26000 hours due to circumstances of disaster, does the established contract value goes up accordingly?

**Answer:** It is the total contract value as shall be established in the final contract(s) that cannot be exceeded, not the individual hours associated with the various titles. Therefore, it is possible that the actual hours used for a particular title under the contract could exceed the estimate used on the bid form, as long as the total established value is not exceeded.

3. **Question:** Article 5.1 Scope of Contract states that “The awarded contractor shall provide comprehensive Disaster Service Experts *in the event of an emergency/disaster....*”. We’d like to confirm that this contract is intended to support future disasters and not to support assistance on previously declared disasters (ie. Hurricane Irene and Remnants of Lee)? If so we ask that you please clarify this explicitly in the response.

**Answer:** This contract is intended to support all emergencies/disasters, prior, present and future as the State identifies its needs.

4. **Question:** The RFP in general and specifically in Article 5.1 Scope of Contract appears to only cover comprehensive FEMA expert support services and not any comprehensive CDBG DR expert support services. We'd appreciate if you could please clarify that is the intent of this RFP in your response.

**Answer:** State OEM does not administer the CDBG grants. Therefore, expert support services in this area is not a requirement.

5. **Question:** Will there be oral interviews for this RFP?

**Answer:** No.

6. **Question:** Please clarify what information is requested for "your firm's cost estimate" under Section 2.2.2 Minimum Requirements.

**Answer:** For the Type of Disaster for which your company provided services to three (3) government clients, please provide the Scope of work, your firm's cost estimate (the dollar amount quoted for the services) and the workload of each project.

7. **Question:** What is the difference between the bullet under Section 2.2.3 Plan of Operation/Staffing Plan, a) Operational Plan asking to describe your firm's proposed staffing plan and timeframe/mobilization, and Section 2.2.3 Plan of Operation/Staffing Plan, b) Staffing Plan?

**Answer:** The bullet under part a) Operational Plan is intended to mean how the bidder is prepared for, and intends to mobilize and provide initial responders.

8. **Question:** Under Section 2.2.3, are narrative bios acceptable for resumes of key management personnel?

**Answer: See above - "Correction: Section 2.2.3 – Plan of Operation / Staffing Plan: Bidders will be required to submit a listing of all On-Site & Off-Site personnel for Key Corporate Management Personnel *and* a list of Project Managers that will oversee the contract. **Include resumes and Title of each within the Technical Evaluation.**"**

9. **Question:** Are resumes/bios required for on-site staffing (Section 2.2.3 Plan of Operation/Staffing Plan, b) On-Site Staffing Plan) or only for off-site staffing (Section 2.2.3 Plan of Operation/Staffing Plan, b) Off-site Staffing)?

**Answer:** See answer to #8 above.

10. **Question:** Should subcontractor information be described under Section 2.2.4 Company Experience?

**Answer:** If the Prime contractor intends to use a Subcontractor for this Proposal it is to be stated in the cover letter (see Section 2.2.1 – Cover Letter). Information regarding the subcontractor, including the intended role and experience is encouraged and should be submitted as well (see Section 2.2.6)

Also, see Section 3.12 Prime Contractor Responsibilities and 6.12 Subcontractors.

11. **Question:** Regarding Section 5.5, will DHSES/OEM credential and authorize all contractors prior to the start of the contract?

**Answer:** Per Section 5.5, the contractor is responsible for credentials for their staff. DHSES may additionally provide necessary access badges for any contractors' staff who are working in a state facility on a daily basis.

12. **Question:** Regarding Section 6.16 NYS Vendor Responsibility Questionnaire For-Profit Business Entity, is a W-9 required to submit with the bid? If yes, should it be included with the "Required Forms" section?

**Answer:** Bidders enrolling for the first time in the OSC Vendrep System (see Section 6.17) will be asked to submit a W-9. The submitted package for this RFP does not include a W-9.

13. **Question:** Regarding Section 6.6 Insurance Requirements, are subcontractors required to provide the same levels of insurance as the Prime contractor?

**Answer:** Per Section 6.6 Contractor Insurance Requirements – "The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein."

14. **Question:** Regarding Section 6.6 Insurance Requirements, are MBE and WBE firms participating on the project as subcontractors required to provide the same levels of insurance as the Prime contractor? Most MWBEs are small firms and may not have the coverage levels required by the RFP.

**Answer:** See Answer #13 above.

15. **Question:** Regarding Section 6.6 Insurance, is an Umbrella Policy with coverage limits of 10M acceptable if the Prime contractor does not have CGL or E&O coverage of 5M...i.e Prime Contractor has both CGL and E&O coverages but at lesser limits.

**Answer:** Per Section 6.6 Contractor Insurance Requirements – "The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the

terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies).”

16. **Question:** Regarding Section 6.8 M/WBE & EEO Requirements, should the MWBE utilization plan and EEO forms be included in the Required Forms section?

**Answer:** The EEO 100 form (Staffing Plan) and the MWBE 100 form (Utilization Plan) are to be submitted with the bid. They may be included separately from the Required Forms section.

17. **Question:** Are any other forms required for submission from <http://www.ogs.ny.gov/MWBE/Forms.asp> (From Section 6.8) besides the EEO 100 Staffing Plan and MWBE 100 Utilization Plan forms?

**Answer:** See Answer #16 above.

18. **Question:** Does DHSES/OEM have an existing information technology system in place for Public Assistance/Individual Assistance and processing project worksheets?

**Answer:** No

19. **Question:** In addition to providing resources for labor and personnel replacement and/or assistance. Does the scope also include retaining and/or performing the tasks necessary to mitigate and remediate property damage including but not necessarily limited to water damage restoration, structural drying, fire or smoke damage cleaning, mold remediation, bio-hazard cleaning and remediation, wind damages, damage resulting from a catastrophic event (i.e. hurricane), regional flooding, or structural restoration and repairs?

**Answer:** No

20. **Question:** In the event of an emergency, will a single call be made to the respective contractor to respond or will several contractors be selected from the bid and asked to bid on a specific project?

**Answer:** See Section 3.2 Method of Award

21. **Questions A-D:** Per section 6.12 of the RFP, it states that “when bidding, any known/planned use of subcontractors must be disclosed in detail with the bid submission.” The definition of a subcontractor is a person or business which has a contract (as an "independent contractor" and not an employee) with a Prime Contractor to provide some portion of the work or services on a project which the Prime Contractor has agreed to perform. The RFP also requires that no Prime Contractor can have more than 15% of their workforce as subcontractors. Based on these requirements, we have the following questions:

- **Question A:** Does a Prime Contractor that traditionally outsources or contracts with subcontractors/independent contractors /individuals as their “staff” on a 1099 basis have to

categorize these contractors/individuals as a subcontractor and not as employees, hence falling under the 15% limitation on the use of subcontractors?

- **Answer A:** The state would expect that in this situation, the contractor would add those individuals to the contractor's payroll for the purposes of work under this contract. However, the contractor is allowed to subcontract up to 15% of the total contract value.
  
- **Question B:** Are all subcontractors categorized as 1099 subcontractors required to adhere to the insurance requirements as defined in section 6.6?
  
- **Answer B:** Yes
  
- **Question C:** If the Prime Contractor utilizes 1099 subcontractors as defined above, are they required to provide the cost of / rate paid to these subcontractors with "no additional markups" as their bid price to the State?
  
- **Answer C:** The contractors rates shall be inclusive of all costs, as set forth in Section 3.3. The amounts the contractor pays to any subcontractor is between the two parties.
  
- **Question D:** Based on the requirement that 85% of the contract (exclusive of M/WBE subcontractors) be provided by employees of the selected Prime Contractor and not subcontractors, will the selected Prime Contractor be required to certify to the State that the qualified employees submitted in response to the State's required positions listed in section 5.1 of the RFP are immediately available upon award?
  
- **Answer D:** The number of, and availability of staff would be part of the staffing plan and therefore a consideration in evaluation. Certification of availability is not required.

All other terms and conditions remain unchanged.

**Proposers that have completed the mandatory Intent to Submit requirement are as follows:**

Adjusters International, Inc.  
National Disaster Recovery Technical Assistance Consultants, Inc  
Witt Group Holdings, LLP  
Mitchell's Construction Solutions, Inc  
CDM Smith  
Simmons Recovery Consulting  
Gilbane Building Company  
O'Briens' Response Management Inc

If submitting a proposal, this Addendum No. 1 for RFP #1719 must contain an original signature, be dated, attached to, and made a part of your bid. If you already submitted a proposal, you still need to complete and submit this addendum and any attachments. If you wish to modify your response to an already submitted proposal, you may do so however any such revision must be clearly identified as a revised proposal superseding the previously submitted proposal. All such modifications must be received prior to the bid due date.

**Please sign below and submit Addendum No. 1 with your bid package.**

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Company Name

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Address (include City, State, Zip)

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Bidders Name (please print)

Title

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Signature

Date



REQUEST FOR PROPOSAL (RFP) SOLICITED BY THE  
NEW YORK STATE OFFICE OF GENERAL SERVICES  
ON BEHALF OF THE  
NEW YORK STATE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES  
OFFICE OF EMERGENCY MANAGEMENT  
FOR  
DISASTER RELIEF SERVICES

**BID DUE DATE: April 3, 2012 @ 2:00 P.M.**

**ISSUE DATE: February 23, 2012**

**Designated Contact:**

Jenny Fung

Voice: 518-474-5981

Fax: 518-473-2844

E-mail: [jenny.fung@ogs.ny.gov](mailto:jenny.fung@ogs.ny.gov)

**Alternate Contact:**

Diane Robinson

Same

Same

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

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# 1. Introduction

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## 1.1 Overview

The New York State Office of General Services (OGS) is soliciting proposals on behalf of the New York State Division of Homeland Security & Emergency Services, Office of Emergency Management (DHSES/OEM). DHSES/OEM intends to contract with a firm that can provide Disaster Relief Services to supplement DHSES/OEM staff in the event of an emergency or disaster. The awarded contractor shall provide various Disaster Specialists in the following titles:

- Program Managers
- State Public Assistance Coordinator
- State Project Officer
- Public Assistance Specialists
- Program Assistant
- Administrative Assistant
- Data Entry Clerk

Refer to Section 5 – Detailed Scope of Work/Service Requirements for the detailed service requirements to be included under this solicitation.

## 1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Jenny Fung, Purchasing Agent, NYS Office of General Services, Division of Financial Administration has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email, voice or fax for all inquiries regarding this solicitation.

Jenny Fung, Purchasing Agent  
NYS Office of General Services  
Financial Administration  
Corning Tower, 40<sup>th</sup> Floor, ESP  
Albany, New York 12242  
Voice: 1-518-474-5981  
Fax: 1-518-473-2844  
Email: [jenny.fung@ogs.ny.gov](mailto:jenny.fung@ogs.ny.gov)

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

Diane Robinson, Senior Purchasing Agent  
NYS Office of General Services  
Financial Administration  
Corning Tower, 40<sup>th</sup> Floor, ESP  
Albany, New York 12242  
Voice: 1-518-474-5981  
Fax: 1-518-473-2844  
Email: [diane.robinson@ogs.ny.gov](mailto:diane.robinson@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: 1-518-473-7083  
Fax: 1-518-486-2679  
Email: [Tryphina.Ramsey@ogs.ny.gov](mailto:Tryphina.Ramsey@ogs.ny.gov)

### 1.3 Minimum Bidder Qualifications

Proposers are advised that the State's intent is to ensure that only responsive, responsible, qualified and reliable contractors enter into a contract to perform the work as defined in this document.

**The State considers the following qualifications to be a pre-requisite in order to be considered as qualified bidder for purposes of the solicitation.**

The following minimum requirements **must** be met by each bidder:

1. Proposer must submit evidence of the following:
  - The proposer must be a Disaster Service/Disaster Recovery Company that specializes in Disaster Relief Services. OGS will not accept a Bid from a temporary service company that has provided Disaster Recovery Services as part of a Scope of Work for a project.
  - Proposer must have a minimum of five (5) years experience as a Disaster Service /Disaster Recovery Company within their current business structure.
  - Proposer must have prior/current verifiable work experience including three (3) Government projects (National, State or Local level) whereby the Proposer was the *Prime Contractor* for the project and provided assistance before, during, and after a natural and/or man-made disaster. The work experience of the Proposer must include Strategic Advice. The projects shall also include your firm's experience in providing Strategic Advice to maximizing Federal reimbursement.
  
2. The Proposer is required to be able to provide each of the required titles and provide the corresponding hourly rates for each title.  
(See section 5 for title requirements.)

### 1.4 Key Events

The Table below outlines the tentative schedule for important action dates.

Action	Date
OGS issues Request for Proposal (RFP) #1719	February 23, 2012
Mandatory Intent to Submit a Proposal Deadline	March 16, 2012 @ 12:00 PM EST
OGS Question Deadline	March 16, 2012 @ 12:00 PM EST
OGS Issues a Response to Written Questions (estimated)	March 22, 2012
<b>Bid Due Date to OGS</b>	<b>April 3, 2012 @ 2:00 PM EST</b>
Contract Start Date	Upon OSC Approval

### 1.5 Mandatory Intent to Submit a Proposal

Vendors who wish to submit a proposal must register their Intent to Submit a Proposal by sending written notice to Jenny Fung, via e-mail at [jenny.fung@ogs.ny.gov](mailto:jenny.fung@ogs.ny.gov). Vendors shall include their company name, address, phone, fax, contact name, title, and email address.

Only vendors who have submitted the mandatory Intent to Submit a Proposal will be allowed to submit proposals and receive updates and responses to questions regarding this RFP.

Please note, by submitting the Intent to Submit a Proposal, the Contractor is not obligated to submit a proposal.

Deadline for submission of Intent to Submit a Proposal will be as stated in Section 1.4 – Key Events. Vendors assume sole responsibility for timely receipt of the intent notification.

## 2. Bid Submission

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### 2.1 RFP Questions and Clarifications

Questions and requests for clarification regarding this RFP shall only be directed to:

Jenny Fung  
OGS Division of Financial Administration  
ESP, Corning Tower, 40th Floor  
Albany, NY 12242  
Phone: 1-518-474-5981  
Fax: 1-518-473-2844  
e-mail: [jenny.fung@ogs.ny.gov](mailto:jenny.fung@ogs.ny.gov)

Questions and requests for clarification are only accepted via e-mail or in writing. Official answers to questions will be provided via addendum.

Deadline for submission of questions will be as stated in Section 1.4 - Key Events.

### 2.2 Bid Format and Content

In order for the State to evaluate bids fairly and completely, bidders must follow the format set forth herein and must provide all of the information requested. All items identified in the following list must be addressed as concisely as possible in order for a bid to be considered complete. Failure to conform to the stated requirements may necessitate rejection of the bid.

#### 2.2.1 Cover Letter.

The cover letter must confirm that the Bidder understands all the terms and conditions contained in this RFP and will comply with all the provisions of this RFP. Further, should the contract be awarded to your company, you would be prepared to begin services upon OSC approval as indicated in Section 1.4 – Key Events. The cover letter must include the full contact information of the person(s) OGS shall contact regarding the bid and must also include the name(s) of principal(s) of the company responsible for this contract, their function, title and number of years of service with company. A Bidder Representative authorized to make contractual obligations must sign the cover letter. The letter must also state whether or not subcontractors will be used, and the name and address of each proposed subcontractor. The Bidder shall acknowledge that if they are awarded the Disaster Relief Services contract as a Prime Contractor, DHSES approval is required on all subcontractors before any contractual agreements are made.

#### 2.2.2 Minimum Requirements.

Bidders must submit information to confirm their ability to meet the minimum qualifications to provide the services requested in this RFP as set forth in Section 1.3 – Minimum Bidder Qualifications.

The reference data for the three government projects must include:

- ✓ The Type of Disaster;
- ✓ Prime Contractor / Subcontractor(s) on the project;
- ✓ Date and Location of the Disaster;
- ✓ List of partnered client involvement (National/State/Local);
- ✓ Service timeframe from notification to resolution;
- ✓ Magnitude of damage: impact on the economic, health and public safety, transportation and emergency services;
- ✓ Scope of Work: your firm's cost estimate, workload of large/small projects;
- ✓ Technical assistance;
- ✓ Public assistance;
- ✓ Mitigation assistance
- ✓ Individual assistance
- ✓ Financial assistance
- ✓ Client/agency contact person;
- ✓ References may be verified, please provide:  
Contact persons' name/title, current business e-mail and telephone number.

### 2.2.3 Plan of Operation/Staffing Plan.

Any additional titles the bidder deems necessary should be included in their Plan of Operation / Staffing Plan.

#### a) Operational Plan

- Methodologies - Provide a detailed outline of plans and approach for providing all services required by the Scope of Work section of this RFP. This detail should include specific information containing the following:
  - What are the latest technologies and equipment being utilized by your company that you propose to utilize within this RFP?
  - Your plan of approach to the Disaster Recovery Services described in this RFP.
  - Will work be performed by specialized teams?
  - Provide details of the hierarchy of various titles you proposed to use and their proposed duties.
- Detail your firm's capability and plan for responding to various Disaster Relief Emergencies. Provide a comparison of your company's protocol for man-made vs. natural disasters.
- Describe your firm's proposed staffing plan(s) and timeframe/mobilization for the first responders and the deployment of requested staff.
- Describe any data and support you may require of DHSES.

#### b) Staffing Plan

- On-Site
  - Provide proposed staffing plan, detailed to include scheduled shifts and hours of the required Disaster Recovery staff as well as any additional staffing proposed. Plan must also detail how you propose coverage in the event of vacation, sick days, etc.
  - The plan must describe the role of each required Staff Title.
  - Proposed plan for staffing after-hours events.
- Off-Site
  - Provide description of how the off-site staff is supported by the Contractor's company, including the Staff Titles and locations of the personnel providing support.
  - Provide a listing of key management personnel that will oversee the contract. Include resumes and role of each.
  - Submit a description of corporate training programs provided to proposed staff.

### 2.2.4 Company Experience.

Describe your firm's experience as a Disaster Relief Service company. Please include how long your company has been providing this service within your current business structure.

### 2.2.5 Pricing.

All Bidders must submit their proposed rates on the Bid Proposal Form for all required titles necessary to provide the State with the Disaster Relief Services Titles on Attachment 1 marked "Bid Proposal Form."

### 2.2.6 Required Documents.

All other required completed forms from Appendix B.

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

**Note:** OGS reserves the right to request any additional information deemed necessary to ensure that the Bidder is able to fulfill the requirements of the contract.

## 2.3 Bid Preparation

All bids must be completed in ink or machine produced. Bids submitted handwritten in pencil will be disqualified.

## 2.4 Packaging of RFP Response

Please submit four (4) originals of Attachment 1 – Bid 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. Submit four (4) originals of all required forms from Appendix B and four (4) originals of the Technical Proposal.

Also submit an additional four (4) exact copies of the Technical Proposal, in 4 separate binders.

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 – 1719 (this document)
- Bid Due Date and Time: (as indicated in Section 1.4 - Key Events)
- Bid for Disaster Relief Services.

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

## 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.

Submit all required bid documents including signed bid addenda if any, to the NYS Office of General Services - Division of Financial Administration at the following address:

**OGS Financial Administration, Contract Unit  
Empire State Plaza, Corning Tower, 40th Floor  
Albany, NY 12242  
Attn: Jenny Fung  
Bid # 1719**

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

The State of New York will not be held liable for any cost incurred by the Bidder 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.

Bids must be received in the above office on or before 2:00 PM on the date indicated in Section 1.4 - Key Events. 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 bidding entity 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.

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 NYS 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 issuing Office 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 the issuing Office 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.

### **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, for delivering bids. Vendors are encouraged to pre-register by contacting the OGS Finance**

**Office at 518-474-5981 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 the OGS Finance Office. The Finance Office will then enter the visitor's information into the building access system. Access will not be allowed until the system has been updated. 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://ogs.ny.gov/BU/BA/Parking/Visitor/>**

## 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, Financial Administration on behalf of the Division of Homeland Security & Emergency Services Office of Emergency Management.

### 3.2 Method of Award

This RFP is intended to be a Multi-Award Contract. Award shall be made to the two highest scoring responsive and responsible vendors who submit the best value proposals. The highest scoring firm shall be the Primary Contractor and the second highest firm shall be the Alternate Contractor.

Upon determination of the best value proposals, a contract, between DHSES and each successful proposer, will be delivered to each successful proposer for signature and shall be returned to the issuing office for all necessary State approvals. Upon final approval, a completely executed contract will be delivered to each contractor.

The Grand Total bid amount of the Primary Contractor, shall be used to establish the contract value. The established contract value shall not be exceeded.

In the event of a disaster (project), the Primary Contractor will be notified of the titles and approximate hours required. In the event that the Primary Contractor cannot provide all needed services, the Alternate Contractor shall be awarded the project.

### 3.3 Price

Prices shall be represented as hourly rates for each title. The hourly rate for each title shall be inclusive of all labor, licenses, insurance, administrative, overhead and profit. Prices must be submitted using the Bid Proposal Form (Attachment 1 of this RFP). An estimated number of annual hours for each title will be used on the Bid Proposal Form for evaluation purposes. Proposers must provide pricing for each title. Incomplete bids will be rejected.

Pre-approved travel, meals or lodging expenses shall be reimbursed in accordance with the not-to-exceed rates authorized by the NYS Office of the State Comptroller (OSC).

Please refer to the provided link to the OSC web site regarding approved NYS travel rates.

<http://www.osc.state.ny.us/agencies/travel/manual.pdf>

### 3.4 Term of Contract

This contract will commence upon OSC approval and will be in effect for five (5) years.

**The State of New York retains the right to cancel this contract for convenience, provided that the Contractor is given at least thirty (30) days written notice of DHSES' intent to cancel.** Any cancellation by DHSES 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 DHSES, its agents and employees therefore for lost profits or any other damages resulting there from. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. See Section 6.16 – Termination.

### 3.5 Price Adjustment (Escalation / De-escalation)

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 (each hourly rate), dependent upon fluctuations in the Consumer Price Index for All Items, 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 adjustment will apply to each hourly rate for each title.

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. 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, and 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.

### **3.6 Method of Payment**

Invoices for payment shall be submitted at the end of each month for services satisfactorily completed during that month, on a Company Invoice.

Invoices will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller (OSC) and 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); Company FEIN; Vendor ID number (Statewide Financial System - SFS); Date(s) of Service; Location where services were performed; actual number of hours worked for each title; and a detailed description of services performed. The Contractor shall separately itemize pre- authorized travel, meals and lodging expenses. (Also see Reporting Requirements in Section 5.7).

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 by OGS.**

All Invoices are to be submitted for payment to:

**The Claims Unit**  
**Office of General Services**  
**Division of Financial Administration**      -or-      [claimsunit@ogs.ny.gov](mailto:claimsunit@ogs.ny.gov)  
**Empire State Plaza Station**  
**P. O. Box 2117**  
**Albany, New York 12220-0117**

**Also, a copy of the Invoice must be simultaneously forwarded to the Office of Emergency Management for review and approval at the following address:**

**Finance Administration**  
**NYS Office of Emergency Management**  
**1220 Washington Ave., Bldg. 22, Ste. 101**  
**Albany, NY 12226**

### **3.7 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 State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner'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 Comptrollers 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. 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 (SFS), 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 the above website and complete the Substitute W-9 form and submit following the instructions provided.

### **3.8 Past Practice**

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of this Agreement 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 Agreement at any time in the past shall constitute a waiver of subsequent breach.

### **3.9 Bid Exceptions**

The Issuing Office 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 Bidder's 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' as identified in Section 1.4 – Key Events. 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, either via addendum (if the response results in a change to the RFP), or directly to the requesting vendor.

### **3.10 Dispute Resolution**

It is the policy of the Office of General Services' 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. 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.

### **3.11 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.

### **3.12 Prime Contractor Responsibilities**

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 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.

### **3.13 Inspection of Books**

It is expressly understood and agreed that the Office of General Services, the New York State Comptroller and the Division of Homeland Security and Emergency Services shall have the right to inspect and audit the Contractor's records covered under this Agreement, in accordance with his statutory responsibility to examine the books and accounts of every Agency. The New York State Comptroller and DHSES require, 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.

### **3.14 Glossary of Terms**

“Issuing Office” shall mean the Office of General Services Division of Financial Administration.

“Contractor” shall mean a successful company(s) 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 and the Division of Homeland Security and Emergency Services (DHSES).

“Commissioner” shall mean the Commissioner of General Services or the Commissioner of the Division of Homeland Security and Emergency Services or duly authorized representative.

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

### **3.15 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

Proposals will be evaluated and scored based upon the criteria set forth in this Section. Proposals will be evaluated for best value to the State.

A committee of OGS and DHSES employees will evaluate each proposal and initially determine whether a proposal is responsive to the requirements of the Solicitation.

The technical evaluation committee will subsequently evaluate and score each responsive proposal for items a–c listed below. DHSES / OGS reserve the right to check references.

OGS Division of Financial Administration will evaluate all cost proposals from responsive Proposers. The cost proposal with the lowest total fee will be awarded the maximum possible points, (refer to item d listed below). 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 for items a-c.

Scores from each of the Proposers, including items a-d listed below, will be totaled and the Proposer having the highest score will be ranked number one; the Proposer with the second highest total score will be ranked number two and so on.

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

Each Proposal will be evaluated as to the quality of its relevant experience (including that of its proposed employees) and length of service in both the industry and with the Proposer, demonstrating its ability to perform the required services.

**b. PLAN OF OPERATION (40%)**

Each Proposal will be evaluated as to the completeness of and the extent to which the operational information meets the goals and requirements of the Solicitation.

**c. QUALITY AND COMPLETENESS OF PROPOSAL (5%)**

Each Proposal will be evaluated as to the extent to which the proposal satisfies and addresses each requirement of the Solicitation. Consideration will also be given to the overall organization of, and ease of navigation of the submitted proposal.

**d. CONTRACT FEE (35%)**

The cost to the State will be evaluated in relation to all cost proposals submitted by responsive Proposers.

### 4.2 Notification of Award

After the evaluation, all Proposers will be notified of the name of the Selected Proposer and the Alternate Proposer. The Selected Proposer and the Alternate 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.

## 5. Detailed Scope of Work/Service Requirements

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### 5.1 Scope of Contract

The purpose of any contract resulting from this Request for Proposal is to provide NYS Division of Homeland Security and Emergency Services with a Disaster Relief Service Contractor to supplement DHSES staff at competitive hourly rates. The awarded contractor shall provide comprehensive Disaster Service Experts in the event of an emergency / disaster by providing Subject Matter experts in various titles for both field staff and administrative staff.

- ❖ Project Managers
- ❖ State Public Assistance Coordinator
- ❖ State Project Officer
- ❖ Public Assistance / Mitigation/ Individual Assistance Specialists
- ❖ Program Assistant
- ❖ Administrative Assistant
- ❖ Data Entry Clerk

The Contractor shall be experienced and knowledgeable in providing Strategic Advice. The field staff must be knowledgeable on the current provisions related to the Public Assistance Programs found in the Stafford Act and 44 CFR. The Contractor shall also be available to support DHSES before, during and after any declared / undeclared; natural / man-made disasters.

**The awarded Contractor (and their subcontractors) is required to adhere to all Federal Emergency Management Agency (FEMA) standards and New York State laws.**

DHSES shall have the discretion to request that the Contractor remove a staff member from service, if needed. All services shall be performed under the direction of DHSES.

### 5.2 Titles and General Descriptions

The total number of Subject Matter experts for each title is dependent to the Type of Disaster and needs of the State. Below is a general description of tasks associated with each title. These descriptions are general and not intended to be all inclusive or limiting the work tasks that may be performed by that title.

#### 5.2.1 Project Manager

- Provide on-site, field level or in-office oversight and management of State Public Assistance / Hazard Mitigation / Individual Assistance Coordinators, State Project Officers, State Public Assistance Specialists and State Administrative Staff (Account Clerk, Administrative Aid and Data Entry Clerks) to ensure proper processing of Individual Assistance (IA), Public Assistance (PA) and Hazard Mitigation (HM) projects.
- Provide management oversight to the state staff assigned to the field and work in coordination with the Joint Field Office (JFO) Liaison to ensure effective mission performance
- Support the JFO Liaison position and perform management level meetings and associated task in support of the Individual Assistance (IA), Public Assistance (PA) and Hazard Mitigation (HM) programs.

#### 5.2.2 State Public Assistance Coordinator

- Schedule, attend and participate in all Kick-Off Meetings with Applicants
- Provide programmatic and technical assistance to Applicants as required
- Estimate and document Public Assistance Grants
- Review all Project Worksheets and provide quality assurance as to scope of work, cost estimate, general content and hazard mitigation maximization
- Perform small project validations
- Formulate large projects
- Project workloads and completion dates for Recovery Operations in assigned county
- Report to the Public Assistance Liaison Coordinator and the Chief of Recovery as required or requested
- Maintain good working relationship with the County Emergency Manager and NYS OEM Regional Director

### **5.2.3 State Project Officer**

- Perform Preliminary Damage Assessments (PDA) for Individual Assistance / Public Assistance immediately following a disaster.
- Serves on an inspection team with a federal inspector and local representative.
- Assists team to assess the magnitude of eligible damage and determine the kind and size of components to be repaired or replaced.
- Assess and document all significant impacts to a geographical area to include: Economic, Social, Health & Public Safety, Transportation and Emergency Access
- Prepare large project worksheets for applicants
- Efficiently manage workload to minimize the project worksheet / application development process
- Conduct exit briefing with applicants when the project worksheet / application development phase is complete
- Provide continuity between the applicants in the field, the JFO and the Recovery Sections at the State Office of Emergency Management
- Assist applicants with preparation of change of scope request, alternate project request or improved project requests or Benefit Cost Analysis
- Provide project reviews for partial and final payment requests from applicants
- Perform large project close-out inspections and project close out reviews
- Visit with applicants and inspect large projects
- Validate claimed costs and all special considerations
- Document results of inspection

### **5.2.4 Public Assistance / Mitigation / Individual Assistance Specialist**

(i.e. Insurance, Environmental, Historic Preservation, Flood Plain Managers)

- Provide technical assistance, perform program reviews and project analysis
- Review and provide professional recommendation on proposed project requirements, changes, offsets and statutory requirements
- Provide synopsis / reviews to Public Assistant Coordinator, DAO and OA, DHSES Chiefs of necessary tasks undertaken
- Provide programmatic and technical assistance to applicants, appropriate program units and staff

### **5.2.5 Program Assistant**

- Program or grant management to support program process
- Tracks, monitors, reviews, assist and provide recommendations on information, progress payment requests, obligations, time tracking, reporting requirements and reimbursements

### **5.2.6 Administrative Assistant**

- Responsible for maintaining administrative files
- Produce all briefing and training materials
- Monitor travel documentation
- Support the program section staff
- Performs other administrative tasks

### **5.2.7 Data Entry Clerk**

- Responsible for entering FEMA Request of Public Assistance (RPA's) into the FEMA EMMIE System
- Assist with preparation and typing of letters for programs
- Assist with data entry on Project Worksheet and projects
- Required to produce and update daily reports
- Maintain paper backup files for all disasters

## 5.3 Scheduling

In the event of a disaster requiring contract services, DHSES will contact the contractor in accordance with the procedure described in Section 3.2. The Contractor will be directed as to how many / what titles will be initially required, and the location(s) and time(s) of deployment. The Awarded Contractor and DHSES will identify a Primary Contact Liaison Person for the project.

DHSES reserves the right to modify the number, titles, and locations of the Contractor's staff throughout the project.

## 5.4 Travel

Subsequent to the scheduling process described in Section 5.3, the Contractor will submit travel plans for the deployment. DHSES must pre-approve all travel and reserves the right to reject or require changes to the submitted plans. Additional travel as may be required throughout the project shall follow the same process.

**Pre-approved travel, meals or lodging expenses shall be reimbursed in accordance with the not-to-exceed rates authorized by the NYS Office of the State Comptroller (OSC).**

**Please refer to the provided link to the OSC web site regarding approved NYS travel rates.**

<http://www.osc.state.ny.us/agencies/travel/manual.pdf>

## 5.5 Security Procedures

The Awarded Contractor's staff must carry appropriate ID credentials to make them identifiable as a Contractor employee. This procedure is required for all in-house and field staff.

Additionally, some locations may have specific agency security policies which must be followed. All In-house staff, working in a state facility, will be required to have a valid Drivers license. The State may also require in-house staff to submit to additional background checks. In the event that the State deems an employee not acceptable, that employee may be denied access. In such circumstance, the contractor is required to provide an acceptable substitute staff.

## 5.6 OSHA

### **Occupational Safety & Health Administration Training Requirements:**

It is possible that the contractors on-site field staff may encounter hazardous conditions. The contractor shall be responsible for adhering to all applicable OSHA guidelines and regulations. The contractor shall also be responsible for ensuring that all on-site field staff completes OSHA training, at a minimum, in the following topics:

- 1) Asbestos Awareness,
- 2) Lead Awareness,
- 3) Affected Person Lockout/Tagout,
- 4) Hazard Communication,
- 5) Confined Space Awareness,
- 6) The use of Personal Protective Equipment.

#### A. Specific Field-of-Work Requirements:

In circumstances where specific OSHA regulated work is required, for example but not limited to: Asbestos work; Lockout/Tagout procedures; or work which involves entering a "confined space", the Contractor/Contract Employee(s) shall have all pertinent and up-to-date certifications beyond the "awareness" level as required by OSHA for the specific work.

It is the Contractor's responsibility to provide the DHSES with all employee updates and/or renewals for the specified training, upon request.

## 5.7 Administrative and Reporting Requirements

### 1. **Contract Meetings:**

- a. The Contractor will be responsible for the completion of a variety of administrative and reporting requirements, and the cost of it shall be included in the base bid price.
- b. Upon award of the contract and prior to the start of any work, the Contractor shall be available for an initial job meeting with the DHSES.
- c. Unless otherwise directed, there shall be periodic job meetings for the following purposes:
  - i. Review job progress, quality of work, and approval

- ii. Identify and resolve problems, which impede planned progress.
- iii. Coordinate the efforts of all concerned so that the contract progresses on schedule to on-time completion.
- iv. Maintain a sound working relationship between the Contractor and the Agency Representative, and a mutual understanding of the contract.
- v. Maintain sound working procedures.

**2. Reporting Requirements:**

- a. Unless otherwise directed, the Contractor shall provide an updated monthly report, which shall be attached to each invoice. This report shall detail all work completed during the invoice period and shall detail actual work completed. The format and content of all reports shall be subject to the approval of DHSES.
- b. The above monthly work schedule report shall include:
  - i. Schedule of when work is performed - date, time, etc.
  - ii. Specific information of what work was performed.
  - iii. The number of titles utilized and hours worked.
- iv. The State reserves the right to request payroll records for review or audits. The contractor shall be obligated to provide such records within 72 hours from request.
  - c. All reports must be available in electronic format within five (5) days following the reporting period unless otherwise directed by DHSES.
  - d. The Contractor is required to submit to DHSES a semi-annual summary of disaster activities for work progress.

## 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 Agreement
3. OGS RFP Number 1719 (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 an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement 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 Offerer/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 Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

<http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html>

### 6.3 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 DHSES/OEM 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 DHSES under this Contract.

Contractor shall supply DHSES with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as DHSES'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 DHSES.

Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from DHSES.

In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify DHSES and commence an investigation in cooperation with DHSES 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 DHSES following the discovery that DHSES's system security has been breached.

Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from DHSES 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.

## 6.4 Confidentiality

Contractor agrees to keep confidential and not to disclose to third parties any information provided by the DHSES or learned by the Contractor during the performance of the Contract unless Contractor has received the prior written consent of the DHSES to make such disclosure. This provision shall survive the expiration and termination of this Contract. The Contractor warrants that all of its operations are compliant with all federal, state and local laws, rules and regulations pertain to the privacy and/or security of personal and confidential information.

## 6.5 Ethics Compliance

All proposers/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 any contract resulting from this RFP, 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.

## 6.6 Contractor Insurance Requirements

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, Office of General Services (hereinafter referred to as "OGS"), Certificates of Insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements contained in this Contract. Such Certificates shall be of a form and substance acceptable to OGS.

Certificate acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers acceptable to OGS; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to Office of General Services, Purchasing Unit, Corning Tower, 40th Floor, Empire State Plaza, Albany, New York 12242 and shall name **The People of the State of New York, its officers, agents, and employees as additional insureds there under** (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by OGS. Such approval shall not be unreasonably withheld.

The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply to OGS updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

a) Commercial General Liability Insurance with a limit of not less than \$5,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.

b) The Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, Errors and Omissions Liability Insurance with a limit of not less than \$5,000,000 per loss.

1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract.
2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.

c) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

d) Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

Contractor acknowledges that failure to obtain any or all required insurance on behalf of OGS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS.

e) WORKERS' COMPENSATION / DISABILITY INSURANCE:

Workers' Compensation, Employer's Liability, and Disability Benefits meeting all New York State statutory requirements are required. If coverage is obtained from an insurance company through an insurance policy, the policy shall provide coverage for all states of operation that apply to the performance of the contract. In addition, if employees will be working on, near or over navigable waters, coverage provided under the US Longshore and Harbor Workers' Compensation Act must be included. Also, if the contract is for temporary services, or involves renting equipment with operators, the Alternate Employer Endorsement, WC 00 03 01A, must be included on the policy naming the People of the State of New York as the alternate employer.

PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS:

ACORD forms are NOT acceptable proof of workers' compensation coverage.

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, 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.

Contractors seeking to enter into contracts with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

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.state.ny.us](http://www.wcb.state.ny.us));

or

B) Certificate of Workers' Compensation Insurance:

1) Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services;

or

2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services;

or

C) Certificate of Workers' Compensation Self-Insurance - Form SI-12, available from the New York State Workers' Compensation Board's Self-Insurance Office;

or

D) Certificate of Participation in Workers' Compensation Group Self-Insurance Form GSI-105.2, available from the contractor's Group Self-Insurance Administrator.

#### PROOF of COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, contractors shall:

A) Be legally exempt from obtaining disability benefits coverage;

or

B) Obtain such coverage from insurance carriers;

or

C) Be a Board-approved self-insured employer.

Contractors seeking to enter into contracts with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

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.state.ny.us](http://www.wcb.state.ny.us));

or

B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services;

or

C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

All forms must name the **Office of General Services – Financial Administration, 40th Floor, Mayor Erastus Corning 2nd Tower, Empire State Plaza, Albany NY 12242**, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

## 6.7 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.

Vendors 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>

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

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

#### **POLICY STATEMENT**

The New York State Office of General Services (OGS), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority and women-owned business enterprises have opportunities for maximum feasible participation 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" ("the 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 verses 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.

#### **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 this contract; or (ii) employment outside New York State.

Bidder further agrees to submit with the bid a staffing plan (Form EEO 100) identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will, upon request, submit to the Authorized User, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

Further, pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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.

#### **Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises (MWBE)**

For purposes of this procurement, OGS hereby establishes a goal of 10% for Minority-owned Business Enterprises (MBE) participation and 10% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total contract MWBE goal of 20%. A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this 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, Bidder/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, Bidder/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a Utilization Plan on Form MWBE 100 with their 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 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.

A Bidder who documents good faith efforts to meet the goal requirements may submit a request for a partial or total waiver on Form BDC 333, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses B-D above, will apply.

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 Compliance & Payment Report on Form MWBE 102 to OGS, by the 10<sup>th</sup> day of each month during the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**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>

## **6.9 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 exempt such information from disclosure. Such request must be in writing, must state the reasons why the information should be exempted 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.

## **6.10 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 DHSES / OGS 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.
- 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 DHSES / OGS.
- 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.
- DHSES interpretation of specifications shall be final and binding upon the Contractor.
- The Commissioner of DHSES 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 DHSES.
- 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, DHSES 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 – DHSES 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, DHSES 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 DHSES 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 DHSES, 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.

- DHSES reserves the right to reject and bar from the facility any employee hired by the Contractor.

## 6.11 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.

## 6.12 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. When bidding, any known / planned use of subcontractors must be disclosed in detail with bid submission. If subcontractors are to be used, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed. 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 15% of the total contract value.

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/subcontractor's employee(s) who carry out any of the provisions of any contract resulting from this RFP.

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 Deputy Director of Recovery, NYS Office of Emergency Management, 1220 Washington Ave, Bldg. 22, Ste. 101, Albany, NY 12226, 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 the Assistant to the Director may require concerning the proposed subcontractor's ability and qualifications.

## 6.13 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 Proposer from receiving the award if the Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct Proposers' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the Proposer.
4. Adjust any Proposer's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Proposer will cause the State to incur additional costs.
5. Utilize any and all ideas submitted in the proposals received.
6. Negotiate with Proposers 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 Proposers.
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, DHSES / OGS, will determine award using established criteria.

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

## 6.14 Extent of Services

DHSES 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.

## 6.15 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>

## 6.16 Termination

### Termination

DHSES 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, DHSES 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, DHSES 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 DHSES 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 DHSES 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, DHSES may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

## 6.17 NYS Vendor Responsibility Questionnaire For-Profit Business Entity

### **(Hereinafter the "questionnaire")**

OGS conducts a review of prospective contractors ("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.

## **6.18 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.

## **6.19 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.

## **6.20 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.

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**

## ***Required Procurement Forms***

***New York State Office of General Services***

***on behalf of the***

**New York State Division of Homeland Security and  
Emergency Services – Office of Emergency  
Management**

**For**

**Disaster Relief Services**

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Contractor Information

SOLICITATION NUMBER 1719

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)

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

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

\_\_\_\_\_  
(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:

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- 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.**

# **Appendix C**

## **Sample Contract Agreement**

### **Request for Proposal No. 1719**

## Sample Contract Agreement

### NEW YORK STATE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES – OFFICE OF EMERGENCY MANAGEMENT

#### Agreement for DISASTER RELIEF SERVICES WITH (CONTRACTOR)

CONTRACT # C00XXXX

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_ 2012 by and between the People of the State of New York, acting by and through the Commissioner of the Division of Homeland Security and Emergency Services, Office of Emergency Management whose office is located at 1220 Washington Avenue, Building 7A, Suite 710, Albany, NY (hereinafter "Commissioner", "DHSES / OEM" or "State"; and \_\_\_\_\_, (hereinafter "Contractor"), with an office at \_\_\_\_\_.

#### WITNESSETH:

**WHEREAS**, DHSES / OEM, as part of their mission, is responsible for the coordination of relief services in the event of a disaster within the state, and,

**WHEREAS**, in order to fulfill that responsibility, DHSES / OEM requires the services of a Professional Disaster Relief Services Company to assist in their efforts, and,

**WHEREAS**, the State has formally solicited proposals for the following described Project: Disaster Relief Services to assist DHSES/OEM in the event of an emergency or disaster. The Contractor is to provide knowledge, expertise, experienced staff and provide assistance to the State before, during and after a disaster 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 Disaster Relief 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 the agreed upon not-to-exceed hourly rates for all titles as proposed in the Contractor's Proposal attached hereto as Appendix C, which Appendix C is otherwise hereby incorporated by reference and made a part hereof as fully as if set forth as length herein.

The maximum value of this contract shall be set at \$ \_\_\_\_\_ and shall not be exceeded.

**2. TERM**

This Agreement shall commence upon OSC approval and will be in effect for five (5) years, unless sooner terminated as herein specified.

**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. 1719, 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 the State 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.

**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 documents, conflicts will be resolved in the following descending order of precedence:

- (i) Appendix A
- (ii) This Contract Agreement
- (ii) Appendix B - Solicitation # 1719 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 DHSES 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 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]

SAMPLE

# Appendix B

## Request for Proposal No. 1719

SAMPLE

# Appendix C

## Contractor's Proposal

SAMPLE

**BID PROPOSAL FORM**

NYS OGS  
 Financial Administration  
 ESP, Corning Tower - 40<sup>th</sup> FL  
 Albany, NY 12242

**RFP - 1719**  
**Contract No.** \_\_\_\_\_  
 (to be completed by agency)

**Contractor's Name** \_\_\_\_\_

*OGS requires four (4) original copies of this form completed, dated and signed.*

The above Contractor Agrees to provide Disaster Service Specialists to the Division of Homeland Security & Emergency Services for all NYS counties in accordance with the specifications in this proposal for the titles bid below. Estimated annual hours are for evaluation purposes only.  
 (Please refer to the title descriptions and requirement criteria in Section 5.)

<i>Titles</i>	<i>Hourly Rate</i>	<i>X Estimated Annual Hours</i>	<i>= Annual Value</i>
Project Manager	\$	2,080	\$
State Public Assistant Coordinator	\$	26,000	\$
State Project Officer	\$	26,000	\$
Public Assistance / Mitigation / Individual Assistance Specialist	\$	5,200	\$
Program Assistant	\$	3,120	\$
Administrative Assistant	\$	4,160	\$
Data Entry Clerk	\$	2,080	\$
Grand Total			\$

Does this proposal meet all of the criteria of the Request for Proposal? \_\_\_\_\_ Yes \_\_\_\_\_ No

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature of Authorized Representative

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

\_\_\_\_\_  
 Title