



**Invitation For Bids # 1873 (IFB) Solicited By  
New York State Office of General Services  
For  
Integrated Pest Management  
At The  
Shirley A. Chisholm State Office Building  
55 Hanson Place  
Brooklyn, New York 11217**

ISSUE DATE: MARCH 24, 2014

**MANDATORY FACILITY SITE VISIT: APRIL 17, 2014 @ 10:00 A.M. EST**

**BID DUE DATE: MAY 9, 2014 @ 2:00 PM EST**

**Designated Contact:**

Nancy Dougherty  
518-474-5981  
[Nancy.Dougherty@ogs.ny.gov](mailto:Nancy.Dougherty@ogs.ny.gov)

**Alternate Contacts:**

Warren Joscelyn  
518-474-5981  
[Warren.Joscelyn@ogs.ny.gov](mailto:Warren.Joscelyn@ogs.ny.gov)

Diane Robinson  
[Diane.Robinson@ogs.ny.gov](mailto:Diane.Robinson@ogs.ny.gov)

William Macey  
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**ATTACHMENT 1 – Bid Proposal Form**

**ATTACHMENT 2 – Reference Check Form**

**APPENDIX A – Standard Clauses for New York State Contracts**

**APPENDIX B – Required Forms (includes Site Visit Form)**

**APPENDIX C – New York State Prevailing Wage Rate Schedule**

**APPENDIX D - Sample Contract**

# 1. Introduction

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## 1.1 Overview

It is the intent of this Invitation For Bids (IFB) is to award a contract to the most responsive and responsible low bidder, to provide Integrated Pest Management (IPM) for the Shirley A. Chisholm State Office Building, Brooklyn, NY 11217.

Traditional structural Pest Management is largely reactive to pest infestations and based much of its response on the routine, scheduled application of pesticides. This spraying and other pesticide application is often done in locations remote from the centers of pest populations with limited effectiveness in providing adequate management.

Conversely, regular IPM is a decision making process, or program, for long term pest suppression or elimination. The process is based on detailed surveillance (and periodic re-inspection) and the interpretation of data to estimate the nature of the pest population in a given area. This monitoring allows accurate decisions to be made on when and where interventions are needed, the type of interventions selected, and the method of application and implementation. Interventions in an IPM program must extend beyond the application of pesticides to predominantly include structural and procedural modifications that establish physical barriers to pests, and reduce the food, water, and harborage available to them.

The contractor shall be responsible to furnish all labor, materials, and equipment to implement the necessary intervention aspects of the IPM program. The contractor shall detail site-specific recommendations for structural and procedural modifications to achieve pest suppression.

## 1.2 Designated Contact

In compliance with the Procurement Lobbying Law, **Nancy Dougherty**, Contract Management Specialist, NYS Office of General Services, Division of Financial Administration has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email or voice for all inquiries regarding this solicitation.

**Nancy Dougherty, Contract Management Specialist I**  
NYS Office of General Services  
Financial Administration  
Corning Tower, 32nd Floor, ESP  
Albany, New York 12242  
Voice: 1-518-474-5981  
Email: [Nancy.Dougherty@ogs.ny.gov](mailto:Nancy.Dougherty@ogs.ny.gov)

**In the event the designated contact is not available, the alternate designated contacts are:**

**Warren Joscelyn, Contract Management Specialist I**

NYS Office of General Services  
Financial Administration  
Corning Tower, 32nd Floor, ESP  
Albany, New York 12242  
Voice: 1-518-474-5981  
Email: [Warren.Joscelyn@ogs.ny.gov](mailto:Warren.Joscelyn@ogs.ny.gov)

**Diane Robinson, Contract Management Specialist II**

NYS Office of General Services  
Financial Administration  
Corning Tower, 32nd Floor, ESP  
Albany, New York 12242  
Voice: 1-518-474-5981  
Email: [Diane.Robinson@ogs.ny.gov](mailto:Diane.Robinson@ogs.ny.gov)

**William Macey, Contract Management Specialist III**

NYS Office of General Services  
Financial Administration  
Corning Tower, 40th Floor, ESP  
Albany, New York 12242  
Voice: 1-518-474-5981  
Email: [William.Macey@ogs.ny.gov](mailto:William.Macey@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**

New York State Office of General Services  
Office for Minority and Women Owned Business Enterprises  
Corning Tower, 29th Floor, ESP  
Albany, New York 12242  
Voice: 1-518-473-7083  
Email: [Anuola.Surgick@ogs.ny.gov](mailto:Anuola.Surgick@ogs.ny.gov)

### 1.3 Key Events

The Table below outlines the schedule for important action dates.

ACTION	DATE
OGS Issues Invitation For Bid (IFB)	March 24, 2014
Mandatory Facility Site Visit	April 17, 2014 @10:00 A.M. EST
Deadline for Submission of Bidder Questions	April 21, 2014
OGS Issues Responses to Written Questions (estimated)	April 25, 2014
Bid Due Date/ Bid Opening Date	May 9, 2014 @ 2:00 P.M. EST
<b>Contract Start Date</b>	<b>August 1, 2014</b>

### 1.4 Minimum Qualifications of Prospective Bidders

Responsive Bidders must meet all the following requirements:

- A. The Bidder is a professional pest management business that practices IPM methods handling industrial, commercial, and/or institutional accounts for a minimum of at least three (3) years and possess manpower and equipment, financial resources, and an organization as herein specified to perform the type, magnitude, and quality of work specified, or the bidder is to supply information confirming that senior management personnel of bidder has been actively and normally engaged cumulatively for the bidder and/or another firm or firms in which they also served as senior management personnel for at least the past 3 years. Provided, however, that in the case of the latter situation, the Bidder must have been in business for at least 6 months. OGS' determination as to whether subject personnel serve or served in senior management positions shall be final.
- B. The Bidder maintains a current Pesticide Business Registration from the New York State Department of Environmental Conservation (NYSDEC). If awarded a contract the bidder must provide an updated copy of this registration as the prior one expires.
- C. The Bidder employs personnel with at least one (1) year of recent full-time paid experience in professional pest management with experience in large, high rise, open office design facilities similar to those at NYS who are certified to perform the work specified herein in accordance with the administration by the New York State Department of Environmental Conservation of the Core Certification Program of the United States Environmental Protection Agency, as outlined in the most recent revision 6 NYCRR: Part 325 - Rules and Regulations Relating to the Application of Pesticides (NYSDEC), in the following categories:
  - 1. 325.16 (g) (1) - Structural and Rodent Control; This subcategory includes pests, such as but not limited to, rodents, roaches, ants, fleas, ticks and stinging and biting insects within or associated with structures, excluding food processing areas and post construction wood destroying organisms. This subcategory does not include the application of termiticides.
  - 2. 325.16 (g) (5) - Food Processing; This subcategory includes commercial pesticide applications to areas other than individual residences, where exposed food or food products are prepared, packaged or held for further distribution or consumption, including

the use fumigants to control appropriate food pests. Other categories which applied to any work in the facilities indicated herein.

## 1.5 Mandatory Pre-Bid Conference and Site Visit

All Bidders should register in advance for the Mandatory Pre-Bid Conference and Site Visit with the Designated Contact, Nancy Dougherty via email at [nancy.dougherty@ogs.ny.gov](mailto:nancy.dougherty@ogs.ny.gov).

Registration shall include:

- Company name
- Address
- Phone number(s)
- Contact name
- Contact title
- Contact Email address

The location of the site visit is scheduled to take place at the Shirley A. Chisholm State Office Building, Brooklyn, NY 11217. Bidders intending to submit a bid will be required to attend the mandatory pre-bid conference and site visit which will include a tour of the facilities on the date and time indicated in **Section 1.3 Key Events** above.

This is the only date and time available for inspection. Alternate dates for additional site inspections **will not** be available. It is recommended that attendees arrive at the building at least thirty minutes prior to scheduled time with photo identification (passport, driver's license, or DMV issued identification). Attendees will be required to sign in and provide basic company and contact information. This information will be used to verify attendance and to communicate any changes to the solicitation (addenda). Therefore, it is imperative that the provided information be legible and accurate.

This site visit is mandatory and waivers of this requirement will not be considered. A Pre-Bid Conference and Site Visit Verification Form, (copy enclosed in Appendix B), must be completed, additionally signed by the Facility Manager or his representative, and submitted with the bid.

### **Failure to attend the mandatory pre-bid conference and site visit will result in rejection of the bid.**

The facilitator of the event will publicly announce the official start time of the site visit, which announcement shall be made no sooner than the time stated in **Section 1.3** of Key Events above. Prospective bidders arriving after the official start time of the site visit will be precluded from attending the site visit, and therefore unable to submit a responsive bid.

**In accordance with State Finance Law §139-j (3) (a) (3), this mandatory site visit is covered by the permissible subject matter authorization. A vendor is authorized to speak with representatives other than Designated Contact(s) for the sole purpose of the site visit (to arrange attendance, during the conduct of the visit and to pose questions regarding the site).**

The site visit will provide an opportunity for Bidders to see first-hand the tasks to be performed and the special needs of the project site locations. Questions during the site visit will be permitted. It is suggested that the Bidder note the question and ask at the end of the tour. Verbal answers are not official answers.

All questions asked at the conference or after the tour must be submitted via email to the designated contact for this solicitation no later than the date and time indicated in **Section 1.3** Key Events. Official answers to all questions will be distributed in the form of an addendum via email to all attendees of the mandatory pre-bid conference and site visit. Only answers provided by addendum are considered official.

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

## End Introduction Section

## 2. Inquiries and Bid Submission

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### 2.1 IFB Questions and Clarifications

Questions and requests for clarification regarding this **IFB (#1873)** shall only be directed to:

Nancy Dougherty, Contract Management Specialist  
OGS Division of Financial Administration  
32nd Floor, Corning Tower, ESP  
Albany, NY 12242  
Phone: 1-518-474-5981  
Email: [Nancy.Dougherty@ogs.ny.gov](mailto:Nancy.Dougherty@ogs.ny.gov)

Questions and/or requests for clarification are only accepted via e-mail. Official answers to questions will be provided via addendum only to those bidders who attended the mandatory site visit. Deadline for submission of questions will be as stated in **Section 1.3** - Key Events.

### 2.2 Bid Format and Content

In order for the State to evaluate bids fairly and completely, bidders should 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.

1. **Cover Letter**. The cover letter must confirm that the bidder understands all the terms and conditions contained in this IFB and will comply with all the provisions of this IFB. Further, that should the contract be awarded to your company, you would be prepared to **begin services on August 1, 2014**. The cover letter must also include the full contact information of the person(s) NYS OGS shall contact regarding the bid. A bidder representative authorized to make contractual obligations must sign the cover letter.
2. **Experience Submissions & Operational Plan**. Bidders must describe their capabilities to provide the services requested in this IFB by providing the following:
  - Staffing plan, including the use of any subcontractors.
  - Describe plan for providing a Board Certified Entomologist or equal professional scientist who will be assigned to this project per 4.1.1.E.
  - Describe IPM Plan
  - Sufficient information to confirm ability to meet the minimum requirements set forth in **Section 1.4 – Minimum Qualifications of Prospective Bidders** including;
    - Indicate number of consecutive years bidder has been actively in the business of IPM

- Three (3) references and contact information on the attached Reference Check Form (Attachment 2) that can verify Section 1.4, Minimum Qualifications of Prospective Bidders Requirements.
  - A copy of the company's current Pesticide Business Registration License from NYSDEC
  - Provide copies of certification for pertinent personnel that will be assigned to this contract to perform the work specified herein.
    - New York State certification in category 325.16 (g) (1) Structural and Rodent, and 325.16 (g) (5) Food Processing
    - Documentation of confirming at least one (1) year of recent full-time paid experience in professional pest management with experience in large, high rise, open office design facilities similar to those at NYS
3. **Pricing:** Bidder shall list all pricing on the attached **Bid Proposal Form (Attachment 1)** for this solicitation.
4. **All** other required **completed forms from Appendix B**. Including those forms available from the provided links: EEO Staffing Plan, MWBE 100, NYS Vendor File and the Vendor Responsibility Questionnaire. The Site Visit Form will need to be signed for Verification of the site visit by an OGS representative.

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

## 2.3 Bid Preparation

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

## 2.4 Packaging of IFB Response

1. Please complete and submit **(4) originals** of the **Bid Proposal Form (Attachment-1)**.  
Please complete and submit **(4) originals** of documents found in **Required Forms (Appendix B)**.
2. The bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

**Bidder's complete name and address**

**Solicitation Number:** IFB #1873

**Bid Due Date and Time:** Same as in Section 1.3- Key Events

**Bid for:** Integrated Pest Management at the Shirley A. Chisholm SOB

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

## 2.5 Instructions for Bid Submission

Only those Bidders who furnish all required information and meet the mandatory requirements will be considered. Submit all required bid documents including bid addenda if any, to the OGS Division of Financial Administration at the following address:

**Division of Financial Administration  
NYS Office of General Services  
Corning Tower, 32nd Floor/Empire State Plaza  
Albany, NY 12242  
Attn: Nancy Dougherty  
IFB #1873**

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

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

Bids must be received in the above office on **or before 2:00 PM** on the date indicated in **Section 1.3 Key Events. Bidders assume all risks for timely, properly submitted deliveries.**

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

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

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

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

### **Important Building Access Procedures for Delivered Bids:**

Building access procedures are in effect at the Corning Tower. Photo identification is required.

All visitors must register for building access, for delivering bids. **Vendors are encouraged to pre-register by contacting the OGS Finance Office at 518-474-5981 at least 24 hours prior to the bid opening.** Pre-registered visitors are to report to the visitor desk located at the Concourse level of the Corning Tower. Upon presentation of appropriate photo identification, the visitor will be allowed access to the building.

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

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

<http://www.ogs.state.ny.us/parking/forVisitor/visitor.html>

## **2.6 Examination of Existing Building and Contract Documents**

1. Each Bidder is under an affirmative duty to inform itself by personal examination of the specifications and location 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.
2. Each Bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the work will be accepted by the Commissioner of the Office of General Services or a designated representative as an excuse for any failure or omission on the part of the Bidder to fulfill every detail of all the requirements of the documents governing the work. Bidder, if awarded contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such bidder might have fully informed itself prior to bidding.
3. Any Bidder in doubt as to the true meaning of any part of this Invitation for Bid or the proposed contract documents shall submit to Nancy Dougherty, Contract Management Specialist, **NYS Office of General Services, Financial Administration, 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242**, a written request for an interpretation thereof. If a major change is involved on which all bidders must be informed, such request for interpretation shall be delivered, in writing, via e-mail by the closing date for inquiries. Any interpretation of the proposed documents will be made only by an addendum duly issued.
4. Any addendum issued during the bidding process shall be included in bids and in closing a contract will become a part thereof.

5. Any verbal information obtained from or statements made by representatives of the Commissioner of General Services at the time of examination of the documents or site shall not be construed as in any way amending Contract Documents. Only such corrections or addenda as are issued in writing to all bidders shall become a part of the contract. The Commissioner of General Services will not be responsible for verbal instructions.

## **End Inquiries and Bid Submission Section**

### 3. Administrative Information

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#### 3.1 Issuing Office

This IFB is being released by the New York State Office of General Services (OGS), Division of Financial Administration, on behalf of the OGS, Real Property Management & Facilities.

#### 3.2 Method of Award

OGS intends to award one contract to the **lowest, responsive and responsible bidder**. The lowest bidder shall be determined by the grand total annual bid as represented on the bid form. The bid form consists of four components; (A) Base Bid Monthly Fee and Additional Services consisting of (B) Hourly Rates, (C) Materials % Mark Up, and (D) Subcontractor markup– Note that item D is an allotment provided by OGS and is not a bid item. This allotment is added to all bids and will be included in the total contract amount. See Section 4.14 regarding subcontracted additional services.

Upon determination of the lowest, responsive and responsible bid, a contract will be delivered to the successful bidder for signature and shall be returned to the issuing office for all necessary State approvals. Upon final approval, a completely executed contract will be delivered to the Bidder. **The Grand Total bid amount of the successful bidder shall be used to establish the four (4) year, ten (10) month contract value. This amount shall not be exceeded.**

#### 3.3 Price

The Bid Price shall be inclusive of all costs including travel, licenses, insurance, administrative, profit and other ancillary costs. Bidders must submit pricing using the **Bid Proposal Form (Attachment 1)** contained in this document. Bidders must provide pricing for all items on the Bid Form.

#### Part I

**Item A** pricing shall be represented as the monthly cost for all specified services.

#### Additional Services Provided by Bidder

**Item B** pricing shall be represented as the hourly labor rates multiplied by the OGS provided estimated annual number of hours that are noted for each title, for the Total for Hourly Rates.

**Item C** pricing shall be represented by the OGS provided estimated materials cost multiplied by the Bidders percent markup Bid. The product of the material costs is then added to the estimated mark-up cost for the Total for Materials.

#### Additional Services Provided by Subcontractor (Allotment provided by OGS)

**Item D** pricing shall be represented by the OGS provided estimated subcontractor allotment multiplied by a 5 % mark-up. The estimated subcontractor allotment plus a 5% contractor markup allowance will added to all bids.

*Continued on following page.....*

**Part II**

The TOTAL ANNUAL BID will be calculated by adding (A) Monthly cost for all facilities multiplied by 12 months, (B) Total for Additional Services Hourly Rates, (C) Total for Additional Services Material Costs, and (D) OGS Allotment for Additional Services Subcontractor Cost.

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Two examples of the bid evaluation are as follows:  
(Part I & Part II have been combined)

*Bidder A*

B. Monthly Cost  
Monthly Cost is \$ 9,000.00 /month x 12 months = \$ 108,000.00

Additional Services Provided by Bidder

C. Annual Hourly Rates (estimated hours)  
Entomologist \$150.00 x 15 hours = \$ 2,250.00  
Supervisor \$120.00 x 30 hours = \$ 3,600.00  
Technician \$107.00 x 60 hours = \$ 6,420.00

**Total Hourly Rate** \$ 12,270.00

D. Estimated Materials Costs  
\$500 x 75% markup + \$500 = \$ 875.00

Additional Services Provided by Subcontractor (allotment provided by OGS)

E. Estimated Subcontractor cost  
\$5000 x 5% markup + \$5,000 = \$ 5,525.00

**TOTAL ANNUAL BID (A+B+C+D) = \$ 198,395.00**

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*Bidder B*

A. Monthly Cost  
Monthly Cost is \$ 8,050.00 /month x 12 months = \$ 96,600.00

Additional Services Provided by Bidder

B. Annual Hourly Rates (estimated hours)  
Entomologist \$125.00 x 15 hours = \$ 1,875.00  
Supervisor \$115.00 x 30 hours = \$ 3,450.00  
Technician \$109.00 x 60 hours = \$ 6,540.00

**Total Hourly Rate** \$ 11,865.00

C. Estimated Materials Costs  
\$500 x 50% markup +500 = \$ 750.00

Additional Services Provided by Subcontractor (allotment provided by OGS)

D. Estimated Subcontractor cost  
\$5000 x 5% markup + \$5,000 = \$ 5,525.00

**TOTAL ANNUAL BID (A+B+C+D) = \$ 114,740.00**

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**The Bidder agrees that from the effective date of the contract until contract termination, the rates charged by the bidder and paid for by OGS will be equal to or lower than any rates provided by the bidder to other clients for like services.**

### **3.4 Term of Contract**

This contract will commence on **August 1, 2014** and will be in effect for 5 years, through **July 31, 2019**.

The State of New York retains the right to cancel this contract for convenience, provided that the Contractor is given at least thirty (30) days written notice of OGS' intent to cancel. Any cancellation by OGS under this section shall in no event constitute or be deemed a breach of any contract resulting from this IFB and no liability shall be incurred by or arise against OGS, its agents and employees therefore for lost profits or any other damages resulting therefrom. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. See Section 5.14 – Termination.

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

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

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

The consumer price index is published around the middle of each month for the prior month (i.e. the January figure is not published until mid-February). The Bidder has the sole responsibility to request, in letter form, an adjusted rate and shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease with the request. This request and documentation must be received at the below address within three months of the base month. To ensure timely delivery, certified mail is recommended. As long as the request is submitted and received within the required time frame, the adjustment will be processed using the base month Consumer Price Index. Once approved, the bidder will be notified in writing. **Request and documentation must be sent to the OGS Purchasing Unit, Corning Tower, 32nd Floor, Empire State Plaza, Albany, New York 12242.**

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

### 3.6 Method of Payment

For the purposes of this contract an **invoice** will be used. This **invoice** will contain the Contract ID number (i.e.: C000XXX) and, either in its body or as an attachment, will **itemize work completed** during that month. Such itemization must include at a minimum: Date(s) of service, and itemized pricing in accordance with the bid form. Invoices for payment shall be submitted at the end of each month on a **company invoice** for services satisfactorily completed during that month.

Invoices shall be submitted to the OGS Business Services Center (BSC) Accounts Payable Unit. Invoices will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

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

All invoices must be submitted for payment to either:

**NYS Office of General Services  
Business Services Center (BSC)  
Accounts Payable Unit  
Empire State Plaza Station, P. O. Box 2117  
Albany, New York 12220-0117**

**-or- [AccountsPayable@ogs.ny.gov](mailto:AccountsPayable@ogs.ny.gov)**

**Also, a copy of the invoice and reports must be forwarded to the Executive Director of Real Property & Facilities Management or his/her designee, 39<sup>th</sup> Floor, Corning Tower, Empire State Plaza, Albany, NY 12242.**

### 3.7 Electronic Payment

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epayments@osc.state.ny.us](mailto:epayments@osc.state.ny.us), or by phone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new statewide financial system, the Office of the State Comptroller requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go

to the above website and complete the Substitute W-9 form and submit following the instructions provided.

### **3.8 Past Practice**

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

### **3.9 Bid Exceptions**

The Issuing Office will consider all requests to waive any bid requirement. However, bidders should be aware that failure to obtain a waiver of any bid requirement in advance of bid submission could result in rejection of Bidder's bid and disqualification from the bidding process. Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the **'Questions Due Date'** as identified in **Key Events Section 1.3**. The request must cite the specific section and requirement in the question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either via addendum (if the response results in a change to the IFB), or directly to the requesting vendor.

### **3.10 Dispute Resolution**

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

### **3.11 Inspection of Books**

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

### **3.12 Glossary of Terms**

**"Issuing Office"** shall mean the Office of General Services Division of Financial Administration.

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

**"Invitation for Bid"** or **"IFB"** 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.

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

### **3.13 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 IF refer to this IFB.

## **End Administrative Information Section**

## 4. Statement of Work

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### 4.1 Staffing Requirements

#### 1. Qualifications and Experience:

Pest management professionals assigned to these facilities by the Contractor must be Certified Pesticide Applicators, Certified Pesticide Technicians, or Apprentices under their direction, and possess the following minimum qualifications and experience:

- A. Good knowledge of problem pests behavior and ecology, and methods of reducing or eliminating food, water and harborage of same, and in the event that pesticide application is necessary, the proper and safe use of least toxic pesticides.
- B. Possess New York State certification in category 325.16 (g) (1) Structural and Rodent, and 325.16 (g) (5) Food Processing.
- C. The Contractor shall supply and insure that each service Certified Applicator and Certified Technician assigned to these facilities maintains the necessary and required equipment for the safe use and application of all materials as required by specific site conditions. This may include but is not limited to bump hats, work gloves, quality flashlights, boots, clipboards and miscellaneous tools.
- D. All personnel providing on-site pest management services must be certified in appropriate categories as per Section 1.4.C (above) as Certified Commercial Pesticide Applicators, or Certified Pesticide Technicians. The bidder shall provide a copy of certification for pertinent personnel that will be assigned to this project. Apprentices will be permitted to work on site only under the immediate supervision of a Certified Applicator or Certified Technician.
- E. The Contractor has a Board Certified Entomologist or equal professional scientist available on an as needed basis (see section 4.1.2.A below).
- F. This entomologist or equal professional will provide supportive consultation and training under this contract when required.

#### 2. Staff Descriptions and Requirements:

A. Entomologist/Ecologist/Mammalogist or General Life Scientist: The contractor has a professional scientist who will have primary responsibility for the conduct of this contract and who will be available for routine and emergency consultation. It is not required, that the scientist be a full time employee.

B. On-Site Supervisor: The supervisor is identified in bidders' proposal and is the contractor's authority to act on matters pertaining to the performance of services required under the contract. This individual shall assure safety and carry out coordination and continuity of the program routine. The supervisor will have a working knowledge of this contract and the detailed Integrated Pest Management Plan and schedule for each building. The supervisor also meets the qualifications identified below.

C. Pest Management Technicians: The names of all pest management personnel who will be assigned to this contract and pertinent information regarding their qualifications, experience (at least 3 years) and training must be submitted. Throughout the life of this contract all personnel providing on-site pest management services must be certified in appropriate jurisdictions as commercial pesticide applicators in the category of industrial, institutional, structural, and health related pest management. No uncertified personnel will be permitted to work on site under this contract.

## 4.2 Project Site Location

The Facility to be serviced by contract shall include the following:

- Includes both occupied and unoccupied space

Shirley A. Chisholm State Office Building  
55 Hanson Street  
Brooklyn, NY 12217

## 4.3 Scope

### 4.3.1 Pests Included

Integrated Pest Management is intended to suppress populations of rats, mice, cockroaches, ants, (excluding carpenter ants), bed bugs, pests located outside buildings that primarily feed on outdoor vegetation, silverfish, and any other arthropod or vertebrate pest not specifically excluded from the contract. Populations of these pests that are located outside the buildings listed herein, but within the property boundaries of the buildings, are included.

### 4.3.2 Pests Excluded

The following pests are excluded from this contract: birds, bats, squirrels, chipmunks, skunks and all other vertebrates (other than commensal rodents), termites, carpenter ants and other wood-destroying organisms, and mosquitoes. However, the Contractor may be called upon to manage or remove these pests for additional fees, see *Section 4.14 – Additional Services*.

## 4.4 IPM Program: Initial Comprehensive Inspection

1. It is required that as a qualified and experienced pest management professional, the Contractor is familiar with the Integrated Pest Management (IPM) concept now recognized as the most effective and up-to-date approach to modern professional pest management.
2. A thorough, initial inspection shall be conducted during the first month of contract by the Contractor's inspector and the Facility Manager. The purpose of this initial inspection is for the Contractor to evaluate the pest management needs of the premises, incorporate any Agency or facility requirements) and to discuss these needs with the Facility Manager.
3. The following specific points should be included in this evaluation:
  - A. Identification of problem areas in and around the building.
  - B. Identification of structural features or personnel practices that are contributing to pest infestations.
  - C. Evaluation of previous management efforts.

- D. Facilitation of contractor access to all necessary areas. Access to building space shall be coordinated with the Facility Manager.
- E. Informing the contractor of any restrictions or special safety precautions.

#### **4.5 PM Program: Submission of Plan**

1. Following the initial comprehensive inspection of a building, the Contractor will develop a detailed Integrated Pest Management Plan and Service Schedule. This written plan and schedule must be submitted to the Facility Manager for approval prior to initiation. The plan and schedule should address any structural or operational changes which should facilitate the pest management effort. In addition, the plan must identify the proposed materials, including pesticides, if any (and alternatives, if any) by Environmental Protection Agency (EPA) accepted common name (generic name) and EPA Product Registration Number, the building and specific location(s) and rationale for each type of use. Proposed trapping devices for rodents, if any, should also be included by type and name of trap, the building and specific location(s) and rationale for each type of use. The plan should describe in detail the contractor's means for monitoring pest populations in and around the building. IPM Programs must be directed against the threat of pests not only from surrounding areas but also pests that may be introduced to the facilities via incoming foods, packages, cartons and other materials. In addition the plan should take into consideration Agency and facility requirements.
2. The plan and schedule shall be submitted not more than ten (10) working days following the initial inspection of the premises. The Facility Manager will render a decision regarding the acceptability of the plan and schedule within ten (10) working days following receipt. The Contractor shall be on-site to implement the plan and schedule within five (5) working days following notice of approval of the plan. If the plan is disapproved, the Contractor shall have five (5) working days to submit a revised plan and schedule.
3. Any subsequent changes in the plan and schedule and/or additions to the approved materials list must be approved by the Facility Manager.

#### **4.6 IPM Program: Initial Integrated Pest Management Plan and Schedule**

Upon award of the contract resulting from this solicitation, Contractor shall implement a comprehensive Integrated Pest Management Plan and Schedule using Contractor's best judgment and industry best practices, and shall continue until such time as Contractors' Integrated Pest Management Plan and Schedule is approved by the Facility Manager as noted in section 4.5.2 (above).

#### **4.7 IPM Program: Inspection and Monitoring**

1. Following the initial comprehensive inspection, a critical aspect of the IPM Plan shall be the establishment of a monitoring program to regularly identify causative conditions, infested zones and allow an assessment of pest population levels. Both comprehensive inspection and monitoring shall be continued throughout the duration of this contract.
2. Throughout the duration of this contract, the premises covered will be inspected periodically by NYS to determine the effectiveness of the program. At the request of the Facility Manager, the Contractor may be subjected to an inspection from outside regulatory Agencies. Inspection results will be documented in writing. The Contractor shall promptly initiate actions to correct all deficiencies found.
3. It shall be the Contractor's responsibility to furnish an adequate supply of tools and materials necessary for the Facility Manager to examine the interior of all rodent bait stations or other

enclosures, if any are used. These materials may include Allen wrenches to loosen and re-tighten fasteners, keys to open locks, or replacement self-locking plastic ties. Inspection mirrors, flashlights, and implements to cut plastic ties or seals are not included under this provision.

#### **4.8 IPM Program: Interventions**

Listed below are categories or type of interventions relative to species of pest identified via a comprehensive inspection.

1. Structural Modifications: Unless otherwise stated, structural modifications for pest prevention and suppression shall not be the responsibility of the Contractor. The Contractor shall make detailed recommendations to the designated NYS contact of what structural modifications can reasonably be accomplished. The Contractor may complete such recommendations if mutually agreed upon with the Facility Manager.
2. Pest breeding places/nests must be eliminated in order to minimize the use of pesticides. Cracks, crevices, and other areas of floors, ceilings and walls must be kept sealed. Openings to the outside are to be protected against the entrance of insects and rodents.

#### **4.9 IPM Program: Record Keeping**

1. The Contractor shall be responsible for maintaining complete and accurate pest management records. Further each building that is serviced under this contract shall have its own service logbook, which will be kept in the designated on site office and maintained on each visit by the contractor.
2. The service log shall contain the following items:
  - A. A copy of the Integrated Pest Management Plan and Service Schedule for the building.
  - B. A copy of the current information sheets regarding all materials and devices, and label and EPA registration number for each pesticide accepted for potential use in the building, including the Material Safety Data Sheet. Pesticide labels which normally include in-depth safety and use documentation are required.
  - C. Date chemicals were applied, location and amount of chemicals applied number of non-chemical monitoring devices used and locations.
  - D. Pest surveillance data sheets that record, in a systematic fashion, the indicators of pest population levels and causative conditions revealed by the Contractor's monitoring program for the building.
  - E. The location of all materials and devices used for monitoring or for interventions in or around the premises. This information can be in either tabular or list in form.
  - F. Arrival and departure time of the Contractor's representative performing the service and all information on material and device applications (conform to specific pesticide information as required by statute).
  - G. Contractor shall submit a monthly report to the facility manager outlining all information in the Log book including dates, and times of each visit as well as areas serviced and material used. The Facility Manager will use the contractor's monthly report to verify / approve payment of invoices.
3. Contractor shall submit a monthly report to the Facility Manager along with Contractor's monthly invoice including but not limited to the "service log" data indicated above. The Facility Manager

will use the monthly report to reconcile Contractor's invoice in order to review and approve payment of invoices.

#### **4.10 IPM Program: Special Requests and Emergency Service**

The regular service shall consist of performing all components of an IPM program other than in structural modifications, as described in the Contractor's detailed plan and schedule for each building during the period of this contract. Occasional requests for corrective action, special services beyond the routine requests or for emergency service, may be recommended by Contractor to the Facility Manager, or initiated by the Facility Manager. When such requests for emergency services are submitted by the Facility Manager, the Contractor shall acknowledge the receipt of the request, on the on the day of the request. The Contractor shall respond to special service requests within one (1) working day after receipt of request. All emergency and special services shall be recorded

#### **4.11 IPM Program: Pesticide Applications**

1. Pesticide Applications shall be used primarily as a last resort and only after prior approval by NYS on a case-by-case basis. When chemicals are utilized, the following conditions shall be applicable: NYS shall receive from the Contractor or its technicians sample labels of all chemicals and materials.
2. In cases where it has been determined that a particular chemical or product in use at these facilities has lost its effectiveness (e.g., due to a resultant increase in resistance in the target pest population) the Contractor shall replace such ineffective chemicals with more effective alternative choices upon approval of the Facility Manager.
3. Within thirty (30) days from the start of this contract, the Contractor shall provide the Facility Manager, the following safety and technical data for chemicals to be used in these facilities:
  - A. A list of chemicals including Environmental Protection Agency (EPA) accepted common name (generic name) and EPA Product Registration Number trade name and name of active and inert (including carriers) ingredients, list respective chemical classifications for each product intended to be used. Organophosphates and chlorinated hydrocarbons are not acceptable. Further, aerosol spray formulations will be highly discouraged. If spray formulations are deemed absolutely necessary, prior written approval by NYS OGS is mandatory. Chemicals, where necessary, shall be restricted to non-persistent chemicals that are least harmful to people, non-target species, and the environment.
  - B. Material Safety Data Sheets for each chemical.
  - C. Antidote data where applicable, including a copy of a standard quick reference chart.
  - D. A list of poison control centers and respective telephone numbers as they may apply to the geographic areas in which these facilities described herein are located.
4. All pesticides shall be securely stored on site in an area designated by the Facility Manager and maintained by the Contractor in a safe manner when not being used.
5. The Contractor shall be responsible for the safe use of all products. Pesticides should be applied according to label instructions. Necessary safety equipment and protective clothing will also be worn when necessary. All pesticides used by the contractor must be registered with the EPA and the NYS DEC. Transport, handling, and use of all pesticides shall be in strict accordance with the manufacturer's label instructions and all applicable Federal, State, and local laws and regulations. The environment, non-target species and people shall be protected at all times.

6. The Contractor shall minimize the use of synthetic organic pesticides, wherever possible. For example:
  - A. The use of crack and crevice application of pesticides directly to pest harborage areas is acceptable. However, spraying crack and crevice exposed surfaces in the general vicinity of harborage areas shall not be allowed.
  - B. The use of boric acid powder and gel or paste baits for cockroaches is acceptable. However, sprays are not appropriate.
  - C. Pesticide fogs or space sprays (including mists and ultra-low volume applications) are essentially not appropriate and shall be restricted to unique situations for which no alternative measures are practical. Such situations should rarely, if ever occur.
7. Pesticides should be applied in such a manner to prevent contaminating persons, food, property and buildings. If absolutely necessary chemicals shall be applied at night or on weekends, at no additional cost and the contractor shall cooperate with the Facility Manager to properly ventilate, where necessary, the premises before tenants re-occupy the building. Tenants should remain out of the sprayed area for the time period specified on the label instructions. Use of spray or aerosol pesticides should be a very rare event and only performed with the Facility Manager's specific approval.
8. Contractor shall cooperate with the Facility Manager to place proper public notices or otherwise inform building occupants regarding what pesticides will be applied, where pesticides will be applied, when pesticides will be applied.
9. Contractors must comply with all local and state regulations codes regarding timely prior notices.

#### **4.12 IPM Program: Rodent Management**

Management of "Active" Rodent Infestations; Contractor shall pick-up and dispose of all rodent or other carcasses from snap traps and other trapping devices (including glue boards) used in management of active rodent infestations daily or as needed upon notification of the facility Manager. The Contractor shall dispose of rodents killed or trapped within 24 hours of notification by the Facility Manager. Trapping shall not be performed during periods when maintenance will be delayed by holidays, weekends, etc., unless approved by the facility manager. Traps shall be placed out of the general view and located so as not to be affected by routine cleaning procedures. When using traps for monitoring, the visit interval may be adjusted as necessary.

All rodenticides regardless of packaging shall be placed either in locations not accessible to children, pets, wildlife, and domestic animals, or in EPA-approved tamper-resistant (often termed "tamper-proof") bait boxes. Bait box servicing shall depend upon the level of rodent infestation. All bait boxes shall be labeled (including contractor's name, address, and telephone number) and dated at the time of installation and each servicing. All bait boxes shall be placed and maintained in accordance with EPA regulations with an emphasis on the safety of non-target species. The following points shall be strictly adhered to:

1. The lids of all bait boxes must be securely locked or fastened shut.
  - A. Bait must always be placed in the baffle-protected feeding chamber of the box and never in the runway of the box.
  - B. All bait boxes must be securely attached or anchored to the floor, ground, wall, etc., so that the box cannot be picked up or moved.

- C. Liquid and solid poison baits shall be placed in distinctively marked bait stations of sturdy plastic, metal or wood construction--no paper or cardboard stations--and placed in areas normally inaccessible to users of the facilities, particularly children and pets. Covered bait stations shall be used in dietary, food processing, storage and handling areas. Paraffinized or weather resistant baits shall be used in damp and wet areas.
- D. All bait stations and traps shall have such tags or labels affixed so as to enable the Contractor to enter their signature and date after each service. All bait stations and trap locations shall be marked by placement or a distinctively colored removable self-adhesive sticker placed on the nearest wall or column to make quick identification of each location.
- E. The Contractor shall make a floor plan (or utilize floor plans supplied by NYS) of each area where bait stations and traps are located, number each bait station and trap and enter the location of each numbered bait station and trap in the diagram. These floor plans or diagrams shall be kept with the other records on the facilities as indicated herein. A detailed IPM Pesticide Application form and a detailed IPM Trap monitoring form shall be completed, indicating the service of each pesticide bait station and trap and turned in at the completion of each service visit (see sample forms). Similar records should be kept for any traps (e.g. glue boards) and for any treatments (chemical or non-chemical).

#### 4.13 Service Timing

It shall be the Contractor's responsibility to carry out work according to the detailed Integrated Pest Management Plan and Service Schedule developed for the Shirley A. Chisholm State Office Building. The Contractor's on-site supervisor shall be responsible for coordination with the Facility Manager at the beginning of each visit. The purpose of this coordination is to review the plan and schedule and to receive information on problem area status.

Services that do not adversely affect tenant health or productivity may be performed during the regular hours of operation in the various buildings. When it is necessary to perform work on weekends or outside the regularly scheduled hours set in the Contractor's plan and schedule, the Contractor shall notify the Facility Manager at least two (2) days in advance, and all arrangements will be coordinated between NYS and the on-site supervisor. All application of toxicants, (i.e., those likely to become airborne), when necessary, is to be done at night or on weekends to allow for ventilation before tenants reenter the facility. The Contractor shall allow the Facility Manager sufficient time to inform tenants of application and assure the security of the areas treated.

#### 4.14 Additional Services

From time to time, The Facility Manager may request that the Contractor perform additional services in the control of various pests. These may include, but not be limited to the following and such services delivered either through "in-house" contractor staff or via a sub-contractor:

1. Control of nuisance wildlife for which a Nuisance Wildlife Control Operator (NWCO), as licensed by the NYS Dept. of Environmental Conservation, will be required.
2. Control of termites, for which a certification under Section 325.16 (g) (3) "Termites" will be required
3. Control of mosquitos, for which a certification under Section 325.16 (c) "Ornamental and Turf Pest Control" will be required.
4. In the event that Additional Services are requested by the Facility Manager, The Contractor must respond, and provide a detailed estimate, including labor and materials and any intended use of subcontractors for the required service, and provide a basis for which the rates can be justified.

5. The Facility Manager shall reserve the right to procure additional services from The Contractor, or another qualified service provider at their sole discretion.

### **Additional Services Provided by Bidder**

For Additional Services provided by the Bidder, item B and C, the hourly labor rates and materials cost would only be used if corrective measures outside the scope of the contract need to be addressed. Since this is a full service contract as specified herein, such corrective measures would be limited to vandalism, fire, Acts of God, and negligence by the State, or other unusual circumstances or pests specifically excluded. A copy of an invoice detailing the Bidder's cost of materials may be required to be submitted with each invoice submitted under the Time and Materials Clause.

### **Additional Services Provided by Subcontractor**

For Additional Services provided by a subcontractor, Item D (any work performed by subcontractors other than for base scope services, etc.) shall only be performed when pre-approved in writing by the Executive Director of OGS Real Property & Facilities Management or his/her designated representative, and shall be at actual cost with the markup thereon being limited to 5 % for subcontractors. Further, in no case shall the amounts paid to all subcontractors (exclusive of any M/WBE subcontracted work as established in the approved utilization plan) during the Contract term exceed ten percent (10%) of the total contract amount. Also see Section 5.9.

## **4.15 Pesticide Neighbor Notification Law**

Notification to the school community of potential pesticide applications is an additional component of IPM education. The Pesticide Neighbor Notification Law, Section 409-h of the Education Law, has formalized a notification process and provides specific direction on when and how notification must take place. The Neighbor Notification Law, effective July 1, 2001, applies to all public and nonpublic elementary and secondary schools and details specific parties who must be notified, as well as the times and circumstances related to such notification. This requirement states that schools provide a written notice to all parents, guardians, and staff. It is the contractor's responsibility to advise schools of their intent to apply pesticides allowing for sufficient time for the schools to meet the requirements of the Education Law. The responsibility for notification rests at the school level in accordance with the law. Further information relative to the law may be found at the NYS Education Department's website at: [www.emsc.nysed.gov/facplan/publicant/IPM/IPMNeighborNotificationDocument.htm](http://www.emsc.nysed.gov/facplan/publicant/IPM/IPMNeighborNotificationDocument.htm)

## **4.16 Prevailing Wage Rate Advisory Notice**

### **Prevailing Wage Rates apply only for Hourly Rates for Exterminators, Fumigators**

Contractors are reminded that the payment of prevailing wages and supplements is a requirement of ALL contracts for public works. Information indicating that prevailing wages are not being paid on a public works project will be forwarded to the New York State Department of Labor for investigation. Willful violations of the prevailing wage provisions of the Labor Law may result in debarment from the bidding and award of public contracts.

**NOTE: ALL PUBLIC WORKS CONTRACTS, REGARDLESS OF DOLLAR VALUE, REQUIRE THE PAYMENT OF PREVAILING WAGES AND SUPPLEMENTS.**

Contractors are required to supply each of their subcontractors with copies of the prevailing rate schedule and to obtain an affidavit acknowledging receipt and agreeing to pay required wages before entering into a subcontract. Contractors are responsible for assuring that their subcontractors pay prevailing wages and supplements.

NOTE: CONTRACTORS ARE FURTHER REQUIRED TO POST THE PREVAILING WAGE RATES AT THE WORK SITE ON BULLETIN BOARDS PROVIDED BY THE FACILITY MANAGER AND INFORM EMPLOYEES OF THE POSTING. FACILITY MANAGERS WILL ENFORCE THIS PROVISION.

Contractors are advised that the Office of General Services may make random inquiries of employees of both prime and subcontractors as to the rate of wages being paid and may request certified copies of one or more weekly payrolls of a contractor or any subcontractor to verify proper payment of wages.

Any discrepancy found in information supplied will be reported to the Department of Labor for investigation.

**DOL Article 9** - Prevailing Rate Case Number PRC# 2014900125 has been assigned to the project only for Exterminators and Fumigators.

To view the PDF file of your schedule, click on <http://wpp.labor.state.ny.us/wpp/publicViewProject.do?method=showIt&id=991542> or copy and paste into your browser

## **End Statement of Work Section**

## 5. Contract Clauses and Requirements

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### 5.1 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 Service Agreement
3. OGS **IFB# 1873** (this document) with any addendum(a)
4. Selected Contractor's Bid

### 5.2 Procurement Lobbying Requirement

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

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

### 5.3 Contractor Insurance Requirements

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

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

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State and acceptable to OGS; shall be primary and non-contributing to any insurance or self-insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to Office of General Services, Purchasing Unit, Corning Tower, 32nd Floor, Empire State Plaza, Albany, New York 12242 and shall name The People of the State of New York, its officers, agents, and employees as additional insured's there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 10 11 85**). The

additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

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

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

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

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

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

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

- a) **Commercial General Liability Insurance** with a limit of not less than **\$2,000,000** each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage's and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
  1. If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.
- b) **Comprehensive Business Automobile Liability Insurance** with a limit of not less than **\$2,000,000** each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- c) **Waiver of Subrogation.** Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.
- d) **WORKERS' COMPENSATION / DISABILITY INSURANCE:**

Prior to any contract resulting from this RFP becoming effective, Contractor must submit proof that they have the workers' compensation and disability benefits coverage required by the New York State Workers' Compensation Law, or proof that they are legally exempt from obtaining such coverage. Proof of compliance must be demonstrated in accordance with the requirements set forth by the New York State Workers' Compensation Board (An instruction manual clarifying

the Workers' Compensation Law requirements is available to download at the Workers' Compensation Board's website, [www.wcb.ny.gov](http://www.wcb.ny.gov). Once you are on the website, click on *Employers/Businesses*, then *Business Permits/Licenses/Contracts*; from there, click on *Instruction Manual for Businesses Obtaining Permits/Licenses/Contracts*.) Contractor shall notify the Office of General Services, Financial Administration Contracts Unit, at least thirty (30) days prior to material change or cancellation of such coverage.

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

**All forms must name the Office of General Services – Financial Administration, 32nd Floor, Mayor Erastus Corning 2<sup>nd</sup> Tower, Empire State Plaza, Albany, NY 12242, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

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

## 5.4 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 IFB. Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the

certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

## **5.5 MWBE & EEO REQUIREMENTS**

### **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. MWBE Contract Goals**

- A. OGS hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- 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.
- 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 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
- D. 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.
- E. Form EEO 102 - Workforce Employment Utilization Report ("Workforce Report")
- F. 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 subcontractors' 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.

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

#### **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 10<sup>th</sup> 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 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.

## 5.6 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid/bid will be held in confidence and details of any bid/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/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 EXEMPTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME OF SUBMISSION OF THE SUBJECT INFORMATION.

REQUESTS FOR EXEMPTION OF THE ENTIRE CONTENTS OF A BID/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.

## 5.7 General Requirements

- The Bidder agrees to adhere to all State and Federal laws and regulations in connection with the contract.
- The Bidder agrees to notify the Office of General Services of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- The Bidder agrees that in any contract resulting from this IFB it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
- The Bidder agrees that any contract resulting from this IFB 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 IFB, 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 IFB, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

- The Commissioner's interpretation of specifications shall be final and binding upon the Contractor.
- The Commissioner of General Services will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
- Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with the Commissioner of General Services.
- INSPECTION – For purposes of any contract resulting from this IFB, 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 IFB and any contract(s) resulting there from at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, the Office of General Services shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the existing Contractor 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.
- It is the Contractor's responsibility to maintain all equipment and materials provided for the work consistent with applicable public safety and health codes.
- The Office of General Services reserves the right to reject any employee hired by the Contractor.

## 5.8 Contract Terms

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

Any contract resulting from this IFB 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.

## 5.9 Subcontractors

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. When bidding, any known / planned use of subcontractors

must be disclosed in detail with bid submission. If subcontractors are to be used for base scope services, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed. If subcontractors are to be used for Additional Services, they will be subject to the Additional Services clause, and associated markup provision herein. The total of all Subcontractor work during the term of the Contract, exclusive of M/WBE subcontracted work as established in the approved utilization plan, shall not exceed 10% of the total contract value,

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

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

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

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the Executive Director of OGS Real Property & Facilities Management or their designee, Governor Nelson A. Rockefeller Empire State Plaza, 39<sup>th</sup> Floor, Albany, New York 12242, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as the Executive Director of OGS Real Property & Facilities Management may require concerning the proposed subcontractor's ability and qualifications.

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

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

## 5.10 Procurement Rights

The State of New York reserves the right to:

1. Reject any and all proposals received in response to this Solicitation.

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

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

### **5.11 Extent of Services**

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

### **5.12 Right To Know**

In accordance with the New York State Toxic Substance Act (Right-to-Know Law) and the United States Occupational Safety and Health Administration's Hazard Communication Standard, the Office of General Services has established and implemented a Right-to-Know/Hazard Communication Program. It is the policy of OGS to provide information and training to advise employees of potentially hazardous substances known to be in the work place. Part of this information is a collection of Material Safety Data Sheets for all chemicals used at State Office Buildings by contract vendors. Before any chemical product is used on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Facility Manager before the chemical is applied.

### **5.13 Debriefings**

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

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

## 5.14 Termination

### A. Termination

The Office of General Services may, upon thirty (30) days' notice, terminate the contract resulting from this IFB 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 IFB 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 IFB, 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 IFB 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.

## 5.15 NYS Standard Vendor Responsibility Questionnaire

### NYS VENDOR RESPONSIBILITY

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](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

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

In order to assist the State in determining the responsibility of the Bidder 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."

## **5.16 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.

## **5.17 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.

## 5.18 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.

## 5.19 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.

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

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

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

## **5.21 Encouraging Use Of New York State Businesses 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, bidders/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.

Bidders/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 bidders/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.

## **End Contract Clauses and Requirements Section**

**Attachment 1 – Bid Proposal Form**

Invitation For Bids (IFB) Number 1873

***INTEGRATED PEST MANAGEMENT***

***AT THE***

***SHIRLEY A. CHISHOLM***

***STATE OFFICE BUILDING***

**CONTRACT NO.** \_\_\_\_\_  
(To be completed by Agency)

**BID PROPOSAL FORM #1873**

Division of Financial Administration  
Corning Tower – 40<sup>th</sup> Floor  
The Governor Nelson A. Rockefeller  
Empire State Plaza  
Albany, New York 12242

(NOTE: Bid Proposal form must be completed, signed and submitted with four (4) originals.)

**Integrated Pest Management at Shirley A. Chisholm State Office Building**

---

Please print the required information clearly

---

(Company Name)

---

(Address)

---

(Phone Number)

agrees to provide all labor, materials, and equipment to implement the necessary intervention aspects of the IPM program. The contractor shall detail site-specific recommendations for structural and procedural modifications to achieve pest suppression for the price(s) bid below.

**CONTRACT NO.** \_\_\_\_\_  
(To be completed by Agency)

**BID PROPOSAL FORM #1839**

(Bid Proposal form must be completed, signed and submitted with four (4) originals.)

**Bid Package**

**Integrated Pest Management**

\*\*\*\*\*

**Part I**

**BASE BID SERVICES**

**A. Monthly Fee (for Shirley A. Chisholm State office Building)**

**(A) Total Bid per Month \$** \_\_\_\_\_

**ADDITIONAL SERVICES PROVIDED BY BIDDER\***

**B. HOURLY RATES\***

Hourly Rate for Entomologist \$ \_\_\_\_\_ x 15 Hours = \$ \_\_\_\_\_

Hourly Rate for Supervisor \$ \_\_\_\_\_ x 30 Hours = \$ \_\_\_\_\_

Hourly Rate for Technician \$ \_\_\_\_\_ x 60 Hours = \$ \_\_\_\_\_

**(B) Total for Hourly Rates \$** \_\_\_\_\_

**C. MATERIALS\***

Materials cost estimated \$500 X \_\_\_\_\_ % Markup + \$500 =

**(C) Total for Materials \$** \_\_\_\_\_

**ADDITIONAL SERVICES PROVIDED BY SUBCONTRACTORS\***

(Allotment provided by OGS)

See Section 3.3

**D. SUBCONTRACTOR COST**

\$5,000.00 x plus  5  % Markup

**(D) Total for Subcontractor \$**  5,250.00

Note\*: Additional Services would only be used if corrective measures outside the scope of the contract need to be addressed.

\*\*\*\*\*

**Part II**

A) Monthly Cost is \_\_\_\_\_/month x 12 months = \$ \_\_\_\_\_

B) Total for Hourly Rates \$ \_\_\_\_\_

C) Total for Materials Cost \$ \_\_\_\_\_

D) Total for Subcontractor Cost \$ 5,250.00

**TOTAL BID (A + B + C + D) \$ \_\_\_\_\_**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
COMPANY

***This Page Left Intentionally Blank***

## **Attachment 2 – Reference Check Form**

### **To Be Submitted with Bid**

BIDDER NAME: \_\_\_\_\_

1. Company: \_\_\_\_\_

Address: \_\_\_\_\_

Reference Contact Name & Title:

\_\_\_\_\_

Phone Number \_\_\_\_\_

Email \_\_\_\_\_

2. Company: \_\_\_\_\_

Address: \_\_\_\_\_

Reference Contact Name & Title:

\_\_\_\_\_

Phone Number \_\_\_\_\_

Email \_\_\_\_\_

3. Company: \_\_\_\_\_

Address: \_\_\_\_\_

Reference Contact Name & Title:

\_\_\_\_\_

Phone Number \_\_\_\_\_

Email \_\_\_\_\_

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

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## STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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 requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed

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

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

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

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and

provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto: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](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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.

a contract and appears on the Prohibited Entities list after contract award.

**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.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this 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 this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

The state agency 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

***APPENDIX- B***

***REQUIRED PROCUREMENT FORMS***

***NEW YORK STATE OFFICE OF***

***GENERAL SERVICES***

**FOR**

***IFB # 1873***

***INTEGRATED PEST MANAGEMENT***

***AT THE SHIRLEY A. CHISHOLM STATE***

***OFFICE BUILDING***

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## Contractor Information

### SOLICITATION NUMBER 1873

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

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

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

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

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

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

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

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

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

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

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

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

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

New York State Small Business Circle One: Yes No

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

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

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

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

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

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

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

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

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

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

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

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

Governmental Entity:

\_\_\_\_\_

Date of Finding of Non-responsibility:

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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Governmental Entity:

Date of Termination or Withholding of Contract:

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

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New York State Department of Taxation and Finance

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



# 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	
Contractor's mailing address (if different than above)				Estimated contract value over the full term of contract (but not including renewals)
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number ( )		Covered agency name		\$
Covered agency address				Covered agency telephone number

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

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

Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

### Instructions

#### General Information

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

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

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

#### When to complete this form

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

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

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

### Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF \_\_\_\_\_ }  
 :  
 COUNTY OF \_\_\_\_\_ } SS.:

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

\_he resides at \_\_\_\_\_,

Town of \_\_\_\_\_,

County of \_\_\_\_\_,

State of \_\_\_\_\_; and further that:

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

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

\_\_\_\_\_  
 Notary Public

\_\_\_\_\_  
 Registration No.

**Privacy notification**

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

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

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

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

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

**Need Help?**

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

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

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

To order forms and publications: 1 800 462-8100

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

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

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

**Bidder is required to sign both sections on this page.**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

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

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

1. Have business operations in Northern Ireland,

Yes     No

If yes:

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

Yes     No

\_\_\_\_\_  
(Contractor's Signature)

\_\_\_\_\_  
(Name of Business)

**NON-COLLUSIVE BIDDING CERTIFICATION**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief: 1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and 3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

\_\_\_\_\_  
(Contractor's Signature)

\_\_\_\_\_  
(Name of Business)

**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.**

**EMPLOYEE INFORMATION TO BE REPORTED BY CERTAIN CONSULTANT  
CONTRACTORS**

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as “contracts entered into by a state agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*” (“covered consultant contract” or “covered consultant services”). The amendments also require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), the Division of the Budget and the Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered contracts awarded on and after such date.

To meet these new requirements, the Contractor agrees to complete:

Form A - the Contractor’s Planned Employment Form upon contract renewal, extension or amendment.

Form B - the Contractor’s Annual Employment Report throughout the term of the Contract by May 1<sup>st</sup> of each year. The following information must be reported:

**For each covered consultant contract in effect at any time between the preceding April 1<sup>st</sup> through March 31<sup>st</sup> fiscal year or for the period of time such contract was in effect during such prior State fiscal year:**

- 1. Total number of employees employed to provide the consultant services, by employment category.**
- 2. Total number of hours worked by such employees.**
- 3. Total compensation paid to all employees that performed consultant services under such Contract.\***

(Information must be reported on the Contractor’s Annual Employment Report (Form B) or other format stipulated by OGS.)

**\*NOTE: The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.**

Contractor agrees to simultaneously report such information via Form B to the Department of Civil Service, the Office of the State Comptroller and the Office of General Services as designated below:

Department of Civil Service  
Alfred E. Smith Office Building  
Albany, NY 12239

NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> floor  
Albany, NY 12236  
Attn: Consulting Reporting

NYS Office of General Services  
Financial Administration-Purchasing Unit  
40<sup>th</sup> Floor – Corning Tower  
Empire State Plaza  
Albany, New York 12242

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual employee names or social security numbers are set forth on a document, the state agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Proposal/Contract Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor: \_\_\_\_\_

## EMPLOYEE INFORMATION TO BE REPORTED BY CERTAIN CONSULTANT CONTRACTORS

### Instructions for Completing Form A and B

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

**Form A - Contractor's Planned Employment** (to be completed and submitted upon contract renewal, extension or amendment).

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

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

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

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

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

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

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





## Important Links to forms that **MUST** be submitted with Bids

1. Link to EEO 100 Staffing Plan **and** MWBE 100: <http://www.ogs.ny.gov/MWBE/Forms.asp>
2. Link to the online Vendor Responsibility Questionnaire:  
[http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm)  
or to enroll, go directly to the VendRep System online at: <https://portal.osc.state.ny.us>

If your company is not currently registered with the New York State Vendor File administered by the Office of the State Comptroller (OSC), please visit: ([http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/)) for instructions on how to register.

OGS recommends completing the questionnaire online using the New York State VendRep System. In this case, your company must be assigned a Vendor ID to enroll in the VendRep System. To request assignment of a Vendor ID to access the VendRep System **in advance of submitting your bid**, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at: [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us)

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**FACILITY SITE VISIT VERIFICATION FORM**  
**To be submitted with Bid**

---

I, \_\_\_\_\_, representing \_\_\_\_\_  
(name) (company name)

by personal examination of the specification and review of the actual work to be performed at the

\_\_\_\_\_  
(facility name and address)

---

on \_\_\_\_\_, at, \_\_\_\_\_, met with the  
(day and date) (time)

Facility Manager and designated representative to comply with the site visit verification requirement as stated in the contract specification.

\_\_\_\_\_, \_\_\_\_\_  
(company representative signature) (date)

\_\_\_\_\_  
(EMAIL ADDRESS)

---

**FOR THE OFFICE OF GENERAL SERVICES' USE ONLY**

Verification of site visit confirmed by OGS representative.

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**Appendix C**

**New York State Department of Labor**

**Prevailing Wage for IFB 1873**

# **General Provisions of Laws Covering Workers on Article 9 Public Work Building Service Contracts**

## **Introduction**

The Labor Law requires public work contractors and subcontractors to pay a service employee under a contract for building service work for a public agency, a wage of not less than the prevailing wage and supplements (fringe benefits) in the locality for the craft, trade, or occupation of the service employee. Such a public work building service contract must be in excess of one thousand five hundred dollars (\$1,500.00).

Building service employee includes, but is not limited, to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and to the transportation and delivery of fossil fuel but does not include clerical, sales, professional, technician and related occupations.

Building service employee also does not include any employee to whom the provisions of Article 8 are applicable.

## **Responsibilities of the Public Agency**

A Public Agency means the state, any of its political subdivisions, a public benefit corporation, a public authority or commission or special purpose district board appointed pursuant to law, and a board of education.

The Public Agency responsible for preparing the specifications for a building service contract must file a statement identifying the types of employees and work to be performed with the New York State Commissioner of Labor, or other fiscal officer<sup>1</sup>. A separate filing is required for every building service contract. Only one filing is required for each contract, regardless of the duration of the contract. To file with the Commissioner of Labor, the Public Agency MUST submit a Request for Wage and Supplement Information" form (PW 39) to the Bureau of Public Work, either online, by fax, or by mail.

In response to each filing, the Bureau of Public Work will assign a Prevailing Rate Case (PRC) number to each building service contract, and will issue a Prevailing Wage Schedule setting forth the wage rates required to be paid for work performed and the expiration date of those rates. If work on the contract continues beyond the expiration date set forth in the Wage Schedule, new rates and expiration dates will be made available online as part of the original PRC Prevailing Wage Schedule determination automatically, without further filings or requests from the Public Agency.

The Commissioner of Labor makes an annual determination of the prevailing rates. This determination is in effect from July 1st through June 30th of the following year.

The Public Agency must include in the specifications for each building service contract the PRC number assigned to such contract and stipulation obligating the contractor to pay not less than the wage rates set forth in the Prevailing Wage Schedule issued under that PRC number.

Upon the awarding of the contract, the law requires that the Public Agency furnish the following information to the Bureau of Public Work: the name and address of the contractor, the date the contract was let and the approximate dollar value of the contract. To facilitate compliance with this provision of the Labor Law, a copy of the Bureau's "Notice of Contract Award" form (PW 16.9) is provided with the original Prevailing Rate Schedule. The Public Agency is required to notify the Bureau of the completion or cancellation of any public work building service contract. The Bureau's PW 200.9 form is provided for this purpose.

## **Hours**

A building service employee, employed by a contractor, shall work up to eight (8) hours in any one day and up to forty (40) hours in any workweek for the appropriate posted prevailing wage rate. A building service employee who works more than eight (8) hours in any one day or more than forty (40) hours in any workweek shall be paid wages for such overtime at a rate not less than one-and-one-half (1.5) times his prevailing basic cash hourly rate.

## **Wages and Supplements**

The wages and supplements to be paid and/or provided to a building service employee, employed on a public work contract shall be not less than those listed in the Prevailing Rate Schedule provided with the awarded contract. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage or in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

If a prime contractor on a public work contract has not been provided with a Prevailing Rate Schedule, the contractor must notify the Public Agency who in turn must request an original Prevailing Rate Schedule from the Bureau of Public Work.

<sup>1</sup> The New York State Commissioner of Labor is the fiscal officer on all building service contracts except for those performed by or on behalf of a city, in which case the fiscal officer is the comptroller or other analogous officer of the city.

Requests may be submitted by: mail to NYSDOL, Bureau of Public Work, State Office Bldg. Campus, Bldg. 12, Rm. 130, Albany, NY 12240; Fax to Bureau of Public Work (518) 485-1870; or electronically at the NYSDOL website [www.labor.state.ny.us](http://www.labor.state.ny.us).

Upon receiving the original schedule, the Public Agency is REQUIRED to provide complete copies to all prime contractors who in turn MUST, by law, provide copies of all applicable county schedules to each subcontractor and obtain from each subcontractor, an affidavit certifying such schedules were received.

## **Payrolls and Payroll Records**

Every contractor and subcontractor MUST keep original payrolls or transcripts subscribed and affirmed as true under penalty of perjury. Payrolls must be maintained for at least three (3) years from the project's date of completion. At a minimum, payrolls must show the following information for each person employed on a public work project: Name; Social Security number; the craft, trade or occupation in which the worker was employed; Hourly wage rate(s) paid; Supplements paid or provided; and Daily and weekly number of hours worked in each craft, trade or occupation.

In addition, the Commissioner of Labor may require contractors to furnish, with ten (10) days of a request, payroll records sworn to as their validity and accuracy for public work and private work. Payroll records include, but are not limited to time cards, work description sheets, proof that supplements were provided, cancelled payroll checks and payrolls. Failure to provide the requested information within the allotted ten (10) days will result in the withholding of up to 25% of the contract, not to exceed \$100,000.00. The records required to be maintained shall be kept on the site of the work during all of the time that work under the contract is being performed.

All contractors or their subcontractors shall provide to their subcontractors a copy of the Prevailing Rate Schedule specified in the public work contract as well as any subsequently issued schedules. A failure to provide these schedules by a contractor or subcontractor is a violation of Article 9, Section 237 of the Labor Law. The prime contractor is responsible for any underpayments of prevailing wages or supplements by any subcontractor.

All subcontractors engaged by a public work project contractor or its subcontractor, upon receipt of the original schedule and any subsequently issued schedules shall provide to such contractor a verified statement attesting that the subcontractor has received the Prevailing Rate Schedule and will pay or provide the applicable rates of wages and supplements specified therein. (See NYS Labor Law, Article 9, Section 237).

## **Withholding of Payments**

When a complaint is filed with the Commissioner of Labor alleging the failure of a contractor or subcontractor to pay or provide the prevailing wages or supplements, or when the Commissioner of Labor believes that unpaid wages or supplements may be due, payments on the public work contract shall be withheld from the prime contractor in a sufficient amount to satisfy the alleged unpaid wages and supplements, including interest and civil penalty, pending a final determination.

When the Bureau of Public Work finds that a contractor or subcontractor on a public work contract failed to pay or provide the requisite prevailing wages or supplements, the Bureau is authorized by Sections 235.2 of the Labor Law to so notify the financial officer of the Public Agency that awarded the public work contract. Such officer MUST then withhold or cause to be withheld from any payment due the prime contractor on account of such contract the amount indicated by the Bureau as sufficient to satisfy the unpaid wages and supplements, including interest and any civil penalty that may be assessed by the Commissioner of Labor. The withholding continues until there is a final determination of the underpayment by the Commissioner of Labor or by the court in the event a legal proceeding is instituted for review of the determination of the Commissioner of Labor.

The Public Agency shall comply with this order of the Commissioner of Labor or of the court with respect to the release of the funds so withheld.

## **Summary of Notice Posting Requirements**

The current Prevailing Rate Schedule must be posted in a prominent and accessible place on the site of the public work contract.

## **Apprentices**

Employees cannot be paid apprentice rates unless they are individually registered in a program registered with the NYS Commissioner of Labor. The allowable ratio of apprentices to journeyworkers in any craft classification can be no greater than the statewide building trade ratios promulgated by the Department of Labor and included with the Prevailing Rate Schedule. An employee listed on a payroll as an apprentice who is not registered as above or is performing work outside the classification of work for which the apprentice is indentured, must be paid the prevailing journeyworker's wage rate for the classification of work the employee is actually performing.

NYSDOL Labor Law, Article 9, Section 231-7a, require that only apprentices individually registered with the NYS Department of Labor may be paid apprenticeship rates on a public work project. No other Federal or State Agency or office registers apprentices in New York State.

Persons wishing to verify the apprentice registration of any person must do so in writing by mail, to the NYSDOL Office of Employability Development / Apprenticeship Training, State Office Bldg. Campus, Bldg. 12, Albany, NY 12240 or by Fax to NYSDOL Apprenticeship Training (518) 457-7154. All requests for verification must include the name and social security number of the person for whom the information is requested

The only conclusive proof of individual apprentice registration is written verification from the NYSDOL Apprenticeship Training Albany Central office. Neither Federal nor State Apprenticeship Training offices outside of Albany can provide conclusive registration information.

It should be noted that the existence of a registered apprenticeship program is not conclusive proof that any person is registered in that program. Furthermore, the existence or possession of wallet cards, identification cards, or copies of state forms is not conclusive proof of the registration of any person as an apprentice.

### **Interest and Penalties**

In the event that an underpayment of wages and/or supplements is found:

- Interest shall be assessed at the rate then in effect as prescribed by the Superintendent of Banks pursuant to section 14-a of the Banking Law, per annum from the date of underpayment to the date restitution is made.
- A Civil Penalty may also be assessed, not to exceed 25% of the total of wages, supplements, and interest due.

### **Debarment**

Any contractor or subcontractor and/or its successor shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with any state, municipal corporation or public body for a period of five (5) years when:

- Two (2) willful determinations have been rendered against that contractor or subcontractor and/or its successor within any consecutive six (6) year period.
- There is any willful determination that involves the falsification of payroll records or the kickback of wages or supplements.

### **Criminal Sanctions**

Willful violations of the Prevailing Wage Law (Article 9 of the Labor Law) constitute a misdemeanor punishable by fine or imprisonment, or both.

### **Discrimination**

No employee or applicant for employment may be discriminated against on account of age, race, creed, color, national origin, sex, disability or marital status.

No contractor, subcontractor nor any person acting on its behalf, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates (NYS Labor Law, Article 9, Section 239-1).

No contractor, subcontractor, nor any person acting on its behalf, shall in any manner, discriminate against or intimidate any employee on account of race, creed, color, disability, sex, or national origin (NYS Labor Law, Article 9, Section 239-2).

The Human Rights Law also prohibits discrimination in employment because of age, marital status, or religion.

There may be deducted from the amount payable to the contractor under the contract a penalty of \$50.00 for each calendar day during which such person was discriminated against or intimidated in violation of the provision of the contract (NYS Labor Law, Article 9, Section 239-3).

The contract may be cancelled or terminated by the State or municipality. All monies due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of the anti-discrimination sections of the contract (NYS Labor Law, Article 9, Section 239-4).

Every employer subject to the New York State Human Rights Law must conspicuously post at its offices, places of employment, or employment training centers notices furnished by the State Division of Human Rights.

### **Workers' Compensation**

In accordance with Section 142 of the State Finance Law, the contractor shall maintain coverage during the life of the contract for the benefit of such employees as required by the provisions of the New York State Workers' Compensation Law.

A contractor who is awarded a public work contract must provide proof of workers' compensation coverage prior to being allowed to begin work.

The insurance policy must be issued by a company authorized to provide workers' compensation coverage in New York State. Proof of coverage must be on form C-105.2 (Certificate of Workers' Compensation Insurance) and must name this agency as a certificate holder.

If New York State coverage is added to an existing out-of-state policy, it can only be added to a policy from a company authorized to write workers' compensation coverage in this state. The coverage must be listed under item 3A of the information page.

The contractor must maintain proof that subcontractors doing work covered under this contract secured and maintained a workers' compensation policy for all employees working in New York State.

Every employer providing worker's compensation insurance and disability benefits must post notices of such coverage in the format prescribed by the Workers' Compensation Board in a conspicuous place on the jobsite.

### **Unemployment Insurance**

Employers liable for contributions under the Unemployment Insurance Law must conspicuously post on the jobsite notices furnished by the New York State Department of Labor.





New York State Department of Labor  
Bureau of Public Work  
SOBC – Bldg. 12 – Rm. 130  
Albany, NY 12240  
[www.labor.ny.gov](http://www.labor.ny.gov)

## **IMPORTANT NOTICE**

### **Regarding Article 9 Building Service Contract Schedules**

#### **Contracts with PRC#s assigned on or after 8/1/2010:**

- Building Service rates (Article 9) will be determined annually on July 1. They are in effect through June 30 of the following year. Employers must pay the newly determined rates each year.
- Any corrections or updates to the annual determination will be posted to the [DOL website](#) on the first day of each month. Employers are responsible for checking for updates each month and paying these updated rates retroactive to July 1<sup>st</sup>.
- The DOL web site has a [page](#) where employers can enter their specific PRC number to find the correct wage rates for their contracts.

#### **Contracts with PRC#s assigned PRIOR to 8/1/2010:**

- The rates in contracts with PRC#s assigned prior to 8/1/2010 will remain effective and extensions to these contracts WILL NOT require a new schedule.

**This is a change to our prior notice.**

Article 9 wage schedule information is now available [online](#).

## Introduction to the Prevailing Rate Schedule

### Introduction

The Labor Law requires public work contractors and subcontractors to pay a service employee under a contract for building service work for a public agency, a wage of not less than the prevailing wage and supplements (fringe benefits) in the locality for the craft, trade, or occupation of the service employee. Such a public work building service contract must be in excess of one thousand five hundred dollars (\$1,500).

### Requesting a Wage Schedule

For every building service contract, the public agency must file a statement identifying the types of employees and work to be performed by submitting a Request for Wage and Supplement Information form (PW 39) to the Bureau of Public Work, either online, by fax, or by mail. The Commissioner of Labor makes an annual determination of the prevailing rates. This determination is in effect from July 1st through June 30th of the following year.

The Public Agency must include the specifications for each building service contract the PRC number assigned to such contract and stipulation obligating the contractor to pay not less than the wage rates set forth in the Prevailing Wage Schedule issued under that PRC number.

### Hours

A building service employee, employed by a contractor, shall work up to eight (8) hours in any one day and up to forty (40) hours in any workweek for the appropriate posted prevailing wage rates. A building service employee who works more than eight (8) hours in any one day or more than forty (40) hours in any workweek shall be paid wages for such overtime at a rate not less than one-and-one-half (1.5) times the prevailing basic cash hourly rate.

### Wages and Supplements

The wages and supplements to be paid and/or provided to a building service employee, employed on a public work contract shall be not less than those listed in the Prevailing Rate Schedule.

### Payrolls and Payroll Records

Every contractor and subcontractor MUST keep original payrolls or transcripts subscribed and affirmed as true under penalty of perjury. Payrolls must be maintained for at least three (3) years from the projects date of completion.

At a minimum, payrolls must show the following information for each person employed on a public work project: name; social security number; the craft, trade or occupation in which the worker was employed; hourly wage rate(s) paid; supplements paid or provided; and daily and weekly number or hours worked in each craft, trade or occupation.

**NOTE:** For more detailed information regarding Article 9 prevailing wage contracts, please refer to "General Provisions of Laws Covering Workers on Article 9 Public Work Building Service Contracts".

If you have any questions concerning the attached schedule or would like additional information, please write to:

New York State Department of Labor  
Bureau of Public Work  
State Office Campus, Bldg. 12  
Albany, NY 12240

OR

Contact the nearest BUREAU of PUBLIC WORK District Office

District Office Locations:	Telephone #	FAX #
Bureau of Public Work - Albany	518-457-2744	518-485-0240
Bureau of Public Work - Binghamton	607-721-8005	607-721-8004
Bureau of Public Work - Buffalo	716-847-7159	716-847-7650
Bureau of Public Work - Garden City	516-228-3915	516-794-3518
Bureau of Public Work - Newburgh	845-568-5287	845-568-5332
Bureau of Public Work - New York City	212-775-3568	212-775-3579

Bureau of Public Work - Patchogue	631-687-4882	631-687-4904
Bureau of Public Work - Rochester	585-258-4505	585-258-4708
Bureau of Public Work - Syracuse	315-428-4056	315-428-4671
Bureau of Public Work - Utica	315-793-2314	315-793-2514
Bureau of Public Work - White Plains	914-997-9507	914-997-9523
Bureau of Public Work - Central Office	518-457-5589	518-485-1870

**Kings County Article 9**

**Exterminators, Fumigators**

**03/01/2014**

**JOB DESCRIPTION** Exterminators, Fumigators

**DISTRICT** 10

**ENTIRE COUNTIES**

Bronx, Kings, New York, Queens, Richmond

**WAGES**

**EXTERMINATOR**

Office Building Class "A" (Over 280,000 square feet gross area)  
 Office Building Class "B" (Over 120,000 and less than 280,000 square feet gross area)  
 Office Building Class "C" (Less than 120,000 square feet gross area)

Wage Rate per Hour:

	07/01/2013	01/01/2014	01/01/2015
Class A	\$ 22.97	\$ 23.42	\$ 23.92
Class B	22.94	23.39	23.89
Class C	22.90	23.35	23.85

Any employee who was employed in the industry as of February 3, 1996 shall receive the full minimum rate from the date of hire.

**NEW HIRE:**

Hired before 01/01/2012 - May be paid a starting rate of eighty percent (80%) of the hourly rate published above. Upon completion of thirty (30) months of employment, the new hire shall be paid the full wage rate.

Hired on or after January 01/01/2012 - Shall be paid seventy-five percent (75%) of hourly rate for twenty-one months (21) of employment. Shall be paid eighty-five percent (85%) of hourly rate for twenty-second month (22) through forty-second (42nd) month. Shall be paid full rate thereafter.

**VACATION RELIEF EMPLOYEE:** Employees hired to replace vacationing employees only, may be paid 60% of wage and no benefits for up to 5 months.

**IMPORTANT INFORMATION:**

Article 9 §230.6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

**SUPPLEMENTAL BENEFITS**

This is an additional required amount.

All supplements start after 3 months.

Employees regularly scheduled 2 or more days a week:			
	\$ 6.92*	\$ 7.22*	\$ 7.67
Employees regularly scheduled more than 20 hours a week:			
	9.51*	9.91*	10.46
New hires regularly scheduled more than 20 hours a week			
After 3rd month-12th month:			
	6.92*	7.22*	7.67
after 12th month-24th month:			
	9.18*	9.58*	10.13

\* Add \$ .24 per hour from 07//01/2013 to 06/30/2014

**Vacation**

Less than 6 months of work... no vacation  
 6 months of work.....three days  
 1 year of work..... .ten days  
 5 years of work.....fifteen days  
 15 years of work..... .twenty days  
 21 years of work.....twenty-one days  
 22 years of work.....twenty-two days  
 23 years of work...twenty-three days

24 years of work....twenty-four days  
25 years or more twenty-five days

Plus two Personal Days per year.

Plus 10 Sick Days per year after one full year with employer based on a 40 hour work week.

**OVERTIME PAY**

See (B, B2, F) on OVERTIME PAGE

Holidays are paid days off and are additional to above amounts

**HOLIDAY**

Paid: See (5, 6, 8, 11, 16, 25) on HOLIDAY PAGE

Holidays that fall on Saturday are observed the previous Friday. Those that fall on Sunday are observed the next Monday

10-32 BJ

## Overtime Codes

Following is an explanation of the code(s) listed in the OVERTIME section of each classification contained in the attached schedule. Additional requirements may also be listed in the HOLIDAY section.

- ( B1 ) Time and one half of the hourly rate for the 9th & 10th hours week days and the 1st 8 hours on Saturday. Double the hourly rate for all additional hours
- ( A ) Time and one half of the hourly rate after 7 hours per day
- ( AA ) Time and one half of the hourly rate after 7 and one half hours per day
- ( E3 ) Between November 1st and March 3rd Saturday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather, provided a given employee has worked between 16 and 32 hours that week
- ( B ) Time and one half of the hourly rate after 8 hours per day
- ( S1 ) Two and one half times the hourly rate the first 8 hours on Sunday or Holidays One and one half times the hourly rate all additional hours.
- ( E5 ) Double time after 8 hours on Saturdays
- ( B2 ) Time and one half of the hourly rate after 40 hours per week
- ( C ) Double the hourly rate after 7 hours per day
- ( C1 ) Double the hourly rate after 7 and one half hours per day
- ( D ) Double the hourly rate after 8 hours per day
- ( D1 ) Double the hourly rate after 9 hours per day
- ( E ) Time and one half of the hourly rate on Saturday
- ( E1 ) Time and one half 1st 4 hours on Saturday Double the hourly rate all additional Saturday hours
- ( E2 ) Saturday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather
- ( E4 ) Saturday and Sunday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather
- ( F ) Time and one half of the hourly rate on Saturday and Sunday
- ( G ) Time and one half of the hourly rate on Saturday and Holidays
- ( H ) Time and one half of the hourly rate on Saturday, Sunday, and Holidays
- ( I ) Time and one half of the hourly rate on Sunday
- ( J ) Time and one half of the hourly rate on Sunday and Holidays
- ( K ) Time and one half of the hourly rate on Holidays
- ( L ) Double the hourly rate on Saturday
- ( M ) Double the hourly rate on Saturday and Sunday
- ( N ) Double the hourly rate on Saturday and Holidays
- ( O ) Double the hourly rate on Saturday, Sunday, and Holidays
- ( P ) Double the hourly rate on Sunday
- ( Q ) Double the hourly rate on Sunday and Holidays
- ( R ) Double the hourly rate on Holidays
- ( S ) Two and one half times the hourly rate for Holidays, if worked

- ( T ) Triple the hourly rate for Holidays, if worked
- ( U ) Four times the hourly rate for Holidays, if worked
- ( V ) Including benefits at SAME PREMIUM as shown for overtime
- ( W ) Time and one half for benefits on all overtime hours.

NOTE: BENEFITS are PER HOUR WORKED, for each hour worked, unless otherwise noted

## Holiday Codes

### PAID Holidays:

Paid Holidays are days for which an eligible employee receives a regular day's pay, but is not required to perform work. If an employee works on a day listed as a paid holiday, this remuneration is in addition to payment of the required prevailing rate for the work actually performed.

### OVERTIME Holiday Pay:

Overtime holiday pay is the premium pay that is required for work performed on specified holidays. It is only required where the employee actually performs work on such holidays. The applicable holidays are listed under HOLIDAYS: OVERTIME. The required rate of pay for these covered holidays can be found in the OVERTIME PAY section listings for each classification.

Following is an explanation of the code(s) listed in the HOLIDAY section of each classification contained in the attached schedule. The Holidays as listed below are to be paid at the wage rates at which the employee is normally classified.

- ( 1 ) None
- ( 2 ) Labor Day
- ( 3 ) Memorial Day and Labor Day
- ( 4 ) Memorial Day and July 4th
- ( 5 ) Memorial Day, July 4th, and Labor Day
- ( 6 ) New Year's, Thanksgiving, and Christmas
- ( 7 ) Lincoln's Birthday, Washington's Birthday, and Veterans Day
- ( 8 ) Good Friday
- ( 9 ) Lincoln's Birthday
- ( 10 ) Washington's Birthday
- ( 11 ) Columbus Day
- ( 12 ) Election Day
- ( 13 ) Presidential Election Day
- ( 14 ) 1/2 Day on Presidential Election Day
- ( 15 ) Veterans Day
- ( 16 ) Day after Thanksgiving
- ( 17 ) July 4th
- ( 18 ) 1/2 Day before Christmas
- ( 19 ) 1/2 Day before New Years
- ( 20 ) Thanksgiving
- ( 21 ) New Year's Day
- ( 22 ) Christmas
- ( 23 ) Day before Christmas
- ( 24 ) Day before New Year's
- ( 25 ) Presidents' Day
- ( 26 ) Martin Luther King, Jr. Day
- ( 27 ) Memorial Day







NEW YORK STATE DEPARTMENT OF LABOR  
Bureau of Public Work - Debarment List

**LIST OF EMPLOYERS INELIGIBLE TO BID ON OR BE  
AWARDED ANY PUBLIC WORK CONTRACT**

Under Article 8 and Article 9 of the NYS Labor Law, a contractor, sub-contractor and/or its successor shall be debarred and ineligible to submit a bid on or be awarded any public work or public building service contract/sub-contract with the state, any municipal corporation or public body for a period of five (5) years from the date of debarment when:

- Two (2) final determinations have been rendered within any consecutive six-year (6) period determining that such contractor, sub-contractor and/or its successor has WILLFULLY failed to pay the prevailing wage and/or supplements
- One (1) final determination involves falsification of payroll records or the kickback of wages and/or supplements

NOTE: The agency issuing the determination and providing the information, is denoted under the heading 'Fiscal Officer'. DOL = NYS Dept. of Labor; NYC = New York City Comptroller's Office; AG = NYS Attorney General's Office; DA = County District Attorney's Office.

A list of those barred from bidding, or being awarded, any public work contract or subcontract with the State, under section 141-b of the Workers' Compensation Law, may be obtained at the following link, on the NYS DOL Website:

<https://dbr.labor.state.ny.us/EDList/searchPage.do>



Article 9

AGENCY	Fiscal Officer	FEIN	EMPLOYER NAME	EMPLOYER DBA NAME	ADDRESS	DEBARMENT START DATE	DEBARMENT END DATE
DOL	DOL		AIRPORT SERVICE LTD		P O BOX 548 MORICHES NY 11955	11/28/2012	11/28/2017
DOL	DOL	*****8954	AMERICAN INDUSTRIAL CLEANING CO INC		10 CHELSEA PLACE GREAT NECK NY 11021	02/17/2011	02/17/2016
DOL	DOL	*****5530	CFM SERVICE CORPORATION INC		P O BOX 548 MORICHES NY 11955	11/28/2012	11/28/2017
DOL	DOL		EMMANUEL ODIGIE		837 OUTLOOK AVENUE WEST BABYLON NY 11704	09/10/2010	09/10/2015
DOL	NYC	*****8356	JETSTREAM MAINTENANCE CORP		7156 ROCKAWAY BLVD WOODHAVEN NY 11421	04/28/2011	04/28/2016
DOL	DOL		JOSEPH KLEINPETER	CFM SERVICE CORPORATIO N INC	P O BOX 548 MORICHES NY 11955	11/28/2012	11/28/2017
DOL	DOL		MYRON STEMPA		10 CHELSEA PLACE GREAT NECK NY 11021	02/17/2011	02/17/2016
DOL	DOL	*****0744	NCLN20 INC		3494 HALL LANE P O BOX 69LAFAYETTE CA 94549	05/23/2013	05/23/2018
DOL	DOL	*****0817	NORTH EAST SECURITY GUARD SERVICE INC		837 OUTLOOK AVENUE WEST BABYLON NY 11704	09/10/2010	09/20/2015
DOL	NYC		SAE KEON WON		7156 ROCKAWAY BLVD WOODHAVEN NY 11421	04/28/2011	04/28/2016
DOL	DOL		SIHAYA JONES		C/O NCLN20 INC 3404 HALL LANELAFAYETTE CA 94549	05/23/2013	05/23/2018
DOL	DOL		STEPHEN JONES		C/O NCLN10 INC 3404 HALL LANELAFAYETTE CA 94549	05/23/2013	05/23/2018
DOL	NYC	*****8212	VELOX CLEANING CORP		32 ESSEX LANE WILLINGBORO NJ 08046	07/09/2010	07/09/2015

**Appendix D**  
**SAMPLE CONTRACT**  
**For**  
**IFB 1873**

# Appendix D

## Sample Contract

### Solicitation No. 1873

SAMPLE

**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
AGREEMENT FOR  
INTEGRATED PEST MANAGEMENT  
AT THE SHIRLEY A. CHISHOLM STATE OFFICE BUILDING  
IN BROOKLYN, NY  
WITH  
(CONTRACTOR)**

**CONTRACT # C00XXXX**

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is on the 41st Floor, Corning Tower Building, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "Commissioner", "OGS" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, the OGS is responsible for the Integrated Pest Management at the Shirley A. Chisholm State Office Building, 55 Hanson Place, Brooklyn, NY 11217 (hereinafter the "State Office Building") and in fulfilling its responsibility deems it necessary to obtain integrated pest management service therefore, and

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

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

**1. CONSIDERATION**

OGS shall pay the Contractor for all Integrated Pest Management fees and other fees and expenses in accordance with the amounts and rates put forth in the Contractor's proposal attached hereto as Appendix "C", which Appendix C is hereby incorporated by reference and

made a part hereof as fully as if set forth as length herein. This contract will be established with a not to exceed value of \$ \_\_\_\_\_. Services performed beyond this amount will not be compensated.

## **2. TERM**

This Agreement shall commence on August 1, 2014 and will be in effect for (5) five years through July 31, 2019, unless sooner terminated as herein specified.

## **3. SERVICES**

The Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the Invitation For Bids No. 1873, which is annexed as Appendix "B" hereto, and the Contractor's proposal, annexed as Appendix "C" hereto, except as such Appendices B and C have been revised by the terms hereof. Appendix B is hereby incorporated by reference and made a part hereof with the same force and effect as if set forth at length herein.

## **4. TERMINATION**

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

### **A) Termination**

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

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

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

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

### **B.) Procurement Lobbying Termination**

The Office of General Services reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance

Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

**5. RECORDS**

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

**6. TAXES**

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

**7. INDEPENDENT CONTRACTOR**

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

**8. APPENDIX A**

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

**9. ASSIGNMENT**

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

**10. LAW**

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

**11. CONDITIONS PRECEDENT**

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

## **12. ENTIRE AGREEMENT**

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

## **13. EXECUTORY CLAUSE**

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

## **14. INCONSISTENCIES**

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

- (i) Appendix A
- (ii) This contract agreement
- (iii) Appendix B – Solicitation #1873 including Addenda
- (iv) Appendix C – Contractor's Proposal

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

## **15. FORCE MAJEURE**

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

**16. ASSIGNMENT BY STATE**

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

**17. NOTICES**

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

**18. CAPTIONS**

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

**19. SEVERABILITY**

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

**20. IRAN DIVESTMENT ACT**

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

During the term of the Contract, should OGS receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OGS will review such information and offer the person an opportunity to respond. If the person fails to

demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then OGS shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

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

## **21. INFORMATION SECURITY BREACH**

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

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

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

## 22. MWBE/EEO

### I. General Provisions

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

## II. Contract Goals

- A. OGS hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- 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.
- 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 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”) Contractor agrees it is responsible for updating and providing notice to the OGS of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **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 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.

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.

SAMPLE

**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

\_\_\_\_\_

\_\_\_\_\_

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }

: SS.:

COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_ , before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he resides at \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

**[Check One]**

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

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

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

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

\_\_\_\_\_  
**Notary Public**

**Registration No.** \_\_\_\_\_

**State of:** \_\_\_\_\_

# Appendix A

## STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

# Appendix B

## Invitation For Bids # 1873

SAMPLE

# Appendix C

## Contractor's Proposal

SAMPLE

# **Appendix D**

## **Service Contract**

SAMPLE