

**STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
AGREEMENT WITH
CONTRACTOR'S NAME
NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C001204**

THIS AGREEMENT ("Agreement") is between the New York State (the "State") Office of the State Comptroller, by the Department of Audit and Control ("OSC"), whose main office and principal place of business is 110 State Street, Albany, New York, 12236, and [Contractor Name] (the "Contractor"), whose office is located at [Contractor Address].

W I T N E S S E T H

WHEREAS, OSC has an ongoing need for electronic fillable form creation and hosting services (the "Services");

WHEREAS, to meet this need OSC issued an advertisement in the New York State Contract Reporter dated [] for the Services, indicating that it was seeking to make an award pursuant to its discretionary authority under State Finance Law §163(6);

WHEREAS, the Contractor, among others, responded to the advertisement with a response dated [];

WHEREAS, the Contractor is a responsible entity with the ability to perform the Services and the compensation to be paid to the Contractor is reasonable; and

WHEREAS, the Contractor [is certified by New York State as a minority- or women-owned business enterprise ("M/WBE") under Article 15-A of the Executive Law] **OR** [is certified by New York State as a service-disabled veteran-owned business ("SDVOB") under Article 3 of the Veterans' Services Law], and therefore is eligible for a discretionary award under State Finance Law §163(6).

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:

I. TERM

This Agreement will commence on approval by OSC's Bureau of Contracts and will continue for a period of five years, or until compensation for the Services reaches the "total compensation" amount stated in Section III. (Compensation), whichever comes first.

II. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES

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

A. Appendix A – Standard Clauses for New York State Contracts;

B. Agreement – this document, including:

- Appendix B – Forms AC 3239-A, Contractor's EEO Staffing Plan of Anticipated Workforce and 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;

C. Attachments – Attachments A through and including D:

- Attachment A – Statement of Work;
- Attachment B – Response Form, including Attachment B-1 (Solution Requirements Matrix) and Attachment B-2 (Bid Page);
- Attachment C – New York State Contract Reporter Ad: and
- Attachment D – Responses to Questions.

III. SERVICES

In reliance on the Contractor's representations, warranties, and covenants set forth in Attachment B and as set forth herein, OSC hereby retains the Contractor to perform the Services, and the Contractor hereby agrees to perform the Services, which shall include all deliverables, work, and work products described on Attachment A (Statement of Work) and Attachment B (Response Form).

IV. COMPENSATION AND PAYMENT

A. Fees. OSC will compensate the Contractor for the Services in accordance with the Fee Schedule set forth in Attachment B-2 (Bid Page). Total compensation under this Agreement, must not exceed **\$XXX.XX.**

B. Fee Increases. Licensing Fees for Year 1 of the Solution, which will commence on Go-Live, meaning when the Solution is fully configured and placed into production, are set forth on Attachment B-2 (Bid Page). Licensing Fees in subsequent years may be increased or decreased on the anniversary date of the Agreement based on the change in the Consumer Price Index, All Urban Consumer – Northeast, for the preceding 12-month period, or 5%, whichever is less. The Contractor must submit a request for any such increase, with supporting documentation, at least 30 days before the anniversary date of the Agreement, or such request may be denied. If OSC elects to approve a late request, such increase shall not apply to any period prior to the date such request is approved by OSC. [Additional Fees related to the Solution that are identified on Attachment B-2 (Bid Page) may be subject to a similar increase/decrease in accordance with the Bid]

C. Invoice Submission. OSC will compensate the Contractor in the ordinary course of OSC business upon receipt of the Contractor's invoice. Approved invoices will be paid in accordance with Article 11-A of the State Finance Law.

1. Invoices will be submitted as follows:
 - Implementation, if any: upon final approval from OSC that the Solution meets OSC's requirements;
 - Licensing Fees: on an annual basis; and
 - Additional Fees: at the frequency identified on Attachment B-2, or as otherwise agreed upon between the parties.
2. All invoices must include the following information:
 - OSC's Agreement #C001204, Contractor's taxpayer identification number, and Contractor's New York State Vendor Identification Number;
 - A detailed description of Services provided;
 - The total amount billed for Services for the invoice period; and
 - The beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement.
3. All invoices are subject to OSC's acceptance of the Services for which billing is being made and must be submitted via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

Office of the State Comptroller
Bureau of Finance

Contract Payment Unit
110 State Street, Stop 13-2
Albany, NY 12236-0001

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

Office of the State Comptroller
Emergency Preparedness and Internal Communications
110 State Street, Stop ##-#
Albany, NY 12236-0001
ATTENTION: [Contact Name]

V. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REPORTING

- A. Compliance.** The 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.
- B. Required Submissions.** 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 shall 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 the 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
Office of the State Comptroller
Bureau of Finance
110 State Street, Stop 13-2
Albany, NY 12236

- C. Deficiencies.** These Reports are reviewed as part of OSC's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce and the Contractor's/subcontractor's EEO Workforce Utilization Reports, the Contractor/subcontractor may be subject to an in-depth EEO compliance review. If deficiencies are identified, OSC will 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 OSC Deputy Comptroller for the Bureau of Finance determines that the Contractor/subcontractor is non-compliant, such Deputy Comptroller will 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 recommend to DMWBD that it review and attempt to resolve the noncompliance matter. The Deputy Comptroller will serve a copy of the complaint upon the Contractor/subcontractor by personal service or certified mail, return receipt requested.
- D. Noncompliance Resolution.** DMWBD will attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties will 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 will take all appropriate actions under statute (Executive Law §316) and regulation (5 NYCRR §143.6).

VI. NOTICES

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

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

The following are the names and contact information for OSC and the Contractor. The parties agree to 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

Contractor:

Name: _____
Title: _____
Address: _____
Telephone: _____

VII. 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, OSC will supply and make available necessary information and personnel to assist the Contractor to perform the Services.

VIII. STAFF

- A. **Definition.** For the purposes of this Agreement, the Contractor's "Staff" means the Contractor's employees, consultants, owners, officers, directors, subcontractors, subsidiaries, affiliates, partners, and agents. Staff also includes any subcontractor (including third-party services providers) and their employees providing Services hereunder or who have access to Confidential Information as defined herein.
- B. **FIRCA.** 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 United States-based employees are legally entitled to work in the . The Contractor warrants to OSC that it has verified that its Staff assigned to provide Services to OSC are eligible for employment in the United States. The Contractor is responsible for ensuring that its Staff retain the authorization to legally work in the United States throughout the term of the Agreement. In order to confirm that its 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 the Agreement. In accordance with such law, OSC does not discriminate against individuals on the basis of national origin or citizenship.
- C. **Subcontractors.** The Contractor shall disclose to OSC its intention to enter into any subcontracts for the performance of any Services prior to the performance of those 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 must include in all subcontractor agreements binding confidentiality provisions that are at least as restrictive as those found in this Agreement. The Contractor acknowledges that these requirements are ongoing for the term of this Agreement, and.

- D. **Approval.** 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.

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. 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. 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. OSC in each instance will be provided with a summary of the experience of the proposed subcontractor's staff member and an opportunity to interview that person, prior to giving its approval or disapproval.

- E. **Responsibility.** 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 this Agreement.

IX. **RELATIONSHIP OF PARTIES; RIGHTS TO WORK PRODUCT**

- A. **Independent Contractor.** The relationship of the Contractor and its Staff to OSC shall be that of an independent contractor, and not that of an agent or employee of OSC. The Contractor, as an independent contractor, shall not have the authority to contract for or bind OSC for any purpose whatsoever. The Contractor covenants and agrees that its Staff will not hold themselves out as agents, officers, or employees of OSC, and that they will not make any claim, demand or application for any right or privilege applicable to any officer or employee of OSC, including but not limited to, Workers' Compensation coverage, Social Security coverage or Retirement System benefits.
- B. **Work for Hire.** The deliverables created by the Contractor and its Staff for OSC under the Agreement are intended as works for hire. Such work is specially ordered and commissioned for use as contributions to a collective work, or is other such work as specified by the U.S. Copyright Act [17 U.S.C. §101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York. Furthermore, OSC and the Contractor agree title and ownership shall pass to the State of New York upon acceptance of the work. The Contractor and its Staff who have been or may be used in regard to the Agreement forfeit all claims of title or ownership to work produced under the Agreement. Any and all reports and other materials (preliminary, final, and otherwise), analyses and data (whether statistical or otherwise), transmitted to OSC by the Contractor shall become the sole and exclusive property of OSC for such use as OSC shall deem appropriate, other than the Contractor's work papers, which the Contractor may retain.
- C. **Contractor Intellectual Property.** Notwithstanding the above, in the course of performing Services, the Contractor may make available to OSC Contractor's written materials prepared generally for the Contractor's clients ("Contractor Materials"). The Contractor retains all intellectual property rights in the Contractor Materials and grants OSC a perpetual license to such Contractor Materials for OSC's internal business purposes, subject to the terms and conditions of this Agreement. Nothing herein shall be deemed to preclude the Contractor from otherwise using the Contractor Materials and the related or underlying general knowledge, skills, ideas, concepts, techniques, and experience developed in the course of Contractor's business. The Contractor will own and retain all right, title, and interest, including all intellectual property and proprietary rights, in and to the Solution and Deliverables so long as such Deliverables do not involve the use of, incorporate, or rely on OSC Confidential Information.

X. **WARRANTY**

The Contractor hereby warrants that the Services 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.

XI. CONFIDENTIALITY AND SECURITY

- A. Confidential Information.** The Contractor and its Staff will receive and have access to OSC confidential information in the course of providing the Services. OSC confidential information includes all non-public information (herein referred to as “Confidential Information”) which is disclosed to or received by the Contractor, whether verbally, electronically, visually, or in written or other tangible form, which is either identified or should be reasonably understood to be confidential. Confidential Information includes, but is not limited to, information about OSC information technology systems and infrastructure; and any personal information or data as may be collected or accessed by the Contractor in connection with the Services, or that may be provided to the Contractor on behalf of OSC. The Contractor must ensure that its Staff understand and agree to be bound to these confidentiality restrictions and obligations.
- B. Use.** The Contractor, its subcontractors, and any service providers or other entities involved in processing or interacting with OSC data shall use OSC data and Confidential Information solely for the purpose of carrying out its obligations hereunder, and for no other purpose.
- C. Disclosure of Confidential Information.** Confidential Information shall not be disclosed by the Contractor or its Staff to any third party except to those third parties operating under non-disclosure provisions no less restrictive than those in this Agreement and who have a justified business “need to know.”
1. The Contractor shall have robust compartmentalization of job duties, and all persons to whom Confidential Information is disclosed (meaning anyone who accesses, inputs, stores, processes, outputs, transmits, or otherwise interacts with or acts upon Confidential Information shall be properly informed and trained regarding the confidential nature of the information and appropriate security standards.
 2. In the event of the receipt by the Contractor of a valid order or mandatory request for disclosure of Confidential Information from a judicial, administrative, or governmental agency having jurisdiction over it, the Contractor shall, unless prohibited by applicable law, promptly notify OSC thereof. The Contractor shall, to the extent practicable, meet with OSC for purposes of discussing such order or request prior to the submission of a response thereto, and shall, except to the extent prohibited as a matter of law, cooperate and assist OSC in responding to any orders or request.
 3. Throughout the term of the Agreement, the Contractor shall disclose to OSC any artificial intelligence-based tool, software, or application that interacts with OSC data, now or in the future, and any use that may be made of OSC data in relation thereto.
- D. Security.** The Contractor represents and warrants that it has developed, implemented, and shall maintain comprehensive data security, disaster recovery, and business continuity programs (together, the “Security Programs”) reasonably designed to protect information and conduct its business in accordance with current industry standards and applicable law. The Contractor further represents and warrants that it will monitor its Security Programs and audit such Security Programs at least annually. The Contractor agrees to adjust its Security Programs as necessary in accordance with the results of such audits.
- E. CONUS.** All Services provided hereunder, including any services that directly or indirectly access or interact with OSC Confidential Information, shall be performed only from within the contiguous United States and the District of Columbia (“CONUS”). All OSC Confidential Information shall only be stored, acted upon, viewed, or processed only from within the CONUS. All helpdesk, online, and support services which may access OSC Confidential Information shall only be performed from locations within the CONUS.
1. The Contractor and its Staff shall comply with all applicable OSC facility and information security policies, standards, and procedures, provided to the Contractor in performing the

Services.

2. The Contractor shall not connect any non-OSC computer, electronic storage device or telecommunications equipment to OSC's network. Personal and corporate laptop computers, personal and corporate USB devices, smartphones, and tablets are included in this prohibition.
3. The Contractor shall not remove OSC data from OSC-owned or licensed systems, computer disks, or other electronic storage devices without the prior written approval from an authorized OSC representative.

F. Security Incident. "Security Incident" means any theft; loss of; unauthorized or unlawful disclosure, use, alteration or destruction of; unauthorized or unlawful access to; or other actual or potential compromise of, Confidential Information, breach of the Contractor's systems (or systems that access, input, store, processes, output, transmit, or otherwise interact with or act upon Confidential Information), including, in the absence of direct evidence of a breach, 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.

1. At the Contractor's sole cost and expense, the Contractor shall immediately commence an investigation to determine the scope of a Security Incident and to restore the security of its systems and prevent further, unauthorized access to or disclosure of Confidential Information.
2. To the extent not prohibited by applicable law, the Contractor shall notify OSC immediately in writing of the Security Incident, in the most expedient time possible and without unreasonable delay, but no later than within 24 hours of such occurrence. Such notice to OSC will be made by contacting OSC's Information Security Office by telephone at 518-473-1374 and by email to: iso@osc.ny.gov (or such other contact which OSC may provide). Such notice shall include, as is known at the time, the scope of the Security Incident; potentially compromised Confidential Information; and other relevant information. The Contractor shall provide prompt updates to OSC as additional information is discovered in the course of its investigation.
 - a. To the extent OSC determines that any further notifications are required, the Contractor shall be responsible for providing such notifications to all required recipients and for the costs of such notifications.
 - b. The Contractor shall be obligated to receive authorization from OSC prior to making additional notifications to any regulating or reporting agencies of a Security Incident, or making any determination to delay notifications due to law enforcement investigations, except as required law.
3. Nothing contained herein reduces or alters the Contractor's obligations under applicable law, including those set forth in General Business Law §§899-aa *et seq.*

G. Destruction. Promptly after the termination or expiration of this Agreement, the Contractor shall sanitize all records, data, information, and other files containing Confidential Information, except, and only to the extent the Contractor is required to retain such Confidential Information pursuant to law and subject to a continuing duty of nondisclosure hereunder. Subsequent to the sanitization of Confidential Information, an officer or principal of the Contractor shall, upon OSC's request, certify in writing that such sanitization has been completed in accordance with the Office of Information Technology Services Policy for Sanitization/Secure Disposal in NYS-S13-003 found at:

https://its.ny.gov/system/files?file=documents/2022/10/nys-s13-003_sanitization_secure_disposal_standard.pdf.

H. Compliance with Laws. In performing the Services, the Contractor must comply with: (i) all applicable international, federal, state, and local laws, rules, regulations, and governmental requirements now or hereafter in effect relating to the confidentiality or security of Confidential Information; and (ii) applicable industry standards concerning data protection, confidentiality and information security.

XII. BACKGROUND INVESTIGATIONS

- A. Investigation of Covered Employees.** The Contractor shall conduct background investigations on its employees, and shall require that all subcontractors conduct background investigations on their employees, who will have access to OSC's IT systems, access to OSC Confidential Information, or routine access to any OSC facility ("Covered Employees"). For purposes of this Section, "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.
- B. Background Investigation Requirements.** At a minimum, background investigations must include a review/evaluation of the following:
- identity verification, including Social Security Number search or national identity number search, as applicable;
 - employment eligibility, including verification of U.S. citizenship or legal immigration status, where appropriate;
 - 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.
- C. Background Investigation Certification.** With the signing of this Agreement, the Contractor certifies that it (and its subcontractors) has or will conduct a background investigation on Covered Employees prior to the Covered Employees' commencement of Services. The Contractor (and its subcontractors) must obtain, unless prohibited by applicable law, the consent of such Covered Employees to allow the OSC Inspector General to audit the results of these background investigations, and (i) to review unredacted the background investigation records, including supporting documentation, and (ii) to conduct its own background investigation. Only Covered Employees who have passed the background investigation and provided such consent shall be assigned to provide Services. The Contractor shall undertake a background investigation on any new/replacement Covered Employees during the term of the Agreement.
of its Staff to allow OSC, upon request:.
- D. Record Retention.** During the term of the Agreement, and in accordance with Appendix A (Section 10, Records), the Contractor must maintain records related to the background investigations performed.

XIII. INDEMNIFICATION AND LIABILITY

- A. Contractor Liability and Indemnification.** The Contractor shall be fully liable to and shall fully indemnify, defend, and hold harmless OSC and the State, their officials, agents, and employees, from suits, actions, damages, and costs of every name and description (including reasonable attorneys' fees and expenses), without limitation, arising from any act or omission of the Contractor or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; violation of the confidentiality provisions set forth herein; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; provided however that the Contractor shall not be obligated to indemnify OSC for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of OSC.
- B. Third Party Claims.** For third party claims, OSC will give the Contractor:
1. prompt written notice of any action, claim, suit, proceeding, or threat of such action;
 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.

C. Indemnification is in Addition to Rights. The indemnification obligation contained in this Section XV Liability and Indemnification (i) is in addition to, and not in lieu of, any other right, power, or remedy that OSC, or the officers, agents, representatives, and staff of OSC, may have against the Contractor; and (ii) will not be construed to limit in any way the duties, responsibilities, and obligations of the Contractor set forth in this Agreement. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due Contractor such monies as may be necessary to satisfy any claim for damages OSC may have against Contractor.

D. Limitations of Liability.

1. **Force Majeure Events.** The Contractor, OSC, and the State shall not be liable for any delay or failure in performance beyond their control resulting from acts of war, hostility or sabotage; act of nature; electrical, internet or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than 90 days, either party may terminate all or any agreed upon portion of the Agreement immediately upon written notice. This section 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. **No Consequential, Indirect, or Special Damages.** Except as stated herein, the Contractor, OSC, and the State shall not be liable for any consequential, indirect, or special damages of any kind that 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. The parties agree that this limitation is not applicable to indemnity for third-party claims or where the party seeking to limit liability for consequential, indirect, or special damages acted with gross negligence or willful misconduct.

XIV. RESPONSIBILITY TERMS

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

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

Notwithstanding Subsection (B), above, 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.

C. Determination of Non-Responsibility. OSC reserves the right to make a final determination of the Contractor's non-responsibility ("Determination of Non-Responsibility") at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (ii) the Contractor's failure to disclose material information; or (iii) OSC's or the State's discovery of any other material

information which pertains to the Contractor's responsibility.

If OSC preliminarily determines the Contractor to be non-responsible, OSC will provide written notice to the Contractor detailing the reason(s) for the preliminary determination and will provide the Contractor with an opportunity to be heard before the determination is finalized.

Upon a Determination of Non-Responsibility of the Contractor, OSC reserves the right to terminate this Agreement for cause pursuant to Section XV. (Termination and Suspension).

XV. TERMINATION AND SUSPENSION

- A. 15 Day Notice of Termination.** OSC may terminate or suspend this Agreement, or terminate or suspend the Services in whole or in part, with or without cause upon 15 days' prior written notice.
- B. Immediate Termination.** OSC reserves the right to terminate or suspend this Agreement, or terminate or suspend the Services in whole or in part 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.
- C. Effect of Termination.** If this Agreement is terminated or suspended for any reason prior to its stated term, the compensation to be paid to the Contractor will be prorated to the effective date of such termination or suspension based on the Services satisfactorily delivered prior to such termination or suspension date.

XVI. MISCELLANEOUS PROVISIONS

- A. 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.
- B. 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.
- C. Ethics Compliance.** The Contractor and its Staff 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 the Agreement and/or other civil or criminal proceedings as required by law.
- D. 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.
- E. Survival.** The provisions of Sections X (Warranty), XI (Confidentiality and Security), XIII (Indemnification and Liability), and Appendix A shall survive the expiration or termination of this Agreement.

XVII. 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. The Agreement shall not be changed, modified, or altered in any manner except by an amendment 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 OSC's Bureau of Contracts pursuant to State Finance Law §112, and filed in the Office of the State Comptroller.

IN WITNESS WHEREOF, the parties have executed this Agreement.

In addition to the acceptance of this Agreement, 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: C001204

CONTRACTOR

OFFICE OF THE STATE COMPTROLLER

SIGNATURE

SIGNATURE

PRINTED NAME

JEREMY R. DISARE

PRINTED NAME

TITLE

DIRECTOR OF FINANCE

TITLE

DATE

DATE

CONTRACTOR'S ACKNOWLEDGEMENT

STATE OF _____ }

COUNTY OF _____ }

SS.:

On the _____ day of _____ in the year 20_____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, 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:
NYS ATTORNEY GENERAL

APPROVED:
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, licensor, 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.

12. 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:

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

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or

representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

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

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

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

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

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

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

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

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

certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

NYS Department of Economic Development
Division for Small Business 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:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced

or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, 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.

22. 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).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 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.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law § 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.

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

27. 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
NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE

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

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR’S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE

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

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

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.
<p>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.</p> <p>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.</p> <p>Failure to submit complete and accurate information may result in non-compliance and bid/proposal disqualification.</p> <p>*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.</p>	

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S/SUBCONTRACTOR'S EEO WORKFORCE UTILIZATION REPORT**

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): <input type="checkbox"/> Yes <input type="checkbox"/> No (if Yes, attach current copy of EEO Policy Statement.)															
Does the Contractor have an existing Affirmative Action Program? (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (if Yes, attach description of Affirmative Action Program)										Is the Contractor ESD Certified: (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, provide ESD Certification Number and Expiration Date.) _____					
<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>can</u> be separated out from the Contractor's/Subcontractor's total workforce.										<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>cannot</u> 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

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

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

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
<p>Please submit completed Form AC 3239-B semi-annually, in accordance with the terms of the State Contract to:</p> <p>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</p> <p>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.</p> <p>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.</p> <p>Failure to submit complete and accurate information may result in non-compliance and bid/proposal disqualification.</p> <p>*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.</p>

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:
 - a. 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;
 - b. 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;
 - c. 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;
 - d. 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;
 - e. 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;
 - f. 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 services¹ 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 vendor² 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 question³ 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 influence⁴ 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

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.

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.

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.

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.

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 process⁵. 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

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.

member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.

13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011

APPENDIX E

CONTRACTOR'S CERTIFICATIONS/ACKNOWLEDGEMENTS

SIGNATURE AUTHORITY
The Contractor* and the person signing on behalf of the Contractor certify that such person is authorized to sign on behalf of the Contractor and has the express authority to contractually bind the Contractor.
ACKNOWLEDGEMENT OF RECEIPT OF OSC'S POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT
The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Policy on Discrimination and Harassment, Including Sexual Harassment (Appendix C), and each agrees to abide by the terms of Appendix C.
CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW § 139(L) REGARDING SEXUAL HARASSMENT POLICY AND ANNUAL TRAINING
"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law."
NON-COLLUSIVE BIDDING CERTIFICATION
<p>"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:</p> <ol style="list-style-type: none"> 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

2. 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