# ATTACHMENT A

# PROPOSER’S CERTIFIED STATEMENTS

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

|  |
| --- |
| **RFP0011****Administrative and Actuarial Services for Length of Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters** |
| 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 with OSC with regard to 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 4.0):**
 |
| 1. **The Proposer is an “administrative service agency.” An administrative service agency is defined as an organization duly authorized to do business in the state and which is qualified to administer and maintain records and accounts of plans that meet the requirements for qualification under the internal revenue code and governmental plans. To be qualified, an administrative service agency must satisfy the statutory requirements of § 215(14), § 219-c(13) and § 219-k(18) of the General Municipal Law (see Attachment F).**
 | **[ ]  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 fully 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 and make available, 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 possesses the necessary integrity and professional capacity to meet OSC’s reasonable expectations. Subsequent to the commencement of Services, whenever the selected Proposer becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OSC no longer possesses the necessary integrity or professional capacity, the Proposer agrees to 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 Contracts). Appendix A contains important information related to the contract to be entered into as a result of this RFP and 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’s legal representation has reviewed and understands Attachment E (Draft Contract), and the Proposer is willing to enter into an Agreement substantially in accord with the terms of Attachment E, should the Proposer be selected for contract award.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer agrees that OSC shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractor(s) of the Proposer prior to their performance of services under the Agreement.**
 | **[ ]  Yes [ ]  No** |
| 1. **The Proposer agrees that it shall be fully responsible for performance of work by its staff and by its subcontractor’s staff. OSC reserves the right to request removal of any Proposer staff or subcontractor’s staff if, in OSC’s discretion, such staff is not performing in accordance with the Agreement.**
 | **[ ]  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 entered into as a result of this procurement. See Section VII of the Draft Contract (Attachment E), NOTICES.**
 |
| **Name:** |
| **Title:** |
| **Address:** |
| **City, State, ZIP Code:** |
| **Telephone Number (including area code):** |
| **Email Address:** |
| 1. **Proposer’s Taxpayer Identification Number:**
 |
|  |
| 1. **Proposer’s NYS Vendor Identification Number as discussed in Section 6.1.D, 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

|  |
| --- |
| **RFP0011****Administrative and Actuarial Services for Length of Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters** |
| **FOR THE ADMINISTRATIVE PROPOSAL** |
| **TAB**  | **RFP §** | **REQUIREMENT** | **INCLUDED** |
| **1** | **§ 6.1.A** | **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** | **[ ]**  |
| **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** | **Minimum Qualification substantiation as described in RFP Section 6.2.D** | **[ ]**  |
| **4** | **§ 6.2.E** | **Technical Qualifications as described in RFP Section 6.2.E (i. – xvii.)**  | **[ ]**  |
| **5** | **§ 6.2.F** | **Attachment D (References)** | **[ ]**  |
| **6** | **§ 6.2.G** | **Summary of insurance coverage** | **[ ]**  |
| **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.A****OPTION 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.B****OPTION 2** | **TWO Copies of the Administrative Proposal** | **[ ]**  |
| **THREE 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

The following includes the required format and information to be provided by the Proposer in the Cost Proposal. Fill in one amount on each line item of this attachment to reflect each fee (all inclusive). **Proposer may not add, remove, or edit fee descriptions**.

**Failure to comply with format content requirements may result in disqualification.**

|  |
| --- |
| **RFP0011 Administrative and Actuarial Services for Length of Service Award Programs****for Volunteer Ambulance Workers and Volunteer Firefighters** |
| **6.3.A. Defined Benefit Plans:** |
| 1. **Annual Fee for Plan Administration:**
 |
| 1. **Base Fee**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Fee Per Pre-Entitlement Age Participant**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Fee Per Post-Entitlement Age Participant**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Per Participant Fee to Process NEW Distributions:**
 |
| 1. **Fee Per Distribution**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Per Determination Fee to calculate the estimated annual costs for a proposed defined benefit service award program:**
 |
| 1. **Base Fee**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Fee Per Participant**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Per Determination Fee to calculate the estimated annual costs to transfer an existing plan from local administration to State administration, in the case of volunteer firefighter programs:**
 |
| 1. **Base Fee**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Fee Per Participant**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **6.3.B. Defined Contribution Plans:** |
| 1. **Per Participant Fee for Plan Administration:**
 |
| 1. **Fee Per Participant**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Per Participant Fee to Process Distributions:**
 |
| 1. **Fee Per Distribution**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Per Participant Fee to calculate estimated annual cost of a proposed defined contribution service award program:**
 |
| 1. **Fee Per Participant**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Per Determination Fee to calculate the estimated costs to transfer an existing plan from local administration to State administration, in the case of volunteer firefighter programs:**
 |
| 1. **Base fee**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Fee Per Participant**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **6.3.C. General Fees:** |
| 1. **Fee for preparing relevant plan documents for NEW ambulance worker and firefighter programs, per plan:**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Fee for modifying plan documents for existing ambulance workers and firefighter programs, per plan, as necessary:**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **6.3.D. Termination Fees:** |
| 1. **Per Participant Fee for calculating the cost of terminating a defined benefit program, including the cost of making up any funding deficiency:**
 |
| 1. **Fee Per Participant**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| 1. **Per Participant Fee for calculating the cost of terminating a defined contribution program:**
 |
| 1. **Fee Per Participant**
 | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Name of Proposer** |
| **Signature of Person Authorized to Bind the Proposer** |
| **Name and Title of Authorized Signatory** |
| **Date** |

# ATTACHMENT D

# REFERENCES

**Submit a total of THREE references to whom you provide administrative and actuarial services (Section 6.2.F) using this form.**

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

|  |
| --- |
| **RFP0011****Administrative and Actuarial Services for Length of Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters** |
| **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 E

# DRAFT CONTRACT

**NOTE: Bracketed language included in this Draft Contract may, at the discretion of OSC, be revised in accordance with the proposal of the selected Proposer or as otherwise mutually agreed to by the parties. OSC may, in its discretion, consider limited and reasonable modifications in alignment with industry standards; however, OSC has no obligation to accept any such proposed modifications and reserves all rights to reject any such proposed changes. Extraneous terms or material deviations (including additional, inconsistent, conflicting, non-beneficial, or alternative terms) to the Draft Contract may be rejected. Each proposed contract modification must be specifically reflected in redlined, track change format in the MS Word copy of the document that has been provided, with comments embedded in the document that specify the reason why each specific change would be in the best interest of OSC.**

**In addition, any Proposer documentation in relation to any provided services submitted with a proposal should be provided in editable, Word format to facilitate OSC’s review. Nothing contained in a Proposer’s submitted documentation will be effective to the extent that it constitutes a variance with the terms or requirements of the Draft Contract, the RFP, or other OSC-required documents, or to the extent that it is not accepted by OSC as part of the final Agreement.**

**STATE OF NEW YORK**

**OFFICE OF THE STATE COMPTROLLER**

**AGREEMENT WITH**

**[Contractor Name]**

**NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER** **C00XXXX**

 **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 all parties, and is by and between the New York State (“State”) Office of the State Comptroller, by the Department of Audit and Control (“OSC” or “Comptroller”), 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**, Article 11-AA of the General Municipal Law (“GML”) authorizes certain political subdivisions to adopt defined contribution service award programs for the volunteer ambulance workers of certain ambulance companies; and

 **WHEREAS**, Article 11-AAA of the GML authorizes certain political subdivisions to adopt defined benefit service award programs for the volunteer ambulance workers of certain ambulance companies (the defined contribution service award programs authorized by Article 11-AA of the GML and the defined benefit service award programs authorized by Article 11-AAA of the GML being hereinafter sometimes referred to collectively as the “Volunteer Ambulance Worker Programs”), and

 **WHEREAS**, Article 11-AA and Article 11-AAA of the GML designate, as the plan administrator of the Volunteer Ambulance Worker Programs, the State Comptroller, or an administrative service agency or financial organization selected by the State Comptroller to administer the Programs; and

 **WHEREAS**, Article 11-A of the GML authorizes certain political subdivisions to adopt defined contribution service award programs and defined benefit service award programs for the volunteer firefighters of volunteer fire companies or volunteer fire departments (the defined contribution service award programs and the defined benefit service award programs authorized by Article 11-A of the GML being hereinafter sometimes referred to collectively as the “Volunteer Firefighter Programs”); and

 **WHEREAS**, Article 11-A of the GML requires Volunteer Firefighter Programs to be either (a) administered by the political subdivision sponsoring such a program, or (b) centrally administered by the State Comptroller; and

 **WHEREAS**, in the case of State-administered Volunteer Firefighter Programs, Article 11-A of the GML authorizes the State Comptroller to enter into a contract or contracts (a) with an administrative service agency or financial organization to serve as program administrator and to perform all or any portion of the functions required to establish and administer such programs, and/or (b) with an actuary for the performance of all actuarial calculations required by such programs; and

**WHEREAS**, Article 11-AAAA of the GML authorizes certain political subdivisions to adopt supplemental award programs for volunteer firefighters (only if that political subdivision has previously established a service award program for volunteer firefighters under Article 11-A or Article 11-AA of the GML) and volunteer ambulance workers (only if that political subdivision has previously established a service award program for volunteer ambulance workers under Article 11-AAA of the GML); and

 **WHEREAS**, OSC deems it to be in the best interest of the Volunteer Ambulance Worker Programs and the Volunteer Firefighter Programs, and their participants, to engage an administrative service agency, defined as an organization duly authorized to do business in the State and which is qualified to administer and maintain records and accounts of plans that meet the requirements for qualification under the internal revenue code and governmental plans, to serve as the Program Administrator (satisfying the statutory requirements of in § 215(14), § 219-c(13) and § 219-k(18) of the GML) of the Programs; and

**WHEREAS**, on [Date], pursuant to a Request for Proposals for Administrative and Actuarial Services for Length of Service Award Programs (LOSAP) for Volunteer Ambulance Workers and Volunteer Firefighters (“RFP,” a copy of which is attached hereto as Exhibit A), OSC solicited proposals from Administrative Service Agencies operating in New York State willing to provide administrative and actuarial services (“Services”) pursuant to the RFP; and

**WHEREAS**, the Contractor, on [Date], submitted a response to the RFP (the “Response,” a copy of which is attached hereto as Exhibit B) including its willingness to perform the necessary Services; and

**WHEREAS**, based upon the evaluation of the various proposals submitted in response to the RFP, it has been determined that the Contractor’s proposal offered the best value and that it would be in the best interests of OSC 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. **DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the following meanings:

1. “Account” shall mean the bookkeeping account established for a Participant in a defined contribution or defined benefit service award program.
2. “Account Balance” shall mean, as of any given time, the value of all contributions credited to a Participant’s Account in a defined contribution plan Program or a defined benefit plan Program, plus all interest, earnings and gains thereon, and minus all losses, distributions, forfeitures and necessary administrative costs charged thereto.
3. “Adoption Agreement” shall mean the standard form of agreement by which a Sponsor agrees to establish a Program and by which a Sponsor may select options with respect to the design of the Program and the benefits to be provided under the Program.
4. “Benefit Amount” shall mean a payment for each year of volunteer ambulance service in such amount as may be authorized by GML Section 219-n(1) (in the case of defined benefit Volunteer Ambulance Worker Programs), or shall mean a payment for each year of volunteer firefighter service in such amount as may be authorized by GML Section 219 (in the case of a defined benefit Volunteer Firefighter Program), as selected by the Sponsor.
5. “Program Liaison” shall mean the lead person assigned by the Contractor to serve as the primary point of contact, responsible for managing the contractual relationship with OSC and the Trustee, and overseeing of the delivery of all Services.
6. “Participant” shall mean: (i) in the context of a defined contribution Volunteer Ambulance Worker Program, a volunteer ambulance worker who has satisfied the age and service requirements provided for in Article 11-AA of the GML, or (ii) in the context of a defined benefit Volunteer Ambulance Worker Program, a volunteer ambulance worker who has satisfied the age and service requirements provided for in Article 11-AAA of the GML, or (iii) in the context of a defined contribution or a defined benefit Volunteer Firefighter Program, a volunteer firefighter who has satisfied the age and service requirements provided for in Article 11-A of the GML, or (iv) in the context of a Supplemental Award Program, a volunteer firefighter or volunteer ambulance worker who has satisfied the age and service requirements provided for in Article 11-AAAA of the GML. The term “Participant” shall be deemed to include beneficiaries of Participants who are entitled to benefits under the terms of the Programs.
7. “Program” or “Programs” shall mean, as the context shall require, one or more service award programs adopted pursuant to Article 11-A, Article 11-AA, Article 11-AAA, and Article 11-AAAA of the GML. As used in this Agreement, the term “Program” shall have the same meaning ascribed to the term “plan” by the applicable Article of the GML.
8. “Program Administrator” shall mean the Proposer selected as a result of RFP0011 (Administrative and Actuarial Services for Length of Service Award Programs (LOSAP) for Volunteer Ambulance Workers and Volunteer Firefighters).
9. “Program Agreement” shall mean the “Program Agreement for Defined Contribution Plan Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters” and/or the “Program Agreement for Defined Benefit Plan Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters,” as the same may be amended from time to time, and as the context shall require.
10. “Regulations” shall mean those regulations promulgated by OSC pursuant to Article 11-A, Article 11-AA, Article 11-AAA, or Article 11-AAAA of the GML, as the same may be amended from time to time, and as the context shall require.
11. “Sponsor” shall mean a political subdivision which adopts a Program pursuant to the provisions of Article 11-A, Article 11-AA, Article 11-AAA, or Article 11-AAAA of the GML.
12. “Trust” shall mean a trust created by a Trust Agreement.
13. “Trust Agreement” shall mean, depending on context, the “Trust for the New York State Volunteer Ambulance Workers Defined Contribution Service Award Program,” as the same may be amended from time to time, the “Trust for the New York State Volunteer Ambulance Workers Defined Benefit Service Award Program,” as the same may be amended from time to time, the Trust for the New York State Volunteer Firefighters Defined Contribution Service Award Program,” as the same may be amended from time to time, or the “Trust for the New York State Volunteer Firefighter Defined Benefit Service Award Program,” as the same may be amended from time to time. The Trusts for said Programs shall, at all times, be separate and distinct from one another, and the funds with respect to each Trust shall not be commingled in any manner.
14. “Trustee” shall mean the Proposer selected as a result of RFP0010 (Financial Organization (Trustee) Services for Length of Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters).
15. “Valuation Date” shall mean, with respect to Defined Contribution Programs, the last day of each calendar quarter, and each other day as of which the Program Administrator is required, under the GML or the Regulations, to determine the value of Participants’ Account Balances.
16. **TERM**

This Agreement shall be for a period commencing on approval by the OSC Bureau of Contracts and shall continue for a period of five years, subject to earlier termination as provided for in Section XX “Termination and Suspension.”

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

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

1. Appendix A – Standard Clauses for New York State Contracts;
2. Agreement – (This Document):
	* 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 C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
	* Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
	* Appendix E – Contractor’s Certifications/Acknowledgements;
	* Appendix F – Disclosure of Prior Non-Responsibility Determinations; and
	* Appendix G – OSC Consultant Disclosure Reporting Requirements.
3. Exhibit A – The RFP number 0011, 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), including any clarifications thereto.

The parties understand and agree that any and all proposed modifications or exceptions taken by the Contractor in its Proposal to OSC’s RFP0011 are hereby withdrawn, provided, however, that where such modifications or exceptions have been agreed to by OSC and explicitly incorporated into this Agreement, such shall apply to this Agreement and shall be subject to this Article III in the event of conflicts between or among the terms of any of the documents that make up this Agreement. The entirety of the redlined, draft contract submitted by the Contractor with its Proposal is withdrawn.

1. **COMPENSATION**

OSC shall compensate the Contractor pursuant to this Agreement in accordance with the Fee Schedule as set forth in the Contractor’s proposal, Exhibit B2 – Cost Proposal. Contractor shall not impose on Sponsors, Participants, or OSC, any additional charges for the Services.

As authorized by § 219-h(4), § 219-p(4), and § 216-c(5) of the GML, payment of such compensation shall be made from the assets of that Trust which holds the funds attributable to the particular Program for which the Services being billed were rendered. There shall be no penalties or surrender charges imposed for the transfer of assets from a Trust or for the transfer of responsibilities from Contractor to a successor Program Administrator upon the expiration or termination of this Agreement.

Total compensation for Services provided under this Agreement shall not exceed the sum of $XXXXX. The Contractor will not be reimbursed for travel expenses, including travel time to and from the OSC facility.

1. **PAYMENT AND INVOICES**
	1. The compensation for Services shall be payable from the assets of the Trust upon the submission and audit of vouchers or other detailed statements of Services that shall be submitted to OSC quarterly, in accordance with Article 11-A of the New York State Finance Law.
	2. All invoices must include the following information:
2. OSC’s Agreement #C00[ ], Contractor’s taxpayer identification number, and Contractor’s New York State Vendor Identification Number;
3. a detailed description of Services provided, including: [ ];
	* the total amount billed for Services and expenses for the invoice period;
	* itemization of each fee (see Exhibit B2);
	* the beginning and ending dates of the billing period included in the invoice, and
	* the expiration date of this Agreement.
	1. All invoices shall be subject to OSC’s acceptance of the Services for which billing is being made and are to be submitted via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

Office of the State Comptroller

Financial Administration

Contract Payment Unit

110 State Street, Stop 13-2

Albany, NY 12236-0001

With a copy via email (preferred) to [insert email address here] or via hard copy mail to:

Attn:

Office of the State Comptroller

NYSLRS – Bureau of Accounting

110 State Street, XX Floor [or Mail Stop #]

Albany, New York 12236-0001

1. **EQUAL EMPLOYMENT OPPORTUNITY (EEO) REPORTING**

Contractor agrees to 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), and to ensure complete 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/Subcontractor 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

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/Subcontractor’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/Subcontractor 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/Subcontractor 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/Subcontractor’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/Subcontractor by personal service or certified mail, return receipt requested.

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 notice or other 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;
2. Upon five days following the deposit of the notice or other communication into the United States Postal Service mail (certified mail, return receipt requested, or first-class postage prepaid); or
3. Upon actual receipt by the intended party if such notice or other communication is sent by overnight mail service.

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: Jeff Mabb

Office of the State Comptroller

NYSLRS – Bureau of Accounting

 Title: Accounting Bureau Management

 Address: 110 State Street, Mail Drop 4-2

Albany, New York 12236-0001

Telephone: (838) 910-4522

Email: jmabb@osc.ny.gov

**Contractor:**

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

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

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

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

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

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

In addition, any legal notices regarding the enforcement of or legal claims relating to the terms of this Agreement, and any legal pleadings or other documents relating thereto, shall be provided to each parties’ legal counsel at the address provided below, electronically for all such notices as a matter of convenience to the parties, in addition to any other method of service that is required under the applicable federal, state, or local rules of practice.

**OSC – Legal Counsel**

Name: Nelson R. Sheingold, Counsel to the Comptroller

Address: 110 State Street, Mail Stop 14-2

 ` Albany, NY 12236

Phone: (518) 474-3444

Email: nsheingold@osc.ny.gov

**Contractor – Legal Counsel**

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

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

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

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

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

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

1. **SERVICES**
	1. 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/or work products as described in Section 3.0 of the RFP.
	2. Nothing contained herein shall prohibit 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.
2. **FIDUCIARY RESPONSIBILITY**

Contractor covenants and agrees that in the performance of its responsibilities and obligations under this Agreement (i) it shall owe OSC, the Programs, and the Participants the duty of a fiduciary, (ii) it shall act solely in the interest of the Program Participants, and (iii) it shall discharge its responsibilities with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aim.

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 shall supply and make available necessary information and personnel to assist the Contractor to perform the Services.

1. **STAFF**

Contractor’s “staff” includes employees, consultants, owners, officers, directors, subcontractors, subsidiaries, affiliates, partners and agents of the Contractor and of any of the Contractor’s subcontractors.

The Contractor shall assign the Program Liaison as the lead person and other such staff as necessary to oversee the day-to-day operations. The replacement for the Program Liaison and any other such key staff removed from, reassigned or who leaves the employ of the Contractor for any reason must reasonably match or exceed the replaced staff member in terms of skill level and experience, 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.

The Contractor specifically represents and agrees that its partners, members, employees, agents, consultants, and subcontractors 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. The Contractor shall be fully responsible for performance of work by its staff and by subcontractor’s staff.

1. **SUBCONTRACTORS**

If the Contractor uses subcontractors to perform any of the Services, OSC shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractors of the Contractor prior to their performance of Services.

The Contractor shall require all proposed subcontractors to complete such Appendices included in this Agreement as are deemed necessary by OSC prior to any such proposed subcontractor’s performance of Services. The Contractor acknowledges that this requirement is ongoing for the term of this Agreement, and the Contractor shall be required to disclose to OSC its intention to enter into any subcontracts for the performance of any Services.

Failure to disclose the identity of any and all subcontractors used by the Contractor together with a detailed description of their responsibilities may, at the sole discretion of OSC, result in a disqualification of the subcontractor or termination of this Agreement.

The Contractor shall be fully responsible to OSC for the acts and omissions of its subcontractors and of persons either directly or indirectly engaged by them in connection with the performance of the Services.

OSC reserves the right to remove any of the subcontractor’s staff if, in OSC’s discretion, such subcontractor’s staff is not performing in accordance with this Agreement, or for any other reasonable work-related cause. OSC reserves the right to approve or disapprove any proposed changes in subcontractor’s key staff. OSC in each instance will be provided with a summary of the experience of the proposed subcontractor’s key staff member and an opportunity to interview that person, prior to giving its approval or disapproval.

1. **RELATIONSHIP OF PARTIES**

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.

1. **GENERAL WARRANTY AND REPRESENTATIONS**

The Contractor hereby warrants and represents:

* 1. Contractor warrants that the Services provided to OSC under this Agreement will be performed in a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, “highest applicable industry standards” shall be defined as 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.
	2. The Federal Immigration Reform and Control Act, as amended, (8 USC section 1324a et. al.) obligates employers, such as the Contractor and its subcontractors, if any, to verify that their staff are legally entitled to work in the United States. The Contractor warrants to OSC that it has verified staff assigned to provide Services to OSC are eligible for employment in the United States. The Contractor is responsible for ensuring that staff retain the authorization to legally work in the United States throughout the term of this Agreement. In order to confirm that the staff are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to the legal entitlement to work in the United States for any of Contractor’s staff assigned work under this Agreement. In accordance with such law, OSC does not discriminate against individuals on the basis of national origin or citizenship. OSC does not provide sponsorship.
	3. Contractor is a business corporation duly authorized to do business in the State of New York, and is qualified to administer and maintain records and accounts of plans which meet the requirements for qualification under the Internal Revenue Code and governmental plans, and shall continue at all times to qualify as an “financial organization” under § 215(15), § 219-c(14) and § 219-k(19) of the GML.
	4. Contractor, at all times during the term of this Agreement, shall comply with the provisions of Article 11-A, Article 11-AA, Article 11-AAA, and Article 11-AAAA of the GML, the Regulations, and the Program Agreements in relation to its performance of Services.
	5. Contractor shall notify OSC, including the OSC - Legal Counsel, as soon as reasonably possible following Contractor’s discovery of criminal acts, potential criminal acts, fraud or potential fraud with respect to any Program that is administered by the Contractor as set forth in this Agreement.
1. **CONFLICTS OF INTEREST**

The Contractor hereby covenants and represents that it currently has no conflicts of interest with respect to Services and any other client engagements, consultant 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. **CONFIDENTIALITY, SECURITY, AND BACKGROUND INVESTIGATIONS**
	1. **Definition**

The term “Confidential Information” shall mean any and all information which is disclosed by either party (“Owner”) to the other (“Recipient”) verbally, electronically, visually, or in written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Owner’s past, current, or possible future products or methods, including information about Owner’s research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software). For the purpose of this Agreement, “Confidential Information” also means personally identifiable information (“PII”) or sensitive information of or relating to any volunteer or Participant, and private information as defined in applicable state or federal law.

* 1. **Treatment**

Owner’s Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than those in this Section and who have a justified business “need to know.” This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by governmental or judicial order or applicable law provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

* 1. **Confidentiality of OSC Information**

The Contractor and its staff may view, or have access to, Confidential Information owned by OSC. Confidential Information shall include, but not be limited to:

* Personal information about individuals, e.g., home addresses, home telephone numbers, social security numbers, payroll information, account numbers, health status;
* OSC security procedures, topology, practices and policies;
* Computer codes or other electronic or non-electronic information, the disclosure of which could jeopardize the security of OSC’s computer systems; and
* Any other material designated as being “Confidential.”

The Contractor, on its own behalf, and on behalf of its employees, directors, officers and subcontractors agrees to preserve the confidentiality of any and all Confidential Information viewed, accessed, or developed under this Agreement, and agrees:

* To view, access and use only the Confidential Information relevant and necessary to provide the Services to OSC under this Agreement;
* To use its best efforts to preserve the confidentiality of the Confidential Information;
* To use its best efforts to prevent disclosure of the Confidential Information to any person other than to OSC staff;
* To abide by all OSC and State confidentiality policies and procedures;
* That all reports and other materials, preliminary, final and otherwise, prepared for or relating to Services described herein (other than Contractor’s work papers)shall be treated at all times as Confidential Information by the Contractor;
* All Confidential Information shall remain the property of OSC; and
* That all Confidential Information shall be returned or destroyed (using highest industry-standard secure disposal methods) within thirty (30) days after the expiration or termination of this Agreement and that upon such destruction, the Contractor will certify as to the method of destruction.
	1. **Security**
		1. The Contractor and its staff shall be required to comply with all applicable facility and information security policies, standards, and procedures, including any training required, both present and future, by OSC in performing the Services.
		2. The Contractor may not connect any non-OSC computer, electronic storage device, or telecommunications equipment to OSC network (e.g., personal and corporate laptop computers, personal and corporate USB devices, smartphones, and tablets are included in this prohibition).
		3. Where performance of Services involves use by the Contractor of State-owned or licensed, or OSC-owned or licensed, papers, files, computer disks or other electronic storage devices, data, or records at OSC or State facilities or offices, the Contractor shall not remove such records therefrom without the prior written approval from an authorized representative of OSC.
		4. 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 24 hours 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 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.

All notices 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. Where PII, private information, and/or other personal information have been accessible or released as a result of a Security Incident, such notice shall also be provided to OSC’s Privacy Officer at PrivacyOfficer@osc.ny.gov.The notice must include, to the extent such information is available, a description of:

* + - 1. 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
			2. 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 and the Contractor’s affiliates and subcontractors must conduct background investigations on their employees and subcontractors who will have access to OSC’s IT systems, access to OSC or State confidential information and any personal identification information (“PII”) or private information, as defined in applicable state or federal law, of any volunteer or Participant, or routine access to any OSC facility. 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. (“Covered Staff”). Accordingly, with the signing of this Agreement, the Contractor certifies that it has or will conduct a background investigation on any Covered Staff to whom the policy applies within the 12 months prior to the Covered Staff commencing Services under this Agreement. The Contractor agrees to undertake a background investigation of any new/replacement Covered Staff during the term of this Agreement.

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

* identity verification, including 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/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 skills, qualifications, and education/professional credentials; and
* references.

OSC has the right to review the results of the background investigation and its supporting documentation upon request; Contractor must therefore obtain staff consent to such review. OSC reserves the right to conduct its own background investigation of the Contractor's Covered Staff, and, if so elected by OSC, Contractor must obtain the consent of the subject staff to permit OSC to conduct such background check. 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.

For the purposes of this Agreement, “staff” includes employees, consultants, owners, officers, directors, subcontractors, subsidiaries, affiliates, partners and agents of the Contractor and of any of the Contractor’s subcontractors.

* 1. **Location of Data and Staff; CONUS; Encryption**

1. **Location of Data and Staff; CONUS.** Allof Contractor’s computer systems, networks, and staff with access to OSC Data (as defined below) shall be physically located within the contiguous United States (“CONUS”), including any customer service representatives and support staff**.** The Contractor shall meet the following requirements:

a. All Data shall remain in the CONUS.

b. Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.

c. Any Services which directly or indirectly access Data shall be performed only from locations within CONUS.

d. All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section XVI(F)(2), Encryption.

e. All helpdesk, online and support services which may access Data shall be performed only from locations within CONUS.

f. No Follow the Sun support shall be allowed to access, use, or transmit Data directly or indirectly from locations outside the CONUS (“OCONUS”) without OSC’s prior, written permission.

For purposes of this Agreement, “Data” shall include “any information, including PII and Confidential Information, and any analytic derivatives, formula, algorithms, or other content that the OSC, the State, a Participant or Sponsor may provide to the Contractor pursuant to this Agreement. For purposes of this Agreement, “Data Center” shall mean “all facilities in which Authorized User Data is processed or stored.”

2. **Encryption.**

a. The Contractor must support secure electronic data file exchange over the internet, to and from OSC and/or OSC designees, and to or from the Contractor and/or an OSC-authorized Contractor designee (e.g., subcontractors) using secure protocols at least equivalent to the protocols listed below.

Currently, New York State uses the following secure file transfer protocols, which are listed by order of preference. Encryption algorithms must comply with current FIPS 140.x guidelines.

·         HTTPS (browser or compatible clients – pickup and drop off at OSC or OSC-approved servers only, port 443); and

·         SFTP (SSH/FTP) using minimum 2048 bit key based authentication (port 22).

OSC also supports the optional use of PGP “Pretty Good Privacy” or the open source equivalent GPG “Gnu Privacy Guard” with public encryption key exchange.

b. The Contractor must provide additional encryption of files using file encryption software before they are SFTP transferred to OSC, and to or from the Contractor and/or an OSC-authorized Contractor designee, or any other third-party to which OSC has approved disclosure of such information.

The Contractor must use OSC-approved encryption software and maintain currency and support for the encryption software throughout the term of this Agreement.

OSC uses PGP and GPG using Rivest-Shamir-Adleman (“RSA”) Keys at current levels.

1. **DISPUTES AND DISSATISFACTION**

In the event OSC or the Contractor is dissatisfied with the other’s performance under this Agreement, either party must so notify the other in writing. The other party must then make every good faith effort to solve the problem or settle the dispute amicably, including meeting with the party’s representatives to attempt diligently to reach a satisfactory result. Nothing herein shall limit a party's ability to pursue all available remedies.

1. **[INDEMNIFICATION AND LIABILITY**
	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 God; electrical outage that is not caused by the obligated party; or other force majeure event. 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. 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. Contractor will be liable to OSC, the State, Sponsors, and their officers, employees, and agents for all claims, demands, and actual liabilities, costs (including notification costs, remediation costs, fees, and expenses, costs of any forensic investigation, replacement, or restoration required due to any virus, information security breach, or any other incident compromising the availability, confidentiality, privacy, security, integrity or usability of OSC or State data), expenses, damages, losses, interest, fees, fines, penalties, suits, proceedings and actions, including reasonable attorneys’ fees and expenses, whether judicial, administrative, investigative or otherwise (collectively, “Losses”), suffered, sustained, or incurred by OSC, the State, and Sponsors to the extent such Losses arise from or relate to: (i) the negligence, gross negligence, willful misconduct, fraud, or bad faith of the Contractor or any of its staff, or subcontractors, or third-party providers, which include any of Contractor’s affiliates, in connection with this Agreement or the Services; (ii) the violation of applicable law by the Contractor or any of its staff, or subcontractors, or third-party providers, which include any of Contractor’s affiliates, in connection with this Agreement or the Services; or (iii) the breach by the Contractor or any of its staff or its subcontractors, or third-party providers, which include any of Contractor’s affiliates, of any of its representations, warranties, or obligations set forth in this Agreement, except that Contractor shall not be liable to OSC, the State, or Sponsors, or any of their officers, employees, or agents under this Section XVIII.B if and only to the extent that such Losses, if any, are caused by the negligence, gross negligence, willful misconduct, fraud, or bad faith of, or violation of applicable law by OSC, the State, Sponsors, or any officer or employee thereof while acting within the course and scope of their employment relative to a liability claim of OSC, the State, or Sponsors, respectively, against Contractor or any of its staff, or subcontractors, or third-party providers.
	3. Contractor will indemnify, defend, and hold harmless OSC, the State, Sponsors, Participants, and their officers, employees, and agents from and against third-party claims, including, as applicable, any claims by Participant(s) or Sponsor(s), (i) for any Losses suffered, incurred, or sustained to the extent such Losses arise from or relate to the negligence, gross negligence, willful misconduct, fraud, or bad faith of the Contractor, its staff, subcontractors, or third-party providers, which include any of Contractor’s affiliates, in connection with this Agreement, the Services, or any Account; and (ii) for any Losses suffered, incurred, or sustained to the extent such Losses arise from or relate to the violation of applicable law by the Contractor, its staff, subcontractors, or third-party providers, which include any of Contractor’s affiliates, in connection with this Agreement or the Services; and (iii) for any and all Losses arising out of, or in connection with, personal injury (including death), damage to real or tangible personal property (including electronic systems, software, and databases), money or securities, or infringement of intellectual property or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; or loss of Confidential Information, including personally identifiable information (PII), arising from or relating to the negligence, gross negligence, willful misconduct, fraud, or bad faith of, or violation of applicable law by, the Contractor, its staff, subcontractors, or third-party providers, which include any of Contractor’s affiliates, in connection with this Agreement or the Services, except that Contractor shall have no obligation or duty to indemnify, defend, or hold harmless under this Section XVIII.C. if and only to the extent that such Losses, if any, are caused by the negligence, gross negligence, willful misconduct, fraud, or bad faith of, or violation of applicable law by the party, entity, or person(s), seeking indemnification under this Section XVIII.C. or any officer, employee, or agent thereof while acting within the course and scope of their employment.
	4. For third party claims, OSC shall give the Contractor:
		* 1. prompt written notice of any action, claim, suit, proceeding, or threat of such action relating to this Agreement;
			2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Contractor’s sole expense; and
			3. 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 a significant public interest.

* 1. For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, the Contractor shall be liable for any act or omission of the Contractor or any of its staff, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges paid or payable to the Contractor as of the date(s) such damages are due.
	2. Nothing in this Article XVIII or elsewhere in this Agreement, including any attachments, exhibits, schedules or amendments, shall relieve Contractor from any statutory liabilities or obligations that it may have as a result of a violation of any state or federal privacy law, including, without limitation, New York General Business Law Section 899-aa and 899-bb.
	3. 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.
	4. 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**
	1. 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.
	2. 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.
	3. 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.
	4. 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.
	5. 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.
	6. Upon a Determination of Non-Responsibility of the Contractor, OSC reserves the right to terminate this Agreement for cause pursuant to Section XX. “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 or if OSC has, in its sole discretion, material concerns regarding the security of confidential information or data relating to OSC or any Participant.

* 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. **TRANSITION**

Upon expiration or termination of this Agreement, the Contractor shall, upon the appointment of the successor contractor, provide access to such successor contractor all necessary records in the Contractor’s possession relating to the Services provided under this Agreement. At OSC’s request, the Contractor shall, at current (hourly) rates, also make appropriate staff available to OSC and to the successor contractor during normal business hours to answer questions regarding such records and the Services which have been provided by the Contractor under this Agreement. The Contractor shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that the Services required are uninterrupted and are not adversely impacted by the change in contractor.

1. **INSURANCE**

The Contractor shall maintain insurance coverage consistent with industry best practices for the nature and scope of Services to be provided throughout the Term of this Agreement and for a period of three years after the expiration or termination of this Agreement, including the following insurance with coverage limits no less than those specified below (which limits may include excess coverage, as applicable):

* Errors & Omissions, [$10 million per claim/aggregate];
* Blanket Bond Coverage including Crime and Computer Crime (covering Employee Dishonesty), [$20 million per occurrence/aggregate];
* Commercial General Liability, [$2 million per occurrence/$5 million aggregate];
* Data Breach and Privacy/Cyber Liability, including coverage for failure to protect confidential information and failure of the security of the Contractor’s computer systems, which coverage must be without geographic or territorial limitation, [$20 million per occurrence/aggregate];
* Umbrella/Excess, [$3 million per occurrence/$5 million aggregate]; and
* Any other insurance required by law.

The Office of the New York State Comptroller must be an additional insured as to Commercial General Liability, Privacy/Cyber Liability, and Umbrella insurance. The Contractor shall provide OSC with certificates of insurance showing its respective coverages and applicable limits (including applicable deductibles and self-insured retention amounts) prior to the commencement of the Services. If Contractor is self-insured for any portion of its insurance program, a letter indicating the coverage and limits of such self-insurance, signed by Contractor’s authorized representative with direct knowledge of and responsibility for Contractor’s insurance/risk management program, must be submitted.

By requiring insurance, OSC does not represent or agree that Contractor’s coverage and limits will be adequate to respond to any loss or claim arising from or relating to the Services or to satisfy the Contractor’s liability in relation thereto.

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.

* 1. **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.

* 1. **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.

* 1. **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.

* 1. **SURVIVAL**

The provisions of Sections XIV. “General Warranty and Representations,” XVI. “Confidentiality, Security and Background Investigations,” XVIII. “Indemnification and Liability,” XXI. “Transition” and Appendix A shall survive the expiration or termination of this Agreement.

1. **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.

|  |
| --- |
| **Contract Number: [ ]** |
| **[Contractor]** | **Office of the State Comptroller** |
|  |  |
| **Signature** | **Signature** |
|  | **Joel Lombardi**  |
| **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 he/she/they 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** |

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law, 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.
4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, 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.
6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.
7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.
8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).
9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the “Records”). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the “Statute”) provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.
11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee’s Federal employer identification number, (ii) the payee’s Federal social security number, and/or (iii) the payee’s Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

1. **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:
2. 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;
3. 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
4. the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

1. **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.
2. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
3. **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.
4. **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.
5. **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.
6. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

1. **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.
2. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development

Division for Small Business and Technology Development

625 Broadway

Albany, New York 12245

Telephone: 518-292-5100

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

NYS Department of Economic Development

Division of Minority and Women's Business Development

633 Third Avenue 33rd Floor

New York, NY 10017

646-8467364

Email: mwbebusinessdev@esd.ny.gov

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

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:

1. 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;
2. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
3. 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
4. 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.
5. **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.
6. **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).
7. **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.
8. **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.
9. **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.
10. **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>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

1. **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**

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

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

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

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| **Contractor Name:**  | **Federal Identification Number:**  |
| **Address:**  | **Contract Number:**  |
| **City, State, Zip Code:**  | **M/WBE Participation Goals Assigned: MBE \_\_\_\_\_% WBE \_\_\_\_\_%** |
| **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**

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

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

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

**INSTRUCTIONS FOR COMPLETING PROPOSER’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** |
|  |  |  |  |  |

**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 C**

**OSC POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT,**

**INCLUDING SEXUAL HARASSMENT**

**DISCRIMINATION AND HARASSMENT**

It is the policy of the Office of the State Comptroller (“OSC”) to provide a workplace that is free of discrimination and harassment based on race, color, sex (including sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender), creed or religion, age, national origin, disability, marital status, military or veteran status, predisposing genetic characteristics, domestic violence victim status or any other classification protected by state or federal law, rule or regulation or executive order.

Discrimination is defined as the failure or refusal to hire, promote, or train an individual or treat that individual equally with respect to compensation, terms, conditions or privileges of employment because of that individual’s membership in any one of the above classes. Harassment based upon a person’s membership in any of the above classes is included within the definition of discrimination.

In keeping with its policies, OSC reaffirms that it will not tolerate such discrimination or harassment in its workplace and that it will take appropriate action to prevent and stop the occurrence of such conduct in its workplace. OSC employees and any third parties who interact with OSC employees in the workplace are expected to avoid any behavior or conduct that could be interpreted as discrimination/harassment based on membership in any of the above classes.

Examples of conduct that may constitute harassment based upon membership in one of the above classes include, but are not limited to:

* kidding or teasing related to membership in, or characteristic of one of the above classes, such as laughing at or mimicking someone’s physical or mental impairment, foreign accent, etc.;
* using ethnic or racial slurs;
* conduct that denigrates or shows hostility toward an individual because of protected class status, and that has the purpose or effect of creating an intimidating, hostile or offensive environment; and
* telling jokes that belittle a member or members of one of the above classes.

**SEXUAL HARASSMENT**

Sexual harassment, a form of discrimination, is defined as unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

* such conduct is made either explicitly or implicitly a term or condition of employment;
* submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment; or
* such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

Examples of sexual harassment include, but are not limited to, sexual innuendo; suggestive comments; sexually-oriented kidding, teasing or practical jokes; jokes about gender-specific traits; jokes about sexual orientation, or perceived masculinity or femininity of individuals; foul or obscene language or gestures; display of foul, obscene or sexually suggestive printed or visual material; physical conduct such as touching or patting; sexually-oriented email or phone mail messages; suggestive or obscene letters, notes, or invitations; inappropriate discussions of a person’s physical appearance; or unwelcome gifts and attention.

A perpetrator of harassment can be a superior, subordinate, co-worker or anyone in the workplace, including an independent contractor, contract worker, vendor, client, customer or visitor.

Questions about what behavior constitutes discrimination or harassment, including sexual harassment, or requests for OSC Executive Orders and policies on such matters may be directed to the OSC Division of Diversity Management at (518) 473-1368.

August 31, 2021

**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-2) 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-3) 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-4) 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-5) 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-6). 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**

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| **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

**APPENDIX G**

**OSC CONSULTANT DISCLOSURE REPORTING REQUIREMENTS**

**Contractor Instructions**

**Background:**

Pursuant to New York State Finance Law Section 163(4)(g), State agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract. The report must include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Contractors selected for award on the basis of a procurement issued by OSC (Request for Proposals, Request for Quotations, Mini-Bid, or Invitation for Bids) must complete **Form A, State Consultant Services – Contractor’s Planned Employment,** upon notification of award. The completed **Form A** must include information for all employees that will be providing services under the contract, whether employed by the contractor or by a subcontractor.

Contractors selected for award are also required to complete **Form B, State Consultant Services Contractor’s Annual Employment Report,** annually for each year of the contract term, on a State fiscal year basis. The first report is due May 15 for the period April 1 through March 31 of the most recently concluded State fiscal year or portion thereof.

Form A must be submitted to OSC as the contracting agency. Form B must be submitted to OSC (as the contracting agency), the Department of Civil Service, and the Consultant Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in these instructions.

**Instructions:**

**Form A: State Consultant Services – Contractor’s Planned Employment**

Upon notification of contract award,complete Form A, attached to these instructions, to reportthe necessary planned employment information prospectively from the start date through the end of the contract term. This is a one-time reporting requirement.

CompleteForm A for contracts for consulting services in accordance with the following:

* **Employment category:** the specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract. (Note: The O\*NET database is available through the US Department of Labor’s Employment and Training Administration website at https://www.onetonline.org.)
* **Number of employees:** the total number of employees in the employment category anticipated to provide services under the contract, including part-time employees and employees of subcontractors.
* **Number of hours to be worked:** the total number of hours anticipated be worked by the employees in the employment category.
* **Amount payable under the contract:** the total amount payable by the State to the Contractor under the contract, for work by the employees in the employment category, for services to be provided during the contract term.

**Submit completed Form A to OSC within 48 hours of notification of selection for award at the address listed below.**

**Form B: State Consultant Services Contractor’s Annual Employment Report**

Use Form B, attached to these Instructions, to report annual employment information. This form captures historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit Form B to OSC (as the contracting agency), the Department of Civil Service, and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below.

Complete Form B for contracts for consulting services in accordance with the following:

* **Scope of Contract:** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
* **Employment Category:** the specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees providing services under the contract. (Note: The O\*NET database is available through the US Department of Labor’s Employment and Training Administration website at https://www.onetonline.org.)
* **Number of Employees:** the total number of employees in the employment category employed that provided services under the contract during the Report Period, including part-time employees and employees of subcontractors.
* **Number of hours worked:** the total number of hours worked during the Report Period by the employees in the employment category.
* **Amount Payable under the Contract:** the total amount paid or payable by the State to the Contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

**Submit the completed Form B by May 15 for the period April 1 through March 31, and annually by May 15th thereafter for each State fiscal year (or portion thereof) the contract is in effect, as follows:**

**To OSC (as the contracting agency):**

By mail: Bureau of Finance

 Office of the State Comptroller

 110 State Street, Stop 13-2

 Albany, NY 12236-0001

By email: rfp@osc.state.ny.us

**To the Bureau of Contracts:**

By mail: Bureau of Contracts

NYS Office of the State Comptroller

 110 State Street, 11th Floor

Albany, NY 12236

Attn: Consultant Reporting

By email: CDMOST@osc.ny.gov

**To Department of Civil Service:**

By mail: NYS Department of Civil Service

 Alfred E. Smith Office Building

 Albany, NY 12239

 Attn: Executive Office

By email: SubmitformB@cs.ny.gov

|  |
| --- |
| **FORM A** |
| New York State Consultant Services**Contractor's Planned Employment** |
| From Contract Start Date Through the End of the Contract Term |
|  |  |  |  |  |  |  |  |  |
| State Agency Name: **Office of the State Comptroller** |  |
| State Agency Department ID: 3050000 | Agency Business Unit: OSC01 |
| Contractor Name:       | Contract Number:       |
| Contract Start Date:   /  /     | Contract End Date:   /  /     |
|  |  |  |  |  |  |  |  |  |
| **Employment Category** | **Number of Employees** | **Number of hours to be worked** | **Amount Payable Under the Contract** |
|  |  |  |  |
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| Preparer's Signature:   |
| Date Prepared:   /  /     |  |  |  |  |
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| **FORM B** |
| New York State Consultant Services**Contractor’s Annual Employment Report** |
| Report Period: April 1,      to March 31,      |
|  |  |  |  |  |  |  |  |  |
| Contracting State Agency Name: **Office of the State Comptroller** |  |
| Contract Number:       | Agency Business Unit: OSC01 |
| Contract Term:   /  /     to   /  /     | Agency Department ID: 3050000 |
| Contractor Name:       |  |
| Contractor Address:       |  |
| Description of Services Being Provided:       |
| **Scope of Contract (Choose one that best fits):** |
| [ ]  Analysis [ ]  Evaluation [ ]  Research [ ]  Training |
| [ ]  Data Processing [ ]  Computer Programming [ ]  Other IT consulting |
| [ ]  Engineering [ ]  Architect Services [ ]  Surveying [ ]  Environmental Services |
| [ ]  Health Services [ ]  Mental Health Services |
| [ ]  Accounting [ ]  Auditing [ ]  Paralegal [ ]  Legal [ ]  Other Consulting |
|  |
| **Employment Category** | **Number of Employees** | **Number of** **Hours Worked** | **Amount Payable Under the Contract** |
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# ATTACHMENT F

# STATUTES APPLICABLE TO THE RFP

**DOCUMENT POSTED SEPARATELY TO THE SITE HOSTING THIS RFP.**

**Service Award Statutes:**

**Articles 11-A, 11-AA, 11-AAA, and 11-AAAA of the General Municipal Law**

**NYCRR Part 150:**

**Service Award Programs for Volunteer Ambulance Workers**

**NYCRR Part 152:**

**Defined Benefit Service Award Programs for Volunteer Ambulance Workers**

**NYCRR Part 154:**

**State-Administered Defined Contribution Service Award Programs for Volunteer Firefighters**

**NYCRR Part 155:**

**State-Administered Defined Benefit Service Award Programs for Volunteer Firefighters**

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-2)
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-3)
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-4)
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-5)
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-6)