



DIVISION OF FINANCIAL ADMINISTRATION

Addendum No. 2

To

RFP No. 1824

Date: July 3, 2013

Subject:

- List of Registered Intent To Submit Vendors
- OGS Response to Written Questions and Clarifications
- Revision of RFP section 3.3 Price
- Revision of Attachment 1-Cost Proposal
- Removal of backdrop references
- Second Update to Exhibit 2- Proposer Checklist

Title: Request for Proposals # 1824- Contract Audits for the Design and Construction Group

Group: 79037 - Class Code: 80 and 84

Proposal Due Date: July 19, 2013

Address Bid Inquiries to the Designated Contact:

Nancy Dougherty – Contract Management Specialist 1
NYS Office of General Services
Corning Tower, 40th Floor
Empire State Plaza
Albany, New York 12242
Phone: 518-474-5981
Fax: 518-486-3651
Email: nancy.dougherty@ogs.ny.gov

Alternate Contact:
Diane Robinson, Contract Management Specialist 2
NYS Office of General Services
Corning Tower, 40th Floor
Empire State Plaza
Albany, New York 12242
Phone: 518-474-5981
Fax: 518-486-3651
Email: diane.robinson@ogs.ny.gov

To Prospective Proposers:

NYS Office of General Services has issued this addendum to notify interested parties of registered Intent to Submit vendors, the OGS Response to written Questions, revision of RFP section 3.3 Price, revision of Attachment 1- Cost Proposal, and the removal of backdrop references within the RFP.

List of Registered Intent to Submit Vendors:

Please note that the following companies filed a timely intent to bid and are eligible to propose on this solicitation.

1. Anchin, Block & Anchin, LLP
2. Bollam, Sheedy, Torani & Co. LLP, (BST)
3. Chianpou Travis Besaw & Kershner LLP
4. Dadia Valles Vendiola LLP
5. Dannible & McKee, LLP (DM)
6. Ernst & Young, LLP
7. Grant Thornton LLP
8. KPMG, LLP
9. Lumsden & McCormick, LLP
10. McGladrey LLP
11. O'Connor Davies, LLP
12. Padilla and Company LLP
13. ParenteBeard LLC
14. Teal, Becker & Chiaramonte
15. TG ASSOCIATES CPAs, PLLC
16. Toski & Co., P.C.
17. Wei, Wei & Co., LLP
18. WeiserMarzars LLP

OGS Response to Written Questions:

#	Question	Reply
	Preceding Pre-Bid	
1	Where will majority of work to be performed under this solicitation be performed? Albany?	Albany, NY right now on the 35th Floor of the Corning Tower.
2	Will there be site visits required that may be in various parts of NYS or in NYC. What % would that represent?	Yes, past experience has been less than 10% but this will really be based on the projects that come up.
3	Please confirm that all travel outside of Albany will be reimbursed based on rates as applicable to M/C employees	The maximum that we will reimburse is what an MC employee would be paid. See section 5.10 Identification of any Project Related Travel, pg. 30 of the RFP
4	I had a question regarding the minimum qualifications for the reference RFP. I have attached a copy of page 10, with part of section 2.2.2.A highlighted. "...or that a licensed Certified Public Accountant in accordance with the New York State Education Department, Office of the Professions is a partner or officer of the firm." Could you please give me some more detail on what this section means? We are interpreting it to mean you will consider a licensed CPA from a different state, as long as that state's licensing requirements equal or exceed those of New York state	No - this requirement is for the contractor to be licensed to perform work in NYS as a sole proprietor, partnership or a CPA firm.
5	Where do you expect the work to be performed? OGS office? Construction vendors? Other?	Most work will be done in Albany, in the Corning Tower. Some work will be performed at the construction site. It is possible that some work could be performed at the construction company's location but that is less likely. We typically require they submit adequate substantiating information.
6	Attachment 1 – Cost Proposal Form – has estimated hours of 2,000 for one staff auditor and one On-site Supervising Auditor. Are these positions expected to complete the majority of the work?	Yes, the only other work we anticipate is whatever quality assurance that a firm would need to issue a report within the process of their own firm.
7	Do you have an example of an audit report completed in accordance with section 5.4 of the RFP?	No - as luck would have it we do not have a completed audit done by the CPA firm. Work product is draft and unavailable until the cases settle with both the IG and the AG or other

		prosecutor.
8	Is it true the MWBE goals of the RFP are 0%?	Yes, the goals are 0% MBE & 0% WBE
	Post Pre-Bid	
9	Can you make an example of an audit report as described in section 5.4 of the RFP available to bidders?	No
10	Can you provide an estimate of the number of audits per year? I did hear approximately 5 large projects but did not hear the number of smaller or more standard projects expected.	Audit work that will not result in an audit report can be very time consuming, depending on the construction contractor's history with OGS. Audit work like that can span a few years but other audit engagement can be straight forward, involve only a few contracts and can be reviewed in a month. Based on plans and history it is unlikely that we will have more than two or three opinion audit reports in any given year.
11	For the staff auditor and supervising auditor, OGS estimates 2,000 hours per year. Can you please tell us what percentage of that time is expected to be spent at the OGS office in Albany? Is it expected that any portion of the work can be done in the contractors offices?	OGS provides two work stations, phones, desktop computers and access to relevant business management systems to these auditors. Billing, contract and other files are in the Corning Tower. Field work is limited to time necessary to get field records, meet with construction staff, observe projects accomplishments and occasionally to meet with suppliers or subcontractors in situations where the Inspector General or Attorney General asks that we help with questioning. As records and staff are here, work at the contractor's site should be limited but can be acceptable with approval of OGS.
12	Due to our firm's policies, we are unable to enter into an agreement that incorporates all of the contract clauses and requirements specified in the RFP without any changes. Although we are willing to enter into an agreement that would incorporate the substance of many of the terms and conditions of the OGS's contract, we also take exception to certain of those terms. We expect to resolve any differences to each of our mutual satisfaction. Will the OGS accept a bid subject to negotiating mutually agreeable	According to the RFP section 3.9 Exception to RFP: <i>...Proposers wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the 'Questions Due Date' as identified in Key Events, Section 1.3. The request must cite the specific section and requirement in question, and clearly identify any proposed alternative.</i>

	terms and conditions?	
13	Which CPA firm currently performs audits for the OGS Design & Construction Group?	Toski , Schaefer & Co P.C.
14	Attachment 2, Experience and Reference Form- are we required to use this form, or can we include the information as part of the technical proposal? If we are required to use the forms and cannot include the reference/experience information as part of the narrative of the technical proposal, are you expecting that the Peer Review will be included in the same section as Exhibit 2, since the Peer Review's inclusion is listed on the back of the form?	Attachment 2 Experience/References is to be used for vendor references and if applicable Subcontractor Firm references so that evaluator can check experience/references. The narrative must include all requested information listed in section 2.2.3 Technical Submittals.
15	As per the instructions on page 12 of 49 of the RFP, are all on-site staff required to have New York State Driver's licenses or is a valid driver's license from any state acceptable?	Due to the potential field work that may be necessary, on-site staff need to have the ability to drive legally throughout the state.
16	Does OGS have any expectation as to the annual number of audits and hours required for this engagement?	We are asking for two FTE - minus 10 state holidays, vacation and sick time.
17	To how many State agencies does the OGS Design and Construction Group provide services? Can you provide an estimate of the current number of active construction contracts/projects?	There are a total of 60 state agencies that OGS Design and Construction Group provide services. There are an estimated 1,026 active construction contracts/projects.
18	Does OGS have an estimated percentage of time that they expect the selected firm to be on-site while providing contract audit services (e.g., at OGS offices, offices of other State agencies, construction sites)?	100% of time unless firm request to work at their offices - to go over work with manager, quality assurance or partner.
19	We believe that it is important to provide staffing resources to OGS that have the appropriate skills and experience for this project. This sometimes necessitates that we bring in resources from outside of the Albany area. That said, is there a strict requirement that all Staff Auditors have a valid NYS driver's license?	See reply to question # 15

Revision of RFP section 3.3 Price:

It is anticipated that some projects will be audits performed in accordance with generally accepted governmental auditing standard that will end with the issuance of a report and an opinion related to scope of the work. It is anticipated that another work product will be required, which will not end in a report but rather a schedule of questionable costs cross referenced to supporting documentation of why the costs appear overstated. This second type of project will be done under the supervision and review of OGS auditors and will not require quality assurance provided by the Audit Contractor. We anticipate that the work in each of these scenarios will be performed by the same onsite staff. OGS is requesting hourly rate pricing for both of these scenarios.

Prices shall be represented as fixed hourly rates for the listed title / work categories. The hourly rates shall be inclusive of all labor (wholly inclusive of all requirements of Section 5), licenses, insurance, travel*, administrative, training, overhead and profit, sustenance, lodging and employee benefits. Price with opinion rates shall include any costs associated with oversight by a Manager and or Partner and whatever quality assurance process required by the awarded firm in order to issue an opinion. Price without opinion rates will not require inclusion of costs associated with issuance of opinions by the contractor firm.

Prices must be submitted using the Cost Proposal Form (Revised Attachment 1). Submitted bids must follow the format of Revised Attachment 1. Any additions, exceptions, qualifiers, ranges, etc. will result in rejection of the proposal. An estimated number of annual hours will be used on the Cost Proposal Form for evaluation purposes. Hourly rates will be fixed for the first year and may be adjusted according to Section 3.5 thereafter. Vendors must provide a fixed hourly rate for each title / work category listed on the Cost Proposal Form. Incomplete bids will be rejected.

*See section 5.10 regarding off-site travel

Revision of Attachment 1-Cost Proposal:

See Attached

Removal of backdrop references:

RFP section 3.3 Price-reference to travel rate * See section 5.1 regarding off site travel, has been changed to

*See section 5.10 off site travel

Second Revision to Exhibit 2- Proposer Checklist:

Exhibit 2-Second Revision to Proposer Checklist, under *Separate Packaging # 2*, Cost Proposal: now request vendor to Submit Revised Attachment 1- Cost Proposal

If submitting a proposal, this Addendum #2 for RFP #1824 must contain an original signature, be dated, attached to, and made a part of your proposal.

Company Name _____

Address (include City, State, Zip) _____

Bidders Name (please print) _____

Title _____

Signature _____

Date _____

Revised Attachment 1 - Cost Proposal Form

CONTRACT NO. _____
(To be completed by Agency)

Contractors
Name: _____

NOTE: Cost Proposal Form must be completed and signed in quadruplicate herein.

The hourly rates shall be inclusive of all costs (see Addendum 2, Revision of RFP section 3.3 Price).

Job Title	# of Positions Required (Estimated)	Fixed Hourly Rate	Estimated Hours Required (Annually)	Extended Costs (Hourly Rate X Estimated Hours)
With Opinion				
(Partner/Manger)				
Staff Auditor	.40		800	\$
On-site Supervising Auditor	.40		800	\$
Without Opinion				
Staff Auditor	.60		1200	\$
On-site Supervising Auditor	.60		1200	\$
Totals	2	\$	4000	
Total Discounted Hourly Rate				\$

Signature of Authorized Representative: _____

Name: (printed) _____

Title: (printed) _____

Date: _____

Exhibit 2

Second Revision- Proposer Checklist

	Contents	RFP Section	Proposer's Proposal Section	Proposer's Proposal Page
	Pre-Qualifiers			
1	Meets all Minimum Vendor Qualifications	1.4		
2	Register an Intent to Submit a Proposal	1.5		
1	Submissions for Technical Proposal Please submit four (4) original and four (4) exact copies			
1a	Cover Letter Includes: A thru F	2.2.1		
1b	Minimum Qualification Submissions Includes: A thru D	2.2.2		
1c	<ul style="list-style-type: none"> • Qualifications of Prospective Bidders Staffing - resumes • Experience Narrative and References (Attachment 2) • Personnel Resources lists as they pertain to Partners/Owners and In-Charge/Managers • Conflict of Interest attestation 	2.2.3		
2	Proposer's Checklist – Please submit one (1) with each Technical Proposal	Second Revision Exhibit 2		
3	Experience/References - Please submit three (3) bidder and three (3) subcontractors (if applicable) with each Technical Proposal	Attachment 2		
	Separate Packaging			
1	Confidentiality Agreement – Please submit four (4) signed originals	Exhibit 1		
2	Cost Proposal – Please submit four (4) signed originals	Revised Attachment 1		
3	All Required Forms – Please submit four (4) fully executed originals	Appendix B		
4	All Addendums – Please submit four (4) signed originals			



DIVISION OF FINANCIAL ADMINISTRATION

Addendum No. 1

To

RFP No. 1824

Date: June 18, 2013

Subject: Correction to Exhibit 2- Proposer Checklist and location of the Optional Pre-Bid Conference

Title: Request for Proposals # 1824- Contract Audits for the Design and Construction Group

Group: 79037 - Class Code: 80 and 84

Proposal Due Date: July 19, 2013

Address Bid Inquiries to the Designated Contact:

Nancy Dougherty – Contract Management Specialist 1
NYS Office of General Services
Corning Tower, 40th Floor
Empire State Plaza
Albany, New York 12242
Phone: 518-474-5981
Fax: 518-486-3651
Email: nancy.dougherty@ogs.ny.gov

Alternate Contact:
Diane Robinson, Contract Management Specialist 2
NYS Office of General Services
Corning Tower, 40th Floor
Empire State Plaza
Albany, New York 12242

Phone: 518-474-5981
Fax: 518-486-3651
Email: diane.robinson@ogs.ny.gov

To Prospective Proposers:

NYS Office of General Services has issued this addendum to notify interested parties of a Correction to Exhibit 2- Proposer Checklist, and Section 1.6 Optional Pre-Bid Conference.

Exhibit 2-Proposer Checklist #1 Submissions for Technical Proposal correction:

#1b Minimum Qualification Submission includes A thru D (there is no E)

Optional Pre-Bid Conference location:

The location for the Optional Pre-Bid Conference has been changed to:
Plaza Operations Room 130 located in the Empire State Plaza Concourse, Albany, NY 12242

If submitting a proposal, this Addendum #1 for RFP #1824 must contain an original signature, be dated, attached to, and made a part of your proposal.

Company Name _____

Address (include City, State, Zip) _____

Bidders Name (please print) _____

Title _____

Signature _____

Date _____

A. Exhibit 2

Revised Proposer Checklist

	Contents	RFP Section	Proposer's Proposal Section	Proposer's Proposal Page
	Pre-Qualifiers			
1	Meets all Minimum Vendor Qualifications	1.4		
2	Register an Intent to Submit a Proposal	1.5		
1	Submissions for Technical Proposal Please submit four (4) original and four (4) exact copies			
1a	Cover Letter Includes: A thru F	2.2.1		
1b	Minimum Qualification Submissions Includes: A thru D	2.2.2		
1c	<ul style="list-style-type: none"> • Qualifications of Prospective Bidders Staffing - resumes • Experience Narrative and References (Attachment 2) • Personnel Resources lists as they pertain to Partners/Owners and In-Charge/Managers • Conflict of Interest attestation 	2.2.3		
2	Proposer's Checklist – Please submit one (1) with each Technical Proposal	Exhibit 2		
3	Experience/References - Please submit three (3) bidder and three (3) subcontractors (if applicable) with each Technical Proposal	Attachment 2		
	Separate Packaging			
1	Confidentiality Agreement – Please submit four (4) signed originals	Exhibit 1		
2	Cost Proposal – Please submit four (4) signed originals	Attachment 1		
3	All Required Forms – Please submit four (4) fully executed originals	Appendix B		
4	All Addendums – Please submit four (4) signed originals			



**Request for Proposals (RFP) are being solicited by the
New York State Office of General Services**

For

**RFP # 1824, Contract Audits for the
Design and Construction Group**

PROPOSAL DUE DATE: JULY 19, 2013 @ 2:00 P.M

ISSUE DATE: MAY 31, 2013

Designated Contact:

Nancy Dougherty

Voice: 518-474-5981

E-mail: nancy.dougherty@ogs.ny.gov

Alternate Contact:

Diane Robinson

Voice: Same

E-mail: diane.robinson@ogs.ny.gov

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Attachments

Attachment 1 – Cost Proposal Form

Attachment 2 - Reference Check Form

Exhibits

Exhibit 1 – Confidentiality Agreement

Exhibit 2 – Proposer’s Checklist

1. INTRODUCTION

1.1 Overview

This Request for Proposals (RFP) is being released by the New York State Office of General Services (OGS or State) Division of Financial Administration on behalf of the OGS Design and Construction Group (D&C). OGS is seeking to arrange for a firm to provide a series of contract audits in order to assess whether the services obtained were within the scopes of the contracts and whether the contract payments are supported by the documentation of the work performed.

This solicitation outlines the terms, conditions, and all applicable information required for submitting a proposal. Proposers should pay strict attention to the proposal submission date and time to prevent disqualification. To ensure compliance with the RFP requirements and to prevent possible disqualification, Proposers should follow the format and instructions contained in this document.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law (139j & 139k), Nancy Dougherty, Contract Management Specialist I, New York State Office of General Services, Division of Financial Administration has been designated the Primary designated contact for this procurement solicitation and may be reached by email, voice or fax for all inquiries regarding this solicitation.

Designated Contact:

Nancy Dougherty, Contract Management Specialist I
New York State Office of General Services
Financial Administration
Corning Tower, 40th Floor
Empire State Plaza
Albany, New York 12242
Voice: 1-518-474-5981
Fax: 1-518-486-3651
Email: nancy.dougherty@ogs.ny.gov

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

Diane Robinson, Contract Management Specialist II
New York State Office of General Services
Financial Administration
Corning Tower, 40th Floor
Empire State Plaza
Albany, New York 12242
Voice: 1-518-474-5981
Fax: 1-518-486-3651
Email: diane.robinson@ogs.ny.gov

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

Anuola Surgick, Compliance Specialist 1
MWBE and Community Relations
NYS Office of General Services
Corning Tower, Empire State Plaza
Albany, NY 12242
Voice: (518) 486-6866
Fax: (518) 486-9285
Email: anuola.surgick@ogs.ny.gov

1.3 Key Events

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 accomplished through an addendum to this RFP.

Action	Date
OGS issues Request for Proposal (RFP) # 1824 for Contract Audits for Design & Construction	05/31/2013
Proposers submit Mandatory Intent to Submit a Proposal notification to OGS <i>No later than 2:00 PM EDT</i>	06/24/2013
OGS Optional Pre-Bid Conference <i>10:00 AM EDT</i>	06/26/2013
Proposers Questions due to OGS including any exception waiver request <i>No later than 2:00 PM EDT</i>	06/28/2013
OGS issues Responses to Questions (estimated)	07/03/2013
Proposals due to OGS <i>No later than 2:00 PM EDT</i>	07/19/2013
Contract start date	10/01/2013

1.4 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.

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

- A. Proposer is a New York State licensed Certified Public Accounting firm or that a licensed Certified Public Accountant in accordance with the New York State Education Department, Office of the Professions is a partner or officer of the firm.
- B. Proposer has at least three (3) years previous experience, and possesses adequate financial resources and organization to perform the type, magnitude, and quality of work specified.
- C. Proposer has received an unqualified opinion on their external quality review during the past three (3) calendar years. *{NOTE: This may be marked "Confidential".}*
- D. Proposer has relevant audits that the proposed staff auditor and on-site supervising auditor have worked on performing construction contract audits.

1.5 Intent to Submit a Proposal

Proposers who wish to submit a proposal **must register** their Intent to Submit a Proposal with OGS by sending notice to the designated contact, Nancy Dougherty, via email nancy.dougherty@ogs.ny.gov. Proposers shall include their company name, address, phone, fax, contact name, title, email address. Additionally, if planning to attend the Optional Pre-Bid conference, include the name of representative(s) planning to attend the Optional Pre-Bid Conference if different than company contact name. Please limit attendees to two (2) representatives per company. Proposers must register their intent no later than the date and time indicated in Section 1.3.

Only registered Proposers will be allowed to submit proposals and attend the Optional Pre-Bid Conference for this RFP. Also, only registered Proposers will receive information on Pre-Bid Conference updates or responses to questions regarding this RFP. By registering Intent to Submit a Proposal, Proposers are not obligated to submit a proposal. Late submissions will not be accepted. Proposers assume sole responsibility for ensuring that their intent is received and on time.

1.6 Optional Pre-Bid Conference

Attendance at the Pre-Bid Conference is strongly encouraged.

OGS will require all registered persons to sign an attendance roster. The pre-bid conference will be held on **June 26, 2013, 10:00 A.M., Plaza Managers Conference Room - Room 125, Concourse**, just outside of the Corning Tower Building, Empire State Plaza, Albany, NY 12242.

As stated above, you must notify the OGS Designated Contact, along with your Intent to Submit a Proposal, of the representative(s) planning to attend the Optional Pre-Bid Conference no later than the intent to submit a proposal deadline listed in section 1.3.

The facilitator of the event will publicly announce the official start time of the pre-bid conference, which announcement shall be made no sooner than the time stated in Section 1.3.

In accordance with State Finance Law §139-j (3) (a) (3), this Optional pre-bid conference is covered by the permissible subject matter authorization. A vendor is authorized to speak with representatives other than Designated Contact(s) for the sole purpose of the pre-bid conference.

The pre-bid conference will provide an opportunity for Vendors to ask clarifying questions. It is suggested that the Vendor note the question and ask at the end of the conference. Verbal answers are not official answers. All questions asked at the conference or after must be submitted via email to the designated contact for this solicitation no later than the date and time indicated in Section 1.3. Official answers to all questions will be distributed in the form of an addendum via email to all firms who submitted a timely Intent to Submit a Proposal. Only answers provided by addendum are considered official.

NOTE: If there are any questions Vendors would like addressed at the pre-bid conference, Vendors should submit them in writing as instructed in Section 2.1 to the designated contact prior to the date of the conference. Questions during the pre-bid conference will be permitted, however, only questions submitted in writing and answered via addendum will be considered official.

2. PROPOSAL SUBMISSION

2.1 Questions Concerning the RFP

There will be an opportunity available for submission of questions and/or requests for clarification. Questions and/or clarifications must be submitted, via email, to the Designated Contact. All questions must cite the particular page, section, and paragraph number, where applicable. Please submit questions as early as possible following receipt of the RFP. The final deadline for submission of any questions/clarifications regarding this RFP is listed in Section 1.3. Questions received after the deadline for inquiries may not be answered.

OGS will distribute an addendum with all Questions and Responses to Questions via email on or about the date listed in Section 1.3, to the Primary Contact Person for all vendors that have submitted the Intent to Submit a Proposal notice. Vendors that have registered their Intent to Submit a Proposal will also receive any additional updates regarding this RFP, as necessary.

2.2 Proposal Format and Content

In order for OGS to evaluate bids fairly and completely, vendors must follow the format set forth herein and must provide all of the information requested. The vendor should submit a clear and concise proposal. The vendor is advised to thoroughly read and follow all instructions contained in this RFP.

Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the scoring process or may be deemed to be non-responsive which may necessitate rejection of the bid. All proposals submitted will become the property of OGS and will not be returned. The information contained in your proposal shall include all items identified in Exhibit 2 (Proposers Checklist) and be indicated by a Table of Contents.

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

2.2.1 Cover Letter

Bidders must submit a cover letter which includes the following:

- A. Confirmation that should the contract be awarded to your company, you would be prepared to begin operations on October 1, 2013;

- B. The full contact information of the person(s) OGS should contact regarding the bid (including name, title, telephone and facsimile number, and e-mail address);
- C. The name of the contact person who will handle day-to-day customer requests.
- D. A summary of the key aspects of the proposing company, distinguishing characteristics of the proposal, identification of services being proposed, the implementation approach, and ongoing services as well as how it will fulfill the goals and scope of work set forth in this RFP and provide best value to the State and OGS D&C.
- E. A brief description of the proposing firm, including: history, number of years the organization has been in business, and type of services it provides; and
- F. The signature of an officer, authorized to bind the company.

2.2.2. Minimum Qualifications Submission

Vendors must describe their capabilities to provide the services requested in this RFP by providing the following:

- A. Evidence that the prospective vendor is a New York State licensed Certified Public Accounting firm or that a licensed Certified Public Accountant in accordance with the New York State Education Department, Office of the Professions is a partner or officer of the firm.
- B. Evidence that the prospective vendor has had previous experience, at least three (3) years, and possess adequate financial resources and organization to perform the type, magnitude, and quality of work specified.
- C. Evidence that the vendor has received an unqualified opinion on their external quality review during the past three (3) calendar years.
- D. A written narrative briefly describing relevant audits that the staff auditor and on-site supervising auditor have worked on highlighting experience performing construction contract audits. The narrative shall provide a description of the steps and time required to gain an understanding of D&C contracting processes and a description of the steps they will use to conduct the individual audits of contracts.

Note: Any Prospective Vendor failing to submit in whole or in part the above documentation attesting to its bid may result in a rejection of the bid.

2.2.3 Technical Submittals

A. Experience

1. Vendors must provide a narrative focusing on the following:
 - a) Vendor's technical understanding and capability as demonstrated by the size, scope, complexity, and results achieved in the performance of similar tasks under contract with other similarly positioned private industry and/or public sector organizations as well as project plans, activities and deliverables proposed for this contract.
2. Three (3) references (Attachment 2) for which the vendor provided similar services for within the past five (5) years.

B. Personnel Resources

Each proposal shall list the following information relative to Partners/Owners and In-Charge/Managers that would be assigned to the New York State program:

1. Names, titles and length of service with vendor's company of Partners/Owners and In Charge/Managers responsible for any contract resulting from this solicitation.
2. Professional degrees, certification, license, or other recognition for each Partners/Owners and In-Charge/Manager of the firm demonstrating competency in their particular discipline.
3. Membership in an appropriate professional organization(s) (e.g. AICPA).
4. Demonstrations of experience in the type of work being considered.
5. The extent of education and training received in disciplines that pertain to the particular engagement.
6. A demonstration of the providers' knowledge and experience in the industry in which the firm operates.
7. Area of expertise and proposed role of the firm's Partners/Owners and In-Charge/Managers that will be working on the project should be included.

The State reserves the right to verify the standing with the New York State Education Department – Office of the Professions of each Partner/Owner and In-Charge Manager associated with the contract. Should the State find evidence of a Regents Action on Professional Misconduct and Discipline against any one partner/owner and/or in-charge manager, the entire firm may be disqualified from participating in this contract.

C. Preferred Qualifications of Prospective Bidders Staffing

Vendors must submit resumes for the following titles:

1. **Proposed Staff Auditor** – At least 2 years of audit experience with a preference for public works construction audits.

Proposed on- site auditors should also have the following qualifications:

- Be proficient in appropriate accounting principles and auditing standards (Generally Accepted Auditing Standards [GAAS] and/or Generally Accepted Government Auditing Standards [GAGAS]).
 - Certified Public Accountant or have a Bachelor’s Degree with a major in accounting or related field.
 - Demonstrated ability to develop spreadsheets with formulae, graphs, etc., in Excel.
 - Valid NYS Driver’s License.
 - Interpersonal skills to interact with personnel employed by NYS, prime vendors, suppliers, etc.
2. **Proposed On-Site Supervisory Auditor** - At least 4 years of audit experience conducting audits of construction contracts where billings are done on a time and material basis with a markup for overhead and profit or are fixed costs paid according to a schedule of values and paid based on a percentage of completion. Preference is for construction audit experience to be on public works construction projects.
 3. **Manager** (if applicable) – at least 3 years’ experience managing governmental audits.
 4. **Partner** (if applicable) – 10 to 20 years of audit experience including government audits.
 5. **Subcontractors** - If the Vendor will be utilizing a subcontracting firm for any part of these audit related projects the vendor must submit three (3) references (Attachment 2) for which services have been performed within the last three (3) years for each subcontracting firm.

D. Conflict of Interest

1. Any bidder offering to provide services pursuant to this RFP, as a contractor or subcontractor, shall attest that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor cause the bidder to breach any other contract currently in force with the State of New York.
2. Furthermore, bidders shall attest that they will not act in any manner that is detrimental to any State project on which the bidder is rendering services.

Specifically, bidders shall submit with their proposal a letter, signed by an officer authorized to bind the company, attesting that:

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

2.3 Bid Preparation

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

2.4 Packaging of RFP Response

- Submit four (4) original and four (4) exact copies (total of 8) of the Technical Proposal.
- Submit four (4) originals of the Cost Proposal. This must be kept separate from the Technical Proposal. It must be sealed separately, labeled and provided with the complete submission package.

- Complete and submit four (4) originals of all other documents found in Appendix B, as well as any bid addenda.
- Vendors are also reminded to submit the required MWBE / EEO forms per Section 6.9, and also to complete the online responsibility questionnaire per Section 6.19.
- The proposal 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
 - ✓ RFP Proposal Number – 1824
 - ✓ Proposal Due Date and Time: See Section 1.3
 - ✓ 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.

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

2.5 Instructions for 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
Empire State Plaza, Corning Tower, 40th Floor
Albany, NY 12242
Attn: Nancy Dougherty
RFP 1824

E-MAIL OR FAX PROPOSAL SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED. NO CONSIDERATION WILL BE GIVEN TO PROPOSALS RECEIVED AFTER THE STATED DATE AND TIME.

Vendors 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 bidding 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 120 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Proposer. A proposal shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 day period until either tentative award of the contract(s) by issuing Office is made or withdrawal of the proposal in writing by Proposer. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing Office to the successful Vendor. 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 Proposals

Building Access procedures are in effect at the Corning Tower. Photo identification is required. All visitors must register for building access, for delivering proposals. **Vendors are encouraged to pre-register by contacting the OGS Finance Office at 518-474-5981 at least 24 hours prior to the proposal 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 proposals 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 Division of Financial Administration on behalf of OGS Design & Construction.

3.2 Method of Award

It is the intention of the Office of General Services to award a single contract, based upon best value to a responsive and responsible vendor. The best value vendor shall be determined by the highest total score, based on the evaluation criteria stated in Section 4.

3.3 Price

Price shall be represented as fixed hourly rates for listed title / work categories. The hourly rates shall be inclusive of all labor (wholly inclusive of all requirements of Section 5), licenses, insurance, travel*, administrative, overhead and profit, sustenance, lodging and employee benefits. Prices must be submitted using the Cost Proposal Form (Attachment 1). Submitted bids must follow the format of Attachment 1. Any additions, exceptions, qualifiers, ranges, etc. will result in rejection of the proposal. An estimated number of annual hours will be used on the Cost Proposal Form for evaluation purposes. Hourly rates will be fixed for the first year and may be adjusted according to Section 3.5 thereafter. Vendors must provide a fixed hourly rate for each title / work category listed on the Cost Proposal Form. Incomplete bids will be rejected.

*See section 5.1 regarding off-site travel

3.4 Term of Contract

The contract resulting from this RFP will become effective on the date on which final approval of the contract is given by the Office of the State Comptroller, and will continue for a term of five (5) years.

No later than thirty (30) days prior to the expiration of the contract, OGS and the contractor will develop a list of active assignments on which the contractor efforts continue. The list shall include an estimated date for completion. The final determination of those assignments will be in the sole discretion of OGS. In the event that OGS chooses that the contractor complete the assignment, the contract may be extended for a short term (Section 6.13) – ONLY for those active assignments, no new assignments can be initiated during the extension period.

The State of New York retains the right to cancel this contract for convenience, provided that the Contractor is given at least thirty (30) days written notice of OGS's intent to cancel. Any cancellation by OGS under this section shall in no event constitute or be deemed a breach of any

contract resulting from this RFP and no liability shall be incurred by or arise against OGS, its agents and employees therefore for lost profits or any other damages resulting there from. This provision shall 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.

3.5 Price Adjustment (Escalation / De-escalation)

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

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

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

3.6 Method of Payment

For the purposes of this contract, payment will be based on an itemized invoice of all services performed by the Contractor. Invoices shall be submitted on a monthly basis for services

provided during that period clearly detailing the auditor name, dates / hours of services, and hourly rate.

Invoices not containing the above information will be returned to the contractor, and will not be due or owing until a corrected invoice is received.

Submitted invoices will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller (OSC).

All invoices or vouchers must be submitted for payment to:

Accounts Payable

Business Service Center

-or- accounts payable@ogs.ny.gov

OFFICE OF GENERAL SERVICES

EMPIRE STATE PLAZA STATION

P. O. BOX 2117

ALBANY, NEW YORK 12220-0117

Also, a copy of the invoice and reports must be forwarded to the OGS Facility Manager.

A copy of each invoice, along with a monthly report, must also be forwarded to Program Management at this address:

DIRECTOR OF INTERNAL AUDIT

OFFICE OF GENERAL SERVICES

TOWER BUILDING, 26th FLOOR

EMPIRE STATE PLAZA

ALBANY, NY 12242

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, the agency, and the State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptrollers website at www.osc.state.ny.us/epay/index.htm, 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 the State Comptroller's electronic payment procedures,

except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new Statewide Financial System (SFS), the Office of the State Comptroller (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 this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived. No waiver of any breach of the Agreement at any time in the past shall constitute a waiver of subsequent breach.

3.9 Exceptions to RFP

The Issuing Office will consider all requests to waive any RFP requirement. However, vendors should be aware that failure to obtain a waiver of any RFP requirement in advance of proposal submission could result in rejection of Proposer's proposal and disqualification from the proposing process.

Proposers wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the 'Questions Due Date' as identified in Key Events, Section 1.3. The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either with the 'Responses to Questions' as identified in Key Events (if the response results in a change to the RFP), or directly to the requesting vendor.

3.10 Dispute Resolution

It is the policy of the Office of General Services' Financial Administration to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to proposal solicitations, contract awards, and contract administration. OGS Financial Administration encourages vendors to seek resolution of disputes informally, through consultation with OGS Financial Administration staff, prior to commencing a formal dispute process. All such matters will be accorded full, impartial and timely consideration. A copy of the OGS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the designated contact person identified in the solicitation.

3.11 Examination of Contract Documents

- Each Vendor 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 Vendor 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 Vendor to fulfill every detail of all the requirements of the documents governing the work. The Vendor, 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 Vendor in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit to Nancy Dougherty, Division of Financial Administration, 40th Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242 email: nancy.dougherty@ogs.ny.gov a written request for an interpretation thereof. If a major change is involved to which all vendors must be informed, such request for interpretation shall be delivered, in writing, no later than question due date listed in Section 1.3. Any interpretation of the proposed documents will be made only by an addendum duly issued. A copy of such addendum will be emailed to vendors who have registered Intent to Submit a Proposal.
- Any addendum issued prior to the proposal due date must be acknowledged by signature, dated and be submitted on or before the proposal due date with four (4) originals. In awarding a contract, any addenda will become a part thereof.
- Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services at the time of examination of the documents or site shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, to all Proposers shall become a part of the contract.

3.12 Prime Contractor Responsibilities

The State will contract only with the successful Vendor who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the RFP, and the contract resulting from the RFP.

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

3.13 Inspection of Books

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

3.14 Glossary of Terms

"Issuing Office" shall mean the Office of General Services Department 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.

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

"Proposer", "Bidder", or "Vendor" shall mean any person, partnership, firm, corporation or other authorized entity submitting a proposal to the State pursuant to this RFP.

3.15 Rules of Construction

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

4. EVALUATION AND SELECTION PROCESS

4.1 Proposal Evaluation

Proposals will be evaluated and scored for best value based upon the criteria set forth in this Section. Vendors should ensure that their submissions draw a clear line of sight to the activities and desired outcomes described within this solicitation.

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

4.2 Proposal Scoring

Specific information regarding the evaluation criteria is as follows:

- a. Experience and Qualifications – 35%**
Proposer/Auditor/Supervisor Experience
Each Proposer will be evaluated as to its experience and qualifications pursuant to this RFP, demonstrating its level of experience in operating an organization capable of performing the services sought by the RFP.
- b. Plan of Operation - 20 %**
Each Proposal will be evaluated for the completeness of, and the extent to which, the operational information meets the goals and requirements of the RFP.
- c. Quality and Completeness of Proposal - 5 %**
Each Proposal will be evaluated for the extent to which the proposal satisfies and addresses each requirement of the RFP. Consideration will also be given to the overall organization of, and ease of navigation of the submitted proposal.
- d. Cost - 40 %**
The cost of services based on a fixed one (1) year rate will be evaluated in relation to the cost for services submitted by the lowest responsive and responsible proposer.

4.3 Evaluation Process

4.3.1 Submission Review

A committee of OGS employees will evaluate each proposal and initially determine whether a proposal is responsive to the requirements of the Solicitation. Bids that are nonresponsive, in the

sole opinion of OGS, may be rejected. All bids passing the submission review requirements for responsiveness will be evaluated.

4.3.2 Technical Proposal Evaluation

The Technical Evaluation Committee will subsequently evaluate and score each responsive proposal for items a–c listed above (Section 4.2). OGS reserves the right to check references and reference check information will be considered in the technical evaluation. The evaluation team will grade each proposal criteria (a, b, and c) using a 0 – 10 scale. That grade will be applied to the category weight to determine the category points. Example: a perfect grade of 10 in each category (a, b, and c) would receive 600 points (60%).

4.3.3 Cost Proposal Evaluation

OGS Division of Financial Administration will evaluate all cost proposals from responsive Proposers. The cost proposal with the lowest total fee will be awarded the maximum possible points, (refer to item d listed above in Section 4.2). Each subsequent proposal will receive a proportionate number of points using the following formula: $\text{low bid} / \text{bid being evaluated} \times \text{X category weight}$.

4.3.4 Final Composite Score

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

4.4 Notification of Award

After the evaluation, all Vendors offering proposals will be notified of the name of the successful Vendor. The successful Vendor will be notified that the submitted proposal has been tentatively selected. 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 RFP shall not be made without prior approval from the Issuing Office.

Proposals shall be submitted with the understanding that the acceptance thereof in writing by the Commissioners of OGS shall be binding upon the Proposer. Execution of an agreement, which incorporates the terms of this RFP and Proposer's proposal, with the approval of the Attorney General and the State Comptroller, shall constitute a contract between the Contractor and the State.

5. SCOPE OF WORK

5.1 Project Background

The Office of General Services Design and Construction Group provide a full range of high quality architectural/engineering and construction management services to State agencies. Its operating expenses for the year ended March 31, 2013 were \$52 million and it processed about \$250 Millions of construction contract payments during the year. There have been issues with contracts and payment processing over the years and changes made to controls and processes to ensure that similar issues would not reoccur.

OGS is seeking to contract with a company to provide a series of contract audits in order to assess whether the services obtained were within the scope of the contracts and whether the contract payments are supported by the documentation of the work performed.

5.2 Project Objectives

To obtain a series of audits of individual Design or Construction contracts. The successful contractor will conduct the audits under the coordination of the OGS - Director of Internal Audit. Each audit will include assessing compliance with the Design and Construction Group's procedures for project/construction oversight and payment approval and processing as well as compliance with the terms of the contract, the State Finance Law and the directives of the Office of the State Comptroller.

OGS envisions the audit consisting of the following sub-objectives and steps. These are provided for clarification purposes. The successful contractor should develop their own audit steps to obtain sufficient evidentiary matter and information to form their own opinions and recommendations related to the audit. The successful contractor should consider and budget for conducting a preliminary survey to allow them to design their audit program for this engagement. The contractor should plan to present and discuss their proposed audit program after conducting their preliminary survey with OGS management to ensure that objectives of the engagement are adequately addressed.

This audit shall be performed in conformance with Generally Accepted Government Auditing Standards (GAGAS).

5.3 General Requirements

ON-SITE Work: Services performed on-site by the Contractor's employees, subcontractors or agents shall be rendered in accordance with these additional requirements:

- A. Notice Prior to Site Visit: Contractor's representatives are to check with OGS designated representative seven (7) days prior to reporting to the site for permission to accomplish all work.
- B. Employee or Agent Sign-In: Contractor's representatives may be required to sign in and out with OGS designated representative. Failure to sign in or out, whether intentional or not, shall be understood to mean that service was not performed.

5.4 Expected Deliverables

A contract with OGS will include, but may not be limited to the following deliverables:

- A. Individual audit reports describing the results of each contract audit performed. The report should conclude whether the contracts were used appropriately and the documentation supports the payments issued. The reports should include recommendations to address any weaknesses identified during the audit. Depending on the results of the audit, the report might need to include a schedule of costs that are being disallowed based on duplicate billings, falsified invoices, billing for hours not worked or any other situation noted that results in billing for costs that are not allowed under the contract.

5.5 Tasks

- A. Gain an understanding of the payment processes including normal construction progress billings and unit price contracts, emergency contracts.
 - Review any/all available procedures that describe the payment process from oversight of work to issuance of payment documents to the State Comptroller's Office. Interview OGS management, D&C management and staff, and Internal Audit to gain an understanding of the process, any concerns about the process and to ensure that the process works as described.
 - Flowchart the project / construction oversight and payment processes to document the understanding of the processes and to assess the adequacy of the controls over contract initiation.
 - Review flowcharts with D&C management to ensure that the understanding of the processes is correct.
- B. OGS will assign a series of contracts to audit under this contract. It is anticipated that the contracts to be audited will be a mix of time and material emergency, lump sum construction and architecture and engineering contracts. The objective of the audits will be to assess

whether the billings are proper, our controls are being implemented. Audits will evaluate whether D&C's process was adhered to, the use of the contract was appropriate for the work performed and the available documentation supports the payments made. For each contract reviewed, OGS requires a report that expresses an opinion whether OGS' contract issuance, change order and payment documentation and submission procedures were followed; whether the work done under the contract, field and change orders was appropriate given the scope of the contract; and the payments made are supported by the documentation submitted. If audit results indicate fraud, the deliverable of the audit will instead be a schedule of expenditures that are believed to be questionable and descriptions both written and verbal to explain the schedule to investigators that might be assigned to the case by the New York Inspector General or Office of the State Comptroller's Investigations Unit and perhaps to the New York State Attorney General or local district attorney who takes the case.

- The audit team will be assigned a series of contracts and transactions for review, Architectural & Engineering (A&E,) Construction Contracts, Term Construction Management Contracts, Work Orders, Field Orders, Change Orders, and Emergency Contracts).
 - Review contract terms to determine the contract deliverables and the terms of payment.
 - Review the terms of any work orders, field orders, or change orders issued related to the contract.
 - Review any documentation necessary to conclude that the work has been done and payments made in conformance with the terms of the contract. Such review might include comparing labor billings to other records of work on site if they exist, reviewing invoices for indications of alteration and comparing unit prices to market pricing available from other suppliers to assess the reasonableness of pricing.
- C. Develop recommendations to address weaknesses in either the internal controls or the implementation of those controls identified during the individual contract audits.
- D. Develop summary schedules and supporting documentation of any amount determined not to be legitimate construction costs and to allow the State to pursue administrative, civil or criminal action based on the nature of the findings. The auditors should be prepared to discuss the results of the audit with and prepare additional information as necessary in support resultant disallowances or action.

5.6 Administrative Requirements

A. Contract Meetings

The contractor will be responsible for the completion of a variety of administrative and reporting requirements, and the cost of same shall be included in the base bid price.

B. Job Meetings

Upon award of the Contract and prior to the start of any work, the Contractor shall be available for an initial job meeting with OGS designated representative. This meeting shall include:

- 1) The firm's submission of a schedule of work to be reviewed and approved by OGS.
- 2) A review of all facility use rules.
- 3) An introduction for OGS chain of command, etc.
- 4) Unless otherwise directed, there shall be monthly job meetings for the following purposes:
 - Review job progress, quality of work, and approval and delivery of materials.
 - Identify and resolve problems that impede planned progress.
 - Coordinate the efforts of all concerned so that the contract progresses on schedule to on time completion.
 - Maintain a sound working relationship between the Contractor and OGS, and a mutual understanding of the contract.
 - Entrance and exit conferences should be scheduled to ensure the contractor is aware of the scope of the project and also to ensure the project reaches proper closure.

C. External Quality Control Review

Audit organizations should have an external quality control review completed within three (3) years from the date they start their first audit in accordance with the GAGAS. Subsequent external quality control reviews should be completed within three years after the issuance of the prior review.

5.7 Service Requirements

Qualifications for the bidder's job titles assigned to conduct an audit may include:

- A. knowledge of the methods and techniques applicable to government auditing and the education, skills, and experience to apply such knowledge to the audit being conducted;
- B. knowledge of the methods and techniques applicable to construction auditing and the education, skills, and experience to apply such knowledge to the audit being conducted;
- C. knowledge of government organizations, programs activities, and functions;

D. skills to communicate clearly and effectively, both verbally and in writing;

E. skills appropriate for the audit work being conducted. For example:

- if the work requires use of statistical sampling, staff should include persons with statistical sampling skills;
- Knowledge and experience with computer aided audit tools to extract and analyze data from sequel based construction project management systems;
- if the work involves review of complex engineering data, the staff should have the ability to work with OGS engineers and incorporate the engineer's determinations into the results of their audit work.

Audit types may include but are not limited to:

Operational and Claims Audits

- New York State Public Works
- Architectural and Engineering Design
- Construction Management

These audits may include, but are not limited to work performed on a time and material basis, terminated contracts, and costs related to delay claims.

A. Once the RFP process is completed, OGS will authorize the contractor in writing to perform task assignments under this agreement. The fixed hourly rate shall be calculated for the performance of each authorized task assignment.

- A professional fee for the fixed hourly rate.

The fixed hourly rate is to include the rates for ALL of the job titles of the bidder that could potentially be assigned to work on an engagement, and should include clerical as well as professional job titles. The fixed hourly rate shall also include overhead, profit, and all other costs not expressly specified to be reimbursable. The budget will be calculated by multiplying the hours by the discounted hourly rate for each job title. Travel expenses are not to be included in the hourly rate. These costs will be reimbursed at State rate and will be separate costs in the engagement budget.

- Costs for (i) travel to and from destinations outside the county containing an office of the proposer, and in association with such travel (ii) meals and (iii) lodging, for those assignments that require such, shall not exceed the prevailing maximum rates established by the Office of the State Comptroller, which correspond to the rates provided by the Federal Government to its employees.

- While the actual job titles submitted may vary depending on the specified nomenclature of your firm, the listing should be complete using OGS job titles.
 - The compensation herein shall be payable at monthly intervals, based on exact itemized invoicing for services performed the previous month.
- B. At the time of the award, the Contractor shall file with OGS, Certificates of Insurance evidencing compliance with all requirements contained in this RFP. Such Certificates shall be of form and substance acceptable to OGS.
- C. A description of how the firm's quality assurance program will be applied to the proposed engagement.
- D. Each bidder should indicate if they have the ability to submit documentation in electronic format. Adobe Acrobat or other fixed file format that can be viewed by others with the use of free document viewer software.
- E. Descriptions of the type of audits appear above. Vendors must provide documentation to support their bid.

5.8 Interview Schedule for Staff Assigned to this Engagement

As part of the RFP process, the Office of General Services reserves the right to interview any staff proposed for this engagement and to approve or reject their participation.

5.9 Staffing Expectations

The Office of General Services expects that all services will be conducted diligently and effectively under the supervision of OGS staff. Further, it is expected that:

- Any contractor staff shall conduct themselves in a professional manner with OGS staff and with the General Public.
- Any staff assigned shall report to work in appropriate dress and appearance.
- All contractor staff shall comply with all rules and requirements of this solicitation, including the prohibition of the use of drugs and alcohol prior to or during any period of work to which they are assigned.

- If during the term of the contract the auditors assigned are replaced, the new auditors must meet the experience requirements and must be pre-approved by OGS. OGS reserves the right to request that an auditor be replaced if they do not meet our needs.
- Any failure to comply with any of the requirements of this solicitation shall result in the removal from the project.
- Staff provided under this contract will obtain, at the firms expense both time and cost of training courses, continuing professional education necessary to meet GAGAS standard. If OGS requires training like fire safety training for our building occupants, OGS will pay for the time used attending the course, there are not costs to attend such courses.

5.10 Identification of any Project Related Travel

Time spent working at OGS' main office in Albany will not be considered travel eligible and will not be reimbursed.

Audits of individual contracts will likely require travel to construction sites to interview staff, review documentation and perhaps review status of work and or assess accuracy of submitted bills to work completed. Audit related travel outside of the Albany, NY area does not need to be bid, such travel costs will be reimbursed as described below. All travel will require prior approval by OGS or the travel costs will not be reimbursed.

Reimbursement for contractor's travel and meals/lodging expenses is subject to the same limitations, which apply to New York State Management/Confidential (M/C) employees. These limitations including the current available rates may be found at the following web site: <http://www.osc.state.ny.us/agencies/travel/travel.htm>

5.11 Ownership, Use and Dissemination of the Data or Data Base

Subject to the terms and conditions hereof, the Contractor grants to the State and its User Agencies a non-exclusive license to the Contractor's work product including reports, spreadsheets, databases and queries developed during the course of the audits. OGS will provide computers connected to OGS' network. Any queries, data extract from our systems, databases or spreadsheets developed during the contract will be owned by NYS and access to and ownership of said materials will reside with the state during and after the end of the contract. OGS will provide access to necessary software including the Microsoft office suite, and other such data analysis tools that OGS determines might be useful during the term of the contract.

6. CONTRACT CLAUSES AND REQUIREMENTS

6.1 Appendix A / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated December 2012, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein. Appendix A is a separate document to this RFP and shall be retained for reference by the proposer.

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:

- Appendix A
- The Contract (sample attached hereto)
- OGS Solicitation Number 1824 (This Document)
- Selected Contractor's Proposal

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 notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/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 Information Security Breach

In accordance with the Information and Security Breach Notification Act (ISBNA) (Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005), a Contractor with OGS shall be responsible for all applicable provisions of the ISBNA and the following terms herein with respect to any private information (as defined in the ISBNA) received by or on behalf of OGS under this Contract.

- ✓ Contractor shall supply OGS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as OGS's notification policy.
- ✓ Contractor must encrypt any database fields and backup tapes that contain private data elements, as set forth in the ISBNA.
- ✓ Contractor must ensure that private data elements are encrypted in transit to / from their systems.
- ✓ In general, contractor must ensure that private data elements are not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.
- ✓ Contractor must monitor for breaches of security to any of its systems that store or process private data owned by OGS.
- ✓ Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from OGS.
- ✓ In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify OGS and commence an investigation in cooperation with OGS to determine the scope of the breach.
- ✓ Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
- ✓ Contractor shall immediately notify OGS following the discovery that OGS's system security has been breached.
- ✓ Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from OGS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the State Office of Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General's Office or any consuming reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.
- ✓ Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.

- ✓ This policy and procedure shall not impair the ability of the Attorney General to bring an action against the Contractor to enforce all provisions of the ISBNA or limit the Contractor's liability for any violations of the ISBNA.

6.4 Confidentiality Agreement

Contractor agrees to keep confidential and not to disclose to third parties any information provided by the OGS or learned by the Contractor during the performance of the Contract unless Contractor has received the prior written consent of the OGS to make such disclosure. This provision shall survive the expiration and termination of this Contract. The Contractor warrants that all of its operations are compliant with all federal, state and local laws, rules and regulations pertain to the privacy and/or security of personal and confidential information. As detailed in "Exhibit 1" Appendix, the successful vendor and the staff involved will be required to sign and adhere to the "Confidentiality Agreement".

6.5 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.

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

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

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

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

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

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

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

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

- a) Commercial General Liability Insurance with a limit of not less than \$5,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
 1. If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.
- 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.
- c) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance,

the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against OGS arising from Contractors work.

1. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
 2. If the Contract includes disposal of materials from the job site, the Contractor must furnish to OGS, evidence of pollution legal liability insurance in the amount of \$2,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Contract.
 3. If autos are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.
- d) If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$5,000,000 per loss.
1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any 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 effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
- e) 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.

f) **WORKERS' COMPENSATION / DISABILITY INSURANCE:**

Prior to any contract resulting from this RFP becoming effective, Contractor must submit proof that they have the workers' compensation and disability benefits coverage required by the New York State Workers' Compensation Law, or proof that they are legally exempt from obtaining such coverage. Proof of compliance must be demonstrated in accordance with the requirements set forth by the New York State Workers' Compensation Board (An instruction manual clarifying the Workers' Compensation Law requirements is available to download at the Workers' Compensation Board's website, www.wcb.ny.gov. Once you are on the website, click on *Employers/Businesses*, then *Business Permits/Licenses/Contracts*; from there, click on *Instruction Manual for Businesses Obtaining Permits/Licenses/Contracts*.) Contractor shall notify the Office of General Services, Financial Administration Contracts Unit, at least thirty (30) days prior to material change or cancellation of such coverage.

If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.

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

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of OGS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for OGS' immediate termination of any contract resulting from this RFP, subject only to a five (5) business day cure period. Any termination by OGS 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 Office of General Services, its agents and employees therefore for lost profits or any other damages.

6.6 Tax and Finance Clause

TAX LAW § 5-A (Attachment 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 proposal 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 proposal 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>

6.7 M/WBE & EEO Requirements

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

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A, OGS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and

women-owned business enterprises and the employment of minority group members and women in the performance of OGS contracts.

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

Equal Employment Opportunity Requirements

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

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age,

disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Business Participation Opportunities for MWBEs

For purposes of this procurement, OGS hereby establishes a goal of 0% for Minority-owned Business Enterprises (MBE) participation and 0% Proposer for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total contract MWBE goal of 0%. 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, Proposer/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, Vendor/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Proposers 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 Proposer of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to OGS, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely

or is found by OGS to be inadequate, OGS shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- D. OGS may disqualify a Proposer as being non-responsive under the following circumstances:
- a) If a Proposer fails to submit a MWBE Utilization Plan;
 - b) If a Proposer fails to submit a written remedy to a notice of deficiency;
 - c) If a Proposer fails to submit a request for waiver; or
 - d) If OGS determines that the Proposer has failed to document good faith efforts.

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

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

Contractors are required to submit a Contractor's Monthly Compliance & Payment Report on Form MWBE 102 to OGS, by the 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.ny.gov/MWBE/Forms.asp>

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.

6.8 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each proposal will be held in confidence and details of any proposal 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 PROPOSAL 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 PROPOSAL 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

6.9 General Requirements

- The Bidder agrees to adhere to all State and Federal laws and regulations in connection with the contract.
- The Bidder agrees to notify the OGS of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- The Bidder agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
- The Bidder agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of OGS.
- For reasons of safety and public policy, in any contract resulting from this RFP, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
- For purposes of any contract resulting from this RFP, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
- OGS interpretation of specifications shall be final and binding upon the Contractor.
- The Commissioner of OGS will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
- Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be

assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with OGS.

- **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, OGS 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** – OGS reserves the right to stop the work covered by this RFP and any contract(s) resulting there from at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, OGS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Bidder shall be liable to the State of New York for any such costs on account thereof. In the event that OGS 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 OGS, 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.
- OGS reserves the right to reject and bar from the facility any employee hired by the Contractor.

6.10 Contract Terms

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

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

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

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

6.11 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.

6.12 Short Term Extension

In the event the replacement contract has not been issued, or in the State's determination an open engagement is best completed by the contractor, any contract let and awarded hereunder by the State, may be extended for an additional period of up to three months. Examples of such necessity may include: to complete an open audit or to allow the work to be turned over to the State or subsequent contract auditors. It is understood that no new audits will be assigned during the extension period.

The contractor agrees to continue with the extension at the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such extension), prices, and delivery requirements.

6.13 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 bidding, any known / planned use of subcontractors must be disclosed in detail with bid submission. If subcontractors are to be used, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed. The total of all Subcontractor work during the term of the Contract, exclusive of M/WBE subcontracted work as established in the approved utilization plan, shall not exceed 20% of the total contract value.

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

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

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

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the Director of Internal Audit, Corning Tower, 40th floor, Albany, NY 12226, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as the Assistant to the Director may require concerning the proposed subcontractor's ability and qualifications.

6.14 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 proposal 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 proposal 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.

Please 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.

6.15 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 Proposer's bid or bid. After contract award, OGS shall, upon request, provide a debriefing to any Proposer that responded to the RFP, regarding the reason that the bid or bid submitted by the unsuccessful Proposer was not selected for a contract award. The post award debriefing should be requested by the Proposer within thirty days of contract approval as posted on the OSC website (web address below).

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

6.16 Termination

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

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

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

Procurement Lobbying Termination

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

6.17 NYS Vendor Responsibility

OGS conducts a review of prospective contractors ("Vendors") to provide reasonable assurances that the Vendor is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide

information to assess a Vendor'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, Vendor agrees to fully and accurately complete the Questionnaire. The Vendor acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Vendor is responsible, and that the State will be relying upon the Vendor's responses to the Questionnaire when making its responsibility determination.

OGS recommends each Vendor 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>. Vendors 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 Vendor prior to Contract Award, the Vendor must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Vendor's Questionnaire cannot be viewed by OGS until the Vendor has certified the Questionnaire. It is recommended that all Vendors 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 Vendor agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her

designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

6.18 Extension of Use

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

6.19 Indemnification

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

6.20 Force Majeure

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

6.21 Ethics Compliance

All proposers/contractors and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing 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.

6.22 Iran Divestment Act

By submitting a proposal in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Vendor/Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Vendors/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Vendor/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

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

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

6.23 Encouraging use of New State Business in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Proposers/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

vendors/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, vendors/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects vendors/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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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, licenser, licensee, lessor, lessee or any other party):

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, 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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

the contract, the Department of Civil Service and the State Comptroller.

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

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

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

Appendix B

Required Forms

Request for Proposals (RFP) for the New York State Office of General Services

Request for Proposal No. 1824

Contract Audits for the

Design and Construction Group

Required Forms

The following required forms are to be submitted with the proposer's proposal. The forms include:

- Contractor Information Page
- Corporate Acknowledgement (must be notarized);
- Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law;
- Offerer Disclosure of Prior Non-Responsibility Determinations;
- Offerer's Certification of Compliance with State Finance Law §139-k(5)
- ST-220 -TD Taxation & finance Contractor Certification (**Submit directly to Taxation & Finance**)
- ST-220 -CA Taxation and Finance Covered Agency Certification;
- MacBride Principles;
- Non/Collusive Bidding Certification;
- Consultant Contractor Forms A & B

Contractor Information

SOLICITATION NUMBER 1824

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

(Authorized Signature)

(Date)

(Print Name)

(Title)

(Company Name)

(Federal I.D. Number)

(NYS Vendor I.D. Number)

(Address)

(City, State, Zip)

(County)

(Telephone Number) Ext. _____

(Toll Free Phone) Ext. _____

(Fax Number)

(Toll Free Fax Number)

(E-mail)

Questions:

- 1. New York State Small Business Circle One: Yes No
- 2. New York State Certified Minority Owned Business Circle One: Yes No
- 3. New York State Certified Woman Owned Business Circle One: Yes No
- 4. 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
- 5. Will New York State Businesses be used in the performance of this contract? Circle One: Yes No
- 6. If yes, identify New York State Business(es) that will be used; (Attach identifying information).
- 7. Does your proposal meet all the requirements of this solicitation? Circle One: Yes No

BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

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

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

_____ YES _____ NO

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

_____ YES _____ NO

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

_____ YES _____ NO

Governmental Entity:

Date of Finding of Non-responsibility:

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

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

_____ YES _____ NO

Governmental Entity:

Date of Termination or Withholding of Contract:

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

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:

[Check One]

- 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.

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)

(Submit directly to Taxation & Finance)

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



New York State Department of Taxation and Finance

Contractor Certification

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

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

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

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:

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

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

Bidder is required to sign both sections on this page

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either: (answer yes or no to one or both of the following, as applicable:

1. Have business operations in Northern Ireland,

Yes No

If yes:

2. Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes No

(Contractor's Signature)

(Name of Business)

NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief) 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) 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; an) 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)

EMPLOYEE INFORMATION TO BE REPORTED BY CERTAIN CONSULTANT CONTRACTORS

Instructions for Completing Form A and B

Form A and Form B should be completed for contracts for consulting services in accordance with the following

Form A - Contractor's Planned Employment (to be completed and submitted with bid/quote)

- **Employment Category:** enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the planned employees to provide services under the contract.

(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)

- **Number of Employees:** enter the total number of employees in the employment category to be employed to provide services under the contract including part time employees and employees of subcontractors.
- **Number of hours:** enter the total number of hours to be worked by the employees in the employment category.
- **Amount Payable under the Contract:** enter the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category.

Form B – Contractor's Annual Employment Report. (to be completed by May 1st of each year for each consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the Department of Civil Service, Office of the State Comptroller and Office of General Services)

- **Scope of Contract:** choose a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract.

(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)

- **Number of Employees:** enter the total number of employees in the employment category employed to provide services under the contract during the report period, including part time employees and employees of subcontractors.
- **Number of hours:** enter the total number of hours worked during the report period by the employees in the employment category.
- **Amount Payable under the Contract:** enter the total amount paid by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the report period.

Appendix C

Sample Contract

Solicitation No. 1824

SAMPLE

STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT FOR
CONTRACT AUDITS FOR THE
DESIGN AND CONSTRUCTION GROUP
WITH
(CONTRACTOR)
CONTRACT # C00XXXX

THIS AGREEMENT, made this ____ day of _____, 2013 by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is on the 41st Floor, Corning Tower Building, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "Commissioner", "OGS" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at _____.

WITNESSETH:

WHEREAS, the OGS is responsible for Design & Construction Contract Administration at Corning Tower located at the Empire State Plaza (hereinafter the "State Office Building") and in fulfilling its responsibility deems it necessary to obtain a firm to provide a series of contract audits in order to assess whether the services obtained were within the scopes of the contracts and whether the contract payments are supported by the documentation of the work performed therefore, and

WHEREAS, OGS has determined after having solicited proposals from proposers willing to supply these services, that the Contractor submitted the proposal affording the State the best value for such services and that the Contractor possesses the necessary capacity, experience and expertise for provision of contract audit services, and that Contractor is ready, willing and able to perform such services on the terms hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

1. CONSIDERATION

OGS shall pay the Contractor for all contract audit fees and other fees and expenses in accordance with the amounts and rates put forth in the Contractor's proposal attached hereto as Appendix "C", which Appendix C is hereby incorporated by reference and made a part hereof as

fully as if set forth as length herein.

2. TERM

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

3. SERVICES

The Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the Request for Proposals No. 1824 which is annexed as Appendix "B" hereto, and the Contractor's proposal, annexed as Appendix "C" hereto, except as such Appendices B and C have been revised by the terms hereof. Appendix B is hereby incorporated by reference and made a part hereof with the same force and effect as if set forth at length herein.

4. TERMINATION

This Agreement may be terminated in accordance with the termination provisions set forth in the solicitation attached hereto as Appendix B hereof.

A) Termination

The Office of General Services may, upon thirty (30) days notice, terminate the contract resulting from this solicitation in the event of the awarded Bidder's failure to comply with any of the proposal's requirements unless the awarded Bidder obtained a waiver of the requirement. In addition, OGS may also terminate any contract resulting from this solicitation upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of the creditors.

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

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

B.) Procurement Lobbying Termination

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

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

5. RECORDS

The Contractor will maintain accurate records and accounts of services performed and monies expended under this Agreement. Such records will be maintained for six (6) years following the close of the State fiscal year to which they pertain and will be made available to representatives of OGS or the New York State Comptroller, as may be necessary for auditing purposes, upon request.

6. TAXES

The Contractor will be responsible for all applicable Federal, State and Local taxes and all FICA contributions.

7. INDEPENDENT CONTRACTOR

It is understood and agreed that the legal status of the Contractor, its subcontractors, agents, officers and employees is that of an independent contractor and in no manner shall they be deemed employees or agents of the State of New York and, therefore, are not entitled to any of the benefits associated with such employment or designation.

8. APPENDIX A

Appendix A, Standard Clauses for New York State Contracts, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein.

9. ASSIGNMENT

Contractor agrees that it will not assign this Agreement, or any interest therein without the prior written consent of the Commissioner of General Services.

10. LAW

This Agreement shall be governed by the laws of the State of New York.

11. CONDITIONS PRECEDENT

This Agreement shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the State Comptroller.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto.

13. EXECUTORY CLAUSE

This Agreement shall be deemed executory only to the extent of money available to the State for performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for purposes thereof.

14. INCONSISTENCIES

In the event of any discrepancy, disagreement or ambiguity between this contract agreement and Appendix B "Solicitation" and/or Appendix C "Proposal", or between any Appendices, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

- (i) Appendix A
- (ii) This contract agreement
- (iii) Appendix B – Solicitation #1824 including Addenda
- (iv) Appendix C – Contractor's Proposal

The parties understand and agree that any and all deviations or exceptions taken by Contractor to the State's Request for Proposal are hereby withdrawn except only to the extent that such exceptions or deviations have been explicitly incorporated into this contract agreement.

15. FORCE MAJEURE

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

16. ASSIGNMENT BY STATE

The State agrees not to assign this Agreement without prior notice to and reasonable consent of the Contractor provided, however, that this Agreement may be assigned without such consent to another agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the pertinent functions of OGS as an agency are transferred to a successor agency or subdivision of the State.

17. NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, overnight carrier or hand delivered, (i) if to the State, addressed to the State at its address set forth above, and (ii) if to Contractor, addressed to Contractor at its address set forth above. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for the purposes of this Agreement.

18. CAPTIONS

The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

19. SEVERABILITY

In the event that any one or more of the provisions of this Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

20. 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 may approve a request for Assignment of Contract.

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

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

OGS reserves the right to reject any 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.

21. INFORMATION SECURITY BREACH

In accordance with the Information and Security Breach Notification Act (ISBNA) (Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005), a Contractor with OGS shall be responsible for all applicable provisions of the ISBNA and the following terms herein with respect to any private information (as defined in the ISBNA) received by or on behalf of OGS under this Agreement.

- Contractor shall supply OGS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as OGS's notification policy.
- Contractor must encrypt any database fields and backup tapes that contain private data elements, as set forth in the ISBNA.
- Contractor must ensure that private data elements are encrypted in transit to / from their systems.
- In general, contractor must ensure that private data elements are not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.
- Contractor must monitor for breaches of security to any of its systems that store or process private data owned by OGS.
- Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from OGS.
- In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify OGS and commence an investigation in cooperation with OGS to determine the scope of the breach.
- Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
- Contractor shall immediately notify OGS following the discovery that OGS's system security has been breached.

- Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from OGS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the State Office of Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General's Office or any consuming reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.
- Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.
- This policy and procedure shall not impair the ability of the Attorney General to bring an action against the Contractor to enforce all provisions of the ISBNA or limit the Contractor's liability for any violations of the ISBNA.

22. MWBE/EEO

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 or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the contract does not offer any opportunities for participation by MWBEs.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of 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. Contractors shall complete the Staffing plan form and submit it as part of their contract.
- D. Form EEO 102 - 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.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

23. CONTRACTOR RESPONSIBILITY

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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.

CONTRACT NO. C00XXXX

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

Agency Certification

"In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

(Company Name)

THE PEOPLE OF THE STATE OF NEW YORK

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

APPROVED AS TO FORM
Eric Schneiderman
Attorney General

APPROVED
Thomas P. DiNapoli
State Comptroller

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:

[Check One]

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. _____

State of: _____

Appendix A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

[Text not included at this time because it is included elsewhere in the solicitation. Will be added when contract is finalized]

Appendix B

Request for Proposal

SAMPLE

Appendix C

Contractor's Proposal

SAMPLE

Attachment 1 - Cost Proposal Form

CONTRACT NO. _____
(To be completed by Agency)

Contractors
Name: _____

NOTE: Cost Proposal Form must be completed and signed in quadruplicate herein.

Bidders must bid the titles listed on the bid form and any additional titles they plan to utilize on the project. All Bidders must submit a fixed hourly rate for each specified title. **OGS' central office is located in Albany, NY. The successful contractor might determine that the audit requires some travel to construction sites outside of Albany. However, we anticipate that the amount of time required will be limited and that the work will be done by the auditors from Region 4 (Albany) to aid them in gaining their understanding of the internal controls. As such only Region 4 rates should be bid.** Fixed hourly rates must be inclusive of all overhead, profit and all other costs not expressly specified to be reimbursable.

Job Title	# of Positions Required	Fixed Hourly Rate	Estimated Hours Required (Annually)	Extended Costs
Staff Auditor	1		2000	\$
On-site Supervising Auditor	1		2000	\$
Total Discounted Hourly Rate				\$

Signature of Authorized Representative: _____
 Name: (printed) _____
 Title: (printed) _____
 Date: _____

Attachment 2

Experience /References

<u>YOUR COMPANY'S INFORMATION</u>	
Company Name:	_____
Signature:	_____
Company Address	_____
Year Business Began	_____ / _____ / _____
No. of Years in Business	_____

Each firm must provide:

- **A copy of your Most Recent Peer Review (within the past 3 years)**
- **Three (3) Vendor References from within the past five (5) years**
- **If applicable, three (3) Subcontractor Firm References from within the past three (3) years**

Customer Name	_____		
Customer Address	_____		
Contact Person	_____		
Telephone Number	() _____		
Date Range of Service	_____ / _____ / _____	through	_____ / _____ / _____
Dollar Value of Contract	_____		
Description of services provided, including monthly billable hours, audit type, etc.:			

EXHIBIT 1

CONFIDENTIALITY AGREEMENT

Between

THE NYS OFFICE OF GENERAL SERVICES

and

(CONTRACTOR)

CONCERNING THE CONFIDENTIALITY AND NON-DISCLOSURE OF SECURITY RELATED INFORMATION PROVIDED FOR AUDITING PURPOSES

This Agreement dated _____, 2013 is hereby made by and between the NYS Office of General Services ("OGS") and the contractor_____.

1. OGS will provide (CONTRACTOR) _____ with access to all records and information in its possession related to the audit scope.
2. (CONTRACTOR) _____ will keep strictly confidential all records and information provided to it, directly or indirectly, orally, in writing, or by other means, and will only provide access to such records to those of its employees whose responsibilities cannot be accomplished without such access, including, without limitation, appropriate audit staff. Further, (CONTRACTOR) _____ will advise these employees as to the confidential nature of these records and information, and the obligation not to release to anyone else, nor to discuss with anyone else, the contents of such records or such information. All (CONTRACTOR) _____ auditors working on this audit shall sign this Agreement to acknowledge their understanding and acceptance of its requirements. When in use, diligent steps shall be taken to minimize the risk of access to such records and information by unauthorized personnel. Diligent steps shall include, but are not limited to keeping such records and information under the personal observation and control of authorized individuals or in a secure container. When not in use, such records and information shall be maintained in a secure container, such as a locked drawer or file cabinet. Any record will be reproduced only to the minimum extent necessary, and the confidentiality of any such reproduced record will be protected in the same manner and to the same extent as the original.
3. Nothing in this Agreement shall preclude the (CONTRACTOR) _____ from making a referral to the appropriate government entity or providing information on potential violations of law, including, without limitation, the referral of any such matter to appropriate regulatory, investigative or prosecutorial authorities of the State.
4. At the conclusion of the audit, (CONTRACTOR) _____ will issue a confidential report of such audit to OGS.

5. The obligations imposed by this Agreement with respect to the protection of confidential records and information obtained by (CONTRACTOR) _____ for purposes of this audit shall survive the completion of the audit.

IN WITNESS WHEREOF, the parties have executed this Agreement by the authorized signatures below as of the date and year first above written.

OFFICE OF GENERAL SERVICES

CONTRACTOR

By _____

By _____

Name:

Name:

Title:

Title:

Exhibit 2

Proposer Checklist

	Contents	RFP Section	Proposer's Proposal Section	Proposer's Proposal Page
	Pre-Qualifiers			
1	Meets all Minimum Vendor Qualifications	1.4		
2	Register an Intent to Submit a Proposal	1.5		
1	Submissions for Technical Proposal Please submit four (4) original and four (4) exact copies			
1a	Cover Letter Includes: A thru F	2.2.1		
1b	Minimum Qualification Submissions Includes: A thru E	2.2.2		
1c	<ul style="list-style-type: none"> • Qualifications of Prospective Bidders Staffing - resumes • Experience Narrative and References (Attachment 2) • Personnel Resources lists as they pertain to Partners/Owners and In-Charge/Managers • Conflict of Interest attestation 	2.2.3		
2	Proposer's Checklist – Please submit one (1) with each Technical Proposal	Exhibit 2		
3	Experience/References - Please submit three (3) bidder and three (3) subcontractors (if applicable) with each Technical Proposal	Attachment 2		
	Separate Packaging			
1	Confidentiality Agreement – Please submit four (4) signed originals	Exhibit 1		
2	Cost Proposal – Please submit four (4) signed originals	Attachment 1		
3	All Required Forms – Please submit four (4) fully executed originals	Appendix B		
4	All Addendums – Please submit four (4) signed originals			