



**A Request for Proposal (RFP) Is Being Solicited By The
New York State Office of General Services
On Behalf Of The
New York State Board of Elections
For
Independent Testing Authority Services For
Voting System Examination and Certification Testing**

October 31, 2012

Class Codes: 43 & 93
Group Number: 73805
Proposal Number: 1777
Contract Period: As Specified
Proposal Due Date: 12/12/12 @ 2:00 PM EST

Designated Contact:

Warren Joscelyn

Voice: 518-474-5981

Fax: 518-486-3651

E-mail: warren.joscelyn@ogs.ny.gov

Alternate Contact:

Diane Robinson

Same

Same

diane.robinson@ogs.ny.gov

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1. Introduction

1.1 Overview

The New York State Office of General Services on behalf of the New York State Board of Elections (NYSBOE) is issuing this Request for Proposals (RFP) for the services of an Independent Voting Systems Testing Authority¹ (ITA).

New York State (NYS) is seeking a vendor to provide testing and certification of voting systems for use in NYS elections. Before any voting system may be purchased in New York State, the NYSBOE must certify that such system(s) meet the requirements of the NYS Election Law, Section 6209 of Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (both of which may be found at <http://www.elections.ny.gov>) and the federal 2005 Voluntary Voting System Guidelines (VVSG).

Independent testing authorities (ITAs) must possess an ITA Certification issued by the National Association of State Election Directors (NASED), the U.S. Election Assistance Commission (EAC) or be otherwise approved by the commissioners of the NYSBOE. The successful Contractor will be responsible for examining and testing voting systems for certification, decertification, and recertification by the NYSBOE.

The awarded ITA Contractor will develop and deliver the Voting System Examination and Certification Testing services in accordance with the deliverables and requirements expressed in this RFP.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Warren Joscelyn, Purchasing Officer, New York State Office of General Services, Division of Financial Administration has been designated as the PRIMARY contact for this procurement solicitation and may be reached by e-mail, voice or fax for all inquiries regarding this solicitation.

Warren Joscelyn, Purchasing Officer
New York State Office of General Services
Financial Administration, 40th Floor
Corning Tower, Empire State Plaza
Albany, New York 12242
Voice: 1-518-474-5981 Fax: 1-518-486-3651
E-mail: warren.joscelyn@ogs.ny.gov

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

Diane Robinson, Senior Purchasing Agent
New York State Office of General Services
Financial Administration, 40th Floor
Corning Tower, Empire State Plaza 40th Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Fax: 1-518-486-3651
E-mail: diane.robinson@ogs.ny.gov

¹ NYSBOE considers the terms ITA and VSTL (Voting System Test Laboratory) to be equivalent.

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, 35th Floor, ESP
 Albany, NY 12242
 Voice: 1-518-473-7083
 Fax: 1-518-486-2679
 E-mail: Tryphina.Ramsey@ogs.ny.gov

1.3 Minimum Proposer Qualifications

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

To be a qualified bidder for this RFP, the proposing firm must meet the following qualification:

- Proposer must either: 1) have successfully completed the testing upon which an EAC ITA Certification is awarded and is awaiting an award of certification from the EAC; or 2) possesses a current EAC certification. NYSBOE and the Commissioner, or his/her designated representative, shall have the right to reject responses from any Proposer who is unable to provide satisfactory evidence that it meets this qualification.

1.4 Intent to Submit a Proposal

Vendors who wish to submit a proposal **must register their Intent to Submit a Proposal by the date stated in Section 1.5 Key Events** by sending written notice to Warren Joscelyn, via e-mail at warren.joscelyn@ogs.ny.gov. Vendors shall include their company name, address, phone, fax, contact name, title, and e-mail address. Only vendors who have submitted an Intent to Submit a Proposal will be allowed to submit Proposals and receive updates and responses to questions regarding this RFP. By issuing an Intent to Submit a Proposal, the vendor is not obligated to submit a proposal.

1.5 Key Events (Estimated)

The Table below outlines the tentative schedule for important action dates. If the State finds it necessary to change any of these dates, notification will be made through a bid addendum to this RFP

Action	Date
OGS Issues Request for Proposal (RFP) for Voting System Examination and Certification Testing services	10/31/12
Proposers Submit Intent to Bid Notification to OGS (see Section 1.4)	11/21/12
Proposer Questions Due to OGS <u>including any exception waiver requests</u> (See Section 3.9).	11/21/12
OGS Issues Responses to Questions	12/4/12
Proposals Due to NYS OGS	12/12/12 2:00 pm EST
Oral Presentations/Site Visits – NYSBOE may visit Proposer’s facilities	Week of 1/7/12
Estimated Vendor Selection	1/21/13
Estimated Contract Award	3/07/13

2. Bid Submission

2.1 RFP Questions and Clarifications

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

Warren Joscelyn, Purchasing Officer
OGS Division of Financial Administration
40th Floor, Corning Tower, ESP
Albany, NY 12242
Phone: 1-518-474-5981
Fax: 1-518-486-3651
e-mail: warren.joscelyn@ogs.ny.gov

Questions and requests for clarification are only accepted via e-mail. Official answers to questions will be provided via addendum. Bid addenda will be provided via e-mail to all Proposers who register an intent to submit a proposal. The party responsible for the question will not be identified in the public response.

Deadline for submission of questions will be as stated in Section 1.5 - Key Events.

2.2 Proposal Format and Content

In order for the State to evaluate Proposals fairly and completely, Proposers must follow the format set forth herein and must provide all of the information requested as concisely as possible in order for a proposal to be considered complete. Failure to conform to the stated requirements and format may necessitate rejection of the proposal.

2.3 Cover Letter and Proof of Ability to Meet Minimum Qualifications

Bidders must submit a cover letter which includes the following:

- Confirmation that the Proposer understands all the terms and conditions contained in this RFP and will comply with the same;
- Confirmation that should the proposal be selected, both technical and pricing components shall remain valid for at least 365 days; and
- Confirmation that should the proposal be selected, the Proposer will be prepared to begin services on the date indicated in Section 1.5 – Key Events.

The cover letter must include the full contact information of the person(s) OGS and/or NYSBOE shall contact regarding the proposal 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 Proposer 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.

- **Minimum Qualification(s).** Proposers must submit information with their cover letter confirming their ability to meet the minimum qualification(s) to provide the services requested in this RFP as set forth in Section 1.3 – Minimum Proposer Qualifications. Satisfactory submission documentation shall include documentation of the successful completion of the testing upon which an EAC ITA Certification is awarded and proof of submission of the same to the EAC, or a current EAC certification.

2.4 Cost Proposal

Proposers shall respond to this RFP by completing the pages of Attachment A (Cost Proposal).

2.5 Technical Proposal

Proposers shall respond to this RFP by completing Appendix B (Required Forms). The technical proposal shall respond to the requested information included in Section 5 and 2 of this RFP and Attachment B Proposer Viability. Proposals may be accompanied by additional supporting documentation.

2.6 Proposal Preparation

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

2.7 Packaging of RFP Response

The Cost Proposal and the Technical Proposal should be submitted in separate envelopes. Please submit four (4) originals of Attachment 1 - Cost Proposal Form **in a sealed envelope clearly marked "Cost Proposal" which is separate** from the technical proposal. No overt statements about costs shall be included in the technical proposal. In addition, please submit a total of 10 copies of the technical proposal, (4 originals and 6 copies.)

Also, submit 4 originals of all other documents found in Appendix B – Required Forms, as well as any bid addenda.

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:

- Proposer's complete name and address
- Solicitation Number – 1777 (this document)
- Proposal Due Date and Time: (as indicated in Section 1.5 - Key Events)
- Proposal for Independent Testing Authority Services NYSBOE

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

2.8 Instructions for Proposal Submission

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

Only those Proposers who furnish all required information and meet the mandatory requirements will be considered. Submit all required proposal documents including signed proposal 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: Warren Joscelyn
Bid # 1777**

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 Proposer 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 the date and time indicated in Section 1.5 - Key Events. Proposers 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.

Proposers mailing their proposal must allow sufficient mail delivery time to ensure receipt of their proposal 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 proposing entity shall not excuse late proposal submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late proposal submissions. Proposers are cautioned that receipt of Proposals 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.

Proposals must remain open and valid for 365 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Proposer. In such cases, a proposal shall continue to remain an effective offer, firm and irrevocable, subsequent to such 365 day period until either tentative award of the contract(s) by the Issuing Office is made or the proposal is withdrawn in writing by the Proposer. Tentative award of the contract(s) shall consist of written notice to that effect by the Issuing Office to the successful Proposer. 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 48 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://www.ogs.state.ny.us/parking/forVisitor/visitor.html>

3. Administrative Information

3.1 Issuing Office

This RFP is being released by the New York State Office of General Services (OGS) on behalf of the New York State Board of Elections (NYSBOE).

3.2 Method of Award

Award under this RFP shall be made to a single Proposer found to be the most responsive and responsible and affording the best value to the State. Specifically award will be made to the Proposer receiving the highest point total using the evaluation criteria listed in Section 4 – Proposal Evaluation. Upon determination of the best value proposal, a contract will be delivered to the successful Proposer for signature and shall be returned to the Issuing Office to obtain all necessary State approvals. Once final approval is given by the Office of the State Comptroller (OSC), the completely executed contract will be delivered to the awarded Contractor.

The successful Proposer's grand total bid amount shall be used to establish the contract value. The established contract value shall not be exceeded.

The State reserves its right to make no award resultant from this RFP.

3.3 Term of Contract

This contract will commence on 3/7/2013 and will be in effect for five (5) years, unless the State exercises its option to cancel as outlined herein.

The State of New York retains the right to cancel this contract without cause, provided that the ITA Contractor is given at least thirty (30) days notice of intent to cancel. 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.

3.4 Method of Payment

Payments will not be processed by the State until the products have been delivered in satisfactory condition or services have been satisfactorily performed, the products or services have been accepted (See Acceptance of Deliverables-Section 3.5) and an invoice has been submitted. Invoices for payment will be processed in accordance with established procedures of OGS and OSC and payment will be made as follows:

1. Deliverable Nos. 1 and 3 thru 10 will be paid monthly based on hourly rates for work performed. NYSBOE will retain 10% on each payment, pending final written acceptance of the deliverables.
2. Deliverable No. 2 invoices shall be submitted at the end of each month on a company invoice for deliverables satisfactorily accepted per section 3.5 during that month.

Invoices must contain sufficient data including, but not limited to, contractor name, contract number, description of services, detailed information which identifies the voting system being tested (ie: the date of the examination, the individual(s) or subcontractor(s) performing such examination, a narrative description of the examination, task or test being performed; the duration of such examination, etc.), the task or test hourly rate and number of hours worked per job title/or per deliverable, the deliverable number, the month of delivery and the Contractor's Vendor Id Number. For purposes of the contract, reimbursement will be limited to the hourly rates as proposed except for Travel Reimbursements at <http://osc.state.ny.us/agencies/travel/reimbrate.htm>. All other costs incurred by the Contractor will be considered the cost of doing business and will not be reimbursable.

The ITA Contractor agrees that from the effective date of the contract until contract termination, the rates charged by the ITA Contractor and paid for by OGS, on behalf of NYSBOE, will be equal to or lower than any rates provided by the ITA Contractor to other customers for like services.

The fees will be paid according to standard State procedures, including the Prompt Payment Section of the State Finance Law, upon receipt by OGS of acceptable invoices referencing the contract number at the following address:

All invoices or vouchers are to be submitted for payment to:

NYS OFFICE OF GENERAL SERVICES
DIVISION OF FINANCIAL ADMINISTRATION
EMPIRE STATE PLAZA STATION
P. O. BOX 2117
ALBANY, NEW YORK 12220-0117

OR

claimsunit@ogs.ny.gov

3.5 Acceptance of Deliverables

Each deliverable must be reviewed and accepted in writing by the NYSBOE. A signed letter from an authorized NYSBOE representative(s) will serve as the sole methodology utilized in acceptance. No other form(s) of communication shall be deemed acceptance of a deliverable or any part of a deliverable.

A timeframe for deliverables will be agreed upon at/or subsequent to the project kick-off meeting. Certain deliverables require several levels of review.

3.6 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 for hourly rates, dependent upon fluctuations in the CPIU 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.

The 'base' month for determining adjustments will be the third month prior to the start date of the contract. The base month is fixed and will not be adjusted year to year. The adjustments will be based on the difference in the base month CPI for each applicable year and will become effective in the anniversary month. For example, if the contract is awarded in September 2006, the 'base' month will be June. If the contract allows for an adjustment after the first year, it would be based on the difference between the June 2006 CPI and the June 2007 CPI and become effective in September 2007. If the contract price is fixed for three years and allows an escalation thereafter, it would be based on the difference between the June 2008 CPI and the June 2009 CPI and become effective September 2009.

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

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

3.7 Electronic Payment

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, OGS, NYSBOE and OSC. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Co-executives, in the Co-executives 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 OSC's procedures to authorize electronic payments. Authorization forms are available at OSC's website at www.osc.state.ny.us/epay/index.htm, by e-mail at 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 OSC'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, OSC 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 any contract resulting from this RFP shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived. No waiver of any breach of the contract at any time in the past shall constitute a waiver of subsequent breach.

3.9 Proposal Exceptions

The Issuing Office will consider all requests to waive any proposal requirement. However, Proposers should be aware that failure to obtain a waiver of any proposal requirement in advance of proposal submission may result in rejection of a proposal and disqualification from the process.

Proposers wishing to obtain an exemption or waiver for any part of this solicitation must contact the Designated Contact listed on the cover of this solicitation in writing by the "Proposer Questions Due to OGS" Date as identified in Section 1.5 – Key Events. The request must cite the specific section of the RFP 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 Proposer.

3.10 Dispute Resolution

For purposes of this RFP it is the intention of the OGS Office of Financial Administration and the NYSBOE to provide Proposers with an opportunity to administratively resolve disputes, complaints or inquiries related to Proposals, this solicitation or contract awards. OGS and NYSBOE encourage 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 identified on the front of the solicitation document.

3.11 Examination of Contract Documents

- Each Proposer 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 Proposer 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 Proposer to fulfill every detail of all the requirements of the documents governing the work. The Proposer, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such Proposer 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 State (NYSBOE/OGS) at the time of examination of the documents 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 Proposer who is the prime contractor. The State 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 under 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 Glossary of Terms

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

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

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

The “State” shall mean The People of the State of New York, which shall also mean the New York State Office of General Services and/or the New York State Board of Elections.

“Offeror” or “Proposer” shall mean any person, partnership, firm, corporation or other authorized entity submitting a bid to the Issuing Office in response to this RFP.

3.14 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. Proposal Evaluation

4.1 Overview

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

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

Overall Breakdown of Points:

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

4.2 Responsiveness

Each proposal will be reviewed by the Issuing Office for responsiveness and compliance with the minimum qualifications. This process will be repeated by the technical evaluation team prior to full review of the proposal.

4.3 Cost Proposal Evaluation 30% (300 Points)

The Issuing Office will examine all Cost Proposal documents for responsiveness to cost requirements. If a Cost Proposal is found to be non-responsive, that proposal will be eliminated from consideration. The Cost Proposal with the Lowest Grand Total Cost will be awarded the maximum possible points (300). Each subsequent proposal will receive a proportionate number of points using the following equation:

$$\frac{\text{Lowest Grand Total Cost}}{\text{Other Proposer's Grand Total Cost}} \times \text{Total Cost Points Available (300 points)} = \text{Cost Points Awarded}$$

Proposers must submit cost Proposals on the Proposal Bid Form, Attachment A - Cost Proposal. For the purposes of bid evaluation each Proposer will submit an hourly rate for the following three job titles: one (1) Technical Test Staff/Security Staff Title, one (1) Project Management Staff Title and one (1) Clerical Staff/Administrative Assistant Staff Title. For purposes of the contract, reimbursement will be limited to the hourly rates as proposed except for Travel Reimbursements at <http://osc.state.ny.us/agencies/travel/reimbrate.htm>. All other costs incurred by the Contractor will be considered the cost of doing business and will not be reimbursable.

Note: Cost will be evaluated on the hourly rates submitted, with an estimated number of hours applied to each Job Title Category. The Technical Test Staff/Security Staff Title rate will be evaluated at an assumed 20,000 hours, the Project Management Staff Title rate at an assumed 5,000 hours and the Clerical Staff/Administrative Assistant Staff Title rate at an assumed 5,000 hours. The number of assumed hours and the above mentioned evaluation methods are for bid evaluation purposes only.

Contractor(s) will be paid for exact hours worked on each system in accordance with Sections 3.4, 3.5 and 3.6 of this RFP.

Each of the Cost Proposal points will be added to the score from the Technical Evaluation Committee.

4.4 Evaluation of Technical Proposal 60% (600 Points)

The Technical Evaluation Committee will independently evaluate and score each responsive Technical Proposal based upon the following:

- a. the Firm/Staff Qualifications (skills and experience of the Proposer and the project team, including all subcontractors, in relation to the project requirements);
- b. the proposed Scope of Work / Work Plan, Product / System, and Schedule; and
- c. cumulative knowledge including all information garnered during oral presentations.

4.5 Oral Presentations/Site Visits

All Proposers will be expected to conduct an oral presentation to explain or clarify content within their proposal, as well as expound on the unique qualities of their approach and resources.

NYSBOE reserves the right to conduct site visits if deemed appropriate. Site visits will be conducted at the expense of NYSBOE and will be restricted to facilities in the continental US. If site visits are deemed appropriate, at its discretion, NYSBOE may opt not to revisit sites which it has previously visited. If site visits are conducted it is NYSBOE's expectation that the oral presentations will be conducted at the Proposer's site during the site visit. If site visits are not conducted, oral presentations will take place in Albany, NY.

NYSBOE will provide an agenda for oral presentations and/or site visits prior to the oral presentation and/or site visit dates.

4.6 Executive Committee Scoring

The final 100 possible points will be awarded by an Executive Committee, the membership of which will be designated by OGS and NYSBOE. The Executive Committee will be privy to all pertinent proposal materials and will award points based upon factors that include the Executive Committee's appraisal of the Proposer's level of experience, flexibility, presentation format of the bid and acceptability of the Proposer's scope of services. In addition, consideration will be given to whether the Proposer can perform for the proposed costs while maintaining adequate levels of service and quality over the term of the contract.

4.7 Notification of Award

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

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

5. Scope of Work – Voting System Certification Program

5.1 Introduction to State Board of Elections and Requirement Source

The NYSBOE was created in 1974 and assumed election functions previously handled by the Department of State and the Attorney General. In addition, a wide variety of new election responsibilities was assigned by law to the NYSBOE. NYSBOE works with each of the 62 county elections boards to carry out election administration procedures. Each county has two elections commissioners (one Republican and one Democrat), who are responsible for administering elections in their county. In addition New York City has a centralized board composed of the ten elections commissioners from the five counties which make up New York City.

The NYSBOE consists of four Commissioners, appointed by the Governor and recommended by the chairs of the two major political parties, and the leadership of each house of the legislature. The NYSBOE's duties and responsibilities include:

- ✓ Encouraging voter participation in elections;
- ✓ Developing and recommending election-related legislation;
- ✓ Testing and certifying new voting systems for use in New York State;
- ✓ Monitoring the performance and use of voting systems throughout the State;
- ✓ Conducting reviews of the operation of each local Board of Elections and recommending changes for operational improvement and revisions to policies and procedures;
- ✓ Designing and specifying forms used in registration and overall election administration;
- ✓ Investigating alleged violations of the Election Law;
- ✓ Evaluating useful technology to improve Board operations and establishing rules and regulations for its implementation;
- ✓ Enacting Rules and Regulations to implement the provisions of the Election Law;
- ✓ Providing guidance to local Boards in areas such as interpretation of law and work procedures;
- ✓ Certifying candidates for statewide, Congressional, Assembly, Senate, Justices of the Supreme Court and certain other offices and approving the form, content and wording of statewide ballot questions; and
- ✓ Certifying the results of elections involving offices noted above, and all those offices embracing more than one county.

Staff of the NYSBOE has day-to-day contact, by phone, e-mail, fax and in person with individual local Boards. In addition, there are several seminars scheduled each year, at which the NYSBOE and its staff confer with regional groups of Boards, or all Boards.

The Help America Vote Act of 2002² (HAVA) was approved by Congress to address the issues of accurate elections in the United States. Specifically, the act was established to:

..." provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of federal elections and to otherwise provide assistance with the administration of certain federal election laws and programs, to

² Public Law 107-252, October 29, 2002.

establish minimum election administration standards for states and units of local government with responsibility for the administration of federal elections, and for other purposes.”³

HAVA enhances the voting system certification program provided for in New York State Election Law, and in the State’s Rules and Regulations Part 6209 (both available on the NYSBOE’s website, at <http://www.elections.ny.gov>).

5.2 Project Vision

Proposers bidding on this RFP should understand that NYS is seeking testing against and compliance with the entire VVSG as well as with NYS requirements that enhance the VVSG. The NYS Election Law and Part 6209 of the Codes, Rules and Regulations exceed, and in some cases replace the federal requirements, and will take precedence in the event of a conflict.

5.3 Project Business Goals

Examination of voting systems shall be conducted by an ITA appropriately certified by the NASED, the EAC or otherwise approved by the commissioners of the NYSBOE. ITAs which have successfully completed the testing upon which an ITA certification shall be awarded, may submit documentation of such successful testing, for consideration by the NYSBOE. Voting system testing shall be in compliance with New York State Election Law requirements, the requirements of the NYS Rules and Regulations Part 6209, and the VVSG. Such examination shall utilize examination and testing procedures and processes as required by the EAC accreditation program plus the additional requirements specified by NYSBOE and required by NYS laws and regulations. The ITA scope of services shall include examination and testing for the State Board’s certification, decertification, and recertification of voting systems.

5.4 ITA Specific Project Initiation and Management

The NYSBOE will provide a Project Manager who will maintain and manage the overall project management and project timeline for the complete project to certify new voting systems in New York State. It is intended that the Proposer will prepare their own detailed project plans for the tasks included in this RFP and will work under the direction of the NYSBOE Project Manager to incorporate these ITA specific tasks into the overall project plan and timeline. The Proposer will be required to provide their own Project Manager who will be responsible for providing project management and implementation services for all tasks included in this RFP.

The ITA Contractor shall develop a detailed implementation plan and schedule outlining the key phases, tasks, activities, dependencies, budgeted hours, assigned resources and deliverables for the project. This plan shall be used as input to the master timeline maintained by the NYSBOE and must be created in the same format (MS Project Plan).

The ITA Contractor shall also provide a contractor project organization chart and a staffing plan. During the course of the project, the ITA Contractor shall participate in weekly status meetings and other meetings as necessary either via telephone conference or in person and provide a weekly written status report to NYSBOE. (See Section 5.5.2)

The ITA Contractor Project Manager shall maintain and update the implementation plan and project schedule for the services specified in this RFP throughout the lifecycle of the project and provide NYSBOE updated versions of the plan and project schedule. It is possible that periodically, certain deadlines may be mandated by federal court rulings, in which case the vendor will be required to ensure that their implementation plan and schedule comply with these potential deadlines.

³ Public Law 107-252, October 29, 2002, Preamble.

As part of the ongoing management of each separate voting system certification – project, the ITA Contractor shall develop a risk management plan identifying potential project risks and mitigation strategies. The ITA Contractor shall also identify, track and manage project issues using issue-tracking tool and develop an issue resolution process.

As part of the project initiation process, the ITA Contractor may conduct an in person project kick – off meeting in Albany, NY, at the discretion of the NYSBOE, with key stakeholders within 15 days of contract execution. The kick-off meeting will provide an overview of the project scope and initial schedule for services specified in this RFP, introduce the ITA Contractor project team and outline project start-up procedures.

All documentation will be reviewed, and must be approved, by NYSBOE prior to finalization.

Proposers should be aware that the results of previous voting system certifications may be utilized by the ITA Contractor, however, the amount of documentation available from such previous testing is unknown. The ITA must review the same to determine how much of the prior work will be reusable.

Subsequent to the award of a contract, activity may be sporadic, occurring as new systems are submitted requiring full certification - or upgrades/ modifications are made to certified systems, which may require regression testing, selected testing, or complete certification testing. Any certification tasks which will require simultaneous testing will depend upon when systems are submitted, or when certified systems are upgraded or otherwise modified.

5.5 Deliverables

The Contractor shall provide each of the following deliverables:

5.5.1 Deliverable 1: Project Kick-Off Meeting and Initial Project Management Deliverables

The ITA shall facilitate a project kick-off meeting in Albany, NY, at the discretion of the NYSBOE, with key project stakeholders within 15 days of contract execution. The kick-off meeting will provide an overview of the ITA's project scope and initial schedule for services specified in this RFP, introduce the ITA project team and outline project start-up procedures. The project kick-off meeting will also be used to discuss the project timeline.

ITA Contractor Organization Chart

The ITA shall provide a project organization chart and a staffing plan. The consultant team structure should be identified. Changes to the organizational structure during the course of this project should be promptly reflected in this document, and updates to it shall be submitted to NYSBOE in a timely manner. Key personnel changes such as the Project Manager must first be pre-approved by NYSBOE.

ITA Contractor Schedule and Work Plan

The ITA shall provide an ITA specific detailed implementation plan and schedule outlining the key phases, tasks, activities, dependencies, budget hours, assigned resources and deliverables for the project.

The ITA Detailed Quality Assurance Plan

The ITA shall provide a detailed Quality Assurance Plan that explains the proposed quality assurance and testing practices. The ITA shall explain their internal quality management program. This should include reference to the use of any specific methodologies, as well as the receipt of any quality certification.

The ITA Change Control Plan

The ITA shall provide a detailed Change Control Plan that will identify, track and manage project deliverables throughout the lifecycle of the project and provide NYSBOE with updated versions.

The ITA Communications Plan

The ITA shall provide one communication plan to facilitate reporting to the NYSBOE and voting system vendors, all anomalies, errors and any corresponding remediation, throughout the process. The ITA shall assist NYSBOE with revising and enhancing a project communication plan, including the identification of a single point of contact representing the ITA with decision making authority, and information regarding communications responsibilities of the ITA.

The ITA Issue Resolution Plan

The ITA shall create an Issue Resolution Plan that details how issues will be identified, tracked and managed. The plan will identify an issue-tracking tool and describe an issue resolution process.

5.5.2 Deliverable 2: Ongoing Project Management Services

The ITA Weekly Project Status Meetings

Status or other necessary conference calls shall be scheduled as needed. Once a voting system is in queue for certification, the ITA shall conduct regularly scheduled Project Status Meetings with NYSBOE to review the status of the ITA's tasks specified under this RFP and resulting contract. Meeting minutes will be provided after each formal meeting. NYSBOE does not expect an on-site presence throughout the engagement. Meetings may be conducted via telephone, but there may be occasions or issues for which requests for on-site meetings would be made. For those sessions, if any, meeting space will be provided.

The ITA Weekly Written Project Status Report

A weekly status report will be produced and will include progress made, planned tasks for the up-coming week, and issues requiring resolution for the services specified in this RFP.

The ITA Project Steering Committee Meetings

The ITA key personnel shall participate as needed in scheduled Project Steering Committee Meetings with NYSBOE key personnel. Meeting minutes will be provided after each formal meeting.

The ITA Project Issue Tracking

The ITA shall also identify, track and manage project issues for the services specified in this RFP using an issue-tracking tool and develop an issue resolution process. NYSBOE does not have a preferred issue tracking tool.

The ITA Risk Management Plan

The ITA shall develop a risk management plan identifying potential project risks that could impact their ability to perform their tasks and mitigation strategies for the area of the project under the ITA's control. The ITA must also report any potential risks that could impact the overall project.

5.5.3 Deliverable 3: Testing Requirements Confirmation Matrix

The ITA is expected to test to **ALL** of the VVSG requirements and test to **ALL** the NYS requirements in the NYS Election Law and Regulations as described below.

The NYSBOE will provide a proposed requirements matrix. The ITA shall review this document and provide a written analysis of the requirements matrix. NYSBOE and the ITA will conduct a series of meetings to discuss and jointly develop a final requirements confirmation matrix document which will then be approved by NYSBOE for use in the test plan development.

5.5.4 Deliverable 4: Evaluation of Prior Work

The ITA will complete an evaluation of any prior Certification Testing documentation submitted by a voting system vendor. Existing test plans, results and other relevant documentation should be used wherever possible to avoid duplication of effort. Documents in scope for this review include but are not limited to Functional and Security Master Test Plans, Environmental test plans, usability tests, detailed individual vendor specific test plans, test results, and anomaly reports. The ITA will develop and present an evaluation report that documents the results of the evaluation of prior testing including any recommendations for re-use.

5.5.5 Deliverable 5: Review of Technical Data Packages (TDPs)

The TDPs provided by the voting system vendors must be reviewed by the ITA for content to ensure that they include all documentation that is required by the regulatory requirements.

The TDP contents must also be reviewed and reported on individually by the ITA to ensure that the content provided is of such quality that it can be utilized to achieve the desired results of the package. Example: The acceptance testing procedures are sufficient to satisfy all requirements.

The ITA shall provide anomaly reports for missing and inadequate content to both the voting system vendor and NYSBOE to track open issues, target dates for resolution and actual resolution.

5.5.6 Deliverable 6: Final Master Test Plan

The ITA must develop a Master Test Plan that encompasses all forms of testing required to satisfy all areas of testing required by the VVSG and NYS requirements. Specifically the Master Test Plan shall follow the testing process and phases outlined in Volume 2 of the 2005 VVSG. This plan must include a tabular reference to all the requirements to be tested against, the type of testing (Functional, Security, Environmental, Source code (Functional and Security), etc) and also include a threat analysis to further define testing requirements at the voting system test plan level. The high-level methodology for each type of testing must also be included.

In the VVSG the following keywords are used to convey conformance and testing requirements:

Shall – indicates a mandatory requirement in order to conform. Synonymous with “is required to.”

Is prohibited –indicates a mandatory requirement that indicates something that is not permitted (allowed) in order to conform. Synonymous with “shall not.”

Should, is encouraged - indicates an optional recommended action, one that is particularly suitable, without mentioning or excluding others. Synonymous with “is permitted and recommended.”

May - indicates an optional, permissible action. Synonymous with “is permitted.”

However, the ITA is expected to test to **ALL** of the VVSG requirements no matter which of the above definitions they fall into and test to ALL the NYS requirements in the NYS Election Law and Regulations.

The Master Test Plan will be reviewed by NYSBOE and must be approved by NYSBOE prior to finalization and implementation. If this review identifies changes that are necessary the contractor must provide additional drafts until accepted by the NYSBOE as final.

All security-related test plans will be reviewed by an independent third party selected by NYSBOE and must be approved by NYSBOE before finalization and implementation. If the independent third party review identifies changes that are necessary the contractor must provide additional drafts until accepted by the third party and NYSBOE as final.

Note: There is no limit to the number of drafts, however, NYSBOE will monitor the changes and make a determination as to whether the change was due to lab error and if so, the duplication of work will need to be removed from any requests for payment.

5.5.7 Deliverable 7: Voting System Specific Test Plans

The ITA must develop individual test plans by voting system to be used as a script for testing all components of the voting system. Voting system-specific test plans shall include: functional testing, functional security testing, source code testing and security source code testing. The NYS requirements for source code review are designed to ensure that all voting systems' software and source code conforms to the 2005 VVSG and the highest standards of good coding practices and security. In order to ensure that this is the case, the NYS requirements go above and beyond the federal guidelines. The NYS requirements can be reviewed at the NYSBOE's website: (www.elections.state.ny.us) which includes New York State Election Law, Section 7-208, Rules and Regulations of the NYSBOE, Part 6209, Understanding of COTS Standards - Version 3, and the current Master Security Test Plan.

Since the Master Test Plan can be considered the "what is to be tested," the individual test plans are the "how it will be tested" as outlined in the National Institute of Standards & Technology (NIST) SP-800-53A Section 3.2. With this in mind, the plans must be detailed and comprehensive enough to ensure that the tests themselves are repeatable with consistent results from different testers.

All test plans will be reviewed by NYSBOE and must be approved by NYSBOE prior to finalization and implementation. If this review identifies changes that are necessary the contractor must provide additional drafts until accepted by the NYSBOE as final.

All security-related test plans will be reviewed by an independent third party selected by NYSBOE and must be approved by NYSBOE before finalization. If the independent third party review identifies changes that are necessary the contractor must provide additional drafts until accepted by the third party and NYSBOE as final.

Note: There is no limit to the number of drafts, however, NYSBOE will monitor the changes and make a determination as to whether the change was due to lab error and if so, the duplication of work will need to be removed from any requests for payment.

5.5.8 Deliverable 8: Perform Testing As Outlined in Test Plans

The ITA will perform all tests outlined in the master and individual test plans based on the schedule defined in the master project plan.

All test results will be reviewed by NYSBOE and must be approved by NYSBOE prior to finalization. If this review identifies changes that are necessary the contractor must provide additional drafts until accepted by the NYSBOE as final.

All security-related test results will be reviewed by an independent third party selected by NYSBOE and must be approved by NYSBOE before finalization. If the independent third party review identifies changes that are necessary the contractor must provide additional drafts until accepted by the third party and NYSBOE as final.

Both NYSBOE and the voting machine vendor are entitled to copies of the respective test records and results. The NYSBOE will officially certify the voting system for use in New York State.

Note: There is no limit to the number of drafts, however, NYSBOE will monitor the changes and make a determination as to whether the change was due to lab error and if so, the duplication of work will need to be removed from any requests for payment.

5.5.9 Deliverable 9: Voting System Individual Test Reports

The ITA Contractor shall prepare test reports for all stages of testing and present them to NYSBOE at predetermined dates.

5.5.10 Deliverable 10: Final Test Reports

The final report will be a compilation of the outcome of all the individual test reports indicating a pass/fail for each requirement broken down by each type of test performed against the requirement. The final reports will be presented to NYSBOE to be used as part of the certification process by NYSBOE. The report shall also include possible "Compensating Controls" for those required tests that a system failed and comments on any non-required test that the system failed.

All test results will be reviewed by NYSBOE and must be approved by NYSBOE prior to finalization. If this review identifies changes that are necessary, the contractor must provide additional drafts until accepted by the NYSBOE as final.

Note: There is no limit to the number of drafts, however, NYSBOE will monitor the changes and make a determination as to whether the change was due to lab error and if so, the duplication of work will need to be removed from any requests for payment.

5.6 New York Political Subdivisions

The smallest political subdivision in the State is the Election District. Presently, there are over 16,000 election districts in NYS. There are also 150 state Assembly Districts, 63 state Senate Districts, and twenty-seven (27) congressional districts.

5.7 Types of Elections

Primary elections occur annually, usually in September; and general elections occur annually in November. In addition, there is a presidential primary conducted in the spring of the year in which the president is to be elected. While there are exceptions to this general explanation, commonly in odd-numbered years, elections are focused on county and other local offices. Likewise, in even-numbered years, they are focused on statewide and federal offices.

Special elections may be conducted upon the proclamation of the Governor, or by the requirements of certain local laws.

School district elections are conducted annually during May and certain other school elections as well as village elections are conducted at various times throughout the year. Fire district elections are commonly conducted during December but may be conducted at various times throughout the year. Library, sewer, water and other special districts also conduct elections at various times throughout the year.

5.8 Conditions for Engagement

1. The Contractor shall adhere to all current and future EAC requirements regarding the EAC Laboratory Accreditation Program and the Voting System Testing and Certification Program necessary to maintain their ITA certification.
2. The Contractor shall allow authorized NYSBOE staff and/or their representatives to be present at lab facilities, to observe voting system testing, review documentation and examine lab conditions and practices.
3. Functional testing and examination shall be performed in an open and public venue, so that members of the general public and stakeholders can view the process. Functional Testing (also commonly referred to as System Integration Testing), includes ballot definition and the casting of a large volume of votes on a system (manually and simulated, in English - and alternate languages where applicable - and using all accessibility features), to test the functionality, logic and accuracy of the system and to ensure that all peripheral devices work properly. Not all of what is considered functional testing and examination shall be performed in an open and public venue. The bulk of the testing will be performed in the lab of the awarded contractor. However, a

subset of the testing that could be classified as user testing can and will be performed in a public venue. This venue will provide for public viewing of the testing but not provide hands-on for the public. The venue must be in NY and will be provided by the NYSBOE. Details on the proposed site for this testing will be shared at the kick-off meeting.

4. Documented procedures, test plans, and the test reports of the NYSBOE and its ITA shall be made available for public inspection at the NYSBOE office and on its website. However, the NYSBOE shall determine whether all or a portion of the security requirements, test plans, testing, and all applicable security requirements and policies shall be available for public inspection, and shall exclude any such information which is deemed to be confidential data.

6. Contract Clauses and Requirements

6.1 Appendix A / Order of Precedence

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

1. Appendix A
2. Contract
3. OGS RFP Number 1777 including any appendices and or 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/Proposer during the procurement process. An Offerer/Proposer is restricted from making contacts from the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids or solicitation of Proposals or any other method of soliciting a response from offers intending to result in a procurement contract with a governmental entity 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. Section 139-j (4) provides that violations of the statute included any contacts between the Offerer and any member, officer or employee of any governmental entity other than the entity conducting the governmental procurement. 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/Proposer 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/Proposer is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

6.3 Contractor Insurance Requirements

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall 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 Section. Such Certificates shall be of a form and substance acceptable to OGS/NYSBOE.

Certificate acceptance and/or approval by OGS/NYSBOE 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 licensed or authorized to do business in New York State and acceptable to OGS/NYSBOE; shall be primary and non-contributing to any insurance or self insurance maintained by OGS or NYSBOE; 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 \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage's 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.

For construction contracts only, If such insurance contains an aggregate limit, it shall apply separately on a per job basis.

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

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

- premises liability,
- independent contractors,
- blanket contractual liability, including tort liability of another assumed in a contract,
- defense and/or indemnification obligations, including obligations assumed under this contract,
- cross liability for additional insureds
- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract
- explosion, collapse, and underground hazards,
- contractor means and methods.

The following ISO forms must be endorsed to the policy:

-
- a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
 - b. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)
 - c. Waiver of Subrogation Endorsement.

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall be endorsed to name The People of the State of New York and the New York State Office of General Services as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

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

- b) 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.

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. A Waiver of Subrogation Endorsement shall be provided upon a tentative award and within three (3) days of request.

- d) Professional Liability: The Contractor shall maintain errors and omissions liability insurance with a limit of not less than \$2,000,000 per loss.

1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OGS prior to the policy’s expiration or cancellation.

3. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

f) 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:

- 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);
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);
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 New York State Board of Elections – 40 Steuben Street, Albany NY 12207, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of OGS/NYSBOE constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS/NYSBOE. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for OGS'/NYSBOE's immediate termination of any contract resulting from this RFP, subject only to a five (5) business day cure period. Any termination by OGS/NYSBOE under this section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the New York State Board of Elections or the Office of General Services, their agents and employees therefore for lost profits or any other damages.

6.4 Tax and Finance Clause

TAX LAW § 5-A:

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

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax

and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this RFP. Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Proposer non-responsive and non-responsible. Proposers 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>

6.5 M/WBE & EEO Requirements

ARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State Certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

II. Contract Goals

For purposes of this procurement, OGS conducted a comprehensive search and determined that this contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is however encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at: <http://www.esd.ny.gov/MWBE/directorySearch.html>

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of New York State Executive Law Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall certify and affirm that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy.
 3. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 3 and Paragraph "E" of this Section II, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. To ensure compliance with this Section, the Contractor shall submit Form EEO 100- Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractor shall complete the Staffing plan form and submit it as part of their contract.
- D. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")
Contractor agrees it is responsible for updating and providing notice to the OGS of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
*Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce

during the subject time frame, not limited to work specifically under the contract.

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). 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, Offeror/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, Offeror/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Offerors 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 M/WBEs after the Contract Award and during the term of the Contract must be reported on a revised M/WBE Utilization Plan and submitted to OGS.
- B. OGS will review the submitted MWBE Utilization Plan and advise the Offeror of OGS' acceptance or issue a notice of deficiency within 20 days of receipt.
- C. If a notice of deficiency is issued, Offeror agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OGS Office of Minority and Women-Owned Enterprises, [35th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 Phone: (518) 473-7083 Fax: (518) 486-2679], 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 Offeror and direct the Offeror to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form MWBE101/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 an Offeror as being non-responsive under the following circumstances:
 - a) If an Offeror fails to submit a MWBE Utilization Plan;
 - b) If an Offeror fails to submit a written remedy to a notice of deficiency;
 - c) If an Offeror fails to submit a request for waiver; or
 - d) If OGS determines that the Offeror has failed to document good faith efforts.

An Offeror who documents good faith efforts to meet the goal requirements may submit a request for a partial or total waiver on form MWBE 101/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 the OGS Office of Minority and Women-Owned Enterprises, [35th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 Phone: (518) 473-7083 Fax: (518) 486-2679], by the 10th 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.state.ny.us/MWBE/Forms.asp>

6.6 Freedom of Information Law / Trade Secrets

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

6.7 General Requirements

- The Proposer agrees to adhere to all State and Federal laws and regulations in connection with the contract.
- The Proposer agrees to notify the Office of General Services of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- The Proposer agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
- It shall be mutually agreed that the Contractor has included cost to remedy all deficient items in their proposal and they will be responsible for satisfactory functioning of the equipment without extra compensation. The Contractor may at their option provide with their bid, a detailed explanation of work intended to be performed under this clause.
- The Proposer agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the NYSBOE.
- 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.
- The NYSBOE's interpretation of specifications shall be final and binding upon the Contractor.

- The NYSBOE and -Commissioner of General Services will make no allowance or concession to the Proposer 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 Proposer has based its bid on the more expensive option. Final decision will rest with the NYSBOE and Commissioner of General Services.
- INSPECTION – For purposes of any contract resulting from this RFP the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the NYSBOE and the Commissioner of the Office of General Services may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.
- STOP WORK ORDER - The Commissioner of General Services or the Co-Executives of New York State Board of Elections reserve 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 Proposer is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, the Office of General Services/NYSBOE 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 Proposer shall be liable to the State of New York for any such costs on account thereof. In the event that the Office of General Services/NYSBOE issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective. Provided, however, that if an emergency situation exists, as reasonably determined by the Office of General Services/NYSBOE, then the stop work order shall be effective immediately.
- It is the Contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
- The NYSBOE and/or Office of General Services reserves the right to reject and bar from the facility any employee hired by the Contractor.

6.8 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 New York State Board of Elections Co-executives, Attorney General and the Comptroller of the State of New York.

6.9 Subcontractors

The State will contract only with the successful Proposer 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 proposing, any known planned use of subcontractor(s) must be disclosed in detail with bid submission. If subcontractors are to be used for base scope services, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed. If subcontractors are to be used for Additional Services, they will be subject to the

Additional Services clause, and associated markup provision herein. The total of all Subcontractor work during the term of the Contract, except in the case of an approved joint venture or M/WBE subcontracted work as established in the approved utilization plan, shall not exceed 10% of the total contract value.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this 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 including, but not limited to the General Conditions and Requirements.

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to NYSBOE 40 Steuben Street, Albany, NY 12207 Co-executives or their designee 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 NYSBOE may require concerning the proposed subcontractor's ability and qualifications.

6.10 Iran Divestment Act

By entering into this Contract, Contractor certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before OGS/NYSBOE may approve a request for Assignment of Contract.

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

[OGS/NYSBOE] reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

6.11 Procurement Rights

The State of New York reserves the right to:

1. Reject any and all Proposals received in response to this Solicitation.
2. Disqualify a 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, the Commissioner of OGS, at his sole discretion, 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.

6.12 Extent of Services

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

6.13 Debriefings

Proposers 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 Proposers' proposal. After contract award, OGS shall, upon request, provide a debriefing to any Proposer that responded to the RFP, regarding the reason that the proposal by the unsuccessful Proposer was not selected for a contract award. The post award debriefing should be requested by the Proposer within 30 days of contract approval as posted on the OSC website (web address below). <http://wwe1.osc.state.ny.us/transparency/contracts/contractsearch.cfm>).

<http://wwe1.osc.state.ny.us/transparency/contracts/contractsearch.cfm>

6.14 Termination

Termination

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

In addition, NYSBOE 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, NYSBOE 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 NYSBOE 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 NYSBOE, its agents and employees for lost profits or any other damages.

Procurement Lobbying Termination

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

6.15 NYS Vendor Responsibility Questionnaire For-Profit Business Entity

(hereinafter the "questionnaire")

OGS conducts a review of prospective contractors ("Proposers") to provide reasonable assurances that the Proposer is responsive and responsible. A Questionnaire is used for non-construction contracts and is designed to provide information to assess a Proposer'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, Proposer agrees to fully and accurately complete the "Questionnaire." The Proposer acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Proposer is responsible, and that the State will be relying upon the Proposer's responses to the Questionnaire when making its responsibility determination.

OGS recommends each Proposer 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 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>. Proposers 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.

In order to assist the State in determining the responsibility of the Proposer, the Proposer should complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Proposer's Questionnaire cannot be viewed by OGS until the Proposer has certified the Questionnaire. It is recommended that all Proposers 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 Proposer agrees that if it is found by the State that the Proposer's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the

State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

6.16 Ethics Compliance

All Proposers and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Contract, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

6.17 Extension of Use

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

6.18 Indemnification

The Contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, subcontractors or agents, of any contract resulting from this RFP 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 RFP, 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 RFP. Such indemnity shall not be limited to the insurance coverage herein prescribed.

6.19 Attachments, Appendices and Exhibits

The Proposer's attention is directed to the attachments, appendices and exhibit documents attached hereto and hereby incorporated by reference and made part hereto as fully as if it were set forth at length herein. They are part of this solicitation and will be part of the subsequent contract. The Proposer is responsible for adhering to all requirements of the appendices and exhibits.

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.

6.21 Background Checks for Contractors Performing Services For the State of New York

Requirements of this clause apply to the successful awardee of the contract that will be performing work for the NYSBOE under the contract.

Definitions. For purposes of this clause, the following definitions apply:

- a. Suitability: "Suitability" refers to identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is likely or not likely to be able to perform the requirements of a contract for NYSBOE without undue risk to the interests of the State.
- b. Suitability Determination: A "Suitability Determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements without undue risk to the interests of the State.

Applicability.

- c. Contractors shall perform background checks and make suitability determinations on contractor employees before the individual employees can perform contract services for NYSBOE.
- d. NYSBOE on a case-by-case basis, may, either temporarily or permanently, waive the requirements of this clause, in whole or in part, if they determine in writing that background checks and suitability determinations are not necessary or for a specific individual, in order to protect the State's interests.

Background Check.

- e. The Contractor is responsible, at its own expense, for completing background checks and making suitability determinations on its employees prior to the employee beginning work. Compliance with the requirement for performing a background check and making a suitability determination shall not be construed as providing a contractor employee clearance to secured areas. Contractors are required to maintain records of background checks and suitability determinations for the term of the contract, and to make them available to the State when requested.
- f. At a minimum, the background check and suitability determination must include an evaluation of:
 - i. Verification that the individual is not listed on a national watched person database. The following link has information about data available. <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html>. The following link has a PDF file of a list that has SPECIFICALLY DESIGNATED NATIONALS AND BLOCKED PERSONS. <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>
 - ii. Criminal History checks using a national database that contains criminal histories and supplement this search by checks of NYS Office of Court Administration and comparable searches of the states where the person lived, worked or attended school during the past five (5) years or by obtaining the record of convictions from NYSOCA directly and from their equivalents from other states where the person might have lived, worked or attended school during the past five (5) years;
 - iii. DMV driving records;
 - iv. Credit report, if the applicable position involves access to cash or property subject to theft;
 - v. Social Security Number trace;
 - vi. Verification of U.S. citizenship or legal resident status;
 - vii. Employment history (past five (5) years), if other than entry level position requiring minimal skills;

- viii. Education history (highest degree verified), if other than entry level position requiring minimal skills;
- ix. Reference names and phone numbers must be required on employment application and need to be verified if specifically directed by the State.
- x. Residence for past three (3) years (should be requested on employment application to compare against data from DMV license and other searches for verification);
- xi. Military service discharge notice; and
- xii. Professional license and certification, if applicable.

Background Check Guidelines.

- g. In making a suitability determination, the contractor shall consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to the State:
 - i. Any loyalty or terrorism issue;
 - ii. Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);
 - iii. Dishonorable military discharge;
 - iv. Felony and misdemeanor offences;
 - v. Drug manufacturing/trafficking/sale;
 - vi. Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury);
 - vii. Criminal sexual misconduct;
 - viii. Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);
 - ix. Illegal use of firearms/explosives; and
 - x. Employment related misconduct involving dishonesty, criminal or violent behavior.
- h. The contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:
 - i. The nature, extent and seriousness of the conduct;
 - ii. The circumstance surrounding the conduct;
 - iii. The frequency and recentness of the conduct;
 - iv. The individual's age and maturity at the time of the conduct;
 - v. The presence or absence of rehabilitation and other pertinent behavior changes;
 - vi. The potential for pressure, coercion, exploitation, or duress;
 - vii. The likelihood of continuation of the conduct;
 - viii. How, and if, the conduct bears upon potential job responsibilities; and
 - ix. The employee's employment history before and after the conduct.

Employee Removal. Whenever a contractor becomes aware that any employee working at a location or on a system under NYSBOE under a contract becomes an unacceptable risk to the State; the contractor shall immediately remove that employee from the site, notify the NYSBOE that such a removal has taken place, and replace them with a qualified substitute. If the approval of the NYSBOE was initially required for the removed employee, NYSBOE approval is required for the replacement employee.

NYSBOE Notification. Prior to commencement of contract performance, the contractor shall notify the NYSBOE that the background checks and suitability determinations required by this clause have been completed for affected individuals.

Each suitability determination should be documented in a narrative. If negative items are mitigated by subsequent passage of time or completion of substance abuse programs this rationale should be included in the narrative. A negative suitability determination must be supported by a finding that the adverse information has a direct bearing on the potential job duties or that it is deemed sufficiently serious to bar the employee from a state site.

6.22 New York State Information Security Policy

This clause is applicable to all contracts that include information technology resources or services in which the Contractor must have physical or electronic access to sensitive NYSBOE information. For the purpose of this clause, the term "Sensitive" is defined by the guidance set forth in the NYS Information Security Policy (P03-002), issued by the NYS Division of Homeland Security and Emergency Services (DHSES). There is a presumption that all information technology systems contain some sensitive information.

Information technology resources include, but are not limited to, system software, application software, and information (data). Information technology services include, but are not limited to, the management, operation (including input, processing, transmission, and output), maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. The Contractor shall be responsible for implementing information technology security measures pertaining to personnel performing under this Contract, and all Contractor equipment used to process or store NYSBOE data or to connect to NYSBOE networks that complies with the requirements contained in:

- The NYS Information Security Policy (P03-002). To obtain a copy, contact DHSES (<http://www.dhses.ny.gov/ocs>);
- NYS information technology policies, standards and best practice guidelines (<http://www.its.ny.gov/tables/technologypolicyindex.htm>); and
- NYSBOE information security policies, procedures, and standards.

For all Contractor owned systems for which performance of the contract requires interconnection with an NYSBOE network or that NYSBOE data be stored or processed on them, the Contractor shall provide, implement, and maintain an IT Security Plan that complies with the requirements set forth above and describes the processes and procedures that will be followed to ensure the appropriate security of IT resources that are developed, processed, or used under this contract.. This plan shall specifically reference clauses of the contract and the security measures to be taken in connection to those sections. The plan shall be submitted to NYSBOE prior to the commencement of any work under the Contract

The Contractor shall incorporate this clause in all subcontracts that meet the conditions in paragraph (1) of this clause.

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 -- 7th 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

GENERAL PROCUREMENT FORMS

ASSET MANAGEMENT

FOR THE NEW YORK STATE BOARD OF ELECTIONS

ALBANY, NY

SOLICITATION NUMBER 1777

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CONTRACTOR INFORMATION

SOLICITATION NUMBER 1777

(Authorized Signature)

(Date)

(Print Name)

(Title)

(Company Name)

(Federal 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 Circle One: Yes No

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

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

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.

New York State Department of Taxation and Finance

Contractor Certification (ST-220-TD)

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

ST-220-TD

(6/06)



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. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

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. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

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. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

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)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
: SS.:
COUNTY OF _____ }

On the _____ day of _____ in the year 20____, before me personally appeared _____ known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_____ he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____ ; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

- (If an individual): _____ he executed the foregoing instrument in his/her name and on his/her own behalf.
- (If a corporation): _____ he is the _____ of _____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _____ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- (If a partnership): _____ he is a _____ of _____ , the partnership described in said instrument; that, by the terms of said partnership, _____ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- (If a limited liability company): _____ he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _____ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No. _____

ST-220-CA
(6/06)



New York State Department of Taxation and Finance

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

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a (see Need Help? on back)*.

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

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:
(Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)
and, to the best of the contractor's knowledge, the information provided on that previously filed Form T-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this _____ day of _____, 20 _____

(sign before a notary public) (title)

Instructions

General Information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF : }
COUNTY OF : } SS.:

On the day ____ of _____ in the year 20 ___, before me personally appeared _____ known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): _he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

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
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. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

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)



**A Request for Proposal (RFP) for the
New York State Board of Elections**

Independent Testing Authority

Proposal No. 1777

Attachment A - Cost Proposal

October 31, 2012

Bid Proposal Form

Name of Proposer _____

Contract Number _____

(To be completed by Agency)

For Deliverables Nos. 1 thru 10 below, All Bidders must submit only one (1) fixed hourly rate for each of the three Job Title Categories listed below that will be utilized for any project under the contract resulting from this RFP. Any employee providing services under this agreement must be invoiced utilizing one of the titles listed below. Hourly rates must be inclusive of all overhead, profit and all other costs not expressly specified to be reimbursable under this RFP.

Job Title Category	<u>Enter Hourly Rate</u>
Technical Test Staff/Security Staff Sub-categories:	Title
Technical Test Staff	\$
Sr. Voting Test Specialist Staff	\$
Project Management Sub-categories:	Title
Project Manager	\$
Deputy Project Manager	\$
Hardware Test Manager	\$
Documentation Manager	\$
Source Code Review Mgr.	\$
QA Manager	\$
Clerical Staff/Administrative	Title
Assistant Staff	\$

Cost Evaluation Methodology:

The rates provided above will be averaged for the five years requested and the average rate by Job Title Category will be multiplied by an estimated number of hours per the table below:

	Average Rate over 5 Years	Total estimated Hours 5 years*
Technical Test Staff/Security Staff	Tech avg. Rate	20,000
Project Management	PM avg. Rate	5,000
Clerical Staff/Administrative Assistant Staff	Assistant Staff avg. Rate	5,000

The total of the average rate over 5 years multiplied by the estimated hours for each staff type will be summed to arrive at an assumed total cost for the five year period.

***Note:** The estimated number of hours are for Cost Proposal evaluation purposes only; hourly rates will be paid for exact hours worked for each set of Job Category Title Categories.



**A Request for Proposal (RFP) for the
New York State Board of Elections**

Independent Testing Authority

Proposal No. 1777

Attachment B – Proposer Viability

October 31, 2012

1. Proposer Viability Requirements

1.1 Proposer Information

This section outlines how the proposer should provide all relevant information regarding project organization and the proposer's unique capabilities. Both the documentation of proposer's internal practices and satisfaction of its customer base are an essential part of the State's evaluation process.

Important Note: If the response to the RFP includes more than one company, please be sure to include information for all companies in the relevant answers to this section. For example, if two companies partnered in the response, include both company's information in all the relevant sections such as team roles, financials, experience, etc.

The selected firm should demonstrate a solid and effective approach to accomplishing the objectives of the project. This includes the use of project management methods, methodologies for defining business requirements, and approaches to deploying staff resources. To demonstrate this, proposers will submit a specific description of their approach to all portions of the project, as outlined below. For each of the sections below the proposer is expected to copy each of the tables and include them, with their response, in their technical proposal

1.2 Acknowledgement of Understanding of Differences Between VVSG and NYSBOE Requirements

The proposer must provide a statement acknowledging that they are expected to test to **all** 2005 VVSG and New York State election law and regulations as proposed herein.

1.3 List of Providers

Please indicate the company name(s) that will furnish the services below (If necessary, insert extra rows).

Independent Testing Authority
Services Provider – Prime
Contractor

<Insert Provider Name Here>

Independent Testing Authority
Services – Sub- Contractor(s)

<Insert Provider Name(s) Here>

1.4 Contact Information

Subcontractors may be used to perform work under this contract. The substitution of one subcontractor for another may be made only at the discretion of the State and with prior written approval from the NYSBOE Project Manager. Proposers will be responsible for the subcontractors meeting all terms and conditions of the specifications.

This section must be completed for proposer and all subcontractors included in the proposal.

Company Name	<Insert contact name here>
Local Address	<Insert local address here>
Corporate Headquarters Address	<Insert headquarters address here>
Company Website Address	<Insert website here>
Contact Representative Name and Title	<Insert contact representative name and title here>
Representative Phone and E-mail	<Insert representative phone and E-mail here>

Note: Proposers should note that they do not need to subcontract with certified labs, as such. The proposers themselves are to be certified or meet the other qualifications set forth in this RFP, and will be the responsible party. It is not necessary to enter into a subcontract agreement with a lab at this time, however it is necessary to provide the contact information as required in this section of the RFP with respect to any and all subcontractors with whom the proposer anticipates entering into work agreements, in order of preference. The list of potential subcontractors should be broad, as under Section 6.9 of the RFP, it is impermissible to subcontract with any firm not identified in the proposer's original proposal without written consent of NYSBOE. As for substitutions, they are allowed. As stated above, one subcontractor may be substituted for another, subject to written approval by the NYSBOE.

1.5 Qualifications

Proposer Unique Qualifications
The proposer shall provide proof of accreditation by the EAC or NASED preferably upon submission of proposal but no later than the date of contract signature, or provide such other documentation for the consideration of the State Board, as specified in this RFP. The proposer shall identify any additional qualifications they bring to this project. Explain what differentiates its services from others in the market.
<Insert answer here>

1.6 Prior Experience

Please indicate the general and organizational experience related to this RFP.

Special mention shall be made of direct supervisors and key personnel (including managers, leads, and similarly titled positions), and the approximate percentage of the total time each will be available for this program.

Prior Experience

Does the proposer have demonstrated experience in completing similar projects on time and within budget?

General Experience: General experience is defined as general background, experience and qualifications of the proposer. A discussion of proposed facilities which can be devoted to the project may be appropriate.

Organizational Experience Related to the RFP: Organizational experience is defined as the accomplishment of work, either past or on-going, which is comparable or related to the effort required by this RFP. This includes overall proposer or corporate experience.

<Insert answer here>

Do the individuals assigned to the project have experience on similar projects?

For key staff proposed, proposers shall include narrative referencing the staff's experience with similar work. Proposers shall also include in their response detailed resumes for these key staff. Resumes should include: employment history, summaries of each position held and project managed, and the candidate's skills and experiences within the context of the assignments/skill sets contained in this RFP. The resume must support the requirements as described or the candidate may be deemed unqualified.

The proposer must include a resume for its proposed Project Manager. It is desirable for the Project Manager's experience to meet the following criteria:

- Certification as a Project Management Professional.
- Six (6) years experience in overseeing medium scaled projects comprised of sub-projects and distinct deliverables, and typically coordinating and delegating the assignments for the project staff.
- Experience using project management tools.

Note: When a proposer submits a proposal with their prospective candidates' resumes, NYSBOE will assume that each candidate, whether a direct employee or subcontractor, has agreed, prior to the proposal submission, to perform the services for which their name and resume has been submitted. Information contained on the candidate's resume may be used to verify portions of the Qualifications and Experience Requirements.

<Insert answer here>

How extensive is the applicable education and experience of the assigned personnel?

Prior Experience

Proposers shall include in their responses the relevant credentials (degrees) and certifications (SANS, CISSP etc.) for staff members who will be responsible for planning and executing the security related tests.

<Insert answer here>

Describe the adequacy of staff, methodology, tools and resources; quality and appropriateness of technical or support staff; and past performance of the organization relevant to this project.

<Insert answer here>

The proposer should describe its relationship with the proposed subcontractors – specifically whether it has worked with the subcontractor in prior testing work. In addition, If the proposer has worked with subcontractor(s) please describe at a minimum:

- type of work performed;
- duration of engagement together;
- when it occurred.

<Insert answer here>

The proposer should discuss its customer base including a profile of geographical areas served, customer size, and type of solutions and services provided.

<Insert answer here>

If subcontractors are proposed, proposer must include a commitment letter with their proposal from each subcontractor detailing:

- Willingness to perform as a subcontractor for specific duties (list duties).
- Statement that should contract be awarded to Primary ITA Contractor, subcontractor will be prepared to begin operations on or about the date stated under RFP Section 2.3 – Cover Letter.
- What priority the work will be given and how it will relate to other work.
- The amount of time and facilities (types, names and addresses for each) available to this project.

Subcontracting arrangements should be clearly detailed in the proposal.

<Insert answer here>

1.7 Sample Documents

The ITA Contractor shall provide sample test plans and other supporting documentation, as required for EAC accreditation, including but not limited to:

- Master Test Plan
- Individual Voting System Security Test Plan
 - Functional
 - Source code
- Individual Voting System Test Plan
 - Functional
 - Source code
 - Environmental hardware
 - Usability
- Quality assurance plan/process

Note: The documents referred to in the RFP include all documents submitted in support of your receipt of accreditation as an ITA, or those in support of the NYSBOE's consideration of your status as an ITA, specifically to the 2005 VVSG. Please feel free to submit any additional documents relevant to the RFP, but you may identify trade secrets or confidential subject matter if it is truly confidential. Note that all responses to the RFP may become a matter of public record. Refer to NYSBOE website for Voting Systems Standards Part 6029. (A) and 6029.6 (F) 3 (n) at:

<http://www.elections.ny.gov>

and also to RFP Section 6.6 Freedom of Information Law (FOIL). For additional information refer to FOIL regulations at:

<http://www.ogs.ny.gov/About/Freedom.asp>

1.8 Customer References for Proposers

Proposers are required to list (2) proposer references, including contact information for testing projects that the proposer has completed.

Contact	Project Description
Organization Description; Entity Name; Contact Name; Contact E-mail Address; Contact Telephone Number;	Project Description; Project Scope; Project Objectives; Original Contract Value; Final Contract Value; Products and Services Rendered to Organization; Project Duration/Dates; Project Status and Outcome; Proposed Personnel Involved
<Insert reference contact here>	<Insert project description here>
<Insert reference contact here>	<Insert project description here>

Note: Proposers are prohibited from presenting manufacturers of voting machines as references.

1.8.1 Customer References for Subcontractors

If subcontractors are to be used, proposers are required to list (2) references for each sub-contractor, including contact information for testing projects that the sub-contractor has completed.

Contact	Project Description
Organization Description; Entity Name; Contact Name; Contact E-mail Address; Contact Telephone Number;	Project Description; Project Scope; Project Objectives; Original Contract Value; Final Contract Value; Products and Services Rendered to Organization; Project Duration/Dates; Project Status and Outcome; Proposed Personnel Involved
<Insert reference contact here>	<Insert project description here>
<Insert reference contact here>	<Insert project description here>

Note: Proposers are prohibited from presenting manufacturers of voting machines as references.

1.9 Conflict of Interest

Conflict of Interest
<p>Each proposer and sub-contractor shall include a statement indicating whether or not the organization or any of the individuals proposed to work on the contract has a possible conflict of interest and, if so, the nature of that conflict. <u>Additionally, the proposer shall provide a “certification” that the laboratory maintains and enforces policies that prohibit and prevent conflicts of interest or perceived conflicts of interest and provide copies of those policies.</u></p> <p>Specifically prohibited conflicts include:</p> <ul style="list-style-type: none"> • The holding by a lab employee, their spouse or dependent children, of any financial stake in a voting system manufacturer; • Being involved with the development of any voting system or system component which might come under test; • Providing consulting services to a manufacturer that would compromise the independence of the testing process; and a prohibition on soliciting or receiving gifts, directly or indirectly from a voting system manufacturer. <p><u>Further, the proposer shall also provide a “certification” that it conducts background checks (see Section 6.21) on all employees proposed for this engagement (NYSBOE reserves the right to examine the results of such checks for staff proposed for the project).</u></p>

Note: The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program to be developed by the proposer. The State's determination regarding any questions of conflict of interest shall be final.

<Insert conflict of interest statement here>

1.10 Project Management Services

The NYSBOE will provide a Project Manager who will maintain and manage the overall timeline (using Microsoft Project Plan) for the complete project to certify voting systems in New York State. It is possible that periodically, certain deadlines may be mandated by Federal Court rulings, in which case the vendor will be required to ensure that their implementation plan and schedule comply with these potential deadlines.

The State requires that the prime contractor take responsibility for providing project management and implementation services for all proposed systems and applications under their control. The prime contractor is expected to guarantee the successful, timely completion of the project.

1.10.1 Project Management Plan

Requirement
Relationship Management - Identify an individual to be the Project Manager for the Contract. Discuss treatment of account management, status reporting, performance review meetings (at least monthly), contract management, audits, planning, setting priorities and handling service requests (e.g. a report, assessment or other similar task which is requested based upon information shared/learned during a status conference call, or from another jurisdiction using the same or similar system or from the review of a deliverable).
Problem Management - Explain your proposed process for problem management including: problem logging, problem prioritization, problem resolution, tracking of unresolved problems, problem escalation procedures, and problem closeout and reporting practices.

<p>Quality Management - Explain your proposed quality assurance and testing practices. Explain your internal quality management program. This should include reference to the use of any specific methodologies, as well as the receipt of any quality certification(s).</p>
<p>Detailed Work Plan - The proposer must include a detailed work plan indicating how each of the deliverables is to be accomplished. The proposer's technical proposal should be in as much detail as necessary to fully explain the proposed technical approach or method. The technical proposal should reflect a clear understanding of the nature of the work being undertaken, and must include information on how the project is to be organized, staffed, and managed.</p>
<p><Insert Project Management Plan here></p>
<p>The State reserves the right to modify the proposed implementation plan based on its evaluation of the proposal or during the course of the project. As the detailed test plans are completed, realignment of the priorities may be necessary. The contractor shall have input into the decision process on realignment of priorities.</p>
<p><Insert samples of a weekly status report, an agenda, minutes, and a risk assessment report here></p>

1.11 Summary of Proposed Implementation - Team Roles and Responsibilities

The proposer should demonstrate that it employs a competent team of people that are readily available to work on this project. All proposed key project personnel, including subcontractor staff, must be identified in the proposal. The State reserves the right to prior approve or disapprove any change in the successful proposer's project team members whose participation is specifically offered in the proposal. This is to assure that persons with vital experience and skill are not arbitrarily removed from the project by the prime contractor.

The proposer will provide a Project Manager to coordinate all necessary tasks as defined in this scope of work through a collaborative effort with NYSBOE staff and managers.

The proposer will be required to provide sufficient functional and technical resources with the necessary knowledge and skills to complete the work defined in this scope in collaboration with NYSBOE. The Project Manager will be responsible for ensuring that all groups have the necessary understanding of the requirements. Regular project-centered meetings will be held by the Project Manager to ensure the effective and collaborative management of all projects and project components. (See Section 5.4)

The management staff provided by the proposer will work collaboratively with NYSBOE to set the direction and develop approaches for accomplishing the particular tasks.

The proposer's management resources should provide the following knowledge, skills and experience:

- Experience with project management methodology and quality assurance processes.
- Experience leading teams that successfully complete multiple, tangible deliverables.

- Experience leading teams with wide-ranging staff skill levels. Experience developing the skills and abilities of staff.
- Possession of strong leadership, interpersonal and problem resolution skills, as well as excellent organizational and communication skills.

Each person’s role must be identified and documented in the following format:

Proposer Team Roles
Provide a list of the names, positions, on-site hours per month and duration of assignment for each of your personnel that may be assigned to the project.
Please provide a diagram of the proposed project staffing structure (showing proposer, subcontractor and expected State team resources)
List roles and team members designated to each role
List other required resources (specify)
<Insert diagram/response here>

1.11.1 Project Team Continuity

Describe your plan for maintaining continuity in the composition of the project team.
<Insert answer here>

1.11.2 NYSBOE Team Roles

In the table below list each NYSBOE project team role that may be required to assist in the completion of the deliverables. Include team role, number of people assigned to role, a brief description of tasks, estimated number of staff hours per role per month, and duration of the project required. Add additional rows as necessary.

Role/Type	No. of Staff	Task Description	Hours Per Month	Duration
<Insert here>				

1.11.3 NYSBOE Responsibilities

Describe the resource roles and level of effort required of NYSBOE to ensure a successful implementation.
<Insert answer here>

EXHIBIT A

INCLUDES APPENDIX A OF THE RFP

SAMPLE CONTRACT

NEW YORK STATE

BOARD OF ELECTIONS

AGREEMENT FOR

INDEPENDENT TESTING AUTHORITY SERVICES FOR
VOTING

SYSTEM EXAMINATION AND CERTIFICATION TESTING

THIS AGREEMENT, made this _____th day of, 2013 by and between the People of the State of New York, acting by and through _____, the State Board of Elections, whose office is 40 N. Pearl Street, Ste. 5, Albany, New York 12207 (hereinafter "NYSBOE" or "State"), and _____ (hereinafter "_____" or "Contractor"), with an office at _____.

WITNESSETH:

WHEREAS, in fulfilling its responsibilities under the Help America Vote Act ("HAVA") NYSBOE deems it necessary to secure the services of an Independent Testing Authority to provide testing and certification of several voting systems for use in NYS elections, and

WHEREAS, NYSBOE 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 the needed 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

- A. OGS, on behalf of NYSBOE shall pay the Contractor, or cause to be paid to it, and the Contractor shall accept, compensation at the deliverable rates and hourly rates put forth below as full compensation for all services rendered by the Contractor under this Agreement and for all costs and expenses incurred by Contractor in connection therewith.

For Deliverables Nos. 1 thru 10 below, bidder has submitted a fixed hourly rate for each of the specified Job Title Categories that will be utilized for any project under the contract resulting from this RFP. Any employee providing services under this agreement must be invoiced utilizing one of the titles listed in Attachment A (Cost Proposal) of RFP 1777. Hourly rates must be inclusive of all overhead, profit and all other costs not expressly specified to be reimbursable.

2. TERM

This contract will commence upon approval of the NYS Office of the State Comptroller and will be in effect for five (5) years. The State of New York retains the right to cancel this contract without cause, provided that the ITA Contractor is given at least thirty (30) days notice of intent to cancel. 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.

3. SERVICES

The Contractor agrees to perform this Agreement and to furnish the services, labor, equipment, facilities and materials required in connection therewith in accordance with all the specifications, terms, conditions, covenants and representations contained in the Request for Proposal No.

1777 (the "RFP") and the Contractor's Proposal annexed hereto, except as such have been modified by the terms of this Agreement. RFP and Contractor's Proposal are hereby incorporated by reference herein and made a part hereof with the same force and effect as if herein set forth at length herein.

4. TERMINATION

This Agreement may be terminated in accordance with the termination provisions set forth in RFP No. 1777 and Appendix B General Specifications attached hereto.

5. RECORDS

The Contractor will maintain accurate records and accounts of services performed and moneys 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 NYSBOE, OGS or the New York State Comptroller, as may be necessary for auditing purposes, upon request.

6. TAXES

Purchases by the State of New York are not subject to any sales or federal excise taxes. Exemption certificates will be furnished upon request. There is no exemption however for Social Security, unemployment insurance and like taxes.

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 of the State of New York and, therefore, are not entitled to any of the benefits associated with such employment.

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 Board, which consent may be unreasonably withheld.

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

A. In the event of any discrepancy, disagreement or ambiguity between this contract agreement and RFP No. 1777 and Contractor's Proposal, or between any Appendices, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

- (i) Appendix A
- (ii) This contract agreement

(iii) RFP No. 1777 (including Appendix B & all other Appendices)

(iv) 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.

SAMPLE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Contract No. _____

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."

THE PEOPLE OF THE STATE OF
NEW YORK

Insert Contractor's Name

BY _____

Name:
Title:
Federal I.D. No.:
Date:

By _____

Name:
Title:
Date:

By _____

Name:
Title:
Date:

APPROVED AS TO FORM

Attorney General

APPROVED

State Comptroller

RFP 1777

Exhibit B

Security/Confidentiality

Security/Confidentiality

Contractor warrants, covenants and represents that it will fully comply with all security procedures of the State in performance of the Contract.

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, passwords, business operations information, or other third party commercial proprietary information, records or data which is accessed or made accessible to Contractor as necessary for Contractor to complete work under the Contract ("confidential information"), will not be divulged during the Contract term or for a period of five (5) years thereafter in any manner to any party by Contractor, its agents, subcontractors, officers, or employees. Contractor further warrants and represents that all confidential information obtained by Contractor, its agents, subcontractors, officers, or employees during the engagement, wherever located, will be immediately destroyed, deleted or otherwise erased or removed, as applicable, upon completion or termination of the work so that Contractor, its agents, subcontractors, officers, or employees will no longer have any ability to access such information. This warranty shall survive termination of this Contract for a period of five (5) years. Contractor further agrees to take appropriate steps to instruct its personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

Prior to performing any work on, or having access to the Independent Testing Authority (ITA) project as described in RFP No.1777, each employee of the contractor or subcontractor(s) shall certify by signature below their acknowledgement and acceptance of the above Security/Confidentiality requirements as well as the Information Security Policy stated in Section 6.22 of the RFP.

Additionally, by signature and submission of this document by an authorized company official, the contractor certifies compliance with these clauses.

Employee

Printed Name: _____
Job Title assigned for
this Project: _____
Signature _____
Date: _____

Authorized Company Official

Printed Name: _____
Title: _____
Signature _____
Date: _____