# ATTACHMENT A

## PROPOSER’S CERTIFIED STATEMENTS

**(MANDATORY SUBMISSION: to be completed and included in the Technical Proposal documents)**

|  |
| --- |
| **RFP0006 Bond Credit Ratings** |
| 1. **Information with regard to the Proposer**
 |
| 1. **Provide the Proposer’s name, address, and telephone number.**
 |
| **Name:**  |
| **Address:**  |
| **City, State, ZIP Code:**  |
| **Telephone Number (including area code):**  |
| 1. **Provide the name, address, telephone number, and email address of the Proposer’s Primary Contact for this proposal.**
 |
| **Name:**  |
| **Address:**  |
| **City, State, ZIP Code:**  |
| **Telephone Number (including area code):**  |
| **Email Address:**  |
| 1. **Provide the name, address, telephone number, and email address of the person authorized to bind the Proposer contractually, if different from (B).**
 |
| **Name:** |
| **Address:** |
| **City, State, ZIP Code:** |
| **Telephone Number (including area code):** |
| **Email Address:** |
| 1. **In accordance with paragraph 6 of the OSC Procurement Integrity Procedures included in this RFP as Appendix D, provide the name, address, telephone number, email address, place of principal employment and occupation of any person authorized to represent the Proposer. This requirement applies not only to Proposer’s employees involved in the submission of the proposal, but also to every individual or organization employed or designated by the Proposer to attempt to influence the procurement process. If there is none, state that. This information must be updated if, after the Deadline for Submission of Proposals, the Proposer retains an individual or organization to attempt to influence the procurement process. Indicate also whether the individual or organization has a financial interest in the procurement.**
 |
| **Name:**  |
| **Address:**  |
| **City, State, ZIP Code:**  |
| **Telephone Number (including area code):**  |
| **Email Address:**  |
| **Place of Principal Employment:**  |
| **Occupation:**  |
| **This individual/organization has a financial interest in the procurement:** | **[ ]  Yes** **[ ]  No**  |
| **No such individual/organization is authorized to represent the Proposer:** | **[ ]  Yes [ ]  No** |
| 1. **Minimum Qualifications to Propose (Section 3.0):**
 |
| 1. **The Proposer must be registered with the U.S. Securities and Exchange Commission (“SEC”) as a NRSRO.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer must have a minimum of five years’ experience providing bond credit ratings to state-level municipal bond issuers.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer must have provided at least three bond credit ratings to state-level municipal bond issuers for issuances with a par amount of $300 million or greater within the last five years prior to the due date of proposals in response to this RFP.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer and its proposed staff to be assigned to this engagement must only perform services from within the United States.**
 | **[ ]  Yes [ ]  No** |
| 1. **Proposer’s Acknowledgement of Proposal Requirements:**

**[Note: alteration of any language contained in this section may render your proposal non-responsive.]** |
| 1. **The proposal, including the Technical, Administrative, and Cost Proposals, constitutes a firm and irrevocable offer for a period of 180 days from the date of submission to OSC.**
 | **[ ]  Yes [ ]  No** |
| 1. **By submission of a proposal, the Proposer agrees not to make any claims for or have a right to any damages because of any misrepresentations or misunderstanding of the specifications or because of any lack of information.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer agrees to comply with the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures attached to this RFP as Appendix D.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer certifies that it can and will provide, at a minimum, all services as described in the RFP if selected for award.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer certifies that staff provided to perform Services possess the necessary integrity and professional capacity to meet OSC’s reasonable expectations. Subsequent to the commencement of Services, whenever the Proposer becomes aware, or reasonably should have become aware, that any staff member(s) providing Services no longer possesses the necessary integrity or professional capacity, the Proposer must immediately discontinue the use of such staff and notify OSC.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer certifies that all information provided in connection with its proposal is true and accurate.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer has read, understands, and accepts all provisions of Appendix A (Standard Clauses for New York State Contracts). Appendix A will be incorporated, without change or amendment, into the contract entered into between OSC and the Proposer. By submitting a response to the RFP, the Proposer agrees to comply with all the provisions of Appendix A.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer has reviewed and understands Attachment F (Draft Contract), and the Proposer is willing to enter into an agreement substantially in accord with the terms of Attachment F, should the Proposer be selected for award.**
 | **[ ]  Yes [ ]  No** |
| **\* A “No” Response in Sections 2 or 3 of this attachment will result in disqualification.** |
| 1. **Information Required:**
 |
| 1. **The Proposer is (check as applicable):**
 |
| **[ ]  A New York State Certified Minority-Owned Business Enterprise****[ ]  A New York State Certified Woman-Owned Business Enterprise****[ ]  A New York State Certified Minority and Woman-Owned Business Enterprise (Dual Certified)****[ ]  A New York State Service-Disabled Veteran-Owned Business** **[ ]  None of the above** |
| 1. **Provide the name, title, address, telephone number, and email address of the person authorized to receive notices with regard to the contract to be entered into as a result of this procurement. See Section VII. of the Draft Contract (Attachment F), NOTICES.**
 |
| **Name:** |
| **Title:** |
| **Address:** |
| **City, State, ZIP Code:** |
| **Telephone Number (including area code):** |
| **Email Address:** |
| 1. **Section XI. Contractor’s Representations, Warranties, and Covenants of the Draft Contract (Attachment F) states that the Contractor is a [ENTITY FORM] duly organized, validly existing, and in good standing under the laws of the State of [STATE].**
 |
| **Provide the Entity Form:**  |  |
| **Provide the name of the State:** |  |
| 1. **Proposer’s Taxpayer Identification Number:**
 |
|  |
| 1. **Proposer’s NYS Vendor Identification Number as discussed in Section 6.1.E, if enrolled:**
 |
|  |
| **By my signature I affirm under penalty of perjury that I am duly authorized to legally bind the Proposer referenced above and I sign this Attachment A (Proposer’s Certified Statements) as the legally binding act of the Proposer.**  |
| **Typed or Printed Name of Authorized Representative of the Proposer** |
| **Title/Position of Authorized Representative of the Proposer** |
| **Signature of Authorized Representative of the Proposer** |
| **Date** |
|  |

# ATTACHMENT B

## PROPOSAL DOCUMENTS CHECKLIST

|  |
| --- |
| **RFP0006 Bond Credit Ratings** |
| **FOR THE ADMINISTRATIVE PROPOSAL** |
| **TAB**  | **RFP §** | **REQUIREMENT** | **INCLUDED** |
| 1 | §6.1.A | M/WBE Participation Requirements: | **[ ]**  |
| The Proposer’s EEO Policy Statement, as described in Clause 12 of Appendix A – Standard Clauses for NYS Contracts | **[ ]**  |
| Form AC3239-A – Proposer’s EEO Staffing Plan of Anticipated Workforce | **[ ]**  |
| 2 | §6.1.B | Appendix E – Contractor’s Certifications/Acknowledgements, completed and signed | **[ ]**  |
| 3 | §6.1.C | Appendix F – Disclosure of Prior Non-Responsibility Determinations, completed and signed | **[ ]**  |
| 4 | §6.1.D | Vendor Responsibility Questionnaire, certified within six months of the Proposal due date (unless filed and certified online) | **[ ]**  |
| If Vendor Responsibility Questionnaire was completed and certified online, check here and do not attach a paper copy. | **[ ]**  |
| 5 | §6.1.E | Written statements of the necessity for protective treatment under Freedom of Information Law | **[ ]**  |
| 6 | §6.1.F | Proposed Modifications to Draft Contract | **[ ]**  |
| **FOR THE TECHNICAL PROPOSAL** |
| **TAB** | **RFP §** | **REQUIREMENT** | **INCLUDED** |
| 1 | §6.2.A - B | Title Page and Table of Contents | **[ ]**  |
| 2 | §6.2.C | Attachment A – Proposer’s Certified Statements, completed and signed | **[ ]**  |
| 3 | §6.2.D | Attachment D – Technical Response Form | **[ ]**  |
| 4 | §6.2.E | Attachment E – References  | **[ ]**  |
| **FOR THE COST PROPOSAL** |
| **TAB**  | **RFP §** | **REQUIREMENT** | **INCLUDED** |
| 1 | §6.3 | Attachment C (Cost Proposal), completed | **[ ]**  |
| **FOR ALL PROPOSALS** |
| **TAB** | **RFP §** | **REQUIREMENT** | **INCLUDED** |
| N/A | §7.1.AOPTION 1 | Submit a single USB flash drive that has been scanned for malware and contains each of the complete Administrative, Technical, and Cost Proposals as separate files as stated in Section 7.1.A. (preferred) | **[ ]**  |
| Optional:Submit one paper copy of each complete Administrative, Technical, and Cost Proposals (recommended) | **[ ]**  |
| N/A | §7.1.BOPTION 2 | TWO Copies of the Administrative Proposal | **[ ]**  |
| FOUR Copies of the Technical Proposal | **[ ]**  |
| TWO Copies of the Cost Proposal | **[ ]**  |
| Submit a single USB flash drive that has been scanned for malware and contains each of the complete Administrative, Technical, and Cost Proposals as separate files as stated in Section 7.1.B. (requested) | **[ ]**  |

#

# ATTACHMENT C

## COST PROPOSAL

|  |
| --- |
| **Name of Proposer** |
|   |
| **Maximum Cost of Services - Year 1** |
| **In Par Amounts** | **Initial Rating Fee** | **Annual Surveillance Fee, if Variable Rate Bonds** |
|  **Less than $200 million** |  **$** | **$**  |
|  **$200 million to $500 million** |  **$** | **$**  |
|  **Greater than $500 million** |  **$** | **$**  |
|   |
| **Maximum Cost of Services - Year 2**  |
| **In Par Amounts** | **Initial Rating Fee** | **Annual Surveillance Fee, if Variable Rate Bonds** |
|  **Less than $200 million** |  **$** | **$** |
|  **$200 million to $500 million** |  **$** | **$** |
|  **Greater than $500 million** |  **$** | **$** |
|   |
| **Maximum Cost of Services - Year 3**  |
| **In Par Amounts** | **Initial Rating Fee** | **Annual Surveillance Fee, if Variable Rate Bonds** |
|  **Less than $200 million** |  **$** | **$** |
|  **$200 million to $500 million** |  **$** | **$** |
|  **Greater than $500 million** |  **$** | **$** |
|   |
| **Maximum Cost of Services - Year 4**  |
| **In Par Amounts** | **Initial Rating Fee** | **Annual Surveillance Fee, if Variable Rate Bonds** |
|  **Less than $200 million** |  **$** | **$** |
|  **$200 million to $500 million** |  **$** | **$** |
|  **Greater than $500 million** |  **$** | **$** |
|   |
| **Maximum Cost of Services - Year 5**  |
| **In Par Amounts** | **Initial Rating Fee** | **Annual Surveillance Fee, if Variable Rate Bonds** |
|  **Less than $200 million** |  **$** | **$** |
|  **$200 million to $500 million** |  **$** | **$** |
|  **Greater than $500 million** |  **$** | **$** |

OSC anticipates a total of five GO Bond issuances during the five-year period of the contract resulting from this RFP, with an estimate of one transaction each year that may range between $300 and $500 million in par value. These estimates are provided for context only and do not guarantee any future engagements to the Pool or any Proposer pursuant to the resulting Agreement. Any use of the Pool participants will be at the sole discretion of OSC.

**ATTACHMENT D**

**TECHNICAL RESPONSE FORM**

*The Technical Response Form should not exceed 15 pages excluding responses to questions A4 (List of state-level bond issuances for which you have provided bond credit ratings) and B1 (Key Personnel Experience).*

|  |
| --- |
| **Minimum Qualifications** |
| **MQ1.** The Proposer must be registered with the U.S. Securities and Exchange Commission (“SEC”) as a NRSRO. In the space below, describe how your firm meets this minimum qualification. |
| **RESPONSE:** |
| **MQ2.** The Proposer must have a minimum of five years’ experience in providing bond credit ratings to state-level government issuers.In the space below, describe how your firm meets this minimum qualification. |
| **RESPONSE:** |
| **MQ3.** The Proposer must have provided at least three bond credit ratings to state-level municipal bond issuers of issuances with a par amount of $300 million or greater within the last five years prior to the due date of proposals in response to this RFP.Using the table below, identify at least three issuances meeting the criteria above. Proposers are encouraged to identify additional certifications beyond the number required to meet the minimum qualification as this will be considered the technical evaluation. Add rows if necessary. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Date** | **Issuer** | **Series** | **Par Amount****(in $mm)** |
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| **MQ4.** The Proposer and its proposed staff to be assigned to this engagement will only perform services from within the United States. | [ ]  Yes[ ]  No |
| **Proposer Qualifications** |
| **A1.** Describe your firm’s qualifications to provide bond credit ratings for State GO Bonds. Include a brief history of your firm, its organizational and ownership structure, and years of experience. |
| **RESPONSE:** |
| **A2.** Provide a detailed outline of your firm’s credit rating process, including the lead time required to gather necessary information and issue the initial bond credit rating. |
| **RESPONSE:** |
| **A3.** Explain your firm’s approach to identifying and assessing potential risks to the GO Bonds creditworthiness. Outline your risk assessment methods and criteria. |
| **RESPONSE:** |

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| **A4.** Using the table below, identify all state-level municipal bond transactions with a par amount of $300 million or greater for which you have provided bond credit ratings within the last five years prior to submission. Add rows as necessary. |

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| --- | --- | --- | --- |
| **Dated Date** | **Issuer**  | **Series** | **Par Amount (in $mm)** |
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| **Key Personnel Experience** |
| **B1.** Using the table below, list the firm’s principals and key personnel who will be primarily responsible for the State’s GO bond credit ratings, along with their years of experience. Identify who will be the lead staff member for this engagement with OSC. You may add or remove rows, if necessary. Include resume(s) of all pertinent staff as an appendix to your technical proposal (does not count towards page limit). |

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Title** | **Total Years of Credit Rating Experience** | **Years and Brief Description of Other Relevant Credit Rating Experience** |
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| **New York State Presence** |
| **C1.** Discuss your firm’s presence in New York State, including the location of your headquarters and the number of offices maintained in the State. Include the total number of staff employed in the State and specify the number of staff dedicated to covering State GO Bonds who are based in the State. |
| **RESPONSE:** |

# ATTACHMENT E

## REFERENCES

**Using this form, submit a total of THREE client references for whom the Proposer has provided bond credit rating reports and/or related services (Section 6.2.E). If the proposer has provided services to any New York State public authority or local government issuer, the entity must be included as one of the references.**

**Expand fields and duplicate this page as necessary.**

|  |
| --- |
| **RFP0006 Bond Credit Ratings**  |
| **PROPOSER:** |  |
| **Provide the following information for each reference submitted. Fields will expand as you type.** |
| **Reference Company #1:** |  |
| **Contact Person:** |  |
| **Address:** |  |
| **City, State, Zip:** |  |
| **Telephone Number:** |  |
| **Email Address:** |  |
| **Number of years Proposer provided services to this entity:** |  |
| **Brief description of the services provided:** |  |
| **Reference Company #2:** |  |
| **Contact Person:** |  |
| **Address:** |  |
| **City, State, Zip:** |  |
| **Telephone Number:** |  |
| **Email Address:** |  |
| **Number of years Proposer provided services to this entity:** |  |
| **Brief description of the services provided:** |  |
| **Reference Company #3:** |  |
| **Contact Person:** |  |
| **Address:** |  |
| **City, State, Zip:** |  |
| **Telephone Number:** |  |
| **Email Address:** |  |
| **Number of years Proposer provided services to this entity:** |  |
| **Brief description of the services provided:** |  |

# ATTACHMENT F

## DRAFT CONTRACT

**STATE OF NEW YORK**

**OFFICE OF THE STATE COMPTROLLER**

**AGREEMENT WITH**

**[Contractor Name]**

**NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER** **C000XXX**

**THIS** **AGREEMENT** (“Agreement”) is made effective as of the date of approval by the New York State Office of the State Comptroller’s Bureau of Contracts after execution by the parties, and is by and between the New York State (“State”) Office of the State Comptroller, by the Department of Audit and Control (“OSC”), whose main office and principal place of business is 110 State Street, Albany, New York, 12236, and [Contractor Name] (the “Contractor”) whose office is located at [Contractor Address].

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

**WHEREAS** OSC is authorized to issue all forms of State General Obligation Bonds (“GO Bonds”) pursuant to Article 5, Sections 55, 56, and 57 of the State Finance Law (“SFL”); and

**WHEREAS**, OSC issued a Request for Proposals dated [ ] (“RFP”) and attached hereto as Exhibit A soliciting proposals from vendors for GO Bond credit ratings services (“Services”); and

**WHEREAS**, the Contractor, among others, responded to the RFP with a proposal dated [ ] (“Proposal”) and attached hereto as Exhibit B indicating its willingness to perform the necessary Services; and

**WHEREAS**, based upon the evaluation of the various proposals submitted in response to the RFP, OSC has determined that is in the best interests of the State to retain the Contractor to perform the Services in accordance with the terms and conditions of this Agreement.

**NOW**, **THEREFORE**, in consideration of the terms set forth and the mutual covenants and obligations of the parties, the parties do hereby agree as follows:

1. **TERM**

This Agreement will commence on the date of contract approval by OSC’s Bureau of Contracts and will continue for a period of five years thereafter with respect to all GO Bonds issued during that period (the “Initial Period”). If the Contractor has provided a GO Bond rating for a variable rate GO Bond during the Initial Period and the variable rate GO Bond is outstanding, this Agreement will remain in effect until there are no outstanding variable rate bonds for which an initial GO Bond rating was provided by the Contractor.

Should compensation for the Services under this Agreement reach the “total compensation” amount stated in Section IIIIV (Compensation), OSC will terminate the Agreement and notify the Contractor of such, regardless of whether or not the full five year Initial Period has been reached or not and regardless of whether there are outstanding variable rate bonds for which an initial GO Bond rating was provided by the Contractor.

1. **MERGER OF DOCUMENTS/CONFLICT OF CLAUSES**

This Agreement is inclusive of the following documents. Only documents expressly mentioned below are deemed a part of this Agreement. Conflicts between these documents will be resolved in the following order of precedence:

1. Appendix A – Standard Clauses for New York State Contracts;
2. Agreement – this document, including:
	* Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
	* Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
3. Exhibit A – RFP number 0006, including the Questions and Answers [and any addenda or amendments if applicable]; and
4. Exhibit B – the Proposal (Exhibits B1 – Technical Proposal, B2 – Cost Proposal, and B3 – Administrative Proposal), as modified by any clarifications thereto, and including all attachments, including completed:
	* Appendix B – Form AC 3239-A Contractor’s EEO Staffing Plan of Anticipated Workforce and Form AC 3239-B, Contractor’s/Subcontractor’s EEO Workforce Utilization Report;
	* Appendix E – Contractor’s Certifications/Acknowledgements; and
	* Appendix F – Disclosure of Prior Non-Responsibility Determinations.
5. **SERVICES**
	1. **Engagement**. In reliance on the Contractor’s representations, warranties, and covenants set forth in Exhibit B and as set forth herein, OSC hereby retains the Contractor to perform the Services, and the Contractor hereby agrees to perform the Services, which shall include all deliverables, work, and work products set forth in Exhibits A and B.
	2. **Non Exclusive**. Nothing contained herein prohibits OSC from contracting at any time with third parties or from performing any of the work itself or through other State entities, for any Services that otherwise may be requested or required of the Contractor pursuant to this Agreement, and the Contractor shall not assert an exclusive right to perform such Services.
6. **COMPENSATION**

OSC will compensate the Contractor pursuant to this Agreement in accordance with the Fee Schedule set forth in Exhibit B2 (Cost Proposal).

* 1. **Initial Rating Fee**. The Contractor’s Initial Rating Fee is payable upon OSC’s acceptance of the final GO Bond credit rating report.
	2. **Annual Surveillance Fee**. The Contractor’s Annual Surveillance Fee is payable one year after the issuance of a variable rate GO Bond for which OSC accepted the Contractor’s final GO Bond credit rating report. Such Fee is payable for each subsequent year thereafter on the anniversary of the variable rate GO Bond issuance as long as such variable rate GO Bond is outstanding.

The amount of the Annual Surveillance Fee payable by OSC for an outstanding variable rate GO Bond on the first anniversary and each subsequent anniversary will be the amount of the Annual Surveillance Fee stated in Exhibit B2 (Cost Proposal) for the year that the variable rate GO Bond was issued. For example, on the first anniversary of a variable rate GO Bond and each subsequent anniversary thereafter so long as that variable rate GO Bond is outstanding, the Annual Surveillance Fee for a variable rate GO Bond issued during Year 3 of this Agreement will be the Annual Surveillance Fee stated in Exhibit B2 (Cost Proposal) for Year 3.

Total compensation under this Agreement must not exceed $XXX.XX.

1. **COMPENSATION AND INVOICES**
	1. **Compensation**. Compensation for Services provided for pursuant to this Agreement will be payable by OSC in the ordinary course of OSC business upon OSC’s receipt of the Contractor’s invoice. Approved invoices will be processed in accordance with Article 11-A of the New York State Finance Law.
	2. **Invoice Requirements**. All invoices must include the following information:
	* OSC’s Agreement #C00[ ], Contractor’s taxpayer identification number, and Contractor’s New York State Vendor Identification Number;
	* a detailed description of Services provided, including: [ ];
		+ the bond series name, the par amount of the issuance, and whether the fee is an Initial Rating Fee or Annual Surveillance Fee;
		+ the total amount billed for Services for the invoice period; and
		+ the beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement;
	1. **Submittal**. All invoices are subject to OSC’s acceptance of the Services for which billing is being made and must be submitted via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

Office of the State Comptroller

Bureau of Finance

Contract Payment Unit

110 State Street, Stop 13-2

Albany, NY 12236-0001

With a copy via email (preferred) to debtmanagement@osc.ny.gov or via hard copy mail to:

ATTENTION: Director, Bureau of Debt Management

Office of the State Comptroller

Bureau of Debt Management

110 State Street, 15th Floor, Stop 15-9

Albany, New York 12236-0001

1. **EQUAL EMPLOYMENT OPPORTUNITY (EEO) REPORTING**
	1. **Compliance**. The Contractor shall comply with applicable federal, State, and local requirements concerning equal employment opportunities for minorities and women, including but not limited to Executive Law §312 and its implementing regulations. In addition to the requirements stated in Appendix A Clause 12 (Equal Employment Opportunities for Minorities and Women).
	2. **Required Submissions**. To ensure compliance with such requirements (and with Executive Law §312 and the regulations adopted pursuant thereto) Contractor agrees to submit to OSC its EEO Policy Statement, and Form AC 3239-A Proposer’s EEO Staffing Plan of Anticipated Workforce. Further, Contractor shall submit on a semi-annual basis Form AC 3239-B (Contractor’s/Subcontractor’s EEO Workforce Utilization Report) and shall require each of its subcontractors, if any, to submit such Report on a quarterly basis during the term of this Agreement.

The Contractor shall submit two originals and two copies of Form AC 3239-B to OSC at the following address:

Attn: Director of Finance

New York State Office of the State Comptroller

Bureau of Finance

110 State Street, Stop 13-2

Albany, NY 12236

* 1. **Deficiencies**. These Reports are reviewed as part of OSC’s general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce and the Contractor’s EEO Workforce Utilization Reports, the Contractor/subcontractor may be subject to an in-depth EEO compliance review. If deficiencies are identified, OSC shall make every effort to resolve the deficiencies identified and to bring the Contractor into compliance with such requirements. If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for the Bureau of Finance at OSC determines that the Contractor is non-compliant, such Deputy Comptroller shall submit a written complaint to the New York State Department of Economic Development’s Division of Minority and Women’s Business Development (“DMWBD”) regarding the Contractor’s noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Contractor by personal service or certified mail, return receipt requested.
	2. **Noncompliance Resolution**. DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law §316) and regulation (5 NYCRR §143.6).
1. **NOTICES**

Any legal notice or other legal communication given pursuant to this Agreement shall be in writing and addressed to such party at the address set forth in this Agreement, and shall be effective:

1. When delivered personally to the party for whom intended; or
2. Upon actual receipt by the intended party if such notice or other communication is sent by overnight mail service, or United State Postal Service mail (certified mail, return receipt requested, or first-class postage prepaid).

The following are the names and contact information for the OSC and the Contractor. The parties shall notify each other as soon as possible of any change.

**OSC:**

Title: Director of Finance

Address: Office of the State Comptroller

110 State Street, Stop 13-2

Albany, NY 12236-0001

**Copy to:**

Name: Chuck Trimbach

Title: Director

Address: Bureau of Debt Management

Office of the State Comptroller

110 State Street, Stop 15-9

Albany, NY 12236-0001

Telephone: (518) 473-4333

**Contractor:**

Name: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Title: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Address: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Telephone: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

1. **COOPERATION**

The Contractor and OSC and their respective agents, employees, and officers shall cooperate with each other to the fullest extent in connection with the Services. Pursuant to the terms and conditions of this Agreement and all appendices hereto, OSC will supply and make available necessary information and personnel to assist the Contractor to perform the Services.

1. **STAFF**
	1. **Definition**. Contractor’s “staff” means Contractor’s employees [and its subcontractors’ employees] providing Services. “Staff” includes staff, and also owners, officers, directors, employees, subsidiaries, affiliates, partners, and agents of the Contractor; and Contractor’s contractors (including third-party services providers) and their employees providing Services hereunder or who have access to the State’s confidential information.
	2. **Staff and Replacement**. The Contractor shall assign the [**NAME**] to be the Lead person to oversee the Contractor’s day-to-day performance of the Services and shall assign other such personnel as necessary. In the event any of Contractor’s key Staff must be replaced, the replacement person’s skill level and experience must be at least equivalent to, or exceed, the replaced Staff member, as determined by OSC. OSC reserves the right to approve or disapprove any proposed changes in key Staff. OSC in each instance will be provided with a summary of the experience of the proposed key Staff member and an opportunity to interview that person, prior to giving its approval or disapproval. Said approval shall not be unreasonably withheld.
	3. **Skills and Expertise.** The Contractor represents and agrees that its Staff have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties to be performed hereunder. OSC reserves the right to remove any of the Contractor’s Staff if, in OSC’s discretion, such Staff is not performing in accordance with this Agreement, or for any other reasonable work-related cause.
	4. **FIRCA**. The Federal Immigration Reform and Control Act, as amended (8 USC §1324a et al.), obligates employers, such as the Contractor, to verify that its United States-based employees are legally entitled to work in the United States. To confirm that such employees are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to such for any Contractor employees assigned to provide Services in the United States. The Contractor warrants to OSC that Contractor’s employees assigned to provide Services in the United States are eligible for employment in the United States. The Contractor is responsible for ensuring that such employees retain the authorization to legally work in the United States throughout the period for which they provide Services in the United States. OSC does not discriminate against individuals on the basis of national origin or citizenship. OSC does not provide sponsorship.
	5. **Responsibility**. The Contractor is fully responsible to OSC for the acts and omissions of Contractor and its Staff in connection with their performance hereunder and their adherence to all contract terms and conditions.
2. **RELATIONSHIP OF PARTIES; RIGHTS TO WORK PRODUCT**
	1. **Independent Contractor**. The relationship of the Contractor and its Staff to OSC shall be that of an independent contractor, and not that of an agent or employee of OSC. The Contractor, as an independent contractor, shall not have the authority to contract for or bind OSC for any purpose whatsoever. The Contractor covenants and agrees that its Staff will not hold themselves out as agents, officers, or employees of OSC, and that they will not make any claim, demand, or application for any right or privilege applicable to any officer or employee of OSC, including but not limited to, workers’ compensation coverage, disability coverage, Social Security coverage, or Retirement System benefits.
	2. **Work for Hire**. All work performed by Contractor and its personnel for OSC under this Agreement is intended as work for hire. Such work is specially ordered and commissioned for use as contributions to a collective work, or is other such work as specified by Section 101(2) of the U.S. Copyright Act [17 U.S.C. 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York. Furthermore, OSC and the Contractor agree that the State of New York is the owner of all copyrights regarding such work. The Contractor warrants to the State of New York that it, and all of its Staff, who have been, or may be used in regard to this Agreement, forfeit all past or future claims of title or ownership to the work produced under this Agreement.
	3. **Publication**. If the Contractor publishes a work related to any aspect of performance under this Agreement, or the results and accomplishments attained in such performance, OSC shall have, in addition to any rights and remedies it may have under this Agreement, a perpetual, royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.
	4. **Contractor Work Papers**. Any and all reports and other materials (preliminary, final and otherwise), analyses and data (whether statistical or otherwise), transmitted to OSC by the Contractor shall become the sole and exclusive property of OSC for such use as OSC deems appropriate, other than Contractor’s work papers, which Contractor may retain.
3. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

The Contractor hereby represents, warrants, and covenants that:

* 1. **Organization**. The Contractor is an entity duly organized, validly existing, and in good standing under the laws of the State of [STATE], and has authority to conduct business in the State of New York.
	2. **Standards**. Contractor shall perform the Services in a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, “highest applicable industry standards” means the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances. Contractor shall re-perform, at its own expense, any work not in compliance with this warranty. Such re-performance of Services will be completed within 90 days of notification to the Contractor of non-compliant work.
	3. **Compliance with Applicable Law**. In performing the Services, the Contractor and its Staff shall comply with: (i) all applicable international, federal, state, and local laws, rules, regulations, and governmental requirements now or hereafter in effect relating to the Services.
	4. **No Conflicts of Interest**. The Contractor currently has no conflicts of interest with respect to Services and any other client engagements, contract or employment, and that the Contractor shall immediately advise OSC whenever it becomes aware of any situation that involves or appears to involve such a conflict of interest or potential conflict.
1. **CONFLICT RESOLUTION**

If there are conflicts between the Contractor and OSC, the Contractor shall submit to OSC a timely written explanation of the details of the conflict, including such pertinent facts as may provide OSC with a firm basis for understanding the nature of the conflict. The OSC Director of Finance shall have the sole right and authority to direct the involved parties on the appropriate course of action to be taken to resolve the conflict. Both parties reserve the right to pursue all available legal and equitable remedies.

1. **CONFIDENTIALITY AND SECURITY**
	1. **Confidential Information.** The Contractor shall treat as confidential all information concerning the State’s determination as to issuance of any GO Bond before that issuance has been publicly announced. The Contractor and its Staff may have access to other OSC information that in the course of providing Services, that is either identified or should be reasonably understood to be confidential. The Contractor shall maintain the confidence of such OSC confidential information and agrees that:
2. The Contractor shall use OSC confidential information solely for the purpose of carrying out its obligations to, or on behalf of, OSC as set forth in this Agreement, and for no other purpose.
3. In the event of a receipt by the Contractor of a valid order or mandatory request for disclosure of OSC confidential information from a judicial, administrative, or governmental agency having jurisdiction over it, the Contractor, must unless prohibited by applicable law, promptly notify OSC thereof. The Contractor must, to the extent practicable, meet with OSC for purposes of discussing such order or request prior to the submission of a response thereto, and shall, except to the extent prohibited as a matter of law, cooperate and assist OSC in responding to any such order or request.
4. Promptly after the termination or conclusion of the Agreement, upon the request of OSC, the Contractor must sanitize OSC confidential information, except where the Contractor is required to retain such information pursuant to applicable law.
	1. **Security**
5. The Contractor and its Staff shall comply with applicable State facility and information security policies, standards, and procedures, including any training required, both present and future, by OSC in performing the Services.
6. Security Incident Notification. To the extent not prohibited by applicable law, the Contractor shall promptly notify OSC in writing upon the occurrence of any Security Incident, as defined in this Section, in the most expedient time possible and without unreasonable delay, but in any event no later than within [48 hours or as mutually agreed between the parties] of such occurrence.

“Security Incident” means any exploited vulnerability or unauthorized or unlawful access to OSC confidential information. A Security Incident includes any destruction, damage, loss, unauthorized use, unauthorized or unlawful disclosure of OSC confidential information, any breach or compromise of the Contractor’s computer data, applications, networks or devices (including the applications, networks, or devices of all subcontractors or third-party service providers that access, store, process, or otherwise interact with confidential information on behalf of the Contractor), and, in the absence of direct evidence of a Security Incident, any occurrence where it can be reasonably assumed under the circumstances that confidential information was exposed, accessed, or disclosed without OSC’s prior written authorization.

Notice to OSC required under this Section must be made by contacting OSC’s Information Security Office first by telephone at 518-474-9487 and then by email to: iso@osc.ny.gov. The notice must include, to the extent such information is available, a description of:

* the scope of the Security Incident; identification of the vulnerability in the affected system; the amount of time that the vulnerability existed; an identification of potentially compromised confidential information; the last time that the attacker (if applicable) had access to the affected systems or confidential information; the identity of the unauthorized third party or unauthorized entity that may have accessed or obtained confidential information as a result of the Security Incident; and the identification of any misuse of any confidential information involved in the Security Incident; and
* the efforts taken by the Contractor to contain and mitigate the impact of the Security Incident, including any retention of an outside law firm or cyber firm to assist in the effort, the involvement of law enforcement, and a reasonably detailed summary of the results of the investigation of the Security Incident. The Contractor shall promptly update OSC with additional information regarding the Security Incident discovered in the course of its investigation.
1. In the instance of a Security Incident, the Contractor shall not notify the New York State Attorney General’s Office or any regulating or reporting agency of the Security Incident, or delay such notifications due to law enforcement investigations, without first receiving OSC’s authorization to make or delay such notifications except as required to comply with the Contractor’s legal obligations. OSC shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a Security Incident. OSC’s approval of notices and/or public disclosures required by law or other regulations will not be unreasonably withheld or delayed. This prior approval applies to any determination to delay notifications due to law enforcement investigations.
2. The Contractor acknowledges that any unauthorized use or disclosure of OSC confidential information may cause irreparable damage to the State. If an unauthorized use or disclosure occurs, the Contractor must, at its expense, take such steps that are reasonably necessary to recover such information and to prevent its subsequent unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief. If the Contractor fails to take such steps in a timely and adequate manner, OSC may take them at the expense of the Contractor.

Nothing contained herein reduces or alters the Contractor’s obligations under applicable law.

1. **Background Investigations**

The Contractor must conduct background investigations on its employees [and by its subcontractors on their employees] who will have access to OSC’s IT systems, access to OSC confidential information, or routine access to any OSC facility (“Covered Staff”). For the purposes of this paragraph, “routine access” is defined as access to an OSC facility for five consecutive business days or 10 business days over the annual term of the engagement. Accordingly, with the signing of this Agreement, the Contractor certifies that it has or will conduct a background investigation on Covered Staff prior to their commencing Services under this Agreement.

At a minimum, background investigations must include a review/evaluation of the following:

* Social Security Number or national identity number search, as applicable;
* verification of U.S. citizenship or legal immigration status, where appropriate, to verify employment eligibility;
* criminal history check/court records (Federal, state and local for the past five years), as permitted under applicable law;
* work experience/history (for the past five years);
* pertinent education/professional credentials; and
* references.

The Contractor must undertake such background investigation of any new or replacement Covered Staff.

The Contractor [and subcontractor] must obtain, unless prohibited by applicable law, the consent of such Covered Employees to allow the Office of the State Comptroller Inspector General to audit the results of these background investigations, and (i) to review unredacted background investigation records, including supporting documentation, and (ii) to conduct its own background investigation.

Only Staff who have passed the background investigation and provided such consent shall be assigned to provide Services to OSC under this Agreement. During the term of this Agreement and in accordance with Appendix A (Section 10, Records), the Contractor must maintain records related to the background investigations performed.

1. **INDEMNIFICATION AND LIABILITY**
	1. **Contractor Liability and Indemnification**. The Contractor shall be fully liable for any act or omission of the Contractor and its Staff and shall fully indemnify, defend, and hold harmless OSC and the State, their officials, agents, and employees, without limitation, from suits, actions, damages, and costs of every name and description (including reasonable attorneys’ fees and expenses) arising from any act or omission of the Contractor or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; provided however that the Contractor shall not be obligated to indemnify OSC for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of OSC.
	2. **Third Party Claims**. For third party claims, for which OSC or the State is entitled to indemnification under this Agreement, OSC shall give the Contractor:
	* prompt written notice of any action, claim, suit, proceeding, or threat of such action;
	* the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Contractor’s sole expense; and
	* reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of Contractor.

Notwithstanding the foregoing, the State reserves the right to join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving significant public interest.

* 1. **Liability Limitations**
		1. Neither the Contractor, OSC, nor the State shall be liable for any delay or failure in performance beyond its control resulting from acts of war, hostility or sabotage; act of nature; electrical, internet, or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than 90 days, either party may terminate all or any agreed upon portion of the Services immediately upon written notice. This paragraph does not excuse either party’s obligation to take reasonable steps to follow its normal disaster recovery procedures, or OSC’s obligation to pay for Services provided by the Contractor which have been approved by OSC.
		2. Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OSC, the Contractor, or by others.
	2. **Remedies**. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due Contractor such moneys as may be necessary to satisfy any claim for damages OSC may have against Contractor.
1. **RESPONSIBILITY TERMS**

**A**. **Covenants and Representations**. The Contractor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Contractor’s Vendor Responsibility Questionnaire (“Responsibility Questionnaire”) provided to the Contractor by OSC prior to execution of this Agreement. The Contractor further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Responsibility Questionnaire.

**B. Ongoing Reporting Obligation**. The Contractor shall provide to OSC updates to the Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information related to such Responsibility Questionnaire becomes available. The Contractor shall, on an annual basis from the anniversary date of execution of this Agreement, re-certify such Responsibility Questionnaire, noting any changes, whether material or non-material, or submit a certification of “no change” to OSC.

Notwithstanding Subsection (B) hereinabove, OSC reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Responsibility Questionnaire, (ii) to inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) to require the Contractor to provide such information to OSC within a reasonable timeframe to be established at OSC’s sole discretion.

1. **Determination of Non-Responsibility**. OSC reserves the right to make a final determination of the Contractor’s non-responsibility (“Determination of Non-Responsibility”) at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (ii) the Contractor’s failure to disclose material information; or (iii) OSC’s discovery of any other material information which pertains to the Contractor’s responsibility. If OSC preliminarily determines the Contractor to be non-responsible, OSC shall provide written notice to the Contractor detailing the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard before the determination is finalized. Upon a Determination of Non-Responsibility of the Contractor, OSC reserves the right to terminate this Agreement for cause pursuant to Section XVII. “Termination and Suspension.”
2. **TERMINATION AND SUSPENSION**
	1. **OSC Termination or Suspension**. OSC reserves the right to terminate or suspend this Agreement or terminate or suspend the Services, with respect to a specific matter or matters, with or without cause upon 15 days’, prior written notice to the Contractor.

OSC reserves the right to terminate or suspend this Agreement or terminate or suspend the Services, with respect to a specific matter or matters, immediately upon written notice to the Contractor, if OSC in its sole discretion, deems the Contractor’s performance unsatisfactory at any time during the term of this Agreement.

* 1. **Effect of Termination or Suspension**. If this Agreement is terminated or suspended, the Contractor shall be entitled to compensation for Services performed through the date of termination or suspension which are acceptable to OSC, in its sole discretion.
1. **MISCELLANEOUS PROVISIONS**
	1. **Waiver**. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.
	2. **Severability**. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
	3. **Public Communication**. Neither the Contractor nor any of its Staff shall make any statement to the press or issue through any media of communication any statement bearing on the Services performed or data collected under this Agreement without the prior written approval of OSC.
	4. **Ethics Compliance**. The Contractor, its officers, directors, employees, subsidiaries, affiliates, partners, and agents shall comply with the requirements of Public Officers Law §§73 and 74, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of this Agreement and/or other civil or criminal proceedings as required by law.
	5. **Survival**. The provisions of Sections XI (Representations, Warranties and Covenants), XIII (Confidentiality and Security), XV (Indemnification and Liability) and Appendix A shall survive the expiration or termination of this Agreement.
2. **ENTIRE AGREEMENT/APPROVALS**

This Agreement and the appendices, exhibits, and attachments hereto constitute the entire Agreement between the parties 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. This Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties. This Agreement and any amendment hereof shall not be deemed executed, valid, or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by the OSC Bureau of Contracts pursuant to Section 112 of the State Finance Law, and filed in the Office of the State Comptroller.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

In addition to the acceptance of this Agreement, the OSC and Contractor signatures on this page also certify that originals of this signature page will be attached to all other originals of this Agreement.

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| --- |
| **Contract Number: [ ]** |
| **[Contractor]** | **Office of the State Comptroller** |
|  |  |
| **Signature** | **Signature** |
|  | **Jeremy R. Disare**  |
| **Printed Name** | **Printed Name** |
|  | **Director of Finance**  |
| **Title** | **Title** |
|  |  |
| **Date** | **Date** |
| **CONTRACTOR’S ACKNOWLEDGEMENT****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 acknowledged to me that the person maintains an office at , is the of , the corporation described in foregoing instrument; and, by authority of the Board of Directors of the corporation, is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and, pursuant to that authority, has executed the foregoing instrument in the name of and on behalf of the corporation as the act and deed of the corporation.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**Notary Public****Registration No.** |
| **Approved as to Form:** | **Approved:** |
| **NYS Attorney General** | **Thomas P. DiNapoli, Comptroller** |
|  |  |
| **By:** | **By:** |
|  |  |
| **Date** | **Date** |

1. **APPENDIX A**
2. **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**
3. 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):
4. **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.
5. **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.
6. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds $50,000 (or $75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and $150,000 for State University Health Care Facilities) 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 $25,000, 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed $85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed $125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds $200,000.
7. **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.
8. **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, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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.
9. **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.
10. **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.
11. **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 (2 NYCRR § 105.4).
12. **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.
13. **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.
14. **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.
15. (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.
16. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 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:
17. 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;
18. 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
19. 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.
20. 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 clause. 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.
21. **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.
22. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
23. **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.
24. **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.
25. **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.
26. **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.
27. 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.
28. **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.
29. **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.
30. Information on the availability of New York State subcontractors and suppliers is available from:
31. NYS Department of Economic Development
32. Division for Small Business and Technology Development
33. 625 Broadway
34. Albany, New York 12245
35. Telephone: 518-292-5100
36. A directory of certified minority- and women-owned business enterprises is available from:
37. NYS Department of Economic Development
38. Division of Minority and Women's Business Development
39. 633 Third Avenue 33rd Floor
40. New York, NY 10017
41. 646-8467364
42. Email: mwbebusinessdev@esd.ny.gov

<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

1. The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:
2. 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;
3. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
4. 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
5. 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.
6. **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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.
7. **COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).
8. **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.
9. **PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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.
10. **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 § 5-a, if the contractor fails to make the certification required by Tax Law § 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.
11. **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: <https://ogs.ny.gov/iran-divestment-act-2012>
12. 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.
13. 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.
14. 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.
15. **ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

June 2023

**APPENDIX B**

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**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**CONTRACTOR’S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE**

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| **INSTRUCTIONS: Contractor must complete and submit this form as part of the Agreement.** |
| **Contractor Name:**  | **Federal Identification Number:**  |
| **Address:**  | **Contract Number:**  |
| **City, State, Zip Code:**  | **M/WBE Participation Goals Assigned: MBE N/A% WBE N/A %** |
| **Does the Contractor have an existing EEO Policy? (Check one): [ ]  Yes [ ]  No** **(if Yes, attach current copy of EEO Policy Statement.)** | **Is the Contractor ESD Certified: (Check one): [ ]  Yes [ ]  No** **(If Yes, provide ESD Certification Number and Expiration Date.)** |
| **[ ]  Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that can be separated out from the Contractor’s/Subcontractor’s total workforce.** | **[ ]  Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that cannot be separated out from the Contractor’s/Subcontractor’s total workforce.** |
| **Enter in the following Job Categories the total number of staff by race, sex, and ethnic status to be utilized by the Contractor during the performance of this State Contract.** |
| **JOB CATEGORIES****(as defined in the Instructions attached)** | **RACE/ETHNICITY OF ANTICIPATED WORKFORCE (Report employees in only one category as defined in the Instructions attached.)** |
| **Hispanic or Latino** | **(NOT HISPANIC OR LATINO)** | **Total Columns****A – N** |
| **White** | **Black or African-American** | **Native Hawaiian or Other Pacific Islander** | **Asian** | **American Indian or Alaska Native** | **Two or more races** |
| **A** | **B** | **C** | **D** | **E** | **F** | **G** | **H** | **I** | **J** | **K** | **L** | **M** | **N** |
| **Male** | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | **Female** |
| **Executive/Senior Level Officials and Managers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **First/Mid-Level Officials and Managers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Professionals** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Technicians** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Sales Workers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Administrative Support Workers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Craft Workers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Operatives** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Laborers and Helpers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Service Workers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **TOTAL:** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Prepared by (signature):**  |
| **Name of Preparer** | **Title of Preparer** | **Date** | **Telephone Number** | **Email Address** |
|  |  |  |  |  |

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**CONTRACTOR’S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE**

**AC 3239-A (Page 2 of 3)**

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| **Location and Description of Work to be Performed (expand as necessary):** |

**INSTRUCTIONS FOR COMPLETING CONTRACTOR’S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE FORM**

**AC 3239-A (Page 3 of 3)**

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| **RACE AND ETHNIC IDENTIFICATION\*****For the purpose of completing this form, OSC has adapted the race and ethnic designations used and obtained in accordance with the requirements administered by the Equal Employment Opportunity Commission, which do not denote scientific definitions of anthropological origins. Definitions of the race and ethnicity categories are as follows:** |
| **Hispanic or Latino** | **A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.** |
| **White**  | **A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.** |
| **Black or African-American** | **A person having origins in any of the black racial groups of Africa.** |
| **Native Hawaiian or Other Pacific Islander** | **A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.** |
| **Asian** | **A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.** |
| **American Indian or Alaska Native** | **A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment** |
| **Two or More Races** | **All persons who identify with more than one of the above five races.** |
| **Submission of this form constitutes the Contractor’s acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this State Contract and OSC’s right to evaluate and determine Contractor/Subcontractor adherence or compliance during the term of said State Contract, pursuant to New York State Executive Law Article 15-A (the “Article”) and the implementing regulations set forth under 5 NYCRR.****By submitting this form, the Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.****Failure to submit complete and accurate information may result in non-compliance and bid/proposal disqualification.****\*The Equal Employment Opportunity Commission’s Description of Job Categories and Instructions for assigning employees can be viewed at** [**www.eeoc.gov/employers/eeo1survey/2007instructions.cfm**](http://www.eeoc.gov/employers/eeo1survey/2007instructions.cfm)**.** |

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**AC 3239-B (Page 1 of 3)**

**CONTRACTOR’S/SUBCONTRACTOR’S EEO WORKFORCE UTILIZATION REPORT**

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| **PART A – INSTRUCTIONS: All Contractors/Subcontractors must complete and submit this form on a semi-annual basis in accordance with terms of Agreement.** |
| **Contractor/Subcontractor Name:** |
| **Address:**  | **Federal Identification Number:** |
| **City, State, Zip Code:**  | **Contract Number:** |
| **Does the Contractor have an existing EEO Policy? (Check one): [ ]  Yes [ ]  No (if Yes, attach current copy of EEO Policy Statement.)** |
| **Does the Contractor have an existing Affirmative Action Program? (Check one): [ ]  Yes [ ]  No (if Yes, attach description of Affirmative Action Program)** | **Is the Contractor ESD Certified: (Check one): [ ]  Yes [ ]  No (If Yes, provide ESD Certification Number and Expiration Date.)**  |
| **[ ]  Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that can be separated out from the Contractor’s/Subcontractor’s total workforce.** | **[ ]  Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that cannot be separated out from the Contractor’s/Subcontractor’s total workforce.** |
| **Enter in the following Job Categories the total number of staff by race, sex, and ethnic status to be utilized by the Bidder during the performance of this State Contract.** |
| **JOB CATEGORIES****(as defined in the Instructions attached)** | **RACE/ETHNICITY OF ANTICIPATED WORKFORCE (Report employees in only one category as defined in the Instructions attached.)** |
| **Hispanic or Latino** | **(NOT HISPANIC OR LATINO)** | **Total Columns****A – N** |
| **White** | **Black or African-American** | **Native Hawaiian or Other Pacific Islander** | **Asian** | **American Indian or Alaska Native** | **Two or more races** |
| **A** | **B** | **C** | **D** | **E** | **F** | **G** | **H** | **I** | **J** | **K** | **L** | **M** | **N** |
| **Male** | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | **Female** |
| **Executive/Senior Level Officials and Managers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **First/Mid-Level Officials and Managers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Professionals** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Technicians** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Sales Workers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Administrative Support Workers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Craft Workers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Operatives** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Laborers and Helpers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Service Workers** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **TOTAL:** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **PART C – Prepared by (signature):**  |
| **Name of Preparer** | **Title of Preparer** | **Date** | **Telephone Number** | **Email Address** |
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**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**CONTRACTOR’S/SUBCONTRACTOR’S EEO WORKFORCE UTILIZATION REPORT**

**AC 3239-B (Page 2 of 3)**

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| **Description of Services or Supplies Provided (expand as necessary):** |

**INSTRUCTIONS FOR COMPLETING CONTRACTOR’S/SUBCONTRACTOR’S EEO WORKFORCE UTILIZATION REPORT FORM**

**AC 3239-B (Page 3 of 3)**

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| **RACE AND ETHNIC IDENTIFICATION\*****For the purpose of completing this form, OSC has adapted the race and ethnic designations used and obtained in accordance with the requirements administered by the Equal Employment Opportunity Commission, which do not denote scientific definitions of anthropological origins. Definitions of the race and ethnicity categories are as follows:** |
| **Hispanic or Latino** | **A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.** |
| **White**  | **A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.** |
| **Black or African-American** | **A person having origins in any of the black racial groups of Africa.** |
| **Native Hawaiian or Other Pacific Islander** | **A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.** |
| **Asian** | **A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.** |
| **American Indian or Alaska Native** | **A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment** |
| **Two or More Races** | **All persons who identify with more than one of the above five races.** |
| **CONTRACTOR’S/SUBCONTRACTOR’S EEO WORKFORCE UTILIZATION REPORT SUBMISSION REQUIREMENTS****Please submit completed Form AC 3239-B semi-annually, in accordance with the terms of the State Contract to:****New York State Office of the State Comptroller****Bureau of Financial Administration, Attn: M/WBE Specialist****110 State Street, Stop 13-2****Albany, NY 12236****Submission of this form constitutes the Contractor’s/Subcontractor’s acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this State Contract and OSC’s right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the “Article”) and the implementing regulations set forth under 5 NYCRR.****By submitting this form, the Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.****Failure to submit complete and accurate information may result in non-compliance and bid/proposal disqualification.****\*The Equal Employment Opportunity Commission’s Description of Job Categories and Instructions for assigning employees can be viewed at** [**www.eeoc.gov/employers/eeo1survey/2007instructions.cfm**](http://www.eeoc.gov/employers/eeo1survey/2007instructions.cfm)**.** |



# APPENDIX D

**OSC EXECUTIVE ORDER ON** **PROCUREMENT INTEGRITY**

Whereas, it is the policy of the Office of the State Comptroller (OSC) and the New York State Common Retirement Fund (CRF) to procure goods and services in a fair, equitable and open manner and to protect the procurement process from improper influences; and

Whereas, procurement lobbying activities must be monitored and documented to assure the integrity of the procurement process;

Now, therefore, I, Thomas P. DiNapoli, Comptroller of the State of New York, in consideration of the foregoing, do hereby order as follows;

1. Applicability. This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller’s fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller’s fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller’s fiduciary responsibilities.
2. General Counsel. The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. Procedural Controls. The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
	1. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
	2. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
	3. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
	4. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;
	5. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;
	6. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

 /s/

Thomas P. DiNapoli

Comptroller, State of New York

Last Revised Date: March 14, 2007

Original Date: February 14, 2002

**OSC PROCUREMENT INTEGRITY PROCEDURES**

In order to ensure that procurements of goods or services[[1]](#footnote-1) by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

The General Counsel to the Comptroller shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF.

A copy of these Procurement Integrity Procedures will be given to every OSC employee, consultant, or other person assigned to any task related to an OSC or CRF procurement. A copy of these procedures will be incorporated into every Request for Information (RFI), Request for Proposals (RFP) or Invitation for Bids (IFB) issued by OSC or CRF.

Any OSC employee who violates these procedures may be subject to disciplinary action, such as a reprimand, suspension, demotion, or dismissal. Any vendor who violates these procedures may, after notice and an opportunity to be heard, be determined to be a non-responsible vendor, and on the basis of such a determination may be ineligible to receive a contract award.

Every reasonable effort will be made to assure compliance with these procedures, but a minor deviation from these procedures that does not impair the fairness and integrity of the procurement process will not require the invalidation of a contract award.

1. OSC employees must provide every interested vendor[[2]](#footnote-2) with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question[[3]](#footnote-3) concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC’s written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC’s Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: RFP@osc.state.ny.us. OSC’s Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.
3. A vendor may not exert or attempt to exert any improper influence[[4]](#footnote-4) relating to the vendor’s bid or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.
4. Unless otherwise directed by the General Counsel to the Comptroller, OSC’s Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor’s bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process[[5]](#footnote-5). If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.
11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.
12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011

**APPENDIX E**

**Contractor’s CertificationS/Acknowledgements**

|  |
| --- |
| **SIGNATURE AUTHORITY** |
| The Contractor\* and the person signing on behalf of the Contractor certify that such person is authorized to sign on behalf of the Contractor and has the express authority to contractually bind the Contractor.  |
| **ACKNOWLEDGEMENT OF RECEIPT OF OSC’S POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT** |
| The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Policy on Discrimination and Harassment, Including Sexual Harassment (Appendix C), and each agrees to abide by the terms of Appendix C. |
| **CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW § 139(L) REGARDING SEXUAL HARASSMENT POLICY AND ANNUAL TRAINING** |
| “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.” |
| **NON-COLLUSIVE BIDDING CERTIFICATION** |
| “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of [such persons] 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 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, directly or indirectly, to any other competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.”
 |
| **CONTRACTOR’S ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY** |
| The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures (Appendix D). By submission of this bid, the Contractor and the person signing on behalf of the Contractor each affirms, under penalty of perjury, that they understand and will comply with the terms of Appendix D.  |
| \* All reference to “bidders” within this Appendix E includes proposers and Contractors. Reference to “bids” includes proposals and other responses to solicitations. **THE SIGNATURE(S) BELOW INDICATES AGREEMENT WITH EACH OF THE ABOVE CERTIFICATIONS/ ACKNOWLEDGEMENTS** |
|  |  |  |
| **Proposer Name** |  | **Joint Proposer Name (if any)** |
|  |  |  |
| **Signature** |  | **Signature** |
|  |  |  |
| **Printed or Typed Name** |  | **Printed or Typed Name** |
|  |  |  |
| **Title** |  | **Title** |
|  |  |  |
| **Date** |  | **Date** |
| *Add additional signature lines below for additional Joint Proposers, as necessary.*October 24, 2023 |

**APPENDIX F**

**DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

Have you been found by any governmental entity to be non-responsible within the past four years from the date of this bid due to:

1. Impermissible contacts or other violations of New York State Finance Law Section 139-j (e.g., conduct prohibited by the ethics provisions of the New York State Public Officers Law)?

 [ ]  Yes [ ]  No

1. Intentional provision of false or incomplete information to a governmental entity?

 [ ]  Yes [ ]  No

**If your answer to either of the above is “Yes,” please attach a written explanation indicating the date of the non-responsibility finding, the entity that found you to be non-responsible, and the circumstances surrounding such finding (including any written finding of non-responsibility issued by such entity).**

**By my signature on this form, I certify that all information disclosed to the State is complete, true, and accurate with regard to prior non-responsibility findings within the past four years based on (i) impermissible Contacts or other violations of New York State Finance Law Section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.**

 Signature

 Printed or Typed Name

 Title

 Procurement Number

 Date

August 15, 2014

1. These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller’s fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities. [↑](#footnote-ref-1)
2. For the purposes of these procedures, the term “interested vendor” means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF. [↑](#footnote-ref-2)
3. For the purposes of these procedures, the term “substantive question” means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal. [↑](#footnote-ref-3)
4. For the purposes of these procedures, the term “improper influence” means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74. [↑](#footnote-ref-4)
5. For the purposes of these procedures, the term “attempt to influence the procurement process” means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract. [↑](#footnote-ref-5)