DIVISION OF FINANCIAL ADMINISTRATION

Addendum No. 1

To

RFP No. 1825

Date: July 11, 2013

Subject: Correction of Proposal Due Date and Time on Cover Page of RFP

Title: New York State Office of General Services – Professional Auctioneer Services

Group: 79000 - Class Code: 77, 80 & 84

Proposal Due Date: September 18, 2013

Address Bid Inquiries to the Designated Contact:

Beth Maus – Contract Management Specialist 1
NYS Office of General Services
Corning Tower, 40th Floor
Empire State Plaza
Albany, New York 12242
Phone: 518-474-5981
Email: beth.maus@ogs.ny.gov

Please see the attached corrected cover page for RFP No. 1825 – Professional Auctioneer Services. The proposal due date was inadvertently left out and the time is incorrect. The correct proposal due date, as stated in Section 1.4 – Key Events, is **September 18, 2013 at 3:00PM.**

If you have any question please feel free to contact me.

If submitting a proposal, this Addendum No. 1 for RFP No. 1825 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_____

REQUEST FOR PROPOSAL (RFP) 1825 SOLICITED BY THE

NEW YORK STATE OFFICE OF GENERAL SERVICES

FOR

PROFESSIONAL AUCTIONEER SERVICES

PRPOSAL DUE DATE: SEPTEMBER 18, 2013 @ 3:00 PM

ISSUE DATE: JULY 10, 2013

Designated Contact:
Beth Maus
Voice: 518-474-5981
E-mail: Beth.maus@ogs.ny.gov

Alternate Contact:
Diane Robinson
Voice: Same
E-mail: diane.robinson@ogs.ny.gov

REQUEST FOR PROPOSAL (RFP) 1825 SOLICITED BY THE

NEW YORK STATE OFFICE OF GENERAL SERVICES

FOR

PROFESSIONAL AUCTIONEER SERVICES

BID DUE DATE: @ 2:00 P.M

ISSUE DATE: JULY 10, 2013

Designated Contact:
Beth Maus
Voice: 518-474-5981
E-mail: Beth.maus@ogs.ny.gov

Alternate Contact:
Diane Robinson
Voice: Same
E-mail: diane.robinson@ogs.ny.gov

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1. Introduction

1.1 Overview

The New York State (NYS) Office of General Services (OGS) operates a centralized service for the disposition of a wide variety of surplus property. OGS engages the services of a professional auctioneer for the purpose of conducting auctions of surplus property, receiving the proceeds and providing them to OGS, advertising and marketing, and creating and maintaining related records. The auctions are held at various locations throughout the state.

While most auctions conducted by the professional auctioneer contractor involve passenger vehicles, trucks and heavy equipment, occasionally auctions of other equipment or items may be required.

1.2 Designated Contact

In compliance with the New York State Procurement Lobbying Law, State Finance Law Section 139-j, Beth Maus, Contract Management Specialist, NYS Office of General Services, Division of Financial Administration has been designated as the PRIMARY designated contact for this procurement solicitation and may be reached by e-mail, voice or fax for all inquiries regarding this solicitation.

Beth Maus, Contract Management Specialist I
NYS Office of General Services
Financial Administration, Contract unit
Corning Tower, 40th Floor, ESP
Albany, New York 12242
Voice: 518-474-5981
Fax: 518-486-3651
E-mail: beth.maus@ogs.ny.gov.

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

Diane Robinson, Contract Management Specialist II
NYS Office of General Services
Financial Administration, Contract Unit
Corning Tower, 40th Floor, ESP
Albany, New York 12242
Voice: 518-474-5981
Fax: 518-486-3651
E-mail: diane.robinson@ogs.ny.gov

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

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

1.3 Minimum Proposer Qualifications

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

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.

- Proposer has actively and normally been engaged, for at least the past three (3) years in conducting auctions similar in scope to the services described herein or Proposer is to supply information confirming that senior management personnel of Proposer has been actively and normally engaged cumulatively for the Proposer and another firm or firms in which they also served as senior management personnel, for at least the past three (3) years in conducting auctions similar in scope to the services described herein. Provided, however, that in the case of the latter situation, the Proposer must have been in business for at least six (6) months. OGS' determination as to whether subject personnel serve or served in senior management positions shall be final.
- Past experience must include no fewer than (3) auctions each valued in excess of $100,000 dollars, within the last (2) years.

1.4 Key Events

The Table below outlines the tentative schedule for important action dates. This schedule represents OGS' best estimate of the schedule that will be followed.

OGS reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. OGS will communicate any adjustment to this schedule of events via e-mail to all potential Proposers who have filed a timely intent to submit a proposal.

Action	Date
OGS issues RFP #1825 for Professional Auctioneer Services	**July 10, 2013**
Intent to Submit a Proposal Notification due to OGS (See Section 2.1)	**August 14, 2013**
Proposer questions due to OGS (including any exception waiver requests)	**August 14, 2013**
OGS issues responses to questions due (estimate)	**August 28, 2013**
Proposals due to OGS @ 3:00 PM EST	**September 18, 2013**
Contract start date (estimate)	**March 9, 2014**

2. Proposal Submission

2.1 Intent to Submit a Proposal

Vendors who wish to submit a proposal must register their Intent to Submit a Proposal with OGS by sending notice to Beth S. Maus, Contract Management Specialist 1, via email beth.maus@ogs.ny.gov . Vendors shall include their company name, address, phone, fax, contact name, title, and email address. Vendors must register their intent no later than the date specified in Section 1.4 - Key Events. Only registered vendors will be allowed to submit proposals for this RFP. Also, only registered vendors will receive updates or responses to questions regarding this RFP. By registering a letter of Intent to Submit a Proposal, the vendor is not obligated to submit a proposal. Vendors assume sole responsibility for timely receipt of Intent.

2.2 RFP Questions and Clarifications

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

Beth Maus
NYS Office of General Services
Financial Administration, Contract Unit
Corning Tower, 40th Floor, ESP
Albany, New York 12242
Phone: 1-518-474-5981
Fax: 1-518-486-3651
e-mail: beth.maus@ogs.ny.gov

Questions and requests for clarification are only accepted via e-mail or in writing. Official answers to questions will be provided via addendum. Bid addenda will be provided via e-mail to all proposers who have submitted an Intent to Submit a Proposal.

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

2.3 Proposal Format and Content

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

2.3.1 Cover Letter

Proposers must submit a cover letter which includes the following:

- Confirmation that the Proposer understands and will comply with all the provisions/requirements of this RFP, and are intended to meet the nature of the

work and level of effort necessary to successfully provide the services required by such contract.

- A statement that should the contract be awarded to your company, you would be prepared to begin operations on the date indicated in Section 1.4 - Key Events.
- The full contact information of the person(s) OGS should contact regarding the bid (including name, title, telephone and fax number, and e-mail address).
- A brief description of the proposing firm and shall include: firm's history, number of years the organization has been in business, and types of service it provides.
- A company representative authorized to make contractual obligations must sign the cover letter.

2.3.2 Minimum Qualifications

Proposers must submit proof that they meet the minimum qualifications set forth in Section 1.3

2.3.3 Experience of Firm and Key Personnel

Provide a detailed description of the firm's organization, experience and personnel that will substantiate the firm's qualifications and capabilities to provide the services required by this RFP including but not limited to the following:

- Names, titles, and qualifications of key personnel who will be assigned to this contract. Include each individual's function and role in providing the services required by this contract as well as their qualifications and experience in providing such services.
- Detailed resume of each proposed auctioneer assigned to this contract.
- Comprehensive list of contracts of similar scope that have been successfully undertaken by the firm within the last two years. Provide the name, address and telephone number of a reference for each. Note: proposers are solely responsible for availability of the submitted references. The inability to contact a reference provided by the Proposer will be considered as part of the evaluation process.
- Years of experience in auctioneer services for the firm and <u>each</u> auctioneer and key personnel.

2.3.4 Plan of Operation

Provide a detailed plan outlining your firms approach for providing all services required by Section 5 - Scope of Work of this RFP including but not limited to the following:

- Staffing Plan - number of employees and their function/duties at each auction.
- Location of office responsible for managing this contract.

- Tools, resources and technology to be used to facilitate the processing of credit card transactions and electronic record keeping and reporting.
- Describe process for advertising and marketing
- Describe processes and preparations in advance of auctions
- Describe process for site set-up and preparations on day of auction
- Describe post auction activities and procedures

Proposers are encouraged to submit any additional information intended to support and strengthen their proposal.

2.3.5 Bonding Requirement

Provide valid proof of bonding as required by Section 5.9 – Bonding Requirements. With bid submission, without expense to NYS, the bidder shall provide evidence of bondability in the sum of $500,000.00. Acceptable evidence of bondability is a writing issued by a bank, bond company, or bond agency guaranteeing issuance of a bond, payable to State of New York, in the amount required and for the term of any contract resulting from this RFP.

2.3.6 Contract Fee

Proposers must submit a completed Cost proposal Form. Any alterations, exceptions, qualifiers, ranges, etc. will result in rejection of the proposal.

2.3.7 Required Forms

All other required completed forms and Attachments.

2.4 Proposal Preparation

All bids <u>must</u> be completed in ink or machine produced. Handwritten bids will be disqualified.

2.5 Packaging of RFP Response

- Submit three (3) original and three (3) exact copies (total of 6) of the technical proposal.
- Submit three (3) original and two (2) exact copies (total of 5) 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 three (3) original and one (1) copy (total 4) of all other documents found in Appendix B, as well as any bid addenda.
- Proposers are also reminded to submit the required MWBE / EEO forms per Section 6.5 - M/WBE & EEO Requirements, and also to complete the online

responsibility questionnaire per Section 6.15 - NYS Vendor Responsibility Questionnaire For-Profit Business Entity.

- 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 – 1825
  - Proposal Due Date and Time: Refer to Section 1.4 - Key Event Dates

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.

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.

2.6 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. A complete package (Technical Proposal, Cost Proposal and all Other Documents) must be received before the Proposal Due date as stated in Section 1.4 – Key Events table. Proposals are to be sent to the following address:

NYS Office of General Services
Financial Administration, Contract Unit
Corning Tower, 40th Floor, ESP
Albany, New York 12242
Attn: Beth Maus

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

PROPOSERS ASSUME ALL RISKS FOR TIMELY, PROPERLY SUBMITTED DELIVERIES.

THE RECEIVED TIME OF BIDS WILL BE DETERMINED BY THE CLOCK AT THE ABOVE NOTED LOCATION.

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

MAILED BIDS

Proposers mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time. Delays in

United States mail deliveries or any other means of transmittal, including couriers or agents of the Proposer shall not excuse late bid submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late bid submissions. Proposers are cautioned that receipt of bids in the OGS Mailroom is NOT sufficient, and that at least historically, one overnight carrier has been known to deliver its packages to the OGS Mailroom. OGS cannot be responsible for the actions of your chosen carrier.

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

IMPORTANT BUILDING ACCESS PROCEDURES FOR DELIVERED BIDS

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

Upon arrival at the visitor desk, visitors that have not pre-registered will be directed to a designated phone to call Beth Maus or Diane Robinson of the OGS Finance Office at 518-474-5981. The visitor's information will then be entered into the building access system. Access will not be allowed until the system has been updated which takes some time. Visitors are encouraged to pre-register to ensure timely access to the building. Vendors who intend to deliver bids or conduct business with OGS should allow extra time to comply with these procedures. These procedures may change or be modified at any time.

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

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

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 Bureau of Surplus Personal Property Disposition.

3.2 Term of Contract

The contract resulting from this RFP will become effective March 9, 2014 and will continue for a term of five (5) years.

The State of New York retains the right to cancel this contract without cause, provided that the contractor is given at least thirty (30) days' notice of its intent to cancel. Any cancellation by OGS under this Section 3.2 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 therefor for lost profits or any other damages resulting there from. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision.

3.3 Method of Award

This will be a single award contract to conduct all assigned auctions throughout New York State. The contract will be awarded to the responsive and responsible Proposer affording the best value to the State. Best value shall be determined by the highest point total using the evaluation criteria listed in Section 4 – Evaluation and Selection Process.

The Grand Total bid amount of the successful Proposer shall be used to calculate the total contract value.

3.4 Price

Proposers must submit their gross commission fee on the Cost Proposal Form provided as Attachment 1. Any alterations, exceptions, qualifiers, ranges, etc. will result in rejection of the proposal. The contract fee is expressed as a percentage of gross auction sales (not including sales tax). A percentage shall be provided for each year of the contract, as stated on the Cost Proposal Form.

The bid price is inclusive of all ancillary costs and expenses (Including, but not limited to travel, lodging, meals, insurance, bonding, administrative, overhead and profit, etc.). For evaluation purposes, an estimated annual dollar value will be used.

3.5 Method of Payment

For the purposes of this contract, payment will be based on a percentage bid and applied to proceeds on a per auction basis.

As soon as practicable but no later than 15 calendar days from the date of each auction, the contractor shall submit both, the electronic and hard copy auction reports, as described in Section 5.11, to the OGS Program Coordinator, Bureau of Surplus Property Disposition for review and approval. Once approved, the OGS Bureau of Surplus Property Disposition will notify the contractor in writing of such approval. The contractor may then submit an invoice for payment.

Submitted invoices must contain sufficient information to clearly tie it to the applicable auction / report. At a minimum, each invoice must contain: the contract number, a unique invoice number, date and location of the auction, amount of sales, commission percentage as bid, and amount of commission due to the contractor.

Invoices received without this information may be returned to the contractor and payment will not be due or owing until a corrected invoice is received.

The invoice must be submitted to OGS Accounts Payable via email to accountspayable@ogs.ny.gov **OR** the following mailing address: NYS Office of General Services, Business Service Center, Accounts Payable, P.O. Box 2117, Empire State Plaza Station, Albany, NY 12220-0117

MANDATORY: A copy of the invoice must simultaneously be sent to the Program Coordinator, Bureau of Surplus Property Disposition. Payment cannot be processed until the Program Coordinator has approved each invoice.

When approved by the Program Coordinator, OGS Bureau of Surplus Property Disposition, the invoice will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law. For clarification purposes, it is understood that the clock for the purpose of the prompt payment provision shall not begin until the invoice is received by Accounts Payable **AND** the Program Coordinator, and in no case shall that date be earlier than the date of written approval of the auction report as indicated in the second paragraph of this section.

3.6 Electronic Payments

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

The Contractor acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the State Comptroller's electronic payment

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

Please note that in conjunction with New York State's implementation of a new Statewide Financial System, the Office of the State Comptroller requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the substitute 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.

3.7 Past Practice

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

3.8 Proposal Exceptions

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

Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the 'Questions Due Date' as identified in Section 1.4 - Key Events. The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either with the 'Answers to Questions' as identified in Section 1.4 - Key Events (if the response results in a change to the RFP), or directly to the requesting vendor.

3.9 Dispute Resolution

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

3.10 Examination of Contract Documents

- Each Proposer is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may

select, of the character, quality and extent of the work to be performed and the conditions under which the contract is to be executed.

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

3.11 Prime Contractor Responsibilities

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

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

3.12 Inspection of Books

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

3.13 Glossary of Terms

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

"Request for Proposal" or "RFP" shall mean this document.

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

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

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

3.14 Rules of Construction

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

4. 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, using a committee of employees from OGS.

Proposers are encouraged to include all information that may be deemed pertinent to the evaluation of their Proposal. If additional information or clarification is needed during the evaluation period, OGS will contact the Proposer. This information/clarification will be considered a formal part of the Proposer's original bid.

Proposers will be required to provide a presentation to the evaluation team. The presentations will be held in Albany, NY at a date and time scheduled by OGS.

OGS reserves the right to contact references and reference check information will be considered in the technical evaluation.

Further, OGS reserves the right for evaluators to make on-site inspections of any Proposer or Proposer's sub-contractor's facilities, auctions, vehicles and other equipment.

4.1.1 Submission Review

OGS Financial Administration will review each proposal and initially determine whether a proposal is responsive to the requirements of the RFP. Proposals that are determined to be non-responsive may be rejected. All proposals passing the submission review requirements for responsiveness will be evaluated.

4.1.2 Technical Evaluation

The technical evaluation committee will subsequently evaluate and score each responsive proposal for items a, b, and c listed below. Maximum of 50 percent.

a) **Proposer's Experience -- 20 percent**
Each Proposer will be evaluated as to its experience, pursuant to this RFP, demonstrating its level of experience and qualifications in operating an organization capable of performing the services sought by this RFP.

b) **Plan of Operation --25 percent**
Each proposal will be evaluated for the completeness of, and the extent to which, the operational information and specific action plans meet the goals and requirements of the RFP.

c) **Quality and Completeness of Proposal -- 5 percent**
Each proposal will be evaluated for the extent to which the proposal satisfies and addresses each requirement of the RFP. Consideration also will be given to the overall organization of, and ease of navigation of the submitted proposal.

4.1.3 Cost

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. Each subsequent proposal will receive a proportionate number of points using the following formula: low bid / bid being evaluated X category weight. **Maximum of 40 percent**.

4.1.4 Executive Review

The Executive Committee will be privy to all pertinent proposal materials and will award points based upon factors that include the Executive Committee's appraisal of the Proposer's level of experience, presentation, format of the bid and acceptability of the Proposer's scope of services. In addition, consideration will be given to whether the Proposer can perform for the proposed costs while maintaining adequate levels of service and quality over the term of the contract. **Maximum 10 percent**.

4.2 Notification of Award

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

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

5. Scope of Work

5.1 Operational Standards

All auctioneer services under any contract resulting from this RFP shall be of the highest quality and standards; and must conform in all respects to Federal, State and municipal laws, ordinances, rules and regulations. The Contractor shall continuously maintain all required licenses and permits and shall provide for the inspection and review of such licenses and permits by the Office of General Services and any other persons authorized by law.

The service shall at all times be prompt, accurate, courteous and efficient. Service shall be provided to all patrons without discrimination.

The quality of service shall be subject to inspection by the State of New York at any time.

5.2 Service Requirements

The Professional Auctioneer Contractor will handle, auction off, and dispose of such surplus personal property as designated for such purpose by OGS, and will do so pursuant to the following provisions being set forth hereinafter at length.

There are approximately 50 auctions held throughout the State, typically April through December each year.

- Contractor shall provide all services necessary to auction automotive vehicles, such as passenger cars, vans, buses, ambulances), trucks, highway maintenance equipment and all other items made available for sale by the OGS Bureau of Surplus Personal Property Disposition.
- All surplus personal property shall be sold “as is”. Potential buyers may observe and inspect property on the day of sale. Known defects of surplus personal property offered for sale will be furnished to the Contractor by NYS prior to the auction date.
- The Contractor shall become familiar with the equipment to be sold in order to obtain the highest possible revenue for NYS. Good marketing practices are to be used in connection with each auction. Refer to Section 5.4 – Marketing and Promotions, for additional marketing requirements.
- OGS reserves the right to withdraw items prior to their sale and may do so without any recourse by the Contractor for any commission that might have been earned.
- At the time of the auction, the Contractor shall require each successful buyer to post an appropriate deposit or make full payment in cash, credit card, certified check, bank check or business check, as approved by the Contractor. All checks accepted are to be made payable to NYS Office of General Services. Any returned checks will be the responsibility of the Contractor. Determination of the

validity of the documents presented by the buyers for payment shall be the sole responsibility of the Contractor.

- A bill of sale will be provided by the Contractor to each buyer and a copy of that bill must also be provided to OGS. The bill of sale must include sales tax, where applicable, for each item purchased. For all automotive equipment, the bill of sale must include the catalog item number, year, make, VIN/serial number, mileage and identification number of the vehicle or equipment sold.
- The Contractor, the Contractor's family and employees are prohibited from purchasing any items during the auction bidding process, and no sale shall result in a benefit to the Contractor or to any of the Contractor's family or employees outside of the terms and conditions of this contract. Violation is immediate cause for termination of contract.
- OGS will assign and schedule auctions to be conducted at various times on any day of the week, Monday through Friday, and occasionally on Saturdays or during evening hours. No auctions will be scheduled on Sundays or on State or Federal legal holidays. OGS will provide a minimum of (2) week's prior notice for all auctions. The contractor must provide necessary staffing, including an additional auctioneer as may be required. All auction sales will be open to the general public.
- OGS also reserves the right to conduct auctions in-house or by any other means determined to be in the best interest of the State.
- The Contractor shall secure the prior approval of the OGS Bureau of Surplus Personal Property Disposition for (1) any data or information formats or forms to be used by the Contractor, (2) all types of record keeping and reporting, and (3) any subsequent changes to the formats, forms, record keeping or reporting. Generally, the OGS Bureau of Surplus Personal Property Disposition will supply forms.
- Pursuant to Article 11, Section 167 of the New York State Finance Law, OGS has the right to reject any final offer made at the auction sale, if the OGS representative deems the offer to be too low. The high bidder, and only the high bidder, will be given an opportunity to meet the acceptable price placed on the item by the OGS representative in charge of the auction sale. The OGS representative will be present at the auction sale to carry out the terms of this paragraph.
- This contract does not give the Contractor the exclusive right to sell any or all surplus equipment for NYS.
- Each item sold by the Contractor pursuant to this contract shall be at the buyer's risk from the fall of the hammer and shall be paid for on the day of sale within one half hour of the end of the auction and taken away by the buyer within four (4) business days from the date of the sale. NYS shall issue the necessary documents to transfer ownership of the items to the purchaser or purchasers. No warranty from NYS is given with any item, and no sale shall be invalidated by

reason of any fault in any item or by reason of any item being incorrectly described, in the catalog or otherwise, and no compensation shall be paid by NYS for any such fault or error in description.

5.3 Special Auctions

Auctions relating to the closing of a State Facility or other unique circumstance involving extraordinary expenses shall be subject to reimbursement of expenses in addition to the same fee as "regular" auctions, and shall otherwise be governed as follows:

1. The State shall have the exclusive right, in its sole discretion, to designate an auction as a "Special Auction.
2. The only expenses which may qualify for reimbursement are those reasonable extraordinary (above that which would normally be expected for a typical vehicle and equipment auction) expenses for marketing (including advertising, printing, layout and design, postage and associated costs) and human resources (including travel and lodging costs calculated at the State Comptroller's guidelines for reimbursement for Management/Confidential employees).
3. All expenses shall be pre-approved by the State in writing. The contractor shall submit to the State a detailed proposed budget for each Special Auction which includes its proposed usual and extraordinary expenditures, separately listed and described therein.

5.4 Marketing and Promotions

The Contractor's best efforts shall be used to assist in planning and promoting each auction. Also, the Contractor shall utilize a minimum of two percent (2%) of the Contractor's gross commissions for advertising in trade publications, printing, mailing of circulars, and other advertising or marketing that is acceptable to the OGS Bureau of Surplus Personal Property Disposition. Utilization of 2% of the gross commissions for advertising, mailing, printing and other marketing is intended to be accomplished in connection with the various auctions throughout the year. Reporting related to this requirement shall be as follows:

1. Schedule of Reports – Not later than the 31st day of each July and December, the Contractor shall provide adequate documentation to demonstrate compliance with this requirement by providing copies of all information, mailings, ads, receipts for expenditures, etc.
2. Payment After Report Received – Payment of the gross commission for the last auction in each calendar period shall be delayed by OGS until adequate documentation, evidencing that the Contractor has utilized a minimum of 2% of the gross proceeds, has been received and accepted.
3. Annual Reconciliation – At the end of each calendar year, or upon termination of this contract, an accounting will be done by OGS, and if the requirement for advertising, mailing, printing and other marketing has not been met, at the option of OGS, either the Contractor will pay to OGS the amount of the deficiency in

meeting this requirement or the amount of the deficiency will be withheld by OGS from the gross commission to be paid for auctioning the last auction.

5.5 Resources and Specific Requirements

1. Provide sufficient experienced personnel to be on hand prior to the auction to start and operate, make minor adjustments and/or repairs, number and/or tag, arrange for sale (verify VINs, mileage, defects, etc.), and clean all items, including, insofar as is practical, to broom clean the interiors and trunks.
2. Provide sufficient small tools (e.g., jumper cables, portable starting device, wrenches, pliers, and screwdrivers) and a reasonable supply of gasoline, motor oil, starting fluid and transmission fluid necessary to operate each vehicle and unit of highway equipment to be sold. “Operate” shall be only to demonstrate. “Demonstrate” shall be “operating the equipment to the extent possible, given the condition and location of the item.” Operating shall include raising and lowering bulldozer blades, dump truck bodies and loader buckets, and driving vehicles to the auction block.
3. Provide a portable public address system, a tape recorder for recording the auction process, and a clean and environmentally accommodating office trailer on the day of the auction. Office space shall be sufficient to allow the NYS representative a functional working area including seating.
4. “Sign” each workstation used for auction clerical duties to identify the activities to be performed at that workstation (e.g., “register here” and “pay here”); the sign at the registration location shall include the terms of payment.
5. Erect the signs provided by NYS and imprinted with “State of New York Equipment Auction” at locations so as to identify the sale location.
6. Provide safety equipment necessary to the operation of vehicle and equipment preparation. This equipment shall include, but not be limited to a dry chemical fire extinguisher at least five (5) pounds in size, a portable eyewash station, and a first aid kit. This equipment shall be kept accessible during the preparation and execution of the auction sale.
7. Staffing levels must be adequate to enable timely project completion even in the event of illness or other causes preventing completion by initially assigned staff.

5.6 Day of Auction Procedures

The Contractor shall provide on the day of each auction:

1. A professional auctioneer and supporting staff to be at the site of the auction from at least one 90 minutes prior to the advertised and scheduled time of the auction sale. Personnel to be identifiable as auction staff (e.g., name tags, caps, shirts).
2. If motor vehicles are to be auctioned, sufficient personnel (two or more people) to ensure a steady movement of vehicles during the auction as required.

3. At least one competent mechanical assistant to start vehicles and perform duties in the yard when the auction involves sale of mechanical equipment.
4. Sufficient number of competent clerical personnel to record all transactions, review valid exemption certificates, complete all required forms and reports, and maintain a yearly sales tax exemption file.
5. A competent cashier to collect the proceeds and sales tax due and produce customer invoices.
6. The Contractor will be responsible for all funds until they are turned over to the State. It will also be the responsibility of the Contractor for security at the auctions to secure these funds.
7. Two copies of the names and addresses of all buyers and two copies of a listing of all vehicle/items sold including lot number and price must be furnished at the end of each auction sale to the NYS representative who attended the auction. The names and addresses of the buyers who attended the auction should be verified and recorded by the Contractor's clerk during the sign up process by checking at least one form of identification (e.g., a driver's license).

5.7 Handling of Proceeds

Not later than two (2) business days after each auction has been conducted, the Contractor shall deposit all proceeds of the auctions into a bank account identified by the State. These deposits must include the gross receipts of each auction, i.e., the total amount collected for the auction sales—including all sales tax collected, and the Contractor must not deduct or otherwise withhold from the deposits any sum or portion of the gross auction sales proceeds.

5.8 Liquidated Damages

It is understood and agreed by the parties that Contractor's performance and adherence to schedules and timeframes specified herein, and especially relating to the handling and deposit of proceeds of auctions, as detailed by section 5.7 herein, is a material element of the Contract and that time is of the essence in these regards. Contractor's failure to timely meet the specified schedules may be grounds for cancellation of the Contract, and/or shall also, at the sole discretion of the State, subject the Contractor to liquidated damages. The decision of OGS as to compliance with the schedule and timeframe requirements of this contract shall be final. The burden of proof for delay(s) in performance shall rest with the Contractor. In all instances of a potential or actual delay in performance, the Contractor shall immediately notify OGS, and shall confirm in writing the explanation of the delay, and shall take appropriate action to avoid any subsequent delays in performance. Any extension of the time for performance must be requested in writing by the Contractor and must be approved in writing by OGS. Liquidated damages shall be calculated as Five hundred dollars ($500.00) per day until the scheduled performance requirement is completed by Contractor and accepted by the State, or until the Contractor's performance obligation is satisfied and accepted by the State. Liquidated damages may be, at the discretion of OGS, deducted or offset by

the State from payments due, or to become due, to the Contractor on the same or another transaction.

5.9 Bonding Requirements

Acceptable evidence of bondability shall consist of a letter or other written document from a bond company or financial institution confirming their commitment to issue a bond or irrevocable letter of credit for bidder's performance of a contract resulting from this RFP. Prior to actual performance under this contract, without expense to NYS, the Contractor shall supply a $500,000. surety bond or irrevocable letter of credit to OGS in a form satisfactory to OGS, conditioned upon the faithful performance of this contract in accord with the intent and purpose thereof, and guaranteeing payment to the State of New York by the Contractor of all monies due to NYS pursuant to the terms of this contract. The bond or letter of credit must remain in effect for the duration of the contract term.

5.10 Contract Representative

During the term of any contract resulting from this RFP, the Contractor shall maintain a designated officer or employee as its representative for contact with the State and for all communication and transactions relating to any contract resulting from this RFP.

The Commissioner's designated representative for all purposes of this contract shall be the Program Coordinator of the Bureau of Surplus Personal Property Disposition.

5.11 Reporting Requirements

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 as described throughout this RFP.

The following information must be reported in electronic Excel format for each auction conducted as soon as practicable but no later than 15 calendar days from the date of the auction:

- Bidder list, including but not limited to the following data: bidder id number assigned at auction, first name, last name, middle initial, (same as driver license data), address, city, state, zip, company name, NY County of residence, tax exempt status, auction catalog number (supplied by OGS), telephone number.
- Sale recording data: auction catalog number, item identification number, lot number, bidder identification number, sale amount, date/time information collected at site
- Sale invoice data: unique invoice number, catalog number, bidder identification number, item number, lot number, sale amount, sales tax amount, tax county identification number, payment type, paid date
- Copy of deposit receipt

The following information must be reported in hard copy format for each auction conducted as soon as practicable but no later than 15 calendar days from the date of the auction:

- Bidder List to include bidder id number assigned at auction, first name, last name, middle initial (same as driver license data), address, city, state, zip, company name and telephone number.
- Consignment List to include auction catalog number/location, lot number and description of lot, bidder id and name and sale amount.
- Sale Invoices to include unique invoice number, catalog number, auction location, bidder id, lot number and description of lot, sale amount, sales tax amount and county of tax and payment type and amount. Copies of sales tax exemption forms are also to be included. Note: Any such sales tax exemption forms must be updated annually at the beginning of each auction season.

Upon award of the contract and prior to the start of any work, the Contractor shall be available for a face to face initial job meeting with the Program Coordinator of the Bureau of Surplus Personal Property Disposition (hereinafter “Program Coordinator”). This meeting shall include:

- The Contractor's submission of a schedule of work to be reviewed and approved by the Program Coordinator.
- An Introduction for each respective organization, chain of command, etc.
- Discussion of the content and format of both electronic and written reports required by OGS.

Also, see Section 5.4 – Marketing and Promotions for additional reporting requirements.

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. The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A
2. Contract (sample attached hereto as Appendix C)
3. OGS RFP Number 1825 (This Document), including any addenda
4. Selected Contractor's Bid

6.2 Procurement Lobbying Requirement

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

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

6.3 Contractor Insurance Requirements

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

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

All insurance required by the Contract shall be obtained at the sole cost and expense of the contractor; shall be maintained with insurance carriers 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, Tower Building, G.N.A.R. 40th Floor, Empire State Plaza, Albany, New York 12242 and shall name The People of the State of New York and 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 26 11 85** and a copy of the endorsement should accompany the certificate). The additional insured requirement does not apply to Workers Compensation, Disability or Employee Dishonesty Coverage.

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

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

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

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

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

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

a) Commercial General Liability Insurance with a limit of **not less than $2,000,000 each occurrence**. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent 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.
2. Coverage for the use of reasonable force to protect persons and property must be included.

b)Employee dishonesty coverage on money, securities, or property other than money and securities, including property in your care, custody or control with a limit of **not less than $1,000,000**. The coverage shall include all employees including contract and temporary, whether identified or not, acting alone or in collusion with others. A joint loss payable endorsement shall be attached naming OGS as loss payee to any loss arising out of this contract.

c)Commercial Business Automobile Liability Insurance with a limit of **not less than $1,000,000 each accident**. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

d)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 $1,000,000 per loss**.

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

e)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.state.ny.us. 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, RIFM Office, 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).

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

Contractor acknowledges that failure to obtain, as well as failure to maintain in effect for the full term of any contract resulting from this RFP, 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, including immediate termination, subject only to a five (5) business day remedy period following verbal or written notification to the Contractor.

6.4 Tax and Finance Clause

TAX LAW § 5-A:

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

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

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

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

responsible. Proposers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

6.5 M/WBE & EEO Requirements

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

NEW YORK STATE LAW

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

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

BUSINESS PARTICIPATION OPPORTUNITIES FOR MWBES

For purposes of this solicitation, OGS hereby establishes an overall goal of 20% for MWBE participation, 0% for Minority-Owned Business Enterprises ("MBE") participation and 2% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and contractor agrees that OGS may withhold payment pending receipt of the

required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: http://www.esd.ny.gov/mwbe.html.

For guidance on how OGS will determine a contractor's "good faith efforts," refer to 5 NYCRR §142.8.

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

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

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

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

B. OGS will review the submitted MWBE Utilization Plan and advise the 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.

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

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

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

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

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

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

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the

Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

6.6 Freedom of Information Law / Trade Secrets

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

6.7 Iran Divestment Act

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

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

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

any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

6.8 General Requirements

- The Proposer agrees to adhere to all state and federal laws and regulations in connection with the contract.
- The Proposer agrees to notify the Office of General Services of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- The Proposer agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
- The Proposer agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Commissioner of General Services.
- For reasons of safety and public policy, in any contract resulting from this RFP, the use of illegal drugs and/or alcoholic beverages by the contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
- For purposes of any contract resulting from this RFP, the State will not be liable for any expense incurred by the contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the contractor. It is understood that travel expenses will not be allowed.
- The Commissioner's interpretation of specifications shall be final and binding upon the contractor.
- The Commissioner of General Services will make no allowance or concession to the Proposer for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
- Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Proposer has based its bid on the more expensive option. Final decision will rest with the Commissioner of General Services.
- INSPECTION – For purposes of any contract resulting from this RFP the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the Commissioner of the Office of General Services may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing contractor shall be liable to the State of New York for costs incurred on account thereof.

- STOP WORK ORDER - The Commissioner of General Services reserves the right to stop the work covered by this RFP and any contract(s) resulting there from at any time that it is deemed the successful Proposer is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, the Office of General Services shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Proposer shall be liable to the State of New York for any such costs on account thereof. In the event that the Office of General Services issues a stop work order for the work as provided herein, the contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective. Provided, however, that if an emergency situation exists, as reasonably determined by the Office of General Services, then the stop work order shall be effective immediately.
- SUSPENSION OF WORK ORDER - The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this contract, at any time, in the best interests of the State or Issuing Entity. In the event of such suspension, the contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such suspension of work, the Contractor is not to accept or conduct any auctions, as may be specified in the Suspension Order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of work.
- It is the contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
- The Office of General Services reserves the right to reject and bar from the facility any employee hired by the contractor.

6.9 Contract Terms

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

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

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

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

6.10 Subcontractors

The State will contract only with the successful 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. Known or planned use of subcontractors shall be disclosed in detail with bid submission by the proposer. If subcontractors are to be used for base scope services, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed.

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 <u>all</u> terms, conditions, and requirements of the contract documents.

During the term of the Contract, before any part of the contract shall be sublet, the contractor shall submit to the OGS Project Manager, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The contractor shall promptly furnish such information as OGS may require concerning the proposed subcontractor's ability and qualifications. The contractor shall not be entitled to any additional compensation when using subcontractors.

6.11 Procurement Rights

The State of New York reserves the right to:

1. Reject any and all proposals received in response to this solicitation.
2. Disqualify a Proposer from receiving the award if the Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct Proposers' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the Proposer.
4. Adjust any Proposer's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Proposer will cause the State to incur additional costs.
5. Utilize any and all ideas submitted in the proposals received.
6. Negotiate with Proposers responding to this solicitation within the solicitation requirements to serve the best interests of the State.

7. Begin contract negotiations with another bidding contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected contractor within 21 days of selection notification.
8. Waive any non-material requirement not met by all Proposers.
9. Not make an award from this solicitation.
10. Make an award under this solicitation in whole or in part.
11. Make multiple contract awards pursuant to the solicitation.
12. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
13. Seek clarifications of proposals.
14. If two or more offers are found to be substantially equivalent, the Commissioner of OGS, at her sole discretion, will determine award using established criteria.
15. OGS reserves the right to withdraw items prior to their sale and may do so without any recourse by the Contractor for any commission that might have been earned.

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

6.12 Extent of Services

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

6.13 Debriefings

Proposers will be accorded fair and equal treatment with respect to their opportunity for debriefing. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that 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://wwe1.osc.state.ny.us/transparency/contracts/contractsearch.cfm

6.14 Termination

Termination

The Office of General Services may, upon thirty (30) days notice, terminate the contract resulting from this RFP in the event of the awarded 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 Office of General Services reserves the right to terminate this agreement in the event it is found that the certification filed by the contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the contractor in accordance with the written notification terms of this agreement.

6.15 NYS Vendor Responsibility Questionnaire For-Profit Business Entity

OGS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder 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 Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire when making its responsibility determination.

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

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at

http://www.osc.state.ny.us/portal/contactbuss.htm. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm .

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

The Bidder agrees that if it is 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..

6.16 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.

6.17 Extension of Use

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

6.18 Indemnification

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

6.19 Force Majeure

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

6.20 Encouraging use of New York 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 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.

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, bidders/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 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.

December, 2012

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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. <u>CONFLICTING TERMS</u>. 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. <u>GOVERNING LAW</u>. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. <u>LATE PAYMENT</u>. 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. <u>NO ARBITRATION</u>. 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. <u>SERVICE OF PROCESS</u>. 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. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. 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 Proposal No. 1825

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CONTRACTOR INFORMATION

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

_____ _____

(Authorized Signature) (Date)

_____ _____

(Print Name) (Title)

_____ _____

(Company Name) (Federal I.D. Number)

_____

(NYS Vendor I.D. Number)

_____

(Address)

_____

(City, State, Zip)

_____

(County)

_____Ext. _____ _____Ext._____

(Telephone Number) (Toll Free Phone)

_____ _____

(Fax Number) (Toll Free Fax Number)

_____

(E-mail)

New York State Small Business Circle One: Yes No

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

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

Do you understand and is your firm capable of meeting the insurance requirements to enter into a contract with New York State? Circle One: Yes No

Will New York State Businesses be used in the performance of this contract? Circle One: Yes No

If yes, identify New York State Business(es) that will be used; (Attach identifying information).

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? _____YES _____NO
If yes, please answer the following question:

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? _____YES _____NO
If yes, please provide details regarding the finding of non-responsibility:

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? _____YES _____NO
If yes, please provide details:

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.

NYS DEPARTMENT OF TAXATION AND FINANCE

CONTRACTOR CERTIFICATION (ST-220-TD)

CONTRACTOR CERTIFICATION TO COVERED AGENCY (ST-220-CA)

ST-220-TD
(6/06)

New York State Department of Taxation and Finance

Contractor Certification

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

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

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)			

Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )

Covered agency name	Contract number or description	Estimated contract value over the full term of the contract (but not including renewals) $
Covered agency address		Covered agency telephone number

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than $100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006),* available at *www.nystax.gov.* Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

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

Mail completed form to:

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

Privacy notification

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

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

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

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

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

Need Help?

Internet access: *www.nystax.gov*
(for information, forms, and publications)

Fax-on-demand forms: 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

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

Make only one entry in each section below.

Section 1 - Contractor registration status

☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.

☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 - Affiliate registration status

☐ The contractor does not have any affiliates.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 - Subcontractor registration status

☐ The contractor does not have any subcontractors.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this_____ day of _____, 20 ____

_____ _____
(sign before a notary public) *(title)*

Schedule A - Listing of each person (contractor, affiliate, or subcontractor) exceeding $300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such person exceeded the $300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to Contractor	B Name	C Address	D Federal ID Number	E Sales Tax ID Number	F Registration In Progress

Column A - Enter ***C*** in column A if the contractor; ***A*** if an affiliate of the contractor; or ***S*** if a subcontractor.

Column B - Name - If person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If person is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If person has a different DBA (doing business as) name, enter that name as well.

Column C - Address - Enter the street address of person's principal place of business. Do not enter a PO box.

Column D - ID number - Enter the federal employer identification number (EIN) assigned to the person or person's business, as applicable. If the person is an individual, enter the social security number of that person.

Column E - Sales tax ID number - Enter only if different from federal EIN in column D.

Column F - If applicable, enter an X if the person has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

_he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____ ; and further that:

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

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _he is the _____ of _____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _he is a _____ of _____ , the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): _he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____
Notary Public

Registration No. _____

ST-220-CA
(6/06)

New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

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

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

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

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

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

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

Sworn to this_____ day of _____, 20 ____

_____ _____
(sign before a notary public) *(title)*

Instructions

General Information

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

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

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

When to complete this form

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

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

ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: 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 the _____ of _____ , the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): _he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____
Notary Public

Registration No._____

Privacy notification

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

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

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

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

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

Need Help?

Internet access: *www.nystax.gov*
(for information, forms, and publications)

Fax-on-demand forms: 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

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)

BIDDER IS REQUIRED TO SIGN BOTH SECTIONS ON THIS PAGE

APPENDIX C

SAMPLE CONTRACT

Request for Proposal No. 1825

Appendix C

Sample Contract

Solicitation No. 1825

SAMPLE

STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT FOR
PROFESSIONAL AUCTIONEER SERVICES
WITH
(CONTRACTOR)
CONTRACT # C00XXXX

THIS AGREEMENT, made this ____ day of _____, 2012 by and between the People of the State of New York, acting by and through the Commissioner of 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 _____.

W I T N E S S E T H:

WHEREAS, the OGS Bureau of Surplus Personal Property Disposition has a requirement for professional auctioneer services to efficiently and effectively fulfill its mission; 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 the needed professional auctioneer services, and that the 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 professional auctioneer services fees 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 March 9, 2014 and will be in effect for five (5) years, unless sooner terminated as herein specified.

SAMPLE

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. 1825, 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

SAMPLE

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

SAMPLE

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 No. 1825 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,

SAMPLE

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

SAMPLE

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.

SAMPLE

- 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. OGS hereby establishes an overall goal of 20% for MWBE participation, _0_% for Minority-Owned Business Enterprises ("MBE") participation and _2_% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: http://www.esd.ny.gov/mwbe.html . Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

SAMPLE

C. Pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the 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 a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.

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

SAMPLE

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. Form EEO 100 - Staffing Plan. To ensure compliance with this Section, the Contractor shall submit a 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")

(One of the following 2 paragraphs will be included in the final contract)

*****Contractor agrees it is responsible for updating and providing notice to the OGS of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

*****Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

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

SAMPLE

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.

IV. MWBE Utilization Plan

A. Contractor certifies that it has submitted a MWBE Utilization Plan to OGS and will follow such Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

B. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

A. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form (BDC 333) documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

B. If the OGS, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Monthly MWBE Contractor Compliance Report

Contractor is required to submit a Monthly MWBE Contractor Compliance Report (Form MWBE 102) to OGS by the 10th day of the month during the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

A. Where OGS determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if

SAMPLE

Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the OGS liquidated damages.

B. 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.

C. In the event a determination has been made, after Contractor has been afforded the process that it is due, which requires the payment of liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the OGS.

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.

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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.

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

By:_____
Name:
Title:
Date:

APPROVED AS TO FORM
Eric Schneiderman
Attorney General

APPROVED
Thomas P. DiNapoli
State Comptroller

SAMPLE

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:_____**

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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]

SAMPLE

Appendix B

Request for Proposal

SAMPLE

Appendix C

Contractor's Proposal

SAMPLE

Appendix D

Prevailing Wage Rate Schedule

SAMPLE

ATTACHMENT 1

COST PROPOSAL

Request for Proposal No. 1825

COST PROPOSAL FORM

All Proposers must submit a bid commission price for each year that are totally inclusive of all costs and expenses (except for Special Auctions) to be incurred in the performance of any contract resulting from this RFP. The bid must be expressed as a percentage of gross sales receipts, not including sales tax.

	Commission Bid		Est. Annual Proceeds		$ Estimate for Evaluation
Year 1	(%)	x	$5,000,000.00	=	$_____
Year 2	(%)	x	$5,000,000.00	=	$_____
Year 3	(%)	x	$5,000,000.00	=	$_____
Year 4	(%)	x	$5,000,000.00	=	$_____
Year 5	(%)	x	$5,000,000.00	=	$_____
				Total:	$_____

Note: Dollar estimates are for evaluation purposes only. Contractors will be paid per the commission % bid based on actual auction gross sales receipts, not including sales tax.

_____
Company Name

_____ _____
Authorized Signature Date

_____ _____
Printed Name Title