DIVISION OF FINANCIAL ADMINISTRATION

**ADDENDUM #1**

Invitation for Bid # 2234

Date: May 21st, 2019

Subject: Questions and Answer period

Title: Senator Hughes State Office Building Snow Removal

Bid Due Date: Friday, May 31st, 2019 @ 2:00 PM

**Address Bids to:**
Dan Schenkman
Division of Financial Administration
NYS Office of General Services
**32nd** Floor, Corning Tower
Empire State Plaza
Albany, New York 12242
**IFB# 2234**

**Site Visit Attendees (in alphabetical order):**

**Award Winning Landscapes**
**Ballard Construction, Inc.**
**Creative Yard Designs**
**Green Scapes, Inc.**
**Industry Standard USA**

## Questions & Answers:

1. Q: How many people work their way from Lot B-C-D-E into main building on an average day? (Let's go with Monday - Friday)

   A: There are 741 active permit holders. All employees are assigned parking in lots A, B, C, D, or E. They remain in their respective lots throughout the day.

2. Q: Is it safe to say that once most cars are parked say by 9:00AM Monday through Friday and it's still snowing, is contractor free to leave until end of day and come back to open up lanes and sidewalks at 4:30pm or are crews to be on site every day Monday - Friday 6AM - 6PM when it's snowing?

   A: Refer to Section 2.1 E - Snow Management Services and 2.3 - Period of Performance.

3. Q: Who is responsible for when snow/ice removal starts or stops at this facility?

   A: Please see Section 2.1 - Snow Management Services which states in part, “It will be the responsibility of the Contractor to monitor weather conditions, and respond as needed, for both snow removal and ice control.”.

4. Q: Does a snow contractor require special permits from City of Syracuse that was started last year on all pieces of equipment?

   A: This question should be directed to the city of Syracuse.

5. Q: What is a safe percentage of vehicle capacity expected on Lots B-C-D-E during Winter season. A.) 25% B.) 50% C.) 100%

   A: 100%.

6. Q: Would it be safe to say that Lot A & B appear to be zero tolerance? Stating that in a perfect world they would be plowed and salted by 6:00AM Monday through Friday but when it's snowing during the day all lanes in all lots (A,B,C,D,E) need to be continuously and repeatedly going through the motions plowing along with applying salt to keep it as safe as can be... When it's snowing it is nonstop plowing & salting between 6AM - 6PM.

   A: As per Section 2.3 - Period of Performance - For purposes of this solicitation, normal working hours are defined as Monday through Friday between the hours of 6:00 AM and 6:00 PM, except state observed holidays. During normal working hours, the Contractor must keep sidewalks, stairways, parking entrance ways, and parking travel lanes to a maximum snow depth of 2 inches, and clear of ice. Contractor shall perform complete snow plowing and snow removal between the hours of 6:00PM and 6:00 AM, Sunday evening through Friday morning. “A” lot access must be maintained 24/7 and all Holidays. This is a standing request for “A” Lot only.

7. Q: Do Lots C-D-E require salt as does Lot A & Lot B each time we plow?

   A: Refer to Section 2.1 I - Snow Management Services.

8. Q: Do sidewalks on outside of C-D-E require salt as sidewalks in A & B?

   A: Refer to Section 2.1 C - Snow Management Services.

9. Q: Appears like a lot of snow re-locating to back of Lot B - from A-B-C-D-E. Can additional snow re-locating and stacking be an additional cost any time to O.G.S. at any time?

   A: No, see Section 2.1 F - Snow Management Services.

10. Q: Does a State of Emergency or Blizzard Warning constitute to an additional charge over and above contract amount?

    A: No.

11. Q: Appears like a huge undertaking - is an equipment inspection for bidding contractors mandatory?

    A: No. Facility manager may direct contractor to provide any and all equipment needed, (as per contract requirements) if contractor is found to be using insufficient equipment for the task.

12. Q: In the event of a large storm and contractor was required to remove 100 yards of snow out of Lot B (which is only (5) IO-wheeler dump truck loads of snow) Who pays for the remainder of accumulated snow that may need to go, or does it get stacked under the bridge?

    A: Refer to Section 2.1 H - Snow Management Services. 100 cubic yards was an annual estimate used for bid purposes only.

13. Q: Mathematically on an average Winter of 120", approximately 3500 cubic yards gets removed from Lot A to back of Lot B - can an additional cost be passed on to O.G.S in an over above average snow fall of 120 inches.

    A: No. Refer to Section 2.1 F – Snow Management Services which states in part, "Snow removal from Lot A is not considered an additional service and shall be provided at no additional cost to the State.". Additionally, Section 2.2 – Operations Standards states, "There is no minimum or maximum amount of work guaranteed under this contract."

Reminder: Bids are due no later than May 31st, 2019 @ 2:00 PM

All other terms and conditions remain unchanged.

***If submitting a bid, this Addendum #1 for IFB# 2234 must contain an original signature, be dated, attached to, and made a part of your bid.**

Company Name_____

Address (include City, State, Zip)_____

Bidders Name (please print)_____

Title_____

Signature_____

Date_____

# INVITATION FOR BID (IFB) #2234

**SOLICITED BY THE**

**NEW YORK STATE OFFICE OF GENERAL SERVICES FOR**

## SNOW PLOWING, SNOW AND ICE REMOVAL, AND SALTING AT THE:

## SENATOR HUGHES STATE OFFICE BUILDING
## 333 EAST WASHINGTON STREET
## SYRACUSE, NY 13202

**ISSUE DATE: April 10, 2019**

**BID DUE DATE: May 31, 2019 at 2:00 pm**


**Designated Contact:**

Dan Schenkman

Voice: 518-474-4642

E-mail: Daniel.Schenkman@ogs.ny.gov

**Alternate Contact:**

Paige Corning

Voice: 518-474-8209

E-mail: Paige.Corning@ogs.ny.gov

**Alternate Contact:**

Erin Datri

Voice: 518-474-5981

E-Mail: Erin.Datri@ogs.ny.gov

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# 1. Introduction

## 1.1 Overview

The State of New York, Office of General Services (OGS) owns and operates approximately 17 million square feet of office space. To assist in their daily operations, OGS contracts with firms to provide various services.

It is the intent of this specification to provide for snow plowing, salting, and snow/ice removal services at:

**Senator Hughes State Office Building**
**333 East Washington Street**
**Syracuse, NY 13202**

## 1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Dan Schenkman, 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, voice or fax for all inquiries regarding this solicitation.

Dan Schenkman, Contract Management Specialist 1
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, NY 12242
Voice: 1-518-474-4642
Email: Daniel.Schenkman@ogs.ny.gov

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

Paige Corning, Contract Management Specialist 2
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, NY 12242
Voice: 1-518-474-8209
Email: Paige.Corning@ogs.ny.gov

Erin Datri, Contract Management Specialist 3
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Email: Erin.Datri@ogs.ny.gov

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

Lori Brodhead, Compliance Specialist 1
NYS Office of General Services
MWBE and Community Relations
Corning Tower, 29th Floor, ESP
Albany, NY 12242
Voice: (518) 486-6866
Email: Lori.Brodhead@ogs.ny.gov

For inquires 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
Albany, New York 12242
Voice: 1-518-474-2015
Email: Anthony.Tomaselli@ogs.ny.gov

## 1.3 Key Events

The Table below outlines the schedule for important action dates.

| Action | Date | Time |
|---|---|---|
| **OGS Issues Invitation For Bid (IFB)** | **April 10, 2019** | |
| **Mandatory Site Visit** | **May 1, 2019** | **10:00 am** |
| **Deadline for Submission of Bidder Questions** | **May 10, 2019** | **2:00 pm** |
| **OGS Issues Responses to Written Questions (estimated)** | **May 21, 2019** | |
| **Bid Due Date/ Bid Opening Date** | **May 31, 2019** | **2:00 pm** |
| **Contract Start Date** | **October 1, 2019** | |

## 1.4 Minimum Bidder Qualifications

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

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

The following minimum qualifications must be met by each bidder:

A. The Bidder shall have a **minimum of three years previous experience** and possess the manpower, equipment and financial resources, to perform the type, magnitude, and quality of work specified.

B. Location of the Bidder's office/facility that will serve this contract shall be located in proximity, such that the Bidder can respond on-site within one hour if needed or requested by the Facility Manager.

**The State of New York retains the right to request any additional information pertaining to the Contractor's ability, qualifications, and procedures used to accomplish all work under this contract, as it deems necessary to ensure safe and satisfactory work.**

## 1.5 Mandatory Site Visit

Bidders intending to submit a bid will be required to attend a mandatory site visit, which will include a tour of the grounds on the date and time indicated in Section 1.3 Key Events above. This is the only date and time available for inspection. Alternate dates for additional site inspections **will not** be available. Attendees will be required to sign in and provide basic company and contact information. This information will be used to verify attendance and to communicate any changes to the solicitation (addenda). Therefore, it is imperative that the provided information be legible and accurate. Failure to attend the mandatory site visit will result in rejection of the bid. **The facilitator of the event will publicly announce the official start time of the site visit, which announcement shall be made no sooner than the time stated in Section 1.3 of Key Events above. Prospective bidders arriving after the official start time of the site visit will be precluded from attending the site visit, and therefore unable to submit a responsive bid.**

The site visit will be held at the Senator Hughes State Office Building, 333 East Washington Street, Syracuse, NY 13202. Due to security restrictions, all Bidders are encouraged to pre-register with Dan Schenkman, Contract Management Specialist 1 at (518) 474-4642. You can also send an e-mail to Daniel.Schenkman@ogs.ny.gov at least 24 hours in advance. It is recommended that attendees arrive at the building at least thirty minutes prior to scheduled time with photo identification.

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

The site visit will provide an opportunity for Bidders to see the grounds first-hand, the tasks to be performed and the special needs of the facility. Questions during the site visit will be permitted. It is suggested that the Bidder note the question and ask at the end of the tour.

Verbal answers are not official answers. All questions asked at the conference or after the tour must be submitted via email to the designated contact for this solicitation no later than the date and time indicated in Section 1.3 Key Events. Official answers to all questions will be distributed in the form of an addendum via email to all attendees of the mandatory site visit. Only answers provided by addendum are considered official.

**NOTE**: If there are any questions Bidders would like addressed at the site visit, Bidders should submit them in writing as instructed in Section 3.1 – IFB Questions and Clarifications, to the designated contact prior to the date of the site visit. Questions during the site visit will be permitted, however, only questions submitted in writing and answered via addendum will be considered official.

## 1.6 Glossary of Terms

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

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

“Invitation for Bid” or “IFB” shall mean this document.

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

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

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

# 2. Scope of Work

## 2.1 Snow Management Services

The purpose of this Invitation for Bid is to provide for the safe and orderly access to and from this facility for parking, pedestrian areas, and walkways. The contractor shall provide all necessary equipment and materials (including shovels, ice picks, plows, backhoe, dump trucks, front-end loader, snow blowers, salt, calcium chloride, etc.) for the capability of removing all accumulation of snow and ice from the areas described in a timely and efficient manner. Contractor shall coordinate snow and ice removal with the Facility Manager. It will be the responsibility of the Contractor to monitor weather conditions, and respond as needed, for both snow removal and ice control. However, in all cases Facility Manager/OGS will have the option, though not the obligation, to authorize any activity to commence the requirements for snow and ice removal to ensure the Senator Hughes State Office Building is safe for employees and the general public. There are five parking areas associated with the Senator Hughes State Office Building with approximately 324,162 square feet of parking lots and 55,278 square feet of pedestrian areas.

This contract shall include, but not be limited to the following services: snow and ice removal, snow shoveling, snow blowing, snowplowing, and salting when required, of all parking areas, parking lot entrances, sidewalks, or any pedestrian areas designated by the Facility Manager and under OGS jurisdiction. Contractor shall provide the services for each snow/ice event unless otherwise directed by the Facility Manager. Snow accumulation on the stairs must not exceed ½ inch and no accumulation of ice is acceptable. The contractor is expected to make every effort to keep the stairs clear at all times. The Contractor shall provide services/surface treatments as often as necessary to mitigate snow and/or ice accumulations. It is expected that snow accumulations for all areas other than stairs shall not exceed two inches at any time. No amount of ice accumulation is acceptable. Contractor shall take preventative measures to avoid ice build-up and shall take appropriate action to remove ice should it build-up on any vehicular and/or pedestrian surfaces mentioned herein.

A. Prior to the beginning of the season, Contractor shall flag all outdoor equipment, including (but not limited to) utility meters, valves, pumps, outdoor building equipment, transformers, generators, fire hydrants, curbs, etc. Method and means of marking shall be identified and agreed to by the Contractor and the Facility Manager.

B. It is understood that the Contractor may have to return to keep clear all lots and pedestrian areas affected by the plowing of overhead highways and access ramps.

C. Sidewalks must be cleared when snow accumulates two inches or more, returning until the final accumulation is cleared. Calcium chloride shall be applied to concrete sidewalks when there are melting ice conditions to prevent build up and to prevent the onset of black ice. When ice has begun to melt, ice is to then be manually chipped from all sidewalks. Calcium chloride is then to be re-applied to these areas.

D. There is no on-site storage for any de-icing/salting materials.

E. Contractor shall return as needed during each snow/ice event to plow blowing, drifting and residual falling snow. For purposes of the intended contract resulting from this solicitation, the term “snow/ice event” shall be the occurrence of falling or drifting snow and/or ice and the occurrence of subsequent ice formation as a result of falling or drifting snow and/or ice.

F. The Facility Manager shall designate area(s) to be used for snow piles and/or snow storage, prior to removal. Snow piles/banks shall not be placed in such a manner as to block the view from a standard vehicle or block any parking space(s). All snow accumulation in Lot A shall be removed and relocated to one or more of the other lots as predetermined by the Facility Manager. Snow removal from Lot A is not considered an additional service and shall be provided at no additional cost to the State. Lot A is located between the Senator Hughes State Office building and Water Street and flanked by Market Street and S State Street. It is not anticipated that offsite snow removal will be required from the remaining lots, however Contractor may be requested to do so by the Facility Manager and in such case the Contractor will be compensated as an Additional Service.

G. Snow will be pushed as far away from designated parking lanes and areas as possible. Contractor shall possess loaders of sufficient size to stack snow up to 10 feet high in storage areas.

H. In the event that the accumulation of plowed snow causes or can cause a hazardous or unsightly area on Facility premises, Facility Manager can request, at an additional cost, that the excess snow or ice be removed from the premises. When and only when requested by the Facility Manager, Contractor shall remove accumulated snow and dispose of to an off-site location of the Contractor's choice. Contractor's chosen off-site disposal location shall be in accordance with all applicable laws, rules, and regulations governing such disposal. The method of snow removal shall be agreed upon by the Facility Manager and Contractor. This shall be billable in accordance with the actual quantities removed times the unit price per cubic yard bid. Contractor's unit price bid amount includes all labor, equipment, and all appurtenant costs including but not limited to; permit fees, loading, hauling, disposal fees, etc. The contractor will provide the Facility Manager with a ticket signed by the truck driver for each load. The ticket will include the Driver's printed name, truck license plate number, number of cubic yards per load, date and time of removal. At the end of every shift the work tickets shall be turned over to the Facility Manager or security staff on duty. If there is a dispute as to the number of cubic yards removed, the determination of the Facility Manager shall prevail. Also, it is the contractor's responsibility to dispose of such materials (snow/ice) in an environmentally safe fashion, adhering to all laws, codes and regulations.

I. After the plowing/removal of snow and/or ice, rock salt (Halite Rock Salt or approved equal) shall be effectively applied to all parking areas, parking lots, and driveways with the intent to prevent the build-up of ice and thereby reduce the risk of pedestrian slipping and falling. Only non-corrosive treatments such as potassium chloride (Mag Ice Melt or approved equal) shall be approved by OGS for use on building entrance steps/stairways, sidewalks, brick paved areas and all surfaces adjacent to and within 25 feet leading up to building entrances. Contractor shall supply all materials, including potassium chloride and rock salt as needed. All such materials shall only be used after receiving approval from the Facility Manager. Calcium chloride shall be applied and re-applied to paved areas as necessary or as determined by the Facility Manager/OGS during icy conditions.

J. The contractor shall be responsible to sign in and out of the Facility during normal business hours. For dates and times other than normal business hours, contractor or their employees shall sign in and out with building security.

K. Contractor shall be liable for any repairs to the site caused by any snow or ice removal services, including but not limited to, lawn and landscaped areas, parking facilities and/or pedestrian areas. Such repairs shall be completed and approved by the facility manager prior to submission of the season's final invoice (see section 4.7).

L. New York State realizes the potential exists that prior to November 1st and after April 30th there may be a snow/ice event that will require the contractor's services, the contractor shall provide all services to mitigate the snow/ice according to contracts specifications at no additional cost to the State.

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

N. All on site services shall be coordinated between the Contractor and the Facility Manager. The Facility Manager will have the final determination regarding an issue pertaining to the services contained in this solicitation.

## 2.2 Operations Standards

The contractor agrees to provide all necessary equipment and services as required to comply with all the requirements of this bid and further, agrees to perform all the duties in accordance with the standards and qualifications outlined in this solicitation.

All on site services shall be coordinated between the Contractor and the Facility Manager. The Facility Manager will have the final determination regarding an issue pertaining to the services contained in this solicitation.

There is no minimum or maximum guaranteed amount of work from this solicitation.

Bidder shall be advised that the Contractor will be responsible for providing all resources necessary for the safe and efficient execution of this contract.

All services shall be subject to inspection by the State of New York at any time.

## 2.3 Period of Performance

For purposes of this solicitation, normal working hours are defined as Monday through Friday between the hours of 6:00 AM and 6:00 PM, except state observed holidays. During normal working hours, the Contractor must keep sidewalks, stairways, parking entrance ways, and parking travel lanes to a maximum snow depth of 2 inches, and clear of ice. Contractor shall also be careful so as not to block in parked vehicles. Contractor shall perform complete snow plowing and snow removal between the hours of 6:00 PM and 6:00 AM, Sunday evening through Friday morning. "A" lot access must be maintained 24/7 and all Holidays. This is a standing request for "A" Lot only.

Contractor shall train, guide, and supervise staff to minimize property damage during operations. Facility Manager can direct the Contractor and the Contractor agrees to immediately repair any damage resulting from the Contractor's operations. All other repair of damaged areas shall be corrected to the Facility Manager's satisfaction between April 1st and June 1st. The restoration of seeded and landscaped areas may require further attention beyond June 1st. The Contractor shall make every effort to fully restore these areas as soon as possible and maintain areas until full establishment of turf.

Bidder shall be available for service 24 hours, 7 days a week from the beginning to the end of each snowfall season during the 5-year term of the contract resulting from this solicitation.

## 2.4 Staffing Expectations

The Real Property Management and Facilities Group expect that all services will be conducted diligently and effectively under the supervision of OGS staff. Further, it is expected that:

A. Contractors staff assigned any work shall conduct themselves in a professional manner with OGS staff and with the General Public.

B. All contractor staff shall comply with all rules and requirements of this solicitation, including prohibiting the use of drugs and alcohol prior to or during any work performed under this contract.

C. All personnel provided, shall have adequate experience for the function(s) being performed. If OGS determines that the personnel provided are not of adequate experience, then OGS has the right to request, and the contractor shall provide satisfactory substitute personnel.

D. Contractors staff assigned for any work are considered employees of that contractor, and as such are not State employees and not eligible for any NYS benefits

E. The contractor shall sign in and out of the Facility when performing services. The Format of the sign in/out form will be determined prior to the commencement of the contract by the Facility Manager.

F. Failure to comply with any of the requirements of this solicitation may result in the removal from the premises

## 2.5 Prevailing Wage Rate Advisory Notice

**DOL Article 9 -** Prevailing Rate Case Number PRC# 2018901265 has been assigned to the project.

To view the PDF file of your wage schedule, Article 9, click on https://applications.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1468165

**The NYS Department of Labor has determined that the prevailing wage title applicable to this contract is for Janitor.**

Contractors are reminded that the payment of prevailing wages and supplements is a requirement of ALL contracts for public works. Information indicating that prevailing wages are not being paid on a public works project will be forwarded to the New York State Department of Labor for investigation. Willful violations of the prevailing wage provisions of the Labor Law may result in debarment from the bidding and award of public contracts. NOTE: ALL PUBLIC WORKS CONTRACTS, REGARDLESS OF DOLLAR VALUE, REQUIRE THE PAYMENT OF PREVAILING WAGES AND SUPPLEMENTS.

Contractors are required to supply each of their subcontractors with copies of the prevailing rate schedule and to obtain an affidavit acknowledging receipt and agreeing to pay required wages before entering into a subcontract. Contractors are responsible for assuring that their subcontractors pay prevailing wages and supplements. NOTE: CONTRACTORS ARE FURTHER REQUIRED TO POST THE PREVAILING WAGE RATES AT THE WORK SITE ON BULLETIN BOARDS PROVIDED BY THE FACILITY MANAGER AND INFORM EMPLOYEES OF THE POSTING. FACILITY MANAGERS WILL ENFORCE THIS PROVISION.

Contractors are advised that the Office of General Services may make random inquiries of employees of both prime and subcontractors as to the rate of wages being paid and may request certified copies of one or more weekly payrolls of a contractor or any subcontractor to verify proper payment of wages. Any discrepancy found in information supplied will be reported to the Department of Labor for investigation.

## 2.6 OSHA (Occupational Safety & Health Administration) Training Requirements

### 2.6.1 OGS Facility Manager's Obligations

Prior to beginning contract work/work assignment, the OGS Facility Manager or Designee shall inform or make available the Contractor/Contractor's representative(s) of the known specific hazard(s) and chemical(s) they may encounter while performing their contract obligations. For example; testing of materials may be performed or previous reports may be available to inform on the location of Asbestos Containing Materials, lead or other environmental concerns if present, and any site-specific work practices that may be necessary to conduct work safely and in compliance with federal or state standards and OGS procedures such as those involving Lockout/Tagout and electrical procedures.

The Contractor/Contractor's Representative(s) shall also be provided with information about the use and provisions for Personal Protective Equipment required for the work. **Contractor/Contractor's Representative shall provide a signed acknowledgement to the OGS Facility Manager or OGS Designee that they were provided with this information.**

### 2.6.2 Contractor / Contract Employee Obligations

A. General Contract Obligations:

These requirements only apply to on-site work at a State property.

Prior to or upon first reporting to the work location for assignment, the Contractor/Contractor employee(s) and employees of Sub-Contractors must present to the OGS Facility Manager or OGS Designee proof of completion of the OSHA required training for the following, topic areas including but not limited to:

1) Hazard Communication,

2) Personal Protective Equipment.

For environmental health and safety emergencies, an emergency contact must be provided for the facility manager or designee to contact prior to any work commencing. Any changes to this contact, including name and or contact information must be communicated to the OGS Designee immediately.

B. Specific Field-of-Work Requirements:

In circumstances where specific OSHA or NYS Department of Labor regulated work is required, the Contractor/Contract Employee(s) shall have all pertinent and up-to-date certifications beyond

the “awareness” level as required by regulations for the specific work. Onsite employee will be trained to do the work, supervised by higher knowledge/training,

It is the Contractor’s responsibility to provide the OGS Facility Manager or OGS Designee with all employee updates and/or renewals for the above general contract obligations and specific field of work requirements specified training.

The Contractor must coordinate with OGS to be informed of the site’s Emergency Action Plan.

**Note:** Contractor’s/Contractor’s Employee(s) and employees of Sub-Contractors failure to provide such documentation to the OGS Facility Manager or OGS Designee upon or prior to employee reporting to their initial work assignment may result in OGS rejecting the employee(s) until that documentation is provided.

## 2.7 Security Procedures

Please note locations may have security policies which must be followed. The Contractor will work with the OGS Facilities Managers Office to obtain necessary clearances. Contractor may be required to provide information such as, but not limited to, the company name, the employee’s name (as it appears on ID), valid driver license number, vehicle make, model and license plate, etc. to the OGS Facility Managers Office.

## 2.8 Administrative and Reporting Requirements

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

It is expected that the contractor shall maintain accurate records and accounts of the services rendered regarding any event; such as date of event, description of work performed, materials and equipment used, etc. and also shall be responsible for all payroll functions in connection with this bid. Such records shall be made available to OGS upon request.

The Contractor shall maintain a designated officer or employee as its representative for contact with the Facility Manager for all communications and transactions. The designated officer or employee must be available24/7 for the designated snow season.

Upon award of the contract and prior to the start of any work, the Contractor, shall be available for an initial job meeting with the Facility Manager at a location determined by the Facility Manager. This meeting shall include:

1. The Contractor's submission of a schedule of work to be reviewed and approved by the Facility Manager.
2. A review of all Facility use rules.
3. An introduction for each respective organization, chain of command, etc.

Unless otherwise directed, there shall be periodic job meetings for the following purposes:

1. Review quality of work.
2. Identify and resolve problems.
3. Coordinate the efforts of all concerned.
4. Maintain a sound working relationship between the Contractor and the Facility Manager, and a mutual understanding of the contract.
5. Maintain sound working procedures.

# 3. Bid Submission

## 3.1 IFB Questions and Clarifications

Questions and requests for clarification regarding this IFB# 2234 shall only be directed to:

Dan Schenkman, Contract Management Specialist 1
OGS Division of Financial Administration
Corning Tower, 32nd Floor, ESP
Albany, NY 12242
Phone: 1-518-474-4642
E-mail: daniel.schenkman@ogs.ny.gov

All questions must cite the particular page, section, and paragraph number, where applicable. Please submit questions as early as possible following receipt of the IFB. The final deadline for submission of any questions/clarifications regarding this IFB 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 to Questions via email on or about the date listed in Section 1.3 – Key Events, to the Primary Contact Person for all vendors that have attended the mandatory site visit.

## 3.2 Bid Format and Content

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

Bidders may be requested to provide clarification based on the State's evaluation procedure. Any clarification will be considered a formal part of the Bidder's original proposal. If further clarification is needed during the evaluation period, OGS will contact the Bidder.

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

1. **Cover Letter**. The cover letter should confirm the bidder understands all the terms and conditions contained in this IFB and will comply with all the provisions of this IFB. Further, that should the contract be awarded to your company, you would be prepared to begin services on the date indicated in Section 1.3 - Key Events. The cover letter should also include the full contact information of the Bidder's Representative that OGS shall contact regarding the bid. A bidder 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 and address of each proposed subcontractor.
2. **Minimum Qualifications:** Bidders must submit information to confirm their ability to meet the minimum qualifications to provide the services requested in this IFB# 2234 as set forth in Section 1.4 – Minimum Bidder Qualifications.
3. **Pricing**. Bidders shall submit a completed Bid Proposal Form (Attachment 1). Each item must be complete with no lines omitted. Bidder 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 bid.
4. **Administrative Submission:**
    - All other required completed forms from IFB Appendix B.
    - **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 )

- Signed bid addenda (if any)
- Important Notes:
  - Insurance – Bidders are reminded of the insurance requirements as described in Appendix D. The selected Bidder will be required to provide all necessary documentation upon notification of selection.
  - Vendor Responsibility - Bidders are reminded of the requirements as described in Section 5.13 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 VRQ was recertified in the last 6 months.
  - Document Consistency - An award will only be made to the entity that has submitted the bid. All submitted documents must be consistent with the official name of the bidding entity, FEIN and NYS Vendor ID number.

## 3.3 Bid Preparation

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

## 3.4 Packaging of IFB Response

Please submit:

- Three originals and one exact copy of the Bid Proposal Form (Attachment 1)
- Three originals and one exact copy of: Cover Letter and Minimum Qualifications information
- Three originals and one exact copy of the Administrative Submission

**Please provide one digital record (CD or Thumb Drive) containing the above submission items**. If there are any differences between the paper submission 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 bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- Bidder's complete name and address
- Solicitation Number: IFB #2234
- Bid Due Date and Time: (as in Section 1.3 - Key Events)
- Bid for: Snow Plowing, Snow/Ice Removal, and Salting at Senator Hughes Building

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

## 3.5 Instructions for Bid Submission

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

Only those Bidders 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: Dan Schenkman
Bid #2234

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

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a bid or for any work performed prior to the formal execution 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. Bidders assume all risks for timely, properly submitted deliveries. Bidders mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time.

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 90 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 day period until either tentative award of the contract(s) by issuing Office is made or withdrawal of the bid in writing by Bidder. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing Office to the successful Bidder. This IFB remains the property of the State at all times, and all responses to this IFB, once delivered, become the property of the State.

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

Building Access procedures are in effect at the Corning Tower. Photo identification is required. All visitors must register for building access, for delivering bids. **Vendors are encouraged to pre-register by contacting the OGS Finance Office at 518-474-5981 at least 24 hours prior to 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://www.ogs.ny.gov/BU/BA/Parking/Visitor

## 3.6 Examination of Contract Documents

1. Each Bidder 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.
2. Each Bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the State as an excuse for any failure or omission on the part of the Bidder to fulfill every detail of all the requirements of the documents governing the work. The Bidder, if awarded the contract, will not be allowed any extra

compensation by reason of any matter or thing concerning which such bidder might have fully informed itself prior to bidding.

3. Any Bidder in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit to Dan Schenkman, Division of Financial Administration, 32nd Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242 e-mail: Daniel.Schenkman@ogs.ny.gov a written request for an interpretation thereof. If a major change is involved to which all bidders must be informed, such request for interpretation shall be delivered, in writing, no later than question due date listed in **Section 1.3- Key Events.** Any interpretation of the proposed documents will be made only by an addendum duly issued. A copy of such addendum will be e-mailed to bidder who have registered Intent to Submit a Bid.
4. Any addendum issued prior to the bid due date must be acknowledged by signature, dated and be submitted as part of the Administrative Proposal. In awarding a contract, any addenda will become a part thereof.
5. Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services at the time of examination of the documents, pre-bid conference, or site visit shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, to all Bidders shall become a part of the contract.

# 4. Administrative Information

## 4.1 Issuing Office

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

## 4.2 Method of Award

OGS intends to award one contract to the lowest responsive and responsible bidder. The lowest bidder shall be determined by the grand total base bid as represented on the bid form. An estimated number of cubic yards per snow season will be used for evaluation purposes only.

Upon determination of the lowest responsive and responsible bid, a contract will be delivered to the successful bidder for signature and shall be returned to the issuing office for all necessary State approvals. Upon final approval, a completely executed contract will be delivered to the contractor.

**The Grand Total bid amount of the successful bidder shall be used to establish the contract value. The established contract value shall not be exceeded.**

## 4.3 Price

The Prices bid shall be inclusive of all costs including travel, licenses, insurance, administrative, profit and other ancillary costs. Bidders must submit pricing using the Bid Form (Attachment 1) contained in this document. Bidders must provide pricing for all items on the Bid Form. Any exceptions, ranges, qualifiers, or alterations to the Bid Form will result in rejection of the bid.

OGS recognizes that although records exist for seasonal snow fall amounts in a given area, there are multiple variables which make it extremely difficult, if not impossible to precisely bid snow plowing/removal services. As such, OGS has attempted to reduce each bidder's risk and in turn, the State's financial liability by subdividing the total bid into two major categories, Base Bid and Off-Site Snow Removal/ Disposal. These bid items are articulated as follows and on the subsequent Bid Forms.

A. Base Bid - Base bid services are to be provided as needed year-round and will be compensated monthly during the six months that constitute the traditional snowfall season, November, December, January, February, March, and April. The Yearly bid amount for each lot will represent the lump sum amount that will be paid per year in six even monthly installments starting in November and ending in April regardless of the amount or duration of snow/ice events.

   Bidders must submit a bid amount for each year and lot with the Grand Total Bid being the combined total for all five years. Any exclusions will result in bid rejection. Bid amounts will include all required labor materials and equipment, including but not limited to snow and ice removal, snow shoveling, snow blowing, snowplowing, and salting.

B. Off-Site Snow Removal – Off-Site Snow Removal by the cubic yard is estimated at 100 cubic yards annually. The number of cubic yards listed is used for bid comparison purposes only. Payments will be based upon the amount bid per cubic yard times the actual number of cubic yards removed, if any. Only when requested by the Facility Manager, Contractor shall remove accumulated snow and dispose to an off-site location of the Contractor's choice. Contractor's chosen off-site disposal location shall be in accordance with all applicable laws, rules, and regulations governing such disposal. The method of snow removal shall be agreed upon by the Facility Manager and the Contractor shall be billable in accordance with the actual quantities removed times the unit price per cubic yard bid.

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

## 4.4 Early Payment Discount

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 Bid

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.

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

## 4.5 Term of Contract

This contract will commence on 10/01/2019 and will be in effect for five years through 9/30/2024.

## 4.6 Method of Payment

Invoices for payment shall be submitted at the end of each month, November through April, on a **company invoice** for services satisfactorily completed during that month. ***The final invoice for each snowfall season shall not be submitted and will not be paid until all end of season repairs are completed and approved by the Facility Manager.***

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 the dollar 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 must be submitted for payment to:**

**Office of General Services**
**C/O BSC / Accounts Payable -or- accountspayable@ogs.ny.gov**
**1220 WASHINGTON AVE., BLDG. 5, 5TH FL**
**ALBANY, NEW YORK 12226**

***NOTE:*** **A copy of the invoice and reports must be forwarded to the Regional Director for the Real Property Management, Senator Hughes State Office Building, 333 East Washington Street, Syracuse, NY 13202.**

## 4.7 Electronic Payment

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

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

## 4.8 Past Practice

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

## 4.9 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 Key Events (Section 1.3). The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either with the 'Answers to Questions' as identified in Key Events (if the response results in a change to the IFB), or directly to the requesting vendor.

## 4.10 Dispute Resolution

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

During the term of the contract, if either party notifies the other of a dispute or dissatisfaction, the other party will make a good faith effort to solve or settle dispute amicably, including meeting with the other party to diligently attempt to reach a satisfactory result. In the event of a dispute, the parties will continue to fulfill their obligations hereunder during the dispute resolution process. The parties agree to proceed in good faith to avoid disputes and resolve disputes that cannot be avoided at the lowest level possible. If party representatives are unable to resolve the dispute or reach a satisfactory result within twenty days of written notice of a dispute, the dispute will be referred to successive higher levels of each organization for final decision.

## 4.11 Inspection of Books

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

## 4.12 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, a singular word shall include the plural 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 IFB, refer to this IFB.

## 4.13 Prime Contractor Responsibilities

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor regarding 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. Please also see Section 5.7 – Subcontractors.

# 5. Contract Clauses and Requirements

## 5.1 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.

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

1. Appendix A
2. Contract Service Agreement (Appendix C)
3. OGS Invitation for Bid #2234 (this document) with any addendum(a)
4. Selected Contractor's Bid

## 5.2 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 3.1. 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/

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

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid

submission). Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

## 5.4 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/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 BID/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 BID/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.

## 5.5 General Requirements

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

specifications are not being met, OGS may terminate the contract and employ another Contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.

- STOP WORK ORDER – OGS reserves the right to stop the work covered by this IFB 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 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.
- OGS reserves the right to reject and bar from the facility any employee hired by the Contractor.

## 5.6 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 IFB, and will be binding upon the parties to such contract.

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

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

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

## 5.7 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, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed. The total of all Subcontractor work during the term of the Contract, exclusive of M/WBE or SDVOB subcontracted work as established in the approved utilization plan, shall not exceed 10% of the total contract value.

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

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

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

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the Assistant to the Director of OGS Real Property Management Group or their designee, Governor Nelson A. Rockefeller Empire State Plaza, 39th Floor, Albany, New York 12242, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in

the work of this contract. The Contractor shall promptly furnish such information as the Assistant to the Director may require concerning the proposed subcontractor's ability and qualifications.

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

1. The Contractor shall procure goods and services using commercially reasonable and prudent practices to obtain the most favorable price and terms. The Contractor will make his/her best efforts and shall document same to obtain written proposals or bids from at least three responsible service providers before selecting the best price and terms. Prior OGS approval is required for all Additional Services. The following conditions apply to competitive bidding for subcontracted additional services:

    a) Each bid will be solicited in a form and manner conducive to uniformity in all bids. The Contractor will maintain documentation of the solicitation and results.

    b) If the Contractor desires to accept other than the lowest bidder, or where competitive bids are not possible, adequate justification must be provided to the State for required prior approval.

    c) The OGS shall be free to accept or reject any proposal/subcontract submitted for State's approval, and Contractor shall provide OGS with copies of all documentation OGS may request in relation to such approval rights.

## 5.8 Procurement Rights

The State of New York reserves the right to:

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

2. Disqualify a Bidder from receiving the award if the Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.

3. Correct Bidder's mathematical errors and waive or modify other minor irregularities in bids received, after prior notification to the Bidder.

4. Adjust any Bidder's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Bidder will cause the State to incur additional costs.

5. Utilize any and all ideas submitted in the bids received.

6. Negotiate with Bidders 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 Bidders.

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 bids.

14. Disqualify any bidder whose conduct and/or bid fails to conform to the requirements of the IFB.

15. Prior to the bid opening, amend the IFB 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 Bidder in the preparation and production of a bid or for any work performed prior to the issuance of a contract.

## 5.9 Extent of Services

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

## 5.10 Right to Know

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

## 5.11 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.

## 5.12 Termination

A) Termination

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

In addition, OGS may also terminate any contract resulting from this IFB upon ten 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 IFB, or any unit portion thereof, with or without cause, by giving 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 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.

## 5.13 NYS Standard Vendor Responsibility Questionnaire

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

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

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

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

The Bidder agrees that if it is awarded a Contract the following shall apply:

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

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

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

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

## 5.14 Ethics Compliance

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

## 5.15 New York State Vendor File Registration

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York. If Bidder is already registered in the New York State Vendor File, list the ten-digit vendor ID number on the Contractor Information page included in Appendix B of this solicitation.

If the Bidder is not currently registered in the Vendor File and is recommended for award, OGS shall request completion of OSC Substitute W-9 Form. A fillable form with instructions can be found at the link below. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. For more information on the vendor file please visit the following website: www.osc.state.ny.us/vendors/index.htm

Form to be completed: www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf

## 5.16 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 its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed.

## 5.17 Force Majeure

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

## 5.18 Encouraging use of New York State Businesses in Contract Performance

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

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

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

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

## 5.19 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.

## 5.20 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.

## 5.21 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 collect such reimbursement from any outstanding payments due to the contractor.

## 5.22 Sexual Harassment Prevention

Pursuant to N.Y. State Finance Law § 139-l, 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-l, 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, which Bidder must submit with its bid.

# APPENDIX A

# STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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## STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION**. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION**. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information 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 2234

## 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-l 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

## Contractor Information

Solicitation Number **2234**

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 | **2234** 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 |
| ***If yes, please answer questions 2-4 before proceeding to question 5. If no, please go to question 5.*** | | |
| 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:<br><br>*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.* | | | |
|---|---|---|---|
| | | | |
| 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.

# NYS REQUIRED CERTIFICATIONS

## Nondiscrimination In Employment In Northern Ireland
## Macbride Fair Employment Principles

In accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either (answer yes or no to one or both of the following, as applicable):

1. have business operations in Northern Ireland ☐ 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

## Non-Collusive Bidding Certification

In accordance with Section 139-d of the State Finance Law, by submitting its bid each bidder and each person signing on behalf of any other bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

In the event that the Bidder is unable to certify as stated above, the Bidder shall provide a signed statement which sets forth in detail the reasons why the Bidder is unable to furnish the certificate as required in accordance with State Finance Law § 139-d(1)(b).

## Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the "Law") it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations

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-l 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)

Department of Taxation and Finance

# 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 ☐ No ☐ Unknown at this time ☐

## 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.

| A<br>Relationship to contractor | B<br>Name | C<br>Address | D<br>Federal ID number | E<br>Sales tax ID number | F<br>Registration in progress |
|---|---|---|---|---|---|
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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. _____

New York State Department of Taxation and Finance

# Contractor Certification to Covered Agency

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

**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*<br>*Contract number or description* |
| Contractor's principal place of business | City | State | ZIP code | |
| Contractor's mailing address *(if different than above)* | | | | *Estimated contract value over the full term of contract (but not including renewals)*<br>$ |
| 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:

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

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

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

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

## Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20__ , before me personally appeared _____ ,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____; and further that:

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

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

☐ (If a corporation): _he is the _____

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

☐ (If a partnership): _he is 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.

NEW YORK STATE OF OPPORTUNITY. 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.

NEW YORK STATE OF OPPORTUNITY. Office of General Services | Office of Minority and Women-Owned Businesses & Community Relations

# 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.:** 2234 | **Reporting Entity:** ☐ Contractor ☐ Subcontractor | Report includes Contractor's<br>☐ Contractor's work force to be utilized on this contract<br>☐ Contractor's total work force<br>☐ Subcontractor's work force to be utilized on this contract<br>☐ Subcontractor's total work force |
|---|---|---|
| **Contractor/Subcontractor's Name:** | | |
| **Contractor/Subcontractor's Address:**<br><br>**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) | White (F) | Black (M) | Black (F) | Hispanic (M) | Hispanic (F) | Asian (M) | Asian (F) | American Indian or Alaskan Native (M) | American Indian or Alaskan Native (F) | Veteran (M) | Veteran (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.:**<br>**EMAIL ADDRESS:** | **DATE:** |
|---|---|---|
| **NAME AND TITLE OF PREPARER (Print or Type):** | | |

NEW YORK STATE OF OPPORTUNITY. 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.

NEW YORK STATE OF OPPORTUNITY. 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 # **2234**

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: ☐ MBE ☐ 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: ☐ MBE ☐ 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: | | ☐ Accepted | ☐ Accepted as Noted | ☐ 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/VendorSearchPublic.asp?TN=ny&XID=2528

*Note: All listed Subcontractors/Suppliers will be contacted and verified by OGS.*

# ADDITIONAL SHEET

| Bidder/Contractor Name: | Contract/Solicitation # **2234** |
|---|---|

| | | |
|---|---|---|
| MWBE Subcontractor/Supplier Name: | MWBE Certification: ☐ MBE ☐ 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: ☐ MBE ☐ 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: ☐ MBE ☐ 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: ☐ MBE ☐ 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: ☐ MBE ☐ 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 _____% | | |

# Appendix C

# Sample Contract

# Solicitation No. 2234

SAMPLE

# STATE OF NEW YORK
# OFFICE OF GENERAL SERVICES

## AGREEMENT FOR

## SNOW PLOWING, SNOW AND ICE REMOVAL, AND SALTING AT THE:

## SENATOR HUGHES STATE OFFICE BUILDING

## 333 EAST WASHINGTON STREET

## SYRACUSE, NY 13202

## 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, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "Commissioner", "OGS" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at _____.

**W I T N E S S E T H**:

**WHEREAS**, the OGS is responsible for the snow plowing, snow and ice removal, and salting at the Senator Hughes State Office Building in Syracuse, NY and fulfilling its responsibility deems it necessary to obtain snow plowing, snow and ice removal, and salting 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 lowest price for such services and that the Contractor possesses the necessary capacity, experience and expertise for provision of warehousing and distribution 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 snow plowing, snow and ice removal, and salting service 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

SAMPLE

contract will be established with a not to exceed value of $_____. Services performed beyond this amount will not be compensated.

## 2. TERM

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

## 3. SERVICES

The Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the Invitation for Bids No. 2234 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 30 days' notice, terminate the contract resulting from this IFB in the event of the awarded Bidder's failure to comply with any of the proposal's requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, OGS may also terminate any contract resulting from this IFB upon ten 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 IFB, or any unit portion thereof, with or without cause, by giving 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 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

SAMPLE

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

SAMPLE

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

i. Appendix A
ii. This contract agreement
iii. Appendix B – Solicitation #2234 including Addenda
iv. 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.

SAMPLE

## 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

SAMPLE

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.

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**CONTRACT NO. C00XXXX**

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

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

(**Company Name**)

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

**THE PEOPLE OF THE STATE OF NEW YORK**

By:_____
Name:
Title:
Date:

**APPROVED AS TO FORM**

Attorney General

**APPROVED**

State Comptroller

SAMPLE

## INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

**STATE OF** }

**: SS.:**

**COUNTY OF** }

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

**[Check One]**

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

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

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

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

_____

**Notary Public**

**Registration No.**_____ **State of:**_____

SAMPLE

# 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

# Sample Contract

# Appendix B

# Invitation for Bid

SAMPLE

# Sample Contract

# Appendix C

## Contractor's Bid

SAMPLE

# 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;
- Refer to this Solicitation and/or any Contract Number 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 naming as additional insured (via ISO coverage forms CG 20 10 04 13 and form CA 20 48 10 13, or a form that provide 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 | |
| **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. 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.

### 3. 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.**

# 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 Plan

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: http://www.ogs.ny.gov/MWBE/Forms.asp**

# Attachment 1 – Bid Proposal Form

_____

(**Print or Type Name of Contractor above**)

agrees to provide snow/ice management services including but not limited to all labor, materials, and equipment as required for snow shoveling, snow blowing, snow plowing, snow and ice removal, salting services as specified herein for the Senator Hughes State Office Building and its' pedestrian walkways and parking areas. The Senator Hughes State Office Building is located 333 East Washington Street**,** Syracuse**,** NY 13202.

A. **Base Bid** – Base bid services are to be provided as needed year-round and will be compensated monthly during the six months that constitute the traditional snowfall season, November, December, January, February, March, and April. The Yearly bid amount for each lot will represent the lump sum amount that will be paid per year in 6 even monthly installments starting in November and ending in April regardless of the amount or duration of snow/ice events.

   Bidders must submit a bid amount for each year and lot with the Grand Total Bid being the combined total for all five years. Any exclusions will result in bid rejection. Bid amounts will include all required labor materials and equipment, including but not limited to snow and ice removal, snow shoveling, snow blowing, snowplowing, and salting.

B. **Off-Site Snow Removal** – Off-Site Snow Removal by the Cubic Yard is estimated at 100 cubic yards annually. The number of cubic yards listed is used for bid comparison purposes only. Payments will be based upon the amount bid per cubic yard times the actual number of cubic yards removed, if any.

**BID PROPOSAL FORM**

**IFB No.: 2234**
**Contract No.: _____**
(To Be Completed By Agency)

**A. Base Bid(s):**

| Description by Lot | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | |
|---|---|---|---|---|---|---|
| 1) Lot A – to be serviced Nov-Apr | $ | $ | $ | $ | $ | |
| 2) Lot B – to be serviced Nov-Apr | $ | $ | $ | $ | $ | |
| 3) Lot C – to be serviced Nov-A | $ | $ | $ | $ | $ | |
| 4) Lot D – to be serviced Nov-Apr | $ | $ | $ | $ | $ | |
| 5) Lot E – to be serviced Nov-Apr | $ | $ | $ | $ | $ | |
| | **Year 1 (6 month total)** | **Year 2 (6 month total)** | **Year 3 (6 month total)** | **Year 4 (6 month total)** | **Year 5 (6 month total)** | **Total "A" (Yr. 1 – Yr. 5) Base Bid** |
| **Combined Bid Lot A + B + C + D + E** | $ | $ | $ | $ | $ | $ |
| **Amount to be invoiced monthly = Year (6 month total) divided by 6** | $ | $ | $ | $ | $ | |

**B. Snow Removal:**

| | |
|---|---|
| Unit Price per Cubic Yard | $ |
| **Total "B" (Unit Price x 100 Cubic Yards per year)** | $ |

**GRAND TOTAL BASE BID:**

| | |
|---|---|
| **Total "A" + "B"** | $ |

***Prompt Payment discount, if offered: _____% / if paid within _____ days (see section 4.4)**

_____ _____
Print or Type Name Title

_____ _____
Signature Date