



DIVISION OF FINANCIAL ADMINISTRATION

ADDENDUM No.: 1

REQUEST FOR PROPOSAL No.: 2178

Date: May 31, 2019

Subject: Questions and Answers

Title: Automobile Claims Administration Services

Address Bid Inquiries to: **Sonya Stack**
Contract Management Specialist 1
NYS Office of General Services
Financial Administration | Agency Procurement Office
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To Prospective Bidders: This addendum is being issued to provide answers to questions that were submitted during the question period for RFP #No. 2178, Automobile Claims Administration Services.

Questions and Answers	
Q1	Can we have a copy of the current contract?
A1	A FOIL request must be submitted to the NYS Office of General Services via https://ogs.ny.gov/freedom-of-information-law in order to obtain a copy of the current contract.
Q2	How many 3 rd party appraisals are assigned per year?
A2	Approximately 180 3 rd party appraisals are conducted per year.
Q3	How many 1 st party appraisals are assigned per year?
A3	Approximately 10 1 st party appraisals are conducted per year.
Q4	What will the total number of transferred claims from the prior vendor (if awarded the contract)?

A4	As of May 28, 2019, there are currently 251 open claims however, it is difficult to predict how many will be transferred at the time of contract award.
Q5	Of the Approximate 1500 new claims per year, how many are bodily injury vs. property damage?
A5	On average, there are approximately 769 3 rd party property damage claims, 353 1 st party property damage claims and 115 bodily injury claims per year. Please note that the bodily injury number <u>only</u> represents that a bodily injury feature is assigned to the claim, it does not account for if the claim has more than one bodily injury feature or more than one claim party.

If submitting a proposal, this Addendum No. 1 for RFP No. 2178 must contain an original signature, be dated, attached to, and made a part of your proposal.

Company Name

Address (include City, State, Zip)

Proposer's Name (please print)

Title

Signature

Date



**Office of
General Services**

Request for Proposals (RFP) # 2178

Solicited By The

New York State Office of General Services

For

Automobile Claims Administration

Issue Date: May 1, 2019

Bid Due Date: June 21, 2019

Designated Contact:

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E-mail: Sonya.Stack@ogs.ny.gov

Alternate Contact:

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Alternate Contact:

Mary Slusarz

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Table of Contents

1. INTRODUCTION.....	4
1.1 Overview	4
1.2 Designated Contact.....	4
1.3 Key Events	5
1.4 Minimum Proposer Qualifications	6
1.5 Mandatory Intent to Submit a Proposal.....	6
1.6 Glossary of Terms.....	6
2. SCOPE OF WORK	8
2.1 General Scope	8
2.2 General Requirements.....	8
2.3 Claims Process	8
2.4 Staffing Requirements	14
2.5 Liquidated Damages	17
2.6 Computer System	17
2.7 Administrative and Reporting Requirements.....	18
2.8 Contractors Compensatory Liability	18
3. PROPOSAL SUBMISSION	19
3.1 RFP Questions and Clarifications	19
3.2 Technical Proposal Format and Content.....	19
3.2.1 Technical Proposal	19
3.2.2 Cost Proposal.....	22
3.2.3 Administrative Proposal.....	22
3.3 Proposal Preparation.....	23
3.4 Packaging of RFP Response.....	23
3.5 Instructions for Proposal Submission	24
4. EVALUATION AND SELECTION PROCESS	26
4.1 Proposal Evaluation	26
4.2 Proposal Scoring	26
4.3 Evaluation Process	26
4.3.1 Submission Review.....	26
4.3.2 Technical Evaluation (70%).....	27
4.3.3 Cost Proposal Evaluation (30%)	27
4.3.4 Preliminary Score and Down Selection.....	27
4.3.5 Interviews/Demonstrations	27
4.3.6 Recalculation.....	27
4.3.7 Final Composite Score (100%)	27
4.4 Notification of Award	27
5. ADMINISTRATION INFORMATION	29
5.1 Issuing Office.....	29
5.2 Method of Contract Award.....	29
5.3 Term of Contract.....	29
5.4 Price.....	29

5.5	Method of Payment	30
5.6	Electronic Payment	30
5.7	Past Practice.....	30
5.8	Conflict of Interest.....	31
5.9	Security/Confidentiality	31
5.10	Exceptions and Extraneous Terms	31
5.11	Dispute Resolution.....	31
5.12	Examination of Contract Documents	32
5.13	Prime Contractor Responsibilities.....	32
5.14	Rules of Construction.....	32
6.	CONTRACT CLAUSES AND REQUIREMENTS	33
6.1	Appendix A / Order of Precedence.....	33
6.2	Summary of Policy and Prohibitions on Procurement Lobbying	33
6.3	Tax and Finance Clause	33
6.4	Freedom of Information Law / Trade Secrets.....	34
6.5	General Requirements.....	34
6.6	Contract Terms.....	35
6.7	Procurement Rights.....	35
6.8	Extent of Services	36
6.9	Debriefings	37
6.10	Termination.....	37
6.11	NYS Standard Vendor Responsibility Questionnaire.....	37
6.12	Ethics Compliance.....	38
6.13	Indemnification.....	39
6.14	Appendices and Exhibits.....	39
6.15	Force Majeure.....	39
6.16	Subcontractors	39
6.17	Encouraging Use of NYS Businesses in Contract Performance.....	40
6.18	Participation Opportunities For New York State Certified Service-Disabled Veteran-Owned Businesses	40
6.19	Consultant Contracts.....	41
6.20	Background Checks	42
6.21	Sexual Harassment Prevention.....	44
6.22	Information Security Breach.....	45
Appendix A	Standard Clauses for New York State Contracts	
RFP Appendix B	Required Forms	
RFP Appendix C	Sample Contract	
RFP Appendix D	Insurance Requirements	
RFP Appendix E	MWBE Goals	
RFP Attachment 1	Cost Proposal Form	
RFP Attachment 2	Proposer Submission Checklist	

1. Introduction

1.1 Overview

In 1988, the New York State Division of Budget conducted a study that indicated the State could achieve substantial savings by self-retaining for liabilities incurred in connection with its automobile fleet. Section 3 of Chapter 430 of the Laws of 1997 enacted Section 203 of the New York State Executive Law authorizing the Commissioner of General Services, upon the written approval of the New York State Office of the Attorney General (OAG), as required, to satisfy and discharge claims for damage to personal or real property or bodily injuries or wrongful death caused in connection with the operation of a motor vehicle by: (i) officers or employees of the State, when acting within the course and scope of their employment; (ii) authorized persons providing service to the State while providing such services; or (iii) in the case of motor vehicles permanently assigned to a State officer or employee with unrestricted access, by the officer or employee or persons requested to operate such motor vehicle by such officer or employee in the course of or in connection with the use of such motor vehicle by such officer or employee. The statute authorizes payments of benefits up to a maximum of Fifty Thousand Dollars (\$50,000.00) for any occurrence in accordance with the New York State No-Fault Law (Article 51 of the New York State Insurance Law) and up to maximum of Twenty-Five Thousand Dollars (\$25,000.00) for payment of any other property damage, bodily injury or wrongful death claims caused by the tort of such officers, employees or other authorized personnel.

This process is administered by the New York State Office of General Services Fleet Management ("OGS" or the "State"). Pursuant to Section 203 of the New York State Executive Law, the Commissioner of General Services is to carry out the duties described above in accordance with a contract with a private firm, licensed by the New York State Department of Financial Services, to process, adjust, investigate, negotiate, settle, pay, and subrogate such claims on behalf of the State. Accordingly, OGS is requesting proposals from qualified Automobile Claims Administrators ("ACA") to perform the duties described in this paragraph and further detailed in Section 2 - Scope of Work.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Sonya Stack, Contract Management Specialist 1, 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, phone or fax for all inquiries regarding this solicitation.

Sonya Stack, Contract Management Specialist 1
New York State Office of General Services
Financial Administration – Agency Procurement Office
Empire State Plaza
Corning Tower, 32nd Floor
Albany, New York 12242
Phone: 1 518-486-7649
Email: Sonya.Stack@ogs.ny.gov

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

Seth Stark, Contract Management Specialist 2
New York State Office of General Services
Financial Administration
Empire State Plaza
Corning Tower, 32nd Floor
Albany, New York 12242
Phone: 1-518-486-2823
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Albany, New York 12242
Phone: 1-518-474-5981
Email: Mary.Slusarz@ogs.ny.gov

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

Lori Brodhead, Compliance Specialist
New York State Office of General Services
Minority and Women-Owned Business Enterprises
Empire State Plaza
Corning Tower, 29th Floor, ESP
Albany, NY 12242
Phone: 1-518-486-6866
Email: Lori.Brodhead@ogs.ny.gov

For inquiries related specifically to Service Disabled Veteran Owned Businesses (SDVOB) provisions of this procurement solicitation, the designated contact is:

Anthony Tomaselli, Assistant Director
New York State Office of General Services
Division of Service-Disabled Veterans' Business Development
Empire State Plaza
Corning Tower, 32nd Floor
Albany, New York 12242
Phone: 1-518-474-2015
Email: Anthony.Tomaselli@ogs.ny.gov

1.3 Key Events

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

Action	Date
OGS Issues RFP 2178	May 1, 2019
Proposers Submit Mandatory Intent to Bid Notification to OGS (See Section 1.5)	May 22, 2019
Deadline for Submission of Proposer Questions to OGS	May 22, 2019 @ 2:00 PM
OGS Issues Responses to Questions (Estimated)	May 31, 2019
Proposal Due Date/Bid Opening Date	June 21, 2019 @ 2:00 PM
Contract Start Date	30 Days Post OSC Approval

1.4 Minimum Proposer Qualifications

Proposers shall comply with all requirements in this section and provide proper documentation in their response to each Minimum Qualification. A Proposer's compliance with the requirements in this section shall be determined according to the sole unrestricted discretion of OGS. Proposals failing to meet the Minimum Qualifications shall not be considered.

1. License.

- a. To be eligible to submit a proposal under this RFP, an organization must meet all legal requirements for doing business in the State of New York, including but not limited to Proposers and subcontractors being authorized by the New York State Dept. of Financial Services as an independent adjuster or insurance carrier.
- b. Proposers and subcontractors must be rated A or better by the A.M. Best Company, Inc.

2. Experience.

- a. Proposers must have a minimum of three years of experience in performing the services requested in Section 2 – Scope of Work of this Solicitation.
- b. Proposers must have experience working with the Centers for Medicare & Medicaid Services, insurance companies and third-party administrators providing related benefits and/or reimbursement.

1.5 Mandatory Intent to Submit a Proposal

Vendors who wish to submit a proposal must register their Intent to Submit a Proposal by the date stated in Section 1.3 - Key Events by sending written notice to Sonya Stack, via e-mail at Sonya.Stack@ogs.ny.gov. Vendors shall include their company name, address, phone, fax, contact name, title, and e-mail address. Only vendors who have submitted an Intent to Submit a Proposal will be allowed to submit Proposals and receive updates and responses to questions regarding this RFP. By issuing an Intent to Submit a Proposal, the vendor is not obligated to submit a proposal.

Late submissions will not be accepted. Bidders assume sole responsibility for ensuring that their intent is received timely.

1.6 Glossary of Terms

“Appraisal” shall mean the determination of the value of any damaged property (i.e., vehicle and other than vehicle). The ACA, through either an independent appraiser or the claims adjuster may complete the Appraisal, in accordance with Section 2.3.H – Claim Investigation and Appraisals of this Solicitation.

“Claim Investigation(s)” shall mean the process through which the Contractor obtains necessary information to evaluate a claim and shall include, but not be limited to, obtaining a summary of the event, conducting interviews and obtaining Statements, reviewing documentary evidence (e.g., police reports, receipts, inventory records, invoices, titles, bills of sales, deeds, Appraisals, diagrams, proof of ownership, and photographs or video records), reviewing physical evidence (e.g., damaged property), obtaining witness Statements and preparing case reports.

“Commissioner” shall mean the Commissioner of General Services or her duly authorized representative.

“Contractor” shall mean a successful Bidder awarded a contract pursuant to this Solicitation.

“IME” shall mean an Independent Medical Examination.

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

“Litigation Holds” shall mean a period of time during which documents must be retained due to pending or ongoing litigation as determined by the State.

“OGS” shall mean the New York State Office of General Services.

“OSC” shall mean the Office of the New York State Comptroller.

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

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

“SRAP” shall mean the State of New York’s Self-Retained Auto Program.

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

“Statement” shall mean a recitation of the circumstances and scope of the loss and shall include recorded interviews conducted by ACA’s claim adjuster (by telephone or in person) or written statements, whichever seems appropriate in the best professional judgment of ACA’s claims adjuster.

“Subcontractor” shall mean a third-party contractor hired by the Contractor to perform services pursuant to this Solicitation.

2. Scope of Work

2.1 General Scope

OGS is seeking a private firm, licensed by the New York State Department of Financial Services, to process, adjust, investigate, negotiate, settle, pay and subrogate automobile claims on behalf of the State. Claims shall include subrogation of loss transfer and first party property damage (excluding claims involving the New York State Department of Transportation and New York State Police). The State currently has a fleet of approximately 32,000 vehicles consisting of but not limited to passenger cars, trucks, vans, buses, motorcycles, limited use vehicles and tractor trailers. The ACA will be responsible for processing approximately 1,500 claims annually arising from accidents reported to OGS by covered State agencies.

2.2 General Requirements

The primary duty of the ACA will be to provide claims processing related to SRAP. Additionally, during the contract term, the ACA shall be responsible for the following:

1. Recommending and establishing the initial claim reserve when a claim file is established and evaluating the reserve as long as the claim remains open;
2. Evaluating claims and obtaining IMEs and other services when deemed appropriate following approval from OGS;
3. Making recommendations to settle or discontinue payment of a claim in accordance with industry standards;
4. Submitting Medicare Mandatory Reporting Requirements to the Centers for Medicare & Medicaid Services in accordance with applicable laws governing report submissions;
5. Complying with all applicable laws, regulations, rules, orders, policies and procedures, including but not limited to New York State Department of Financial Services' Regulations 64 and 68; and
6. Providing monthly loss reports to OGS.

The ACA must notify and seek approval from OGS before establishing or changing reserves, obtaining IMEs, ordering additional services or settling or discontinuing claim payments.

2.3 Claims Process

A. Receipt of Claims

1. SRAP covered accidents will be submitted by OGS to the ACA. If the ACA receives inquiries about claims directly, prior to receipt of the report(s) from OGS, the ACA shall obtain both claim information and accident report(s) from OGS.
2. The ACA shall immediately send written confirmation of receipt of claims to OGS.

B. Coverage

If there is any question about whether an incident or damage is covered under SRAP, the ACA shall confirm coverage with OGS prior to engaging in any work on a claim.

C. File Creation and Maintenance

The ACA shall create and maintain an electronic file on all claims. Please see Section 2.7 – Administrative and Reporting Requirements, bullet C. All claim files will be available to OGS staff and other necessary

State employees, via a secure website, for administration, audit, or other necessary functions. The file will include any documentation that may subsequently be necessary for litigation support. Files will include, at a minimum:

1. Adjuster's Notes
2. Claimant's Name
3. Claimant's Address
4. Date of Loss
5. Claim Reported Date
6. Estimated Cost of Loss
7. Amounts Paid
8. Dates of Payment
9. Type of Payment/Purpose
10. State Driver's Name
11. State Driver's Contact Information
12. Type of Accident
13. State Driver's Agency
14. Medical Documentation
15. Witness Information
16. Settlement/subrogation Information
17. Vehicle Description (Make, Model, Year)
18. Vehicle License Plate Number
19. Vehicle Identification Number (VIN)
20. Rehabilitation Information
21. Date Claim Closed

D. Prompt Contact with Claimant

1. The ACA shall promptly contact any third-party claimant in accordance with applicable Department of Financial Services (DFS) regulations to make an appointment to inspect the damage and/or take a Statement from claimant.
2. Upon notification of a total loss, the ACA shall promptly calculate figures and contact the claimant to ensure that costs are mitigated (i.e., storage fees and rental costs).
3. The ACA shall complete initial follow-up with claimants in accordance with applicable DFS regulations.

E. Correspondence

1. Correspondence received by the ACA shall be date-stamped on the day it is received. The ACA shall assign new claims to a claim adjuster upon receipt. All other correspondence shall be matched with the appropriate claim file and given to the responsible claims adjuster. Unmatched mail shall be reviewed and appropriate action taken in accordance with the terms of the contract.

F. Reserves

1. The initial claim reserve will be established at the time of claim setup and communicated to OGS. The ACA will recommend appropriate claim reserves amounts at all times until the conclusion of the claim, given the available information. Reserves for a claim will be examined and updated as necessary on an ongoing basis throughout the life of the claim.

G. Contact with OGS

1. The ACA shall promptly notify OGS and OAG of any new information that indicates a potentially high loss exposure (e.g., a loss exposure of twenty-five thousand dollars (\$25,000) or more).
2. The ACA shall obtain prior written approval from OGS and OAG prior to the settlement of any bodily injury, wrongful death, uninsured motorist or property damage claim.
3. The ACA shall identify and work with OGS to mitigate potential risk vulnerabilities and minimize liability claims.
4. The ACA will keep OGS apprised of all reporting to the Centers for Medicare & Medicaid in a timely manner.
5. Reports:
 - a. The ACA shall provide a monthly status report to OGS and OAG for each open claim file. The reports shall include, at a minimum:
 - i. State driver's name;
 - ii. State agency where driver is employed;
 - iii. Claim number;
 - iv. Claimant's name;
 - v. Type of claim (e.g., bodily injury, no-fault, or property damage);
 - vi. Date of accident;
 - vii. Payee;
 - viii. Payment amount; and
 - ix. Adjuster's name.
 - b. The ACA shall provide OGS with weekly First Party and Loss Transfer Recovery reports. Reports shall include the following for each recovery:
 - i. State driver's name;
 - ii. Claim number;
 - iii. Claimant's name;
 - iv. Type of claim (e.g., first party property damage, loss transfer);
 - v. Date of accident;
 - vi. Payee;
 - vii. Payment amount;
 - viii. Adjuster.
 - c. The ACA shall submit a monthly full-captioned electronic report to OGS for each claim with reserves in excess of ten thousand dollars (\$10,000) and on all open litigation claim files. These full-captioned reports shall include at minimum, the following information:
 - i. Date of loss;
 - ii. State driver's name;
 - iii. Claim number;
 - iv. Background and basis for the claim;
 - v. Names of all parties and attorneys, if there is pending litigation;
 - vi. Summary and update of any pending litigation;
 - vii. Percentage of liability;
 - viii. Full and settlement values; and
 - ix. History of all settlement attempts, both before and after the initiation of litigation.

- d. The ACA shall provide weekly property damage and no-fault savings reports.
- e. The ACA shall submit monthly, computerized loss statements to the State, showing open reserves, paid claims, and defined allocated expenses.
- f. The ACA shall prepare and submit monthly Health Care Reform Act (HCRA) reports.
- g. The ACA shall be responsible for producing ad-hoc and customized reports at the request of OGS.

H. Claim Investigation and Appraisals

1. The ACA, through an independent appraiser or the claims adjuster, shall personally complete all Claim Investigations and Appraisals necessary for the proper adjustment of the claim. The proximate cause of the claim shall be identified.
2. All documents and information obtained as a part of the Claim Investigation shall be retained by the Contractor, for the balance of the calendar year in which they were made and for six (6) additional years thereafter or in accordance with any applicable Litigation Holds and provided to OGS, OAG, and other applicable State agencies upon request.
3. The ACA shall, at no additional cost to the State, complete an Appraisal on all third-party motor vehicle property damage claims that exceed \$2,000 or if it is determined that the damage is questionable by the State or the ACA.
4. The ACA shall, at no additional cost to the State, complete an Appraisal on all first-party vehicle property damage claims if requested by the State.
5. The ACA shall, at no additional cost to the State, complete an Appraisal on third-party claims involving property damage (i.e., other than on motor vehicles) when reasonably necessary as determined by the ACA.

Note: The State reserves the right to request an alternate independent appraiser in the event of a dispute with a claimant or adverse carrier.

6. If private investigators or other professional services are to be used for any aspect of claims investigation, the ACA shall substantiate the need and cost of the same and the use of such shall be approved in writing by OGS prior to assignment.
7. When deemed necessary by the State or the ACA, the ACA shall take statements of all persons involved in the incident. The ACA's claims adjuster shall also take statements from any witnesses that can be discovered and located.
8. All photographs, police reports, fire department reports, medical reports and diagrams obtained as a part of the investigation shall be retained in accordance with NYS DFS regulations including but not limited to 11 NYCRR § 243.3.
9. All claim administration costs paid by the ACA shall, at no additional cost to the State, include allocated expenses that are considered normal costs of doing business, including auto and property damage appraisals, and no-fault bill review. These costs will be encompassed in the flat rate charges of the contractor.

I. Settlement of Claims

1. After investigation, the ACA shall make recommendations to OGS regarding next steps taking into consideration options for settlement, arbitration, and all other legal options as are in the best interests of the State in accordance with NYS Executive Law § 203. The OAG will provide legal services for the defense of all litigation, excluding arbitration, against the State, its officers, or employees arising from accidents. The ACA will be responsible for completion of any investigation regardless of when litigation commences and in accordance with Section 2.3.Q - Record Takeover and Turnover.
2. The ACA shall not have settlement authority for claims. The ACA shall submit a request for settlement authority to OGS. If not granted, the ACA will be notified accordingly.

J. Claims Payments

On a weekly basis, the ACA shall submit to OGS a list of approved claim payments:

1. The list must also include a statement certifying that the ACA has complied with the terms of the contract prior to the issuance of these checks or drafts. The list must be submitted electronically or faxed.
2. The ACA must establish a claims fund from which all claims payments will be made. The claims fund will be set up as a zero-balance account. Once established, OGS will fund the account electronically and make subsequent replenishment deposits based on the approved weekly payment list. The account shall be available at all times for audit by OGS or other applicable State personnel. The ACA shall release the checks or drafts corresponding with the weekly list upon receipt of the transfer.

K. Loss Transfer

1. The ACA shall perform all services necessary to pursue recovery of “no-fault” benefits paid pursuant to Section 5105 of the New York State Insurance Law. There will be no additional compensation for these services.
2. Any funds recovered as a result of this effort shall be made payable directly to the State of New York and forwarded to OGS.

L. First Party Claims

1. Any funds recovered shall be made payable to the State of New York and forwarded to OGS Finance, along with appropriate documentation, with a cc to OGS Fleet Management.

M. Audit

1. OGS or other State personnel will audit approximately 15% of all active and settled claims on a quarterly basis. The ACA shall make such specific claims determined by the State and office space available.

N. Lawsuits

1. Whenever legal action commences on a claim against the State, or an officer or employee of the State, the ACA shall complete the Claim Investigation, in accordance with Section 2.3.H - Claim Investigation and Appraisals, of this Solicitation and provide the OAG with its claim file if requested by OGS.

O. Arbitration

1. Upon receipt of a Notice of Arbitration, the ACA shall inform OGS of the hearing date and time.
2. In accordance with Section 2.3.P – Unallocated Expenses, the ACA shall be responsible for obtaining proper legal representation as necessary, to adequately cover all aspects of the arbitration.
3. The ACA will monitor the efforts of its chosen outside legal counsel to ensure the State's interests are adequately protected.

P. Unallocated Expenses

In its performance of the services required by this contract, the ACA may incur expenses ("Unallocated Expenses") for things such as:

1. IMEs;
2. Diagnostic Review Groups (DRGs);
3. Legal fees, including but not limited to, representation at No-Fault Arbitrations;
4. Private Investigations;
5. Preparation of Accident Reconstruction Reports;
6. Engineering Surveys;
7. Copying Fees;
8. Expert Witnesses;
9. Surveillance; and
10. Large Equipment Appraisals.

Prior approval for such Unallocated Expenses shall be submitted to OGS and/or OAG, as necessary and such requests shall include all necessary documentation to substantiate the need for such services and the cost proposed including, but not limited to, itemized bills. OGS and/or OAG reserve the right to review all documents, bills, expense reports, files, etc. prepared in relation to the provision of such Unallocated Expenses. Payment for Unallocated Expenses will be made, without any markup.

1. Rates for IMEs and reviews by DRGs must not exceed the then current maximum hourly rates set by Workers Compensation Board. The ACA shall provide a current fee schedule upon request.
2. Legal fees, including but not limited to, representation at No-Fault Arbitrations:

1) shall not exceed the following maximum hourly rates:

For arbitrations that occur in the Eastern District Court counties of Kings, Nassau, Queens, Richmond, and Suffolk and concurrently with the Southern District, the waters within the counties of Bronx and New York: Partners-\$425.00/hour, Associates-\$300.00/hour and Paralegals-\$175.00/hour;

For arbitrations that occur in the Southern District Court counties of Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan and Westchester and concurrently with the Eastern District, the waters within the Eastern District: Partners-\$425.00/hour, Associates-\$300.00/hour and Paralegals-\$175.00/hour;

For arbitrations that occur in the Northern District Court counties of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Ulster, Warren, and Washington: Partners-\$350.00/hour, Associates-\$205.00/hour and Paralegals-\$105.00/hour; and

For arbitrations that occur in the Western District Court counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates: Partners-\$350.00/hour, Associates-\$205.00/hour and Paralegals-\$105.00/hour.

and

2) will depend upon the services provided and the title and level of experience of the individual providing such services. Requests for legal fees shall include supporting documentation providing the following: (1) Title(s) of individual(s) providing services (e.g., Senior Partner, Junior Partner, Senior Associate, Junior Associate, Paralegal etc.; and (2) A description of the individual(s) experience providing the requested services to similar clients or in relation to similar matters. The hourly rates requested shall be all-inclusive including all salary and compensation, overhead and internal costs (e.g., administration, secretarial, docket, word processing, accounting, library and other clerical time and all profits, etc.). No additional compensation shall be allowed.

3. All other rates must be commercially reasonable in OGS's sole discretion and the ACA must provide written substantiation of all charges billed before payment can be made.

Q. Record Takeover and Turnover

1. The ACA will coordinate with the prior ACA and OGS to obtain possession of all records related to open claims and will complete all work necessary to close out such claims.
2. Upon completion or termination of the contract resulting from this RFP, the ACA shall execute a smooth turnover of all records and files concerning open claims to a successor ACA, and or OGS, with no adverse effect on the administration of the program and the payment of claims.

R. Training

1. The Contractor must provide documentation and materials for any training that is included in its proposal. Please include any training, with a description, that you will require OGS to participate in. The ACA Contractor must provide training to OGS and ACA personnel for its online claims system. Such training must be comprehensive. The ACA shall also provide refresher training as well as training for new employees.

2.4 Staffing Requirements

The ACA shall maintain a staffing plan during the term of this contract that provides employees who will be fully dedicated to this contract.

A. ACA Representative

The ACA must assign and maintain at a minimum one qualified account supervisory individual(s) (hereinafter referred to as the “ACA Representative(s)”), specifically to this contract, that will respond to State inquiries regarding contract services and answer questions related to claims administration. The ACA Representative(s) must have at least three years’ experience handling automobile claims for public or private entities of similar size to those of the State and have proper certification/licenses necessary to carry out the responsibilities of this contract. The ACA Representative assigned to this contract is expected to work at the ACA’s location that will service this contract.

B. Adjusters

The ACA must assign and maintain at a minimum three adjusters who will be directly responsible for the day-to-day operations of servicing this contract. The adjusters must have at least three years’ experience handling automobile claims for public or private entities of similar size to those of the State and have proper certifications/licenses necessary to carry out the requirements of this contract. The adjusters assigned to this contract are expected to work at the ACA’s location that will service this contract.

C. On-Site Staffing Requirement

The ACA must assign and maintain a minimum of two claim assistants who will be directly responsible for the day-to-day operations of servicing this contract. The claim assistants must have at least three years’ experience handling automobile claims for public or private entities of similar size to those of the State and have proper certifications/licenses necessary to carry out the requirements of this contract. The claim assistants assigned to this contract will be permanent employees of the ACA, not the State of New York, but will be expected to work at the Fleet Office in Albany, New York.

D. Work Hours

The ACA must provide contract services during the State’s normal business hours Mondays through Fridays from 8:00 am to 5:00 pm EST, excluding State Legal Holidays. As used herein, the term “State Legal Holidays” shall mean the calendar of legal holidays as established and maintained by the New York State Department of Civil Service. Annual updates of the State Legal Holidays are available at http://www.cs.ny.gov/attendance_leave/index.cfm; once you are on the website, scroll down to Calendars of Legal Holidays and click on the year in question. Notwithstanding the foregoing, any day that is determined to be a floating holiday by the State shall not be considered to be a State Legal Holiday but shall be considered to be a normal work day for the ACA staff assigned to this contract, and the ACA shall provide all contract services on such days. ACA employees are entitled to sick, personal and vacation time in accordance with the terms of their employment with the ACA, but such absences shall not exceed four (4) weeks per calendar year or the ACA shall assign replacement staff as allowed for in this contract.

All meetings with ACA and its staff must be conducted outside of the State’s normal business hours, as defined above, so as to not interfere with daily business operations. Any deviations, including meeting with staff during the State’s normal business hours may be considered with prior review and approval by OGS.

E. Staffing Expectations

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

1. Any ACA staff shall conduct themselves in a professional manner with OGS staff, other State employees and the general public.
2. Any ACA staff assigned to perform services under this contract shall report to work in appropriate dress and appearance.
3. All ACA staff assigned to perform services under this contract shall comply with all rules and requirements of this contract and all applicable laws, rules, regulations, orders, policies or procedures of the State and/or OGS.

F. Failure to Provide Staff between Tentative Award and Contract Approval or Commencement of Work

If for any reason a Proposer provides notice to OGS that they will be unable to provide the minimum staff required after a tentative award has been made, but prior to approval of the Contract or prior to the scheduled commencement of work by the Contractor, then OGS may choose to withdraw the award or terminate the Contract and make a subsequent award to the next highest-ranking Proposer. The selected contractor shall be required to provide such notice if such a situation arises. (Also see "Inspection" in Section 6.5 – General Requirements)

G. Staff Replacement After Commencement of Work

The ACA shall not remove staff assigned under this contract without the prior, written consent of OGS. The ACA's removal of staff assigned to perform services under this contract without the prior, written consent of OGS is an "unauthorized removal." An Unauthorized Removal does not include replacing staff for reasons beyond the ACA's reasonable control, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of employment (the foregoing are collectively referred to below as "Unforeseen Gaps in Coverage." Any Unauthorized Removal may be considered by OGS to be a material breach of this contract, in respect of which OGS may elect to terminate this contract for cause under the termination provisions of this contract (see Section 6.10 - Termination). It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the requirements of this Contract, and loss and damage to the State. The ACA and OGS agree that in the case of any Unauthorized Removal if and when OGS does not elect to exercise its rights under the termination provisions of this contract, the ACA will be responsible for paying liquidated damages, based on the cost proposal, in an amount equal to what OGS pays for staff.

In the event of any Unforeseen Gaps in Coverage, an experienced permanent or temporary replacement must be provided within one business day. Unforeseen Gaps in Coverage include but are not limited to employee termination, separations, extended leave situations, etc. Coverage options may include temporary employment services, short term engagement, or similar. If a replacement employee is not provided within one business day, the ACA will be responsible for paying liquidated damages pursuant to Section 2.5 - Liquidated Damages.

Once replaced, the ACA shall, at its own expense, provide an orientation for the replacement staff member(s). The orientation must be conducted outside of the State's normal business hours as defined in Section 2.4 D – Work hours.

The ACA must notify OGS at least 14 business days before removing or assigning new staff to perform services under this contract and shall provide OGS with the proposed replacement staff member's resume and any other information reasonably requested by OGS and introduce the proposed individual to OGS Fleet Management's Director. OGS reserves the right to interview the individual before granting prior written approval of any changes to the ACA staff assigned to perform services under this contract. OGS reserves the right to reject and bar from State facilities any ACA staff. In the event that OGS finds a proposed individual unacceptable, it will provide a written explanation including reasonable detail outlining the reasons for the rejection. OGS may require a 30-calendar day training period for replacement personnel.

H. Background Check

For security reasons, all prospective employees and subcontractors that will be performing services hereunder on the State's premises are to be properly screened in accordance with OGS provided background check guidelines (see Section 6.20 – Background Checks), at the Contractor's sole expense. Additionally, Contractor and its employees must comply with any other requirements in place for security clearance for the building including the provision of information required by the State Police, if any.

I. Security Badges

OGS ID badges will be required and must be prominently displayed at all times by all employees performing work on State premises. OGS will provide initial and/or replacement ID badges to the Contractor at the current OGS rate of \$13.00, which is subject to change. Badges are obtained from the Department of Motor Vehicles system for all employees with a driver license or non-driver ID. Employees who do not have either a New York State Driver's license or non-driver ID will be required to obtain one in order to process the ID.

2.5 Liquidated Damages

It is understood and agreed by the parties that the Contractor's performance, which includes but is not limited to adherence to staffing requirements and timeframes specified herein, is a material element of the Contract. Contractor's failure to meet the performance requirements may be grounds for cancellation of the Contract and/or, at the sole discretion of the State, subject the Contractor to liquidated damages. The decision of OGS as to compliance with the performance requirements of this contract shall be final. The burden of proof regarding performance shall rest with the Contractor. In all instances of a potential or actual delay in performance, the Contractor shall immediately notify in writing OGS, providing an explanation, and take appropriate action to remedy and avoid any subsequent delays regarding performance. Any extension of time must be requested in writing by the Contractor and must be approved in writing by OGS. Liquidated damages shall be calculated by taking the annual amount proposed divided by the number of FTEs proposed divided by 231 work days. Liquidated damages may be assessed until the Contractor's performance obligation is satisfied and accepted by the State. Liquidated damages may be, at the discretion of OGS, deducted or offset by the State from payments due, or to become due, to the Contractor.

2.6 Computer System

The ACA must have and maintain a web-based computer system to be used for claims processing that may be accessed by OGS. The system must have:

A. Security of Hosting Environment

1. Policies in regard to the hosting environment:
 - a. Backup policies
 - b. Data center physical security policies
 - c. Firewall policy
 - d. Third Party connection policy
 - e. Remote access policy
 - f. Disaster recovery policy
 - g. Patch management policy
 - h. Anti-virus policy
 - i. Vulnerability management policy
 - j. Password policies
2. Intrusion detection systems.
3. High-availability and scalability features in the hosting environment that are relevant to the proposed system.
4. Quality control and change control processes for making revisions to the application.
5. ISP(s) [Internet Service Provider(s)].
6. Sufficient bandwidth for your data center's internet connection(s).
7. Third party security certification information and/or reports for the application and/or the hosting environment.

B. Application Security – Must have:

1. Sufficient security architecture for the proposed application.
2. Web server OS, web server software, and patch levels.
3. User authentication process.
4. System stores user passwords.
5. Application must provide user-friendly error messages when an error occurs.
6. An inactivity timeout.
7. Application logging.
8. Client access to the application must be via a web browser using the standard HTTPS port.
9. Cookies must be easily enabled to be compatible with NYS Fleet Management.
10. Sufficient granularity of user access control.
11. Safeguards on the system that ensure unauthorized access is not obtained.
12. Provide OGS Fleet Management read access to all data and reports.

C. Technical

1. Allow user defined validation/business rules.
2. State the overall availability of the system.
3. Must have maintenance window.
4. Standard notification timeframe for taking the system down for repair or upgrade.
5. Vendor must be able to convert all NYS data into a readable format, if requested.
6. Help features must include on-line and/or written manuals.
7. Must have service levels for problem resolution.
8. Must have emergency telephone service that is part of your product support. Include local hours (Eastern Time Zone) that this service is available.

D. Security Reviews

OGS is required by New York State policy to conduct periodic security reviews of the outsources environment to ensure the security and availability of OGS information (See RFP Appendix D – Insurance Requirements).

2.7 Administrative and Reporting Requirements

The Contractor shall be responsible for the completion of a variety of administrative and reporting requirements, and the cost thereof shall be included in the bid price.

- A. The Contractor is obligated to meet with OGS for an initial meeting within 10 business days of contract approval, and is also obligated to meet with OGS as necessary to discuss the following:
 1. Review job progress; quality of work; and approval and delivery of contract service.
 2. Identify and resolve problems, which impede claims handling.
 3. Coordinate the efforts of all concerned to ensure compliance with all terms and conditions of the contract.
 4. Maintain a sound working relationship between the Contractor and OGS, and a mutual understanding of the contract.
 5. Review the service performance so the contract objectives are met.
- B. The contractor is obligated to provide a written monthly report itemizing services performed during that month.
- C. **Ownership of Information**
 1. All data and information related to vehicle liability claims and payment thereof obtained by the ACA while administering this contract shall remain the property of the State and will be made available to the State upon request.
 2. The ACA shall be responsible for establishing a record retention plan for all claims files that meets with OGS' approval and complies with the requirements of Section 2.3.H – Claim Investigation and Appraisals of this Solicitation and all applicable laws.

2.8 Contractors Compensatory Liability

In the event that the contractor fails to complete any of the specified services within the timeframe required, OGS reserves the right to have such work completed either by another contractor or with in-house staff. In any such event, the contractor shall be liable to reimburse OGS for all costs incurred to complete the work. OGS further reserves the right to withhold such reimbursement from any outstanding payments due to the contractor.

3. Proposal Submission

3.1 RFP Questions and Clarifications

There will be an opportunity for submission of questions and/or requests for clarification. Questions and/or clarifications must be submitted via e-mail to the Designated Contact:

Sonya Stack, Contract Management Specialist 1
OGS Division of Financial Administration – Agency Procurement Office
Empire State Plaza
32nd Floor, Corning Tower, ESP
Albany, NY 12242
Phone : 518-486-7649
E-mail : Sonya.Stack@ogs.ny.gov

All questions should cite the page, section, and paragraph number, where applicable. Please submit questions as early as possible following receipt of the RFP. The final deadline for submission of any questions/clarifications regarding this RFP is listed in Section 1.3 - Key Events. Questions received after the deadline may not be answered. OGS will distribute an addendum with all Questions and Responses via e-mail on or about the date listed in Section 1.3 - Key Events, to the Primary Contact Person for all vendors that have submitted a timely Intent to Submit a Proposal notice. Vendors that have registered their Intent to Submit a Proposal will also receive any additional updates regarding this RFP, as necessary.

3.2 Technical Proposal Format and Content

In order for the State to evaluate proposals fairly and completely, Proposers are strongly encouraged to follow the format set forth herein and should provide all the information requested. All items requested in this Submission section should be provided and addressed as clearly as possible. Failure to conform to the stated requirements may necessitate rejection of the bid.

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

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

No overt reference to **cost** shall be made in the technical proposal.

3.2.1 Technical Proposal

3.2.1.1 Cover Letter

The cover letter should confirm that the Proposer understands all the terms and conditions contained and will comply with all the provisions of this RFP. Further, should the contract be awarded to your company, you would provide transitional services in accordance with Section 5.3 – Term of Contract. The cover letter should include the full contact information of the Proposers Representative that OGS shall contact regarding the bid. A Proposer Representative authorized to make contractual obligations must sign the cover letter. The letter should also state whether or not subcontractors will be used, and the name, address, and intended role of each proposed subcontractor.

3.2.1.2 Minimum Proposer Qualifications

Proposers must submit sufficient information to prove their ability to meet the mandatory qualifications as set forth in Section 1.4 – Minimum Qualifications.

Proposers shall comply with all requirements in this section and provide proper documentation in their response to each Minimum Qualification. A Proposer's compliance with the requirements in this section shall be determined according to the sole unrestricted discretion of OGS. Proposals failing to meet the Minimum Qualifications shall not be considered.

Information provided shall include:

1. License

To be eligible to submit a proposal under this RFP, an organization must meet all legal requirements for doing business in the State of New York by providing a copy of the proposer's and any proposed subcontractor's licenses, as an independent adjuster or an insurance carrier from the New York State Department of Financial Services. Proposers must also provide a copy of their rating of "A" or better by the A.M. Best Company, Inc.

2. Experience

Proposers must provide verifiable references demonstrating their experience in performing the services requested in Section 2 – Scope of Work of this Solicitation for a minimum of three (3) years.

Proposers must provide verifiable references demonstrating their experience working with the Centers for Medicare & Medicaid Services, insurance companies and third-party administrators providing related benefits and/or reimbursement.

3.2.1.3 Proposer's Experience and Qualifications

1. Firm Overview

Proposers should provide a brief history and description of their firm's business organization and its Automobile Claims Administration service expertise and experience as it relates to the requirements discussed in Section 2 – Scope of Work of this RFP. Include the location of offices and the number and types of adjusters, claims managers or other relevant professional staff in each office. Include a discussion of the specific expertise and services that distinguish the firm.

2. Experience

Proposers should:

- a. Demonstrate experience working with automobile claims, including the number of automobile claims administered, the Centers for Medicare & Medicaid Services, insurance companies and all third party administrators providing related benefits and/or reimbursement pursuant to any contract awarded as a result of this Solicitation.
- b. Demonstrate that they have successfully converted and serviced a similar client through the use of its existing claims processing system;
- c. Provide the total amount of claims paid and settled by the organization during the most recent twelve-month period;
- d. Describe the number of full-time equivalent ("FTE") employees, qualifications and experience of staff that will be servicing any contract resulting from this Solicitation and how it will provide support to OGS in the areas of processing, adjusting, investigating, negotiating, settling, paying, and subrogating the State automobile claims.
- e. Disclose any data security breaches that were reported to any federal or state authority by the Proposer within the previous three (3) years.
- f. Include a statement regarding any other specialized automobile claims administration services your firm may offer.

3. References

All Bidders should provide a minimum of three references of clients for which the firm has performed similar work, as described in this RFP, within the past three years. References shall include the following:

- a) Company name, address, contact person, title, telephone number, fax number, email address and number of years Bidder has serviced the referenced account.
- b) Scope of Work performed within the past three (3) years for each referenced account.

3.2.1.4 Experience and Qualifications of Key Personnel

Proposers should provide the names, proposed roles, background and experience, current professional licenses, office location and availability of the consulting personnel that would perform the services described in Section 2 – Scope of Work of this RFP. Specifically identify the primary person(s) who will be responsible for managing the relationship with the State during this endeavor. Proposers should submit a current resume for all proposed staff listing relevant experience and applicable professional affiliations.

3.2.1.5 Operational Work Plan and Methodology

1. Plan of Operations

Proposers should describe in narrative their technical plan for accomplishing the work required by this Solicitation. Use the task descriptions described in Section 2 – Scope of Work of this RFP as a reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Provide a description of all the deliverables that you will provide including samples and at a minimum, a table of contents for each deliverable. Provide relevant samples of deliverables from similar projects that your firm was primarily responsible for producing.

2. Training

Proposers must provide a description and documentation for any training that is included in its proposal including but not limited to training for its online claims system.

3. Computer System

Proposers shall describe the system that the company uses for claims processing. That description should include, at a minimum, the following:

A. Security of Hosting Environment

- I. Describe the security architecture of the overall environment in which the application is contained.
- II. Provide the following policies (or general information about them) in regard to the hosting environment:
 - a) Backup policies
 - b) Data center physical security policies
 - c) Firewall policy
 - d) Third Party connection policy
 - e) Remote access policy
 - f) Disaster recovery policy
 - g) Patch management policy
 - h) Anti-virus policy
 - i) Vulnerability management policy
 - j) Password policies
- III. Describe your intrusion detection systems, if any.
- IV. Describe any high-availability and scalability features in the hosting environment that are relevant to the proposed system.
- V. Describe the quality control and change control processes for making revisions to the application.

- VI. Indicate the name and contact information for your ISP(s) [Internet Service Provider(s)].
- VII. Indicate the bandwidth of your data center's Internet connection(s).
- VIII. Provide any third-party security certification information and/or reports for the application and/or the hosting environment.
- IX. Provide information about any insurance your company carries for covering security incidents.

B. Application Security

- I. Describe the security architecture of the proposed application.
- II. Provide information about the web server OS, web server software, and patch levels.
- III. Provide information about the user authentication process.
- IV. Indicate where the system stores user passwords.
- V. Demonstrate application provides user-friendly error messages when an error occurs.
- VI. Indicate if there is an inactivity timeout. If so, how long it is.
- VII. Provide information about application logging (e.g., what information is logged, how long are logs kept).
- VIII. Demonstrate client access to the application is via a web browser using the standard HTTPS port.
- IX. Indicate whether cookies are used and, if so, their purpose.
- X. Describe the granularity of user access control.
- XI. Indicate any other safeguards on the system that ensure unauthorized access is not obtained.
- XII. Describe how OGS Fleet Management will have read access to all data and reports.

C. Technical

- I. Describe how you allow user defined validation/business rules.
- II. State the overall availability of the system.
- III. Describe any maintenance window you have.
- IV. State the notification timeframe for taking the system down for repair or upgrade.
- V. Demonstrate that it is able to dump all NYS data into a readable format, if requested.
- VI. Describe your help features, including on-line and/or written manuals.
- VII. Discuss the service level for problem resolution.
- VIII. Describe any emergency telephone service that is part of your product support. Include local hours (Eastern Time Zone) that this service is available.

Note: Please see Section 4.1 Proposal Evaluation regarding demonstration requirement.

3.2.2 Cost Proposal

Proposers shall submit a completed Cost Proposal Form - Attachment 1, in a separately sealed package within the proposal submission and should be clearly identified as the cost proposal. Each item must be complete with no lines omitted. Proposers shall not provide alternative pricing or deviate from the Cost Proposal Form. Alternative pricing methodologies will not be considered and may result in the rejection of the proposal.

3.2.3 Administrative Proposal

- A. All required completed forms from RFP Appendix B.
- B. Attachment 2 – Proposal Submission Checklist should be completed and submitted with proposal. Proposers should indicate on the Proposal Submission Checklist where each requested item is located in their proposal
- C. **MWBE.** This procurement includes MWBE participation goals of which all bidders must comply. See Appendix E of this solicitation for specific details pertaining to this procurement opportunity. The New York State Contract System includes an MWBE Directory that can be utilized to find certified MWBE

businesses to meet this requirement.

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>)

D. Signed bid addenda (if any)

E. Important Notes:

- Insurance – Proposers are reminded of the insurance requirements as described in Appendix D. The selected Proposer will be required to provide all necessary documentation upon notification of selection.
- Vendor Responsibility - Proposers are reminded of the requirement as described in Section 6.11 – NYS Standard Vendor Responsibility Questionnaire and are requested to complete the online questionnaire located on the OSC VendRep System website prior to bid submission. If the vendor has previously certified responsibility online, it shall ensure that the Vendor Request Questionnaire (VRQ) was recertified in the last 6 months.
- Document Consistency - An award will only be made to the entity which has submitted the bid. All submitted documents must be consistent with official name of bidding entity, FEIN and NYS Vendor ID number.
- Bidders shall submit with their proposal a letter, signed by an officer authorized to bind the company, attesting that:
 - The fulfillment of obligations by the Bidder, as proposed in the response, does not or will not create any conflict of interest, or perception thereof, with any current role or responsibility the Bidder has with regard to any existing contracts or agreements between the Bidder and the State.
 - The fulfillment of any other contractual obligations that the Bidder has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP.

3.3 Proposal Preparation

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

3.4 Packaging of RFP Response

The Technical, Cost, and Administrative proposals should be separated and identified within the submission package as follows:

1. Technical – Submit three originals and three copies in a clearly marked envelope. No overt statements about cost shall be included in the Technical Proposal.
2. Cost – Submit three originals and one exact copy of Attachment 1 – Cost Proposal Form clearly marked “Cost Proposal” **in a separate sealed envelope**.
3. Administrative – Submit three originals and one exact copy.

Please provide one digital record (CD or Thumb Drive) containing technical, administrative, and cost proposals. If there are any differences between the paper submissions and the electronic submission, the paper submission shall take precedence.

Originals contain a unique wet signature for each of the signed and notarized pages. Exact copies can be photocopied and do not require a unique wet signature.

All proposal documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- a. Proposer 's complete name and address
- b. Solicitation Number – 2178
- c. Proposal Due Date and Time: (as indicated in Section 1.3 - Key Events)
- d. Proposal for Automobile Claims Administration

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

3.5 Instructions for Proposal Submission

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

Only those Proposers who furnish all required information and meet the mandatory requirements will be considered.

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

OGS Financial Administration, Agency Procurement Office
Empire State Plaza, Corning Tower, 32nd Floor
Albany, NY 12242
Attn: Sonya Stack
Proposal #2178

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

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

Bids must be received in the above office on or before 2:00 PM on the date indicated in Section 1.3 - Key Events. Proposers assume all risks for timely, properly submitted deliveries. Proposers mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time.

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

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, or (ii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the bidder. However, in no event will the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a late bid shall be documented in the procurement record.

Bids must remain open and valid for 180 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Proposer. A bid shall continue to remain an effective offer, firm and irrevocable, after such 180-day period until either tentative award of the contract(s) by issuing Office is made or withdrawal of the bid in writing by Proposer. Tentative award of the contract(s) shall consist of written notice to

that effect by the issuing Office to the successful Proposer. This RFP remains the property of the State always, and all responses to this RFP, once delivered, become the property of the State.

Important Building Access Procedures for Delivered Bids:

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

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

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

<http://ogs.ny.gov/BU/BA/Parking/Visitor/>

4. Evaluation and Selection Process

4.1 Proposal Evaluation

Proposals will be evaluated and scored based upon the criteria set forth in this Section. Proposals will be evaluated for best value to the State. A committee of State employees will evaluate each proposal and initially determine whether a proposal is responsive to the requirements of the Solicitation.

The State may request that Proposers submitting responsive proposals provide a demonstration of their proposed computer system/interview covering the major points of their proposals. The demonstrations/interviews will be conducted on a date, time and location to be designated by the State.

OGS reserves the right to check references as part of the evaluation process. It is the responsibility of the Proposer to ensure availability of the provided references. The inability to contact a given reference may be reflected in the technical scoring and/or may result in rejection of the proposal. Also see Section 3.2.1.4 - References.

Note: Information learned from reference checks, interviews and oral presentations may be used in conjunction with the submitted proposal as cumulative information for the scoring of technical points.

4.2 Proposal Scoring

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

- A. Proposer Experience and Qualifications (20%)**
Each proposal will be evaluated as to the relevant experience and qualifications of the company.
- B. Experience and Qualifications of Key Personnel (16.5%)**
Each proposal will be evaluated as to the relevant experience and qualifications of the key personnel.
- C. Operational Work Plans and Methodology (30%)**
Each proposal will be evaluated as to the extent by which Proposer's operational plans, methods, and systems meet the goals and requirements of the RFP.
- D. MWBE, SDVOB or SBE Status (3.5%)**

Proposers that are MWBE, SDVOB, or a New York State small business as defined in Executive Law Section 310(20) will receive an additional 3.5% for such status.

Note: Although a Proposer may have met more than one criterion, credit is to be awarded for only one category, not multiple categories.
- E. Cost (30%)**

Attachment 1, Cost Proposal, will be evaluated in relation to all cost proposals submitted.

4.3 Evaluation Process

4.3.1 Submission Review

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

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

4.3.2 Technical Evaluation (70%)

The technical evaluation committee will evaluate and score each responsive proposal for items A-C above. Points for MWBE, SDVOB or SBE status will be awarded as described in D above.

4.3.3 Cost Proposal Evaluation (30%)

OGS Division of Financial Administration will evaluate all cost proposals from responsive Proposers. The cost proposal with the lowest total fee will be awarded the maximum possible points, (refer to item E listed above). Each subsequent proposal will receive a proportionate number of points using the following formula: $\text{Low Bid/Bid being Evaluated} \times \text{Category Weight}$.

4.3.4 Preliminary Score and Down Selection

Each cost proposal score (**Section 4.3.3 – Cost Proposal Evaluation**) will be added to the score from the technical evaluation score for items A-D to develop the total preliminary scores. The firms with the three (3) highest total preliminary scores, and any additional firms within or equal to 50 points of the highest preliminary score, will be the finalists.

4.3.5 Interviews/Demonstrations

The Finalists must provide an interview/demonstration of the proposed solution, which will be given on a date, time and location to be designated by OGS. The interviews/demonstrations will be conducted in Albany, NY and should be attended by the Proposers' officers/employees who will be responsible for administering any contract resulting from this Solicitation. This is not an opportunity to introduce supplemental submission information. Rather, the Proposer will be requested to demonstrate their proposed computer system functionality and provide clarifications to their submitted proposal. The Technical Evaluation Team will ask questions related to the technical scope of the proposal.

4.3.6 Recalculation

Cost proposals (**Section 4.3.3 – Cost Proposal Evaluation**) will be recalculated employing only the cost proposals from the finalist firms, using the formula described in **Section 4.3.3 – Cost Proposal Evaluation**. Following the interviews, the evaluation team may adjust their technical scores for items A – C. The recalculated scores for items A – C, plus the score for item D, will be combined to develop new technical scores. These will be added to the new cost scores, item E, to obtain the new total scores. If the recalculation results in additional Proposers that would have been included in the initial down-select, then those Proposers will become finalists, and will follow the procedure outlined within this **Section 4.3 – Evaluation Process** pertaining to finalists

4.3.7 Final Composite Score (100%)

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

4.4 Notification of Award

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

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

5. Administration Information

5.1 Issuing Office

This RFP is being released by the New York State Office of General Services Division of Financial Administration on behalf of Office of General Services Fleet Management.

5.2 Method of Contract Award

A single award shall be made to the vendor who has a responsive and responsible proposal with the best value receiving the highest total score using the evaluation criteria listed in Section 4 – Evaluation and Selection Process.

Upon determination of the best value Proposer, a Service Agreement, a sample of which is attached to the RFP as Appendix C - Sample Contract will be completed with the successful Bidder's information and appended to this RFP and the successful Bidder's proposal to form the contract between the parties. This contract will be forwarded to the successful Proposer for execution and returned to the issuing office to be processed for all necessary signatures and State approvals. Upon final approval, a fully executed copy will be forwarded to the Contractor.

The Grand total bid amount of the selected contractor shall be used to establish the contract value. The established contract value shall not be exceeded.

5.3 Term of Contract

The contract will become effective upon approval by the Office of the State Comptroller and will continue for five years. The Contractor shall begin accepting assignments no later than ninety (90) days after the effective date. Contractor shall take all steps necessary during the ninety (90) day period to become familiar with the State's processes and procedures and provide adequate staffing for performance of the Contract so as to be able to begin accepting assignments on or before the ninetieth day of the term.

5.4 Price

Prices shall be represented as fixed annual amounts for the ACA Service terms. The fixed rates shall be inclusive of all labor (wholly inclusive of all requirements of Section 5 – Administration Information), licenses, insurance, travel, administrative, training, overhead and profit, sustenance, lodging and employee benefits.

Prices must be submitted using the Cost Proposal Form (Attachment 1). Submitted bids must follow the format of Attachment 1. Any additions, exceptions, qualifiers, assumptions, ranges, etc. will result in rejection of the proposal.

If the Bidder offers an early payment discount for payments made in less than 30 days after receipt of a proper invoice, please detail the discount by providing, in the appropriate place on the Attachment 1 Cost Proposal Form, the percentage of discount and the specific number of days within which the payment must be made for the discount to apply. If Bidder offers multiple discounts, please provide the details for each discount offered (for example: 2%/15 days; 1%/20 days).

A discount for early payment does not affect bid amounts nor is it considered in making awards, except that a discount may be considered in resolving tie bids.

5.5 Method of Payment

For the purposes of this contract, payment will be issued on a monthly basis with payment made on a 1/12th annual amount in arrears basis. An invoice shall be submitted to the OGS Business Services Center – Accounts Payable Unit for payment.

Invoices will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

Each company invoice **must** be itemized and include the following information: Name of NYS agency being billed; Contract ID number; Purchase Order number; Vendor name; Company FEIN; Vendor ID number; a unique invoice number; date(s) of service(s), the specific deliverable(s) worked on; a detailed description of services performed; and \$ amount requested in accordance with contract or PO rates.

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

All Invoices are to be submitted for payment to:

**Office of General Services
C/O BSC / Accounts Payable
1220 Washington Ave., Bldg. 5, 5th Fl
Albany, New York 12226**

Or email: Accountspayable@ogs.ny.gov

Also, a copy of the invoice must be forwarded to the SRAP mailbox, ogs.sm.SRAP@ogs.ny.gov

5.6 Electronic Payment

Contractor shall provide complete and accurate billing invoices to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and OSC. 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 OSC's procedures to authorize electronic payments. Authorization forms are available at OSC's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by phone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with OSC's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a Statewide Financial System, OSC requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go to the above website and complete the substitute W-9 form and submit following the instructions provided.

5.7 Past Practice

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of 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.

5.8 Conflict of Interest

Any Bidder offering to provide services pursuant to this RFP, as a contractor or subcontractor, shall attest that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor cause the Bidder to breach any other contract currently in force with the State of New York.

Furthermore, Bidders shall attest that they will not act in any manner that is detrimental to any State project on which the Bidder is rendering services. Specifically, Bidders shall submit with their proposal a letter, signed by an officer authorized to bind the company, attesting that:

- The fulfillment of obligations by the Bidder, as proposed in the response, does not or will not create any conflict of interest, or perception thereof, with any current role or responsibility the Bidder has with regard to any existing contracts or agreements between the Bidder and the State.
- The fulfillment of any other contractual obligations that the Bidder has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP.

5.9 Security/Confidentiality

By submission of a proposal, contractor warrants, covenants and represents that it will fully comply with all security procedures of the State in performance of the Contract. Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, passwords, business operations information, or other third party commercial proprietary information, records or data which is accessed or made accessible to Contractor as necessary for Contractor to complete work under the Contract ("confidential information"), will not be divulged during the Contract term or for a period of five (5) years thereafter in any manner to any party by Contractor, its agents, subcontractors, officers, or employees. All contractor staff assigned to this agreement shall be required to execute a Security – Confidentiality Statement (See Exhibit A)

5.10 Exceptions and Extraneous Terms

The Issuing Office will consider all requests to waive any solicitation requirement. The Term "solicitation requirement" as used herein shall include any and all terms and conditions included in the solicitation documents. Bidders should be aware that failure to obtain a waiver of any proposal requirement in advance of bid submission, and/or inclusion of extraneous terms in the form of exceptions, assumptions, qualifiers, ranges, modifications, etc. with bid submission, may result in rejection of Bidder's proposal and disqualification from the bidding process.

Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the 'Questions Due Date' as identified in Section **Error! Reference source not found.** – Key Events. The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either with the 'Answers to Questions' as identified in Key Events (if the response results in a change to the RFP), or directly to the requesting vendor.

5.11 Dispute Resolution

For purposes of this RFP it is the intention of the OGS Financial Administration to provide Proposers with an opportunity to administratively resolve disputes, complaints or inquiries related to Proposals, this solicitation or contract awards. OGS encourages vendors to seek resolution of disputes through consultation with OGS Financial Administration staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the Designated Contact identified on the front of the solicitation document.

5.12 Examination of Contract Documents

Each Proposer is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may select, of the character, quality and extent of the work to be performed and the conditions under which the contract is to be executed.

Each Proposer shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the State as an excuse for any failure or omission on the part of the Proposer to fulfill every detail of all the requirements of the documents governing the work. The Proposer, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such Proposer might have fully informed itself prior to proposing.

Any addendum issued prior to the proposal due date must be acknowledged by signature, dated and be submitted on or before the proposal due date. In awarding a contract any addenda will become a part thereof.

Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services at the time of examination of the documents or conference shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, to all Proposers shall become a part of the contract.

5.13 Prime Contractor Responsibilities

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

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

All persons/contractors hired, paid and/or supervised by the Contractor, shall be the Contractor's employee or its subcontractor's employee and not the State's employee.

5.14 Rules of Construction

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

6. Contract Clauses and Requirements

6.1 Appendix A / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein. Appendix A is a separate document to this RFP and shall be retained for reference by the Proposer.

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

1. Appendix A (dated January 2014)
2. Contract Agreement
3. OGS RFP 2178 (This Document) Including any addenda)
4. Selected Contractor's Proposal including Attachment 1

6.2 Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law §139-j and §139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Vendor during the procurement process. A Vendor is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter 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 and in Section 1.2 – Designated Contact. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Vendor 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 Vendor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: <http://www.ogs.ny.gov/acpl/>

6.3 Tax and Finance Clause

TAX LAW § 5-A:

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

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

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

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

6.4 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each proposal/proposal will be held in confidence and details of any proposal/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process.

SHOULD YOU FEEL YOUR FIRM'S PROPOSAL/PROPOSAL CONTAINS ANY SUCH TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, **YOU MUST SUBMIT A REQUEST TO EXCEPT SUCH INFORMATION FROM DISCLOSURE**. SUCH REQUEST MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION SHOULD BE EXCEPTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME OF SUBMISSION OF THE SUBJECT INFORMATION.

REQUESTS FOR EXEMPTION OF THE ENTIRE CONTENTS OF A PROPOSAL/PROPOSAL FROM DISCLOSURE HAVE GENERALLY NOT BEEN FOUND TO BE MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXEMPTION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR FIRM.

6.5 General Requirements

1. The Proposer agrees to adhere to all State and Federal laws and regulations in connection with the contract.
2. The Proposer agrees to notify OGS of any changes in the legal status or principal ownership of the firm, forty-five (45) days in advance of said change.
3. The Proposer agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
4. The Proposer agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of OGS.
5. For reasons of safety and public policy, in any contract resulting from this RFP, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
6. For purposes of any contract resulting from this RFP, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
7. OGS interpretation of specifications shall be final and binding upon the Contractor.

8. The Commissioner of OGS will make no allowance or concession to the Proposer for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Proposer has based its bid on the more expensive option. Final decision will rest with OGS.
10. INSPECTION – For purposes of any contract resulting from this RFP the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, OGS may terminate the contract and employ another Contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.
11. STOP WORK ORDER – OGS reserves the right to stop the work covered by this RFP and any contract(s) resulting there from at any time that it is deemed the Contractor is unable or incapable of performing the work to the State's satisfaction. In the event of such stopping, OGS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the proposal, the Contractor shall be liable to the State of New York for any such costs on account thereof. In the event that OGS issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective. Provided, however, that if an emergency situation exists, as reasonably determined by OGS, then the stop work order shall be effective immediately.
12. OGS reserves the right to reject and bar from the facility any employee hired by the Contractor.

6.6 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 Solicitation, 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 Solicitation, 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 Solicitation.

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

6.7 Procurement Rights

The State of New York reserves the right to:

1. Reject 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. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP.
15. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
16. Waive any requirements that are not material.
17. If two or more bids are found to be substantially equivalent, the Commissioner of OGS, at their sole discretion, will determine award using the pre-established process. For best value procurements, cost will be the determining factor.

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

6.8 Extent of Services

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

6.9 Debriefings

Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

6.10 Termination

A. Termination

The Office of General Services may, upon thirty (30) days notice, terminate the contract resulting from this RFP in the event of the awarded 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 RFP upon ten (10) days written notice if the Contractor makes any arrangement for assignment for the benefit of the creditors.

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

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.

C. Effect of Termination

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

6.11 NYS Standard Vendor Responsibility Questionnaire

OGS conducts a review of 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 <https://www.osc.state.ny.us/vendrep/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: https://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 always 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 their 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 of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume when the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

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

6.12 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.

In accordance with New York Public Officers Law and the rules, regulations, opinions, guidelines, and policies (the "Ethics Requirements") issued by the New York State Joint Commission on Public Ethics or its predecessors ("JCOPE"), former OGS employees may neither appear nor practice before OGS, nor receive compensation for services rendered on a matter before OGS, for a period of two years following their separation from OGS service. In addition, former OGS employees are subject to a "lifetime bar" from appearing before OGS or receiving compensation for services regarding any transaction in which they personally participated, or which was under the active consideration during their tenure with OGS. The Contractor agrees, by entering into this Contract with OGS, that the two-year and lifetime bars also apply to the Contractor's contract employees who are assigned to work

directly for and on behalf of OGS. The Contractor further agrees to advise all such contract employees that upon cessation of their direct work assignment for OGS through the Contractor, they are restricted from appearing or practicing before OGS as provided herein but are not restricted from working directly for or on behalf of OGS through another direct contract position.

6.13 Indemnification

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

6.14 Appendices and Exhibits

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

6.15 Force Majeure

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

6.16 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.

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

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

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

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to OGS Corning Tower, 32nd Floor, Empire State Plaza, Albany, NY 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 OGS may require concerning the proposed subcontractor's ability and qualifications.

6.17 Encouraging Use of NYS 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 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 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 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.

6.18 Participation Opportunities For New York State Certified Service-Disabled Veteran-Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts

to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract

6.19 Consultant Contracts

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 bid/quote submittal.

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

For each covered consultant contract in effect at any time between the preceding April 1st through March 31st 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
80 South Swan Street
Albany, NY 12239

NYS Office of the State Comptroller
Bureau of Contracts
110 State St, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

NYS Office of General Services
Financial Administration - Agency Procurement Office
32nd 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.

6.20 Background Checks

Requirements of this clause apply to the Contractor performing on-site work for OGS. Background checks shall be performed at no additional cost to the State. The cost to the Contractor for performing requirements of this section shall be taken into consideration when the bidder calculates its bid prices in response to this solicitation. Contractor shall be not be entitled to charge separately, or otherwise be reimbursed, for any costs incurred in complying with this background check requirement.

For purposes of this clause, the following definitions apply:

On-Site: "On-site" refers to any State-owned or leased space open to the public or at which State business operations are conducted.

Suitability: "Suitability" refers to identifiable character traits and past conduct that are reasonably sufficient to indicate whether a given individual is likely to be able to perform the requirements of a contract at OGS on-site locations without undue risk to the interests of the State.

Suitability determination: A "suitability determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements on-site without undue risk to the interests of the State.

Applicability

Contractors shall perform background checks and make suitability determinations on contractor employees before the individual employees can perform on-site contract services for the Office of General Services.

Contractor shall maintain a continuous list of background checks and suitability determinations noted above and shall provide this list to the Facility Manager prior to the contract commencement date. The list shall be updated and resubmitted to the Facility Manager as changes occur, continually keeping the Facility Manager updated.

The Commissioner of General Services, or his or her designee (the "Commissioner"), on a case-by-case basis, may, either temporarily or permanently, waive the requirements of this clause, in whole or in part, if they determine in writing that background checks and suitability determinations are not necessary at a specific location, or for a specific individual, in order to protect the State's interests.

Background Check

The Contractor is responsible for completing background checks and making suitability determinations on its employees prior to the employees beginning on-site work. Compliance with the requirement for performing a background check and making a suitability determination shall not be construed as providing a contractor employee clearance to secured areas. Contractors are required to maintain records of background checks and suitability determinations for the term of the contract, and to make them available to the State when requested.

At a minimum, the background check and suitability determination must include an evaluation of:

- Verification that the individual is not listed on a national watched person database. The following link has information about data available. <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html> . The following link has a PDF file of a list of SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS <https://www.treasury.gov/ofac/downloads/sdnlist.pdf> ;
- Criminal History checks to be performed either by using a national database that contains criminal histories and supplement this search by checks of NYS Office of Court Administration (“NYSOCA”) and comparable searches of states where the person has lived, worked, or attended school during the past 5 years; OR by obtaining the record of convictions from NYSOCA directly and from their equivalents from other states where the person might have lived, worked, or attended school during the last 5 years;
- DMV driving records;
- Social Security Number trace;
- Verification of U.S. citizenship or legal resident status; and
- Residence (past 3 years) (should be requested on employment application to compare against data from DMV license and other searches for verification);

Background Check Guidelines

In making a suitability determination, the contractor shall consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to the State:

Any loyalty or terrorism issue;

Patterns of conduct (e.g., alcohol/drug abuse, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);

Dishonorable military discharge;

Felony and misdemeanor offenses; and

Employment related misconduct involving dishonesty, criminal or violent behavior.

The Contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:

1. The nature, extent, and seriousness of the conduct;
2. The circumstances surrounding the conduct;
3. The frequency and recency of the conduct;
4. The individual's age and maturity at the time of the conduct;
5. The presence or absence of rehabilitation and other pertinent behavior changes;
6. The potential for pressure, coercion, exploitation, or duress;
7. The likelihood of continuation of the conduct;

8. How, and if, the conduct bears upon potential job responsibilities; and
9. The employee's employment history before and after the conduct.

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

Employee Removal

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

Commissioner Notification

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

6.21 Sexual Harassment Prevention

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on Appendix B – NYS Required Certifications, which Bidder must submit with its bid

6.22 Information Security Breach

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

1. 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.
2. Contractor must encrypt any database fields and backup tapes that contain private data elements, as set forth in the ISBNA.
3. Contractor must ensure that private data elements are encrypted in transit to / from their systems.
4. 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.
5. Contractor must monitor for breaches of security to any of its systems that store or process private data owned by OGS.
6. Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from OGS.
7. 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.
8. Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
9. Contractor shall immediately notify OGS following the discovery that OGS's system security has been breached.
10. 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 Division of Homeland Security and Emergency Services Enterprise Information Security Office, the Department of State Division of Consumer Protection, the OAG or any consuming reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.
11. Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.
12. This policy and procedure shall not impair the ability of the OAG 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.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7

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 is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

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

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

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

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

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

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

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

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

Solicitation

Appendix B – Required Forms

Required Forms – Table of Contents

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

- ☐ Contractor Information Page
- ☐ Corporate Acknowledgement (must be notarized)
- ☐ Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b)
- ☐ Offerer Disclosure of Prior Non-Responsibility Determinations
- ☐ Offerer's Certification of Compliance with State Finance Law §139-k(5)
- ☐ NYS Required Certifications
 - Nondiscrimination In Employment In Northern Ireland Macbride Fair Employment Principles
 - Non-Collusive Bidding Certification
 - Diesel Emission Reduction Act
 - Executive Order No 177 Certification
 - State Finance Law § 139-I Certification
 - Small Business Certifications
- ☐ ST-220 -TD Taxation & Finance Contractor Certification
(Submitted directly to Taxation & Finance)
- ☐ ST-220 - CA Taxation and Finance Covered Agency Certification
- ☐ EEO 100 - Equal Employment Opportunity Staffing Plan
- ☐ MWBE 100 - MWBE Utilization Plan
- ☐ Contract Consultant Forms A and B

Contractor Information

Solicitation Number

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 ID Number		NYS Vendor ID Number	
Address			
City	State	Zip	County
Telephone Number	Ext	Toll Free Telephone	Ext
Fax Number	Toll Free Fax Number		
Email of Designated Contact			

Please identify if any of the following apply:

New York State Small Business as defined in Executive Law Section 310(20) and as detailed in the "New York State Required Certifications" included in Appendix B herein.	Yes	No
New York State Certified Minority Owned Business	Yes	No
New York State Certified Woman Owned Business	Yes	No
New York State Certified Service-Disabled Veteran-Owned Business	Yes	No
Do you understand and is your firm capable of meeting the insurance requirements to enter into a contract with New York State?	Yes	No
Will New York State Businesses be used in the performance of this contract?	Yes	No
If yes, identify New York State Business(es) that will be used; (Attach identifying information).		
Does your proposal meet all the requirements of this solicitation?	Yes	No

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: _____

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).			
Authorized Signature		Date	
Print Name		Title	
Company Name			
Address			
City	State	Zip	

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			
City	State	Zip	
Person Submitting this Form	Title	Date	Contract Procurement Number

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?	No	Yes
<i>If yes, please answer questions 2-4 before proceeding to question 5. If no, please go to question 5.</i>		
2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j	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?	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?	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>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.</i>			
Authorized Signature		Date	
Print Name		Title	
Company Name			
Address			
City	State	Zip	

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.

Nondiscrimination In Employment In Northern Ireland Macbride Fair Employment Principles

1. have business operations in Northern Ireland No Yes , **and if yes:**
2. shall take lawful steps in good faith to conduct any business operations 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 compliance with such principles. No Yes

set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

Executive Order No. 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

State Finance Law § 139-I 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 the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

If the bidder cannot make the foregoing certification, such bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the bidder cannot make the certification.

Small Business Certifications

State Finance Law § 163(1)(j) (Authorizes Award of Quantitative Factor Credit for Small Business Status in Evaluation for Best Value Contracts)

For purposes of New York State Finance Law § 163(1)(j), the contractor certifies that it:

___ **IS NOT** a Small Business as defined in New York State Executive Law § 310(20).

___ **IS** a Small Business as defined in New York State Executive Law § 310(20).

"Small Business" is defined under New York State Executive Law § 310(20) as a business that:

- A. has a significant business presence in New York demonstrated through one of the following:
 - 1. pays taxes in New York State, or
 - 2. purchases New York State products or materials, or
 - 3. has any payroll in New York State
- B. is independently owned and operated;
- C. is not dominant in its field; and,
- D. employs less than 300 persons.

State Finance Law § 163(6) (Authorizes Discretionary Purchases of Commodities or Services from Small Business Concerns)

For purposes of New York State Finance Law § 163(6), the contractor certifies that it:

___ **IS NOT** a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

___ **IS** a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

"Small Business Concern" or "Small Business" is defined under New York State Finance Law § 160(8) as a business that:

- A. is resident in New York State;
- B. is independently owned and operated;
- C. is not dominant in its field; and
- D. employs 100 or less persons.

By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Certifications document and that all information provided is complete, true and accurate.

Authorized Signature		Date	
Print Name		Title	
Company Name			
D/B/A – Doing Business As (if applicable)			
Address			
City	State	Zip	

NYS Department of Taxation and Finance - FORMS

CONTRACTOR CERTIFICATION (ST-220-TD 12/11)
CONTRACTOR CERTIFICATION TO COVERED AGENCY
(ST-220-CA 12/11)

**Contractor Certification**(Pursuant to Tax Law Section 5-a, as amended,
effective April 26, 2006)**ST-220-TD**

(4/15)

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

Contractor name		
Contractor's principal place of business	City	State ZIP code
Contractor's mailing address (if different than above)	City	State ZIP code
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 or state agency	Contract number or description	Covered agency telephone number ()
Covered agency address	City	State ZIP code
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000? Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>		

General information

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

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

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

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0826**

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

**Telephone assistance****Sales Tax** Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082**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, call the information center.

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

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 – Contractor registration status

- ☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- ☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 – Affiliate registration status

- ☐ The contractor does not have any affiliates.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 – Subcontractor registration status

- ☐ The contractor does not have any subcontractors.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

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

[illegible]

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

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

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

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
 : SS.:
COUNTY OF }

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

(Mark an X in the appropriate box and complete the accompanying statement.)

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

Notary Public

Registration No. _____

**Contractor Certification to Covered Agency**

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

ST-220-CA

(12/11)

For information, consult Publication 223, Questions 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)					
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 ST-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. 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.

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

When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

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

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

Town of _____,

County of _____,

State of _____; and further that:

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

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

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

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

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

Notary Public

Registration No.

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 Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



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, call the information center.



**Office of
General Services**

**Office of Minority and Women-Owned
Businesses & Community Relations**

EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

General instructions: Contact the Designated Contact(s) for the solicitation if you have any questions. **All Offerors** must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's total work force, the Offeror shall complete this form for the contractor's total work force. Subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor must complete this form upon request of OGS.

Instructions for completing:

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading "Work force by Gender."
6. Break down the total work force by race/ethnic background and enter under the heading "Work force by Race/Ethnic Identification." Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

WHITE - (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

BLACK - A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

HISPANIC - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

ASIAN & PACIFIC ISLANDER - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

AMERICAN INDIAN OR ALASKAN NATIVE (Not of Hispanic Origin) - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.



EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

SUBMIT WITH BID OR PROPOSAL or within a reasonable time thereafter as requested by OGS, but prior to Contract Award.

Solicitation No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Report includes Contractor's <input type="checkbox"/> Contractor's work force to be utilized on this contract <input type="checkbox"/> Contractor's total work force <input type="checkbox"/> Subcontractor's work force to be utilized on this contract <input type="checkbox"/> Subcontractor's total work force
Contractor/Subcontractor's Name:		
Contractor/Subcontractor's Address:		
FEIN:		

Enter the total number of employees for each classification:

EEO Job Category	Total Work Force	Work force by Gender		Work force by Race/Ethnic Identification													
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		American Indian or Alaskan Native (M) (F)		Veteran (M) (F)		(M)	(F)
Executive/Senior level Officials & Managers																	
First/Mid-level officials & Managers																	
Professionals																	
Technicians																	
Sales Workers																	
Administrative Support Workers																	
Craft Workers																	
Operatives																	
Laborers and Helpers																	
Service Workers																	
Totals																	

PREPARED BY (Signature):	TELEPHONE NO.:	DATE:
	EMAIL ADDRESS:	
NAME AND TITLE OF PREPARER (Print or Type):		



**Office of
General Services**

**Office of Minority and Women-Owned
Business Enterprises**

Commodities and Services

Submit Completed Plan with your bid To:

NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242

Instructions for Submitting the MWBE Utilization Plan for Commodities and Services (Form MWBE 100)

Where required in the Solicitation and/or Contract, submit the completed Plan with your bid package on the stated date and time to:

NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Phone: 518-474-5981

Failure to submit the Plan or obtain a waiver could result in non-award of the Contract.

- **The Plan must contain a detailed description of the supplies and/or services to be provided by each MWBE subcontractor/supplier.**
 - **Complete all items on the form with the exception of the sections marked “For OGS MWBE Use Only.”**
 - **List New York State certified MBE/WBE firms only.** Only MBE/WBE firms certified by Empire State Development’s Division of Minority and Women’s Business Development can be used to meet MWBE Goals. Non-certified firms, or firms that are pending certification, cannot be used toward goal attainment until they are NYS certified.
 - **All listed subcontractors/suppliers will be contacted and verified by OGS.**
 - Bidders/Contractors may attach additional sheets if necessary.
2. To identify New York State certified MWBEs, access Empire State Development’s MWBE directory at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp> For additional information regarding this directory, please call The Empire State Development Corporation at (212) 803-2414 (Downstate) or (518) 292-5250 (Upstate). Additionally, you may contact the OGS MWBE office designated contacts at (518) 486-9284 which will, upon request, provide you with a listing of certified MBE/WBE firms.
 3. Pursuant to 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Actions that do not constitute good faith efforts by Contractors to solicit NYS Certified MWBEs to participate in the Contract include, but are not limited to, the following:
 - (1) Self-performance of tasks on a project.
 - (2) Not engaging an MWBE because it did not submit the lowest quote for work or materials.
 4. OGS will review the submitted Plan and advise Bidder/Contractor of OGS’s acceptance or deficiency within twenty (20) days of its receipt. Bidder/Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify Bidder/Contractor and direct Bidder/Contractor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal. The approved Plan will be posted on the OGS website within ten (10) days of Contract Award. Any changes to the Plan must be approved by OGS.



Office of
General Services

Office of Minority and Women-Owned
Business Enterprises

Commodities and Services

Submit Completed Plan with your bid To:

NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242

MWBE UTILIZATION PLAN

☐ Initial Plan ☐ Revised plan Contract/Solicitation # _____

INSTRUCTIONS: This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS Certified Minority and Women-owned Business Enterprises (MWBE) under the contract. By submission of this Plan, the Bidder/Contractor commits to good faith efforts in the utilization of MWBE subcontractors and suppliers as required by the MBE/WBE goals contained in the Solicitation/Contract. Making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward MWBE utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION

MWBE Goals In Contract

Bidder/Contractor Name:	NYS Vendor ID:	MBE	%
Bidder/Contractor Address (Street, City, State and Zip Code):		WBE	%
Bidder/Contractor Telephone Number:		Contract Work Location/Region:	
Contract Description/Title:			

CONTRACTOR INFORMATION

Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:
Email Address:			

IF UNABLE TO MEET THE MBE AND WBE GOALS SET FORTH IN THE SOLICITATION/CONTRACT BIDDER/CONTRACTOR MUST SUBMIT A REQUEST FOR WAIVER (FORM BDC 333)

MWBE Subcontractor/Supplier Name:	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%			

MWBE Subcontractor/Supplier Name:	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%			

FOR OGS MWBE USE ONLY

OGS MWBE Authorized Signature:	<input type="checkbox"/> Accepted	<input type="checkbox"/> Accepted as Noted	<input type="checkbox"/> Notice of Deficiency
NAME (Please Print):	MBE %/\$ _____	WBE %/\$ _____	Date Received: _____
Date Processed: _____			
Comments:			
NYS CERTIFIED MWBE SUBCONTRACTOR/SUPPLIER INFORMATION: The directory of New York State Certified MWBEs can be viewed at: https://ny.newnycontracts.com/FrontEnd/SupplierSearchPublic.asp?TN=ny&XID=2528			
Note: All listed Subcontractors/Suppliers will be contacted and verified by OGS.			

ADDITIONAL SHEET

Bidder/Contractor Name:	Contract/Solicitation # _____
--------------------------------	--------------------------------------

MWBE Subcontractor/Supplier Name:	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%			

MWBE Subcontractor/Supplier Name:	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%			

MWBE Subcontractor/Supplier Name:	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%			

MWBE Subcontractor/Supplier Name:	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%			

MWBE Subcontractor/Supplier Name:	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%			

Employee Information To Be Reported By Certain Consultant Contractors

Instructions for Completing Form A and B

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

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

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

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

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

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

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

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

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

OSC Use Only:

Reporting Code:

Category Code:

Date Contract Approved:

FORM A**State Consultant Services - Contractor's Planned Employment
From Contract Start Date Through The End Of The Contract Term**

State Agency Name:

Agency Code:

Contractor Name:

Contract Number:

Contract Start Date: / /

Contract End Date: / /

O*Net Employment Category (see O*Net on-line at online.onetcenter.org)	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

Page of

State Consultant Services
Contractor's Annual Employment Report
Report Period: April 1, _____ to March 31, _____

Contracting State Agency Name: Agency Code:
 Contract Number:
 Contract Term: / / to / /
 Contractor Name:
 Contractor Address:
 Description of Services Being Provided:

Scope of Contract (Choose one that best fits):

Analysis ☐ Evaluation ☐ Research ☐ Training ☐
Data Processing ☐ Computer Programming ☐ Other IT consulting ☐
Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐
Health Services ☐ Mental Health Services ☐
Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☐

O*Net Employment Category (see O*Net on-line at online.onetcenter.org)	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Preparer's Signature: _____

Title: _____ Phone #: _____

Date Prepared: / /

Use additional pages if necessary)

Page of

RFP Appendix C

Sample Contract

Solicitation No. 2178

SAMPLE

**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT FOR
AUTOMOBILE CLAIMS ADMINISTRATION
FOR
NEW YORK STATE OFFICE OF GENERAL SERVICES
FLEET MANAGMENT
WITH
(CONTRACTOR)**

CONTRACT #OGS1-C00XXXX-1140000

THIS AGREEMENT, made this ____ day of _____, 2019 by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is in the Corning Tower Building, at 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 Automobile Claims Administration to process and service claims arising out of the use of motor vehicles owned by or operated on behalf of the People of the State of New York and in fulfilling its responsibility deems it necessary to obtain Automobile Claims Administration services 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 Automobile Claims Administration 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 Automobile Claims Administration 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 upon OSC approval and will be in effect for five years. The Contractor shall begin accepting assignments no later than ninety (90) days after the effective date. Contractor shall take all steps necessary during the ninety (90) day period to become familiar with the State's processes and procedures and provide adequate staffing for performance of the Contract so as to be able to begin accepting assignments on or before the ninetieth day of the term.

3. SERVICES

The Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the Request for Proposal No. 2178, which is annexed as Appendix "B" hereto, and the Contractor's bid, 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 RFP/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 RFP/IFB upon ten (10) days written notice if the Contractor makes any arrangement for the assignment for the benefit of creditors.

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

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.

C) Effect of Termination

Any termination by OGS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this RFP/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.

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 "Bid", or between any Appendices, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

1. Appendix A
2. This Contract Agreement
3. Appendix B – Solicitation #2178 including Addenda
4. Appendix C – Contractor's Bid

The parties understand and agree that any and all deviations or exceptions taken by Contractor to the State's Invitation to Bid 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. 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 Division of Homeland Security and Emergency Services Enterprise Information Security Office, the Department of State Division of Consumer Protection, 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.

21. CONTRACTOR RESPONSIBILITY

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

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

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

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

CONTRACT NO. C00XXXX

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

Agency Certification

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

(Company Name)

THE PEOPLE OF THE STATE OF NEW YORK

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

By: _____
Name:
Title:
Date:

APPROVED AS TO FORM

Attorney General

APPROVED

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: _____

Sample Contract

Appendix A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

Sample Contract

Appendix B

Request for Proposal

SAMPLE

Sample Contract

Appendix C

Contractor's Bid

SAMPLE

RFP Appendix D

Insurance Requirements

Insurance Requirements

The Bidder shall be required to procure, at its sole cost and expense, all insurance required by this Attachment.

The Bidder shall be required to provide proof of compliance with the requirements of this Attachment, as follows:

- Proof of all insurance required by Section B below shall be provided in accordance with the provisions hereof;
- After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Bidders and Contractors shall deliver to OGS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.

2. Policy Forms. Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Attachment shall be written on an occurrence basis.

3. Certificates of Insurance/Notices. Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the Solicitation or award number and shall name **The New York State Office of General Services, Agency Procurement Office, 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242** as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: **Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.**

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. Primary Coverage. All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.

5. Breach for Lack of Proof of Coverage. The failure to comply with the requirements of this Attachment at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

7. Subcontractors. Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

8. Waiver of Subrogation. For all liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. Additional Insured. The Contractor shall cause to be included in each of the liability policies required below coverage for on-going work or operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 and form CA 20 48 10 13, or a form or

forms that provide the equivalent coverage): The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

10. *Excess/Umbrella Liability Policies.* Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

11. *Notice of Cancellation or Non-Renewal.* Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

12. *Policy Renewal/Expiration* Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OGS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.

13. *Deadlines for Providing Insurance Documents after Renewal or Upon Request.* As set forth herein, certain insurance documents must be provided to the OGS Agency Procurement Office contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For other requested documentation evidencing coverage: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall

extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	\$1,000,000 each occurrence	Upon notification of tentative award and updated in accordance with Contract
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
Data Breach and Privacy/Cyber Liability	\$2,000,000	
Crime Insurance	\$50,000	
Professional Error & Omissions	\$2,000,000	
Business Automobile Liability Insurance	\$1,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		

- 1. Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage.

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

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

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

- Premises liability arising from operations;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the Contract.

2. Crime Insurance (Employee Dishonesty): If performance under this Contract shall require work on State property, the Contractor shall maintain, during the term of the Contract, Crime Insurance on a “loss sustained form” or “loss discovered form,” and coverage must include the following:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor’s insurer as a result of the Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of this Contract.
- The policy shall include coverage for third party fidelity and name “The People of the State of New York, the New York State Office of General Services, and their officers, agents, and employees” as “Loss Payees” for all third party coverage secured. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

3. Data Breach and Privacy/Cyber Liability: Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor’s computer systems or the Authorized Users’ systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data.

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer’s property, including but not limited to money and securities.

If the policy is written on a claims made basis, the Contractor must submit to OGS an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

4. Professional Error & Omissions: If providing professional occupation job titles, the Contractor shall maintain Professional Liability insurance.

- Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services.

- Such insurance shall cover broad areas, including but not limited to: defamation, invasion of privacy, infringement of copyright, and plagiarism.
- If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OGS prior to the policy's expiration or cancellation.
- The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

5. Business Automobile Liability Insurance: Such insurance shall cover liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

6. Workers' Compensation Insurance and Disability Benefits Requirements

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof**

of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS. Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of notification of tentative award, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

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 Solicitation, 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.

RFP Appendix E
M/WBE and EEO Requirements

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

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("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 and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for 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, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
 - 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. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies 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. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 - Staffing

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS 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.

C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS 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 Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D.** Contractor shall comply with the provisions of the Human Rights Law and 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. Contract Goals

- A. OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR §§ 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women-Owned Business Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's 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. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, and the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.

- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed 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.

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly 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, 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.

VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.

4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **"Introduction to the System – Vendor training"** and **"Contract Compliance Reporting - Vendor Training"** to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on **"Account Lookup"** to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing **"Change Info."** It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through **"Request New User."** When identifying the person responsible, please add **"- MWBE Contact"** after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for **"Contact Us & Support"** then **"Technical Support"** on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS

MWBE Office, 29th Floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages provisions in clause IX below.

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- 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. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/mwbe/forms>

RFP Attachment 1

Cost Proposal

Request for Proposal (RFP) #2178 For Automobile Claims Administration

Cost Proposal Form

All Proposers must submit fixed amounts for each one-year term that is inclusive of all costs and expenses to be incurred in the performance of any contract resulting from this Solicitation.

Item A

ACA Services	Fixed Amount
First one (1) year term	\$
Second one (1) year term	\$
Third one (1) year term	\$
Fourth one (1) year term	\$
Fifth one (1) year term	\$

Grand Total five (5) year Cost Proposal, Item A = \$_____

Early payment discounts offered _____% / ____ days after receipt of proper invoice
_____% / ____ days after receipt of proper invoice

(Company Name)

Name: _____ By: _____
(Signature) (Print)

Title: _____ Date: _____

RFP Attachment 2

Proposal Submission Checklist

Attachment 2 - Proposal Submission Checklist

Section	Checklist Item	Check Box	Page # in Submission
Attachment 1	Cost Proposal Form - 3 Originals and 1 Copy	<input type="checkbox"/>	
Attachment 2	Proposal Submission Checklist	<input type="checkbox"/>	
3.2.1	Technical Proposal - 3 Originals and 3 Copies	<input type="checkbox"/>	
3.2.1.1	Cover Letter	<input type="checkbox"/>	
3.2.1.2	Minimum Proposer Qualifications – License and Experience	<input type="checkbox"/>	
3.2.1.3	Proposer's Experience and Qualifications – Firm Overview, Experience, and References	<input type="checkbox"/>	
3.2.1.4	Experience and Qualifications of Key Personnel	<input type="checkbox"/>	
3.2.1.5	Operational Work Plan and Methodology – Plan of Operations, Training, and Computer System	<input type="checkbox"/>	
3.2.3	Administrative Proposal – 3 Originals and 1 Copy		
Appendix B	Contractor Information Page	<input type="checkbox"/>	
Appendix B	Corporate Acknowledgement (must be notarized)	<input type="checkbox"/>	
Appendix B	Offerer's Affirmation of Understanding and Agreement with, pursuant to NYS Finance Law §139-j(3) and §139-j (6)(b)	<input type="checkbox"/>	
Appendix B	Offerer Disclosure of Prior Non-Responsibility Determinations	<input type="checkbox"/>	
Appendix B	Offerer's Certification of Compliance with State Finance Law §139-k(5)	<input type="checkbox"/>	

Appendix B	NYS Required Certifications – Nondiscrimination In Employment In Northern Ireland Macbride Fair Employment Principles, Non-Collusive Bidding Certification, Diesel Emission Reduction Act, Executive Order No. 177 Certification, State Finance Law § 139-I Certification, Small Business Certification	<input type="checkbox"/>	
Appendix B	ST-220 TD Taxation & Finance Contractor Certification (Submitted Directly to Taxation & Finance)	<input type="checkbox"/>	
Appendix B	ST-220-CA Taxation and Finance Covered Agency Certification	<input type="checkbox"/>	
Appendix B	EEO 100 – Equal Employment Opportunity Staffing Plan	<input type="checkbox"/>	
Appendix B	MWBE 100 – MWBE Utilization Plan	<input type="checkbox"/>	
Appendix B	Contract Consultant Forms A and B	<input type="checkbox"/>	
3.2.3	Signed bid addenda (if any)	<input type="checkbox"/>	
Appendix D	Insurance - Commercial General Liability Insurance, Workers' Compensation and Disability Insurance	<input type="checkbox"/>	
3.4	One Digital Record (Thumb Drive) containing technical, administrative and cost proposal	<input type="checkbox"/>	
6.11	Vendor Responsibility Questionnaire (can be found at https://www.osc.state.ny.us/vendrep/index.htm)	<input type="checkbox"/>	

I certify, with my signature below, that all required information listed above is completed and included in this bid submission.

Authorized Signature: _____

Date: _____

Print Name and Title: _____

Company represented: _____

Signee must be the same as on Corporate Acknowledgement Page