

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



REQUEST FOR PROPOSALS

RFP #0011

**ADMINISTRATIVE AND ACTUARIAL SERVICES FOR LENGTH OF SERVICE AWARD
PROGRAMS FOR VOLUNTEER AMBULANCE WORKERS AND VOLUNTEER FIREFIGHTERS**

ISSUED: MAY 13, 2025

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1.0 CALENDAR OF EVENTS

<u>EVENT</u>	<u>DATE</u>
Issuance of Request for Proposals	May 13, 2025
Deadline for Submission of Written Questions	June 4, 2025 4:00 p.m. ET
Responses to Written Questions Posted	June 18, 2025
Deadline for Submission of Proposals	July 3, 2025 4:00 p.m. ET
<u>Anticipated</u> Commencement of Work	May 14, 2025

2.0 EXECUTIVE OVERVIEW

2.1. Overview

Through this Request for Proposals (“RFP”), the Office of the State Comptroller (“OSC”) of the State of New York (“State”), by the Department of Audit and Control, is seeking competitive proposals from administrative service agencies (See Section 4.0, Minimum Qualifications to Propose) to serve as program administrator (“Program Administrator”) and provide Administrative and Actuarial services for Defined Contribution Plan (as defined in General Municipal Law (GML) Section 215(3) and GML 219-c(2) and Defined Benefit Plan (as defined in GML Section 215(2) and GML Section 219(k)(2)) Length of Service Award Programs (each a “LOSAP” or “Program”, and collectively, “LOSAPs” or “Programs”) for volunteer ambulance workers and volunteer firefighters. A separate RFP #0010 has been issued simultaneously to obtain Financial Organization (Trustee) Services for Length of Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters; the resultant contract will be for the same term as this RFP.

2.2. Important Information

This RFP outlines the terms and conditions and all applicable information required for submission of a proposal. Proposers should pay strict attention to the Deadline for Submission of Proposals in Section 1.0 (Calendar of Events) to prevent disqualification. To ensure compliance with these requirements and to prevent possible disqualification, Proposers should follow the format and instructions contained in this document. Appendix D (OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures) impacts the entire procurement and potential Proposers are encouraged to read and understand these procedures as a first step in this RFP.

The Proposer is required to review Appendix A (Standard Clauses for New York State Contracts). Appendix A contains important information related to the contract to be entered into as a result of this RFP and will be incorporated, without change or amendment, into the contract entered into between OSC and the selected Proposer. By submitting a response to the RFP, the Proposer agrees to comply with all the provisions of Appendix A.

The Proposer is also required to review, and is requested to have Legal counsel review, Attachment E (Draft Contract) as the Proposer must be willing to enter into an Agreement (defined below) substantially in accordance with the terms of Attachment E should the Proposer be selected for contract award.

Bracketed language included in Attachment E may, at the sole discretion of OSC, be revised in accordance with the proposal of the selected Proposer or as otherwise mutually agreed to by the Parties. The State

may, in its discretion, consider limited and reasonable modifications in alignment with industry standards; however, the State has no obligation to accept any such proposed modifications and reserves all rights to reject such proposed changes, if any. Extraneous terms or material deviations (including additional, inconsistent, conflicting, or alternative terms) to the Draft Contract may be rejected. The State strongly prefers that all proposed modifications to the Draft Contract be submitted during the Question and Answer period (see RFP Sections 5.2 (Questions) and 1.0), but will also consider proposed modifications that are submitted with the Proposal.

Attachment E is provided in MS Word Format for Proposer's convenience and use. Each proposed contract modification must be specifically reflected in redlined, track change format in the MS Word copy of the document that has been provided, with comments embedded in the document that specify the reason why each specific change would be in the best interest of the State.

If Proposer opts to submit proposed contract changes at the time it submits its Proposal, the redlined Attachment E should be included with its Administrative Proposal (see Section 6.1).

In no event will the State consider proposed modifications to the Draft Contract that have not been submitted during the Question and Answer period (strongly preferred) or with the Proposal.

No proposed modifications will be incorporated into the final Contract unless expressly accepted by the State in writing.

Capitalized terms used but not defined in this RFP have the meanings given to them in Attachment E (Draft Contract).

2.3. Description of the Programs

General Municipal Law ("GML") Articles 11-A, 11-AA, 11-AAA, and, as applicable, 11-AAAA authorize the creation of municipally-funded LOSAPs for volunteer firefighters and volunteer ambulance workers. Contributions to the Programs are made annually by municipal government sponsors ("Sponsors") on behalf of each participating volunteer for whom the Sponsor approves credit for years of volunteer service. The Programs provide pension-like benefits to volunteer ambulance workers and volunteer firefighters based on length of service. Pursuant to statute, Sponsors may elect to have the State administer their LOSAPs; the Comptroller administers these LOSAPs on behalf of the State. As of December 31, 2024, there are 60 State-Administered Programs for the benefit of approximately 4,495 participants (each a "Participant" and jointly "Participants"). Of these 60 Programs:

- 15 are Defined Contribution Plan LOSAPs for ambulance companies (\$6.3 million invested)
- 36 are Defined Benefit Plan LOSAPs for ambulance companies (\$51.2 million invested),
- 8 are Defined Contribution Plan LOSAPs for volunteer fire companies (\$1.1 million invested), and
- 1 is a Defined Benefit Contribution Plan LOSAPs for a volunteer fire company (\$1.2 million invested).

Contributions to the Programs are made annually by municipal government sponsors ("Sponsors") on behalf of each volunteer ambulance worker and volunteer firefighter for whom the Sponsor approves credit for years of volunteer service. The amount of the annual contribution is related to the type of Program offered.

Volunteer ambulance workers and firefighters (for both, each individual is a "volunteer" and collectively, "volunteers") are eligible to participate in a Program after reaching the age of 18 and completing at least one year of service; however, a government sponsor may impose a younger age or shorter length of service requirement for participation in the program for volunteer firefighters. A volunteer (acquires a non-forfeitable right to a service award upon completion of five years of volunteer service, unless the Sponsor establishes

a faster vesting schedule or upon a volunteer firefighter's attainment of entitlement age under the program. The determination of credit for a year of service is the responsibility of the Sponsor.

A. Defined Benefit

The annual contribution to be made to a Defined Benefit Plan LOSAP is calculated (subject to the provisions of General Municipal Law § 219 for a volunteer firefighter and § 219-n for a volunteer ambulance worker) by the Program Administrator, and the Program Administrator bills the Sponsor for the contribution due. The annual employer contribution amount is based on an annual actuarially-determined amount. Contributions are payable annually by the Sponsor to the Program Administrator who then transfers the payments to the proposer selected as a result of RFP0010 (the "Program Trustee" or the "Trustee"). Program assets must be held in trust and invested in accordance with a statutory "prudent person" rule.

A service award for a Participant that is a volunteer firefighter is determined on the basis of an actuarial valuation in accordance with General Municipal Law § 219. A service award for a Participant that is a volunteer ambulance worker is the actuarial equivalent of an annual payment for life in an amount selected by the Sponsor in accordance with General Municipal Law § 219-n(1).

A service award becomes available when the Participant reaches entitlement age, or earlier in the event of permanent total disability or death. Entitlement age is established by the Sponsor and may not be earlier than age 55 or later than age 67, except in no event shall it be later than the age at which the participant can receive an unreduced benefit under Title II of the Social Security Act (Public Law 74-271 U.S.C. 306 et seq.).

Benefits may be paid in the form of a lump sum, a life annuity with or without survivor benefits, a period certain annuity, or any other form provided under the Program, provided that all forms of payment are actuarially equivalent to each other. The Program may limit the forms of payment or impose conditions concerning the availability of a form of payment.

There are approximately 331 participants receiving monthly annuitant payments from the Defined Benefit LOSAPs.

B. Defined Contribution

The minimum contribution for each Participant in the Defined Contribution Plan LOSAP is \$120 per year; the maximum is \$1,200 per year. Contributions are payable annually by the Sponsor to the Program Administrator, who then transfers the payments to the Program Trustee. Program assets must be held in trust and invested in accordance with a statutory "prudent person" rule.

The service award for a Participant is the amount resulting from the contributions made on behalf of the Participant, less necessary administrative costs, plus earnings resulting from the investment of the contributions, determined as of the valuation date(s) provided for in the Program.

A service award becomes available when the Participant reaches entitlement age, or earlier in the event of permanent total disability or death. Entitlement age is established by the Sponsor and may not be earlier than age 55 or later than age 67, except for a volunteer firefighter it shall be no later than the age at which the participant can receive an unreduced benefit under Title II of the Social Security Act (Public Law 74-271 U.S.C. 306 et seq.).

Benefits may be paid in the form of a lump sum, a life annuity with or without survivor benefits, a period certain annuity, or any other form provided under the Program, provided that all forms of payment are actuarially equivalent to each other. The Program may limit the forms of payment or impose conditions concerning the availability of a form of payment.

2.4. Term of the Agreement

The term of the agreement resulting from this RFP ("Agreement" or "Contract") will be for a period of five years from the date of contract approval by OSC's Bureau of Contracts.

3.0 SERVICES

This Section describes the Administrative and Actuarial Services for LOSAPs for Volunteer Ambulance Workers and Volunteer Firefighters that are required to be provided by the selected Proposer ("Services"). Proposer must be able to provide all Services throughout the Agreement term.

NOTE: Proposers will be required to provide responses that address all requirements of this Section as part of its Technical Proposal. Capitalized terms used herein but not otherwise defined in this RFP have the meanings given to them in Attachment E (Draft Contract).

The Services to be provided by the Program Administrator shall in all instances be subject to the approval of OSC. The duties of the Program Administrator are set forth in:

- the Service Award Statute (Articles 11-A, 11-AA, 11-AAA, and, as applicable, 11-AAAA of the General Municipal Law ("GML")).
- the rules and regulations promulgated by the Comptroller (2 NYCRR Part 150, Service Award Programs for Volunteer Ambulance Workers; 2 NYCRR Part 152, Defined Benefit Service Award Programs for Volunteer Ambulance Workers; 2 NYCRR Part 154, State-Administered Defined Contribution Service Award Programs for Volunteer Firefighters; and 2 NYCRR Part 155, State-Administered Defined Benefit Service Award Programs for Volunteer Firefighters) (collectively, the "Regulations"),
- the Program Agreements, as defined in Section I (Definitions) in Attachment E (Draft Contract),
- the Trust Agreements, as defined in Section I (Definitions) in Attachment E.

The Service Award Statutes and the Regulations are posted to the website hosting this procurement in a separate document (Attachment F – Statutes Applicable to the RFP) in addition to all RFP documents.

The Selected Proposer must:

- 3.1.** Prepare, revise, and/or amend standard forms of Program Agreements to be utilized by Sponsors of all of the Programs, as such revisions and/or amendments may be required in order for such Program Agreements to comply with applicable law, or may otherwise be desirable in order to advance the interests of the Programs and their Participants;
- 3.2.** Distribute to all Sponsors a copy of the Program Agreement and Trust Agreement applicable to the form of Program adopted by the Sponsor, including any amendments thereto;
- 3.3.** Prepare and distribute to Sponsors a standard form of Adoption Agreement or amended Adoption Agreement for the applicable Program;
- 3.4.** Review and approve Sponsor's standard form of Adoption Agreement or amended Adoption Agreement for the applicable Program. As necessary, consult with OSC on issues arising regarding approval of Sponsor's standard form of Adoption Agreement or amended Adoption Agreement for the applicable Program. Upon the adoption, amendment, or termination of a Program, transmit copies of the respective Notice of Adoption, Notice of Amendment, or Notice of Termination, as required under the Regulations;

- 3.5.** Prepare and distribute all other forms necessary for the proper administration of the Programs;
- 3.6.** Collect, review, and approve all forms necessary for the proper administration of the Programs. As necessary, consult with OSC on issues arising regarding approval of necessary forms;
- 3.7.** As may be requested by OSC from time to time, provide revisions to OSC's current pamphlet entitled "Service Award Programs for Volunteer Ambulance Workers" (the "Red Book");
- 3.8.** As may be requested by OSC from time to time, prepare and revise pamphlets for distribution to Sponsors of, and Participants in, Volunteer Firefighter Programs which are subject to GML § 216-c, such pamphlets to be in a format similar to the Red Book;
- 3.9.** Revise and/or amend the Program Agreements and the Adoption Agreements from time to time as may be required in order to maintain such agreements' compliance with the GML and the Regulations;
- 3.10.** Prepare and distribute to Sponsors and Participants, at such time or times as may be required by the GML and the Regulations, Summary Plan Descriptions for the Programs adopted by such Sponsors;
- 3.11.** Meet with OSC staff periodically to discuss issues related to the administration and operation of the Program, including actuarial assumptions;
- 3.12.** As may be requested by OSC from time to time, work with OSC staff to prepare revisions to the Regulations;
- 3.13.** Obtain, compile, and maintain, at least annually, such personal information on Participants as may be necessary for the proper administration of the Programs;
- 3.14.** Compile and maintain for each Program, records of Participant service credit;
- 3.15.** Record and process contributions and supporting information for each Program, including installment payments attributable to prior service credit;
- 3.16.** For all Defined Contribution Programs, compile and maintain records of, and determine, Participant Account Balances, by Sponsor, as of each Valuation Date;
- 3.17.** Compile and maintain records of accrued benefit amounts for all Participants in defined benefit Programs;
- 3.18.** Review and approve Participant applications for distributions of service awards;
- 3.19.** Record, process and prepare instructions for distributions of service awards;
- 3.20.** Calculate the amount of all distributions of service awards including, with respect to defined benefit Programs, all amounts payable under actuarially equivalent forms of payment of service awards;
- 3.21.** Calculate the estimated annual cost (and the components thereof) (a) of all newly proposed defined benefit Volunteer Ambulance Worker Programs, including Defined Benefit Volunteer Ambulance Worker Programs which are proposed to be converted from Defined Contribution Volunteer Ambulance Worker Programs (or, if applicable, vice versa), and (b) of amendments to existing defined benefit Volunteer Ambulance Worker Programs;

- 3.22.** Calculate the estimated annual cost (and the components thereof) of any defined benefit Volunteer Firefighter Program proposed to be adopted by a political subdivision, which Program is anticipated to be a state-administered Program under GML § 216-c;
- 3.23.** Calculate the estimated annual cost (and the components thereof) of transferring any existing locally-administered defined benefit Volunteer Firefighter Program to State administration under GML § 216-c, such estimate to include the additional amount, if any, that will be necessary in order to fully fund all existing obligations of such existing Program;
- 3.24.** Calculate the estimated costs to terminate a Program including, in the case of any defined benefit Program, the cost of making up any funding deficiency;
- 3.25.** Calculate for each calendar year during which a defined benefit Program is in effect, the actual cost of maintaining the Program, including all components of such actual costs;
- 3.26.** Calculate any other amounts, costs or actuarial present values related to a defined benefit Program as may be requested by OSC or which may be required by statute, rule or regulation or by generally accepted actuarial or accounting principles applicable to defined benefit Programs;
- 3.27.** Disclose to OSC the actuarial assumptions and actuarial methodology used to calculate the estimated and actual annual costs of maintaining each defined benefit Program being administered, or anticipated to be administered, under the Agreement;
- 3.28.** Prepare and distribute to OSC and to each Sponsor, on or before September 30 during each calendar year, an annual report summarizing such Sponsor's participation in its sponsored Program and the results of operation of such Program during the preceding calendar year, such report to contain such information as may be prescribed by the GML or the Regulations;
- 3.29.** Prepare and distribute to OSC and to each Sponsor, on or before September 30 during each calendar year, a confidential statement of each Participant's participation in a Program during the preceding calendar year, such statement to contain such information as may be prescribed by the GML or the Regulations;
- 3.30.** Attend group meetings of potential Sponsors, seminars and conventions, for the purpose of disseminating information and soliciting adoption of and participation in the Programs;
- 3.31.** Collect tax withholding elections from eligible Participants and communicate those elections to the Trustee;
- 3.32.** Notify OSC of any complaints made to the Program Administrator by Sponsors, volunteer ambulance companies, volunteer fire companies, volunteer fire departments, or Participants, which are not resolved within 30 days after the date on which the complaint has been received by the Program Administrator;
- 3.33.** Perform such other services and functions as may be required of the Program Administrator by the GML and the Regulations, or which may be requested by OSC and which are reasonably related or incidental to the above-described services; provided, however, that this provision shall not be construed to require the Program Administrator to perform additional services that materially expand the scope of its work under the Agreement;
- 3.34.** Cooperate with the Sponsors, the Trustee of the Programs and with OSC in order to ensure the effective and efficient operation of the Programs.
- 3.35.** Transfer collected contributions to Trustee within five business days of receipt.

- 3.36.** Within 30 days after the close of each calendar quarter, and at such other times as OSC may request, submit to OSC a report, in form satisfactory to OSC, which shall include the following data with respect to the Programs as of the end of the quarter:
- A.** the name and address of each Sponsor;
 - B.** the name and address of each Sponsor which first filed an Adoption Agreement with the Program Administrator during the quarter or portion thereof, and a summary of the provisions of the Program adopted by each of those Sponsors;
 - C.** the number of Participants, both in the aggregate and in each Program;
 - D.** the total number of applications for distribution of service awards received during the quarter or portion thereof, and during the calendar year to date, including separate statements of the number of applications based on the death or disability of the Participant;
 - E.** the number of applications for distribution of service awards approved during the quarter, and during the calendar year to date;
 - F.** the number of applications for service awards pending;
 - G.** the name and address of any Sponsor which has failed to file information required to be filed with the Program Administrator under the Regulations, or has failed to pay its contributions in accordance with the Regulations and the Adoption Agreement entered into by such Sponsor; and
 - H.** any other information reasonably related to the Programs as may be requested by OSC.
- 3.37.** Submit to OSC, within 30 days after the end of each calendar quarter, a report detailing all services which the Program Administrator has provided to municipal governments, ambulance companies, fire departments, and fire companies during the calendar quarter for a fee, which services supplement the services provided pursuant to the Agreement. The report shall state the name of, and the amount of the fee charged to, each municipal government, ambulance company, fire department, and fire company receiving such services, and shall describe the nature of such services.
- 3.38.** Assign a Program Liaison to serve as the primary point of contact, responsible for managing the contractual relationship with OSC and the Trustee, and overseeing of the delivery of all Services.
- 3.39.** Ensure adequate staffing is available in the event Program Administrator experiences changes in key personnel.
- 3.40.** Submit to OSC, upon the expiration of the term of the Agreement, or in the event of termination of the Agreement before the end of a calendar month, any outstanding report and within 15 days of the date of such expiration or termination, an additional report containing required information for the period beginning with the first day of the month following the month for which any such outstanding report was required, and ending with the date of expiration or termination of the Agreement.
- 3.41.** Use its best efforts to effect as expeditiously as possible a smooth and orderly transition of the Program Administrator duties and responsibilities to any entity which may succeed it as the Program Administrator at the end of the Agreement term, including delivery to the successor Program Administrator of all original records in the its possession relating to the services provided to OSC pursuant to this RFP, and making appropriate staff available to OSC, the

successor Trustee, and the successor Program Administrator during normal business hours to answer questions regarding such records and the services which have been provided by it pursuant to the Agreement.

4.0 MINIMUM QUALIFICATION TO PROPOSE

Proposers must meet the following Minimum Qualification in order to be eligible to submit a proposal:

Proposals must be submitted by an “administrative service agency.” An administrative service agency is defined as an organization duly authorized to do business in the State and which is qualified to administer and maintain records and accounts of plans that meet the requirements for qualification under the internal revenue code and governmental plans. To be qualified, an administrative service agency must satisfy the statutory requirements of § 215(14), § 219-c(13) and § 219-k(18) of the General Municipal Law (see Attachment F).

Failure to meet this Minimum Qualification will result in a proposal being found non-responsive and eliminated from consideration.

5.0 ADMINISTRATIVE INFORMATION

NOTE: From time to time, addenda to procurement documents may be issued or such documents may be amended. It is the Proposer's responsibility to become aware of any such amendments and/or addenda prior to submission of a proposal. All amendments and/or addenda to this RFP will be posted to the OSC website at www.osc.state.ny.us/procurement/index.htm. Only the OSC website will contain all amendments and/or addenda to the procurement documents, including the Responses to Written Questions. Proposers should review the OSC website prior to submission of a proposal to ensure that they have all information required to submit a complete and responsive proposal.

The following administrative information will apply to this RFP. Failure to comply fully with this information may result in disqualification of your proposal.

5.1. Procurement Integrity/Restrictions on Communication

This procurement is subject to, and shall be conducted in accordance with, the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures attached to this RFP as Appendix D, which:

- (i) Require a Proposer to make contact only with the OSC Director of Finance or his designee(s); and
- (ii) Prohibit a vendor from exerting or attempting to exert any improper influence relating to its proposal. “Improper influence” means any attempt to achieve preferential, unequal, or favored consideration of a 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 §§ 73 and 74.

All inquiries concerning this procurement must be addressed to the Director of Finance as Contracting Officer, or his designee(s) at OSC, via email (preferred) to RFP@osc.ny.gov or via hard copy mail to:

Director of Finance
Questions for RFP0011
Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

During the “restricted period” as defined below, no Proposer-initiated contact with any OSC official shall be permitted regarding this procurement, except as provided herein. This prohibition applies to any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence this procurement. Violation of any of the requirements described in this Section 5.1 may be grounds for a determination that the Proposer is non-responsible and therefore ineligible for this contract award. Two violations within four years of the rules against impermissible contacts during the “restricted period” may result in the violator being debarred from participating in an OSC procurement for a period of four years.

“Restricted period” means the period of time commencing with the earliest written notice, advertisement, or solicitation of a Request for Proposals, Invitation for Bids, or solicitation of proposals, or any other method for soliciting a response from Proposers intending to result in a procurement contract with OSC and ending with the final contract award by OSC or, where applicable, final contract approval by the OSC Bureau of Contracts.

5.2. Questions

There will be an opportunity available for submission of written questions and requests for clarification with regard to this RFP. **All questions and requests for clarification of this RFP** must be submitted via email (preferred) or by hard copy mail to the Contracting Officer as indicated in Section 5.1 (Procurement Integrity/Restrictions on Communication), no later than the Deadline for Submission of Written Questions as specified in Section 1.0. Questions received after the deadline may not be answered.

Requests for clarifications of contract language contained in Attachment E (Draft Contract) must be addressed at this time.

NOTE: It is the Proposer’s responsibility to ensure that hard copy mail or email containing written questions and/or requests for clarification is received at the above address no later than the Deadline for Submission of Written Questions as specified in Section 1.0.

The comprehensive list of questions and responses will be posted to the OSC website and notice of such posting will be distributed by email to all vendors known to OSC who have received electronic access to this RFP on the date specified in Section 1.0. This listing will not include the identities of the vendors submitting the questions; those vendors will remain anonymous to the extent allowed by law.

5.3. Right to Modify RFP

OSC reserves the right to modify any part of this RFP, including but not limited to, the date and time by which proposals must be submitted and received by OSC, at any time prior to the Deadline for Submission of Proposals listed in Section 1.0. Modifications to this RFP shall be made by issuance of amendments and/or addenda.

Prior to the Deadline for Submission of Proposals, any such clarifications or modifications as deemed necessary by OSC will be posted to the OSC website and subsequent email notification will be provided to all potential Proposers known to OSC. OSC also reserves the right to cancel this RFP, in whole or in part, and to reject any and all proposals.

If the Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Proposer shall immediately notify OSC (See Section 5.1) of such error in writing and request clarification or modification of the document.

If, prior to the Deadline for Submission of Proposals, a Proposer fails to notify OSC of a known error or an error that reasonably should have been known, the Proposer shall assume the risk of proposing. If awarded the contract, the Proposer shall not be entitled to additional compensation by reason of the error or its correction.

5.4. Equal Employment Opportunity (EEO) Reporting

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 the Article and the Regulations adopted pursuant thereto), the Proposer shall submit to OSC with its proposal, Form AC 3239-A (Contractor's/Subcontractor's EEO Staffing Plan of Anticipated Workforce) and further, selected Proposer shall submit on a semi-annual basis Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report) attached as Appendix B.

5.5. Service-Disabled Veteran-Owned Businesses

Article 17-B of the Executive Law establishes a program to encourage state agencies to foster the use of Service-Disabled Veteran-Owned Businesses (SDVOBs) on state contracts. OSC expects proposers to make good faith efforts to solicit active participation by New York State certified SDVOBs in the performance of the contract to be awarded as a result of this RFP. Such participation may be as partners, joint venturers, subcontractors, suppliers, protégés or other roles. SDVOBs can be readily identified on the directory of certified businesses at:

<https://online.ogs.ny.gov/SDVOB/search>

Proposers are reminded that they must continue to use small, minority and women-owned businesses consistent with current New York State law.

5.6. Sales and Compensating Use Tax Certification (Tax Law, § 5-a)

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance ("DTF") that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring state entity that they filed the certification with the DTF and that it is correct and complete.

The selected Proposer must file a properly completed Form ST-220-CA (with OSC as the Contracting Agency) and Form ST-220-TD (with the DTF). These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance's website, available through this link: www.tax.ny.gov/pdf/publications/sales/pub223.pdf. Forms are available through these links:

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

5.7. Workers' Compensation, Disability and Paid Family Leave Benefits Certifications

Sections 57 and 220 of the New York State Workers' Compensation Law ("WCL") provide that the State shall not enter into any contract unless proof of workers' compensation, and disability and paid family leave benefits insurance coverage is produced. Prior to entering into a contract with OSC, the selected Proposer must verify for OSC, on forms authorized by the New York State Workers' Compensation Board, the fact it is properly insured or is otherwise in compliance with the insurance provisions of the WCL. The forms to be

used to show compliance with the WCL are listed below. Any questions relating to workers' compensation, disability, or paid family leave benefits coverage should be directed to the New York State Workers' Compensation Board, Bureau of Compliance at (866) 298-7830. Failure to provide verification of any of these types of insurance coverage by the time the contract is ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

The selected Proposer must submit the following documentation upon notification of selection for award:

I. Proof of Workers' Compensation Coverage:

Upon notification of award, the selected Proposer must submit **ONE** of the following forms as Workers' Compensation documentation:

- i. **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carrier (or **Form U-26.3** issued by the State Insurance Fund); or
- ii. **Form SI-12** – Certificate of Workers' Compensation Self-Insurance (or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance); or
- iii. **Form CE-200** – Certificate of Attestation of Exemption from New York State Workers' Compensation Coverage.

J. Proof of Disability and Paid Family Leave Benefits Coverage:

Upon notification of award, the selected Proposer must submit **ONE** of the following forms as Disability documentation:

- i. **Form DB-120.1** – Certificate of Insurance Coverage – Disability and Paid Family Leave Benefits Law; or
- ii. **Form DB-120.2** – Certificate of Participation in Disability or Disability and Paid Family Leave Benefits Group Self-Insurance; or
- iii. **Form DB-155** – Certificate of Self-Insurance Coverage – Disability and Paid Family Leave Benefits Law; or
- iv. **Form CE-200** – Certificate of Attestation of Exemption from New York State Disability and Paid Family Leave Benefits Coverage.

Further information is available at the Workers' Compensation Board's website, which can be accessed through this link: <http://www.wcb.ny.gov>.

List the Name and Address of the Entity Requesting Proof of Coverage on the Worker's Compensation, Disability and Paid Family Leave Benefits certifications as:

NYS Office of the State Comptroller
ATTN: Bureau of Finance
110 State Street, Mail Stop 13-2
Albany, NY 12236

5.8. OSC's Reserved Rights

OSC reserves all rights with respect to this procurement, including, but not limited to:

- A. Cancel the procurement, reject any and all proposals received in response to this RFP, or choose to make no award.
- B. Prior to opening of proposals, amend the RFP to correct errors or oversights, or to change any of the scheduled dates, or to supply additional information, as it becomes available. Modifications to the RFP shall be made by issuance of amendments and/or addenda.
- C. Prior to opening of proposals, direct Proposers to submit proposal modifications addressing RFP amendments or addenda.
- D. Waive any immaterial deviation or defect in a proposal. A waiver of immaterial deviation or defect shall in no way modify the RFP documents or excuse the Proposer from full compliance with the RFP requirements.
- E. Waive any requirements that are not material, or eliminate any mandatory, non-material requirements that cannot be complied with by all prospective Proposers.
- F. Reject any proposal that contains false or misleading statements, or that provides references that do not support an attribute, condition, or qualification claimed by the Proposer.
- G. Correct any arithmetical errors in any proposal and, if the fees or costs in two or more proposals are not comparable, make appropriate adjustments to render the fees and costs comparable.
- H. Require a Proposer to clarify its proposal to assure a full understanding of the proposal and to request revisions to all proposals from vendors susceptible of award of the contract. Any request for clarification or revision is solely at the discretion of OSC.
- I. Use in the evaluation process any information obtained through interviews and OSC's investigation of a Proposer's qualifications, experience, ability or financial standing, and any material or information submitted by the Proposer in response to OSC's request for clarifying information.
- J. Rescind a preliminary contract award and proceed to the next highest-scoring Proposer if a signed contract does not result from good faith negotiations with OSC within a reasonable period of time as determined by OSC.
- K. Rescind a preliminary contract award and proceed to the next highest-scoring Proposer in the event that the Proposer who had achieved best value prior to contract award cannot satisfy the requirements as stated in this RFP.

5.9. Freedom of Information Law

All proposals are subject to disclosure in accordance with the requirements of the Freedom of Information Law ("FOIL"). Accordingly, upon submission of the proposal, Proposer is encouraged to clearly and specifically indicate any portion of the proposal believed to be a trade secret or the disclosure of which would cause substantial injury to the Proposer's competitive position, and submit a written statement of the necessity for protective treatment by OSC. Blanket assertions are insufficient. Upon receipt of a FOIL request for such records, OSC will grant or deny access in accordance with the law.

5.10. State Ethics Law Provision

By submitting a proposal to this RFP, the person signing the proposal certifies, for and on behalf of the Proposer, that:

- A. He/she has read and understands the provisions applicable to post-employment restrictions affecting former New York State officers and employees, available using the link¹ below:
 - i. Public Officers Law § 73(8)(a)(i), (the two-year bar); and
 - ii. Public Officers Law § 73(8)(a)(ii), (the lifetime bar);
- B. Submission of this proposal does not violate either provision;
- C. He/she is familiar with the Proposer's employees, and its agents;
- D. No violation shall occur by entering into a contract or in performance of the contractual services;
- E. This certification is material to the proposal; and
- F. He/she understands that OSC intends to rely on this certification.

The Proposer shall fully disclose to OSC, within its proposal and on a continuing basis, any circumstances that could affect its ability to comply with the cited laws. Proposers shall address any questions concerning these provisions to:

Commission on Ethics and Lobbying in Government
540 Broadway
Albany, NY 12207
Telephone #: (518) 408-3976

5.11. State Finance Law Consultant Disclosure Provisions (Appendix G)

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

The Contractor selected as a result of this procurement will be required to submit Form A prior to contract approval and Form B on an annual basis. OSC has provided the appropriate forms as Appendix G to this procurement.

5.12. Debriefings

Consistent with New York State Finance Law § 163(9)(c), any Proposer not selected for an award may, within 15 calendar days of release of OSC's written or electronic notice that such proposal is unsuccessful, request a debriefing to discuss the reason(s) that the proposal submitted by the unsuccessful Proposer was not selected for an award.

¹ Click on this link: [Public Officers Law, Article 4](#). When the page opens, click on "Laws" in the menu bar at the top of the page, then "Laws of New York." On the next page, select "PBO Public Officers." When this page opens, select "Article 4 – (60 - 79) POWERS AND DUTIES OF PUBLIC OFFICERS" and choose Sections 73 (8-a)(i) and 73 (8-a)(ii).

A debriefing request must be in writing and shall be submitted to the Contracting Officer in accordance with Section 5.1.

A Proposer will be accorded fair and equal treatment with respect to its opportunity for debriefing. The debriefing shall be scheduled within a reasonable time after receipt of the Proposer's written request by the Bureau of Finance.

5.13. Protests

Any interested party may file a protest concerning the contract award with OSC's Director of Finance at the above address within 10 business days from the date of the notice of the contract award, except that any protest concerning the terms and conditions of the solicitation (or other matters that would be apparent to an interested party prior to the date set in this RFP for the receipt of proposals) must be filed on or before the date set in this RFP for the receipt of proposals. OSC's Contract Award Protest Procedure may be accessed by using this link: <https://www.osc.state.ny.us/files/state-agencies/pdf/xi-17-att-2.pdf>.

5.14. Background Investigations; Location of Data and Staff; Encryption; Post-Conditional Award Security and Confidentiality Verification.

A. Background Investigations. The selected Proposer and the selected Proposer's affiliates and subcontractors must conduct background investigations on their employees and subcontractors who will have access to OSC's IT systems, access to OSC or State confidential information and any personal identification information ("PII") or private information, as defined in applicable state or federal law, of any volunteer or Participant, or routine access to any OSC facility. For the purposes of this paragraph, "routine access" is defined as access to an OSC facility for five consecutive business days or 10 business days over the annual term of the engagement. ("Covered Staff"). Accordingly, with the signing of the Agreement, the selected Proposer certifies that it has or will conduct a background investigation on any Covered Staff to whom the policy applies within the 12 months prior to the Covered Staff commencing Services under the Agreement. The selected Proposer agrees to undertake a background investigation of any new/replacement Covered Staff during the term of the Agreement.

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

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

OSC has the right to review the results of the background investigation and its supporting documentation upon request; selected Proposer must therefore obtain staff consent to such review. OSC reserves the right to conduct its own background investigation of the selected Proposer's Covered Staff, and, if so elected by OSC, selected Proposer must obtain the consent of the subject staff to permit OSC to conduct such background check. Only staff who have passed the background investigation, and provided such consent shall be assigned to provide Services to OSC under the Agreement. During the term of the Agreement, the selected Proposer must maintain records related to the background investigations performed.

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

B. Location of Data and Staff; CONUS. All of the selected Proposer’s computer systems, networks, and staff with access to OSC Data shall be physically located within the contiguous United States (“CONUS”), including any customer service representatives and support staff. For purposes of this RFP, “Data” shall include “any information, analytic derivatives, formula, algorithms, or other content that the OSC, the State, a Participant or Sponsor may provide to the selected Proposer pursuant to the Agreement. For purposes of this RFP, “Data Center” shall mean “all facilities in which Data is processed or stored.”

The selected Proposer shall meet the following requirements:

- a. All Data shall remain in the CONUS.
- b. Any Data stored, or acted upon, shall be solely located in Data Centers within the CONUS.
- c. Any services which directly or indirectly access Data shall be performed only from locations within CONUS.
- d. All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section XVI(E)(2), Encryption.
- e. All helpdesk, online and support services which may access Data shall be performed only from locations within CONUS.
- f. No Follow the Sun support shall be allowed to access, use or transmit Data directly or indirectly from locations outside the CONUS (“OCONUS”) without OSC’s prior written consent.

C. Encryption.

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

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

- HTTPS (browser or compatible clients – pickup and drop off at OSC or OSC-approved servers only, port 443); and
- SFTP (SSH/FTP) using minimum 2048 bit key based authentication (port 22).

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

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

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

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

D. Post-Conditional Award Security and Confidentiality Verification

The selected Proposer must ensure the protection of confidential information provided to or collected by the selected Proposer and any of its subcontractors in providing all services contemplated in this RFP. Systems and applications that input, store, process, output, and/or transmit confidential information must protect the confidentiality, integrity, and availability of such information, and the selected Proposer's processes, facilities, and infrastructure must be physically and logically secure in accordance with commercially appropriate security standards, and compliant with applicable laws and regulations. This determination is solely in the discretion of OSC.

Upon notification of conditional award, each conditionally-awarded Proposer will be required to demonstrate to OSC's designated staff, agents, and representatives (which may include, among others, OSC's legal counsel and/or technical staff) that its security measures, processes, standards, and/or policies sufficiently align with commercially reasonable and industry-standard security standards and as required by applicable law or regulation. OSC will, if requested by a conditionally-awarded Proposer, execute an OSC-approved non-disclosure agreement ("NDA") to engage in such further discussions and examine such documentation.

OSC expressly reserves its right to decline to make a final award to any Proposer, including any conditionally-awarded Proposer, that OSC concludes is unable to demonstrate that its security measures, processes, standards, and/or policies sufficiently align with accepted security standards and as required by applicable law or regulation. Upon such determination, OSC may elect to grant the award to the next-highest scoring Proposer. OSC may simultaneously engage in discussions with multiple Proposers regarding their security practices.

Additionally, the Proposer and any authorized subcontractors must be able to warrant and, if required, demonstrate compliance with lawful processing principles and data transfer requirements with respect to ensuring that personal information remains protected (including participating in audits by or on behalf of OSC).

5.15. Staff Integrity

The selected Proposer must certify that staff provided to perform Services possesses the necessary integrity and professional capacity to meet OSC's reasonable expectations. OSC has final approval of any staff furnished to provide Services and may refuse to approve any staff member(s) based on its review of the staff member's responsibility to perform the required Services. OSC reserves the right to bar anyone from access to OSC's premises and/or access to OSC's information resources.

Subsequent to the commencement of Services, whenever the Proposer becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OSC no longer possesses the necessary integrity or professional capacity, the Proposer shall immediately discontinue the use of such staff and notify OSC.

6.0 PROPOSAL CONTENT

The following includes the required format and information to be provided by each Proposer. Proposers responding to this RFP must satisfy all requirements stated in this RFP. All Proposers are required to submit complete Administrative, Technical, and Cost proposals. A proposal that is incomplete in any material respect will be rejected.

To expedite review of the proposals, Proposers are requested to submit proposals in separate Administrative, Technical, and Cost packages formatted with tabs as shown in Attachment B (Proposal Documents Checklist). This separation of information will facilitate the review of the material requested. No information beyond that specifically requested is required, and Proposers are requested to keep their

submissions to the shortest length consistent with making a complete presentation of qualifications. Additional information, if submitted, should be in a separate package. Proposals must contain sufficient information to assure OSC of their accuracy.

Evaluations of the Administrative, Technical, and Cost Proposals received in response to this RFP will be conducted separately. **Proposers are therefore cautioned not to include any Cost Proposal information in the Administrative or Technical Proposal documents.**

OSC will not be responsible for expenses incurred in preparing and submitting the Administrative, Technical, or Cost Proposals. Such costs should not be included in the Proposal.

6.1. Administrative Proposal

The Administrative Proposal should contain all requirements listed below. A proposal that is incomplete in any material respect may be eliminated from consideration. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy.

Provide the forms in the same order in which they are requested. Your proposal must contain sufficient information to assure OSC of its accuracy.

A. Equal Employment Opportunity (EEO) Reporting

- i. Submit a copy of the Proposer's EEO Policy Statement, as described in Clause 12 of Appendix A.
- ii. Submit a completed and signed Form AC 3239-A (Proposer's EEO Staffing Plan of Anticipated Workforce) attached to this RFP as part of Appendix B, which should document the workforce to be used on the state Contract entered into as a result of this procurement, broken down by specified ethnic background, gender, and federal occupational categories or other appropriate categories specified by OSC. See Section 5.4.

B. Contractor's Certifications/Acknowledgements

Submit a completed and signed Appendix E (Contractor's Certifications/Acknowledgements).

Policies referenced in Appendix E can be found in Appendix C (OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment) and Appendix D (OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures).

C. Disclosure of Prior Non-Responsibility Determinations

Submit a completed and signed Appendix F (Disclosure of Prior Non-Responsibility Determinations).

D. Vendor Responsibility Questionnaire

Proposers and any subcontractors providing services in excess of \$100,000 must complete, certify, and file a New York State Vendor Responsibility Questionnaire. OSC recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions at www.osc.state.ny.us/vendrep/index.htm or go directly to the VendRep System online at www.osc.state.ny.us/vendrep.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the OSC Help Desk at 866-370-4672 or 518-408-4672 or by email at ITServicesDesk@osc.ny.gov.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website, www.osc.state.ny.us/vendrep, or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form.

E. Freedom of Information Law – Proposal Redactions

While not required, Proposers may submit their written statements of the necessity for the claimed proprietary information exceptions at the time of submission of their proposals. See Section 5.9 (Freedom of Information Law).

6.2. Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Proposer to perform the Services. The Technical Proposal should demonstrate the qualifications of the Proposer and the staff to be assigned to provide the Services.

A Technical Proposal that is incomplete in any material respect may be eliminated from consideration. The following outlines the required information to be provided, in the following order, by Proposers. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy.

While additional data may be presented, the following should be included. Provide the information in the same order in which it is requested. A proposal must contain sufficient information to assure OSC of its accuracy. Failure to follow these instructions may result in disqualification.

Cost information must not be included in the Technical Proposal documents.

A. Title Page

Submit a Title Page providing the RFP subject and number; the Proposer's name and address, the name, address, telephone number, and email address of the Proposer's contact person; and the date of the proposal.

B. Table of Contents

The Table of Contents should clearly identify all material (by section and page number) included in the proposal.

Specific attention is directed to the list of requirements provided in Attachment B. Each proposal should contain an index that cites each tab number in the proposal where the requested information can be found using the tab numbers found in Attachment B for the corresponding RFP Section.

C. Proposer's Certified Statements – Attachment A

Submit Attachment A (Proposer's Certified Statements), which includes information regarding the Proposer. Attachment A must be signed by an individual authorized to bind the Proposer contractually. Indicate the title or position that the signer holds with the Proposer. OSC reserves the right to reject a proposal that contains an incomplete or unsigned Attachment A. Failure to include Attachment A may result in your proposal being considered non-responsive.

D. Minimum Qualification to Propose

To meet the Minimum Qualification to Propose in Section 4.0, provide documentation that the Proposer is a “administrative service agency” as defined in § 215(14), § 219-c(13) and § 219-k(18) of the General Municipal Law.

E. Technical Qualifications

Include the following information in the order requested:

- i. List the total Defined Benefit and Defined Contribution programs administered by the Proposer and the total number of participants within those plans.
- ii. Describe Proposer's administrative roles and responsibilities for Defined Benefit and Defined Contribution Plans for which it has in the past five years or currently provides services.
- iii. List the clientele of the Proposer, including its three largest clients, and any government clients comparable to OSC.
- iv. Describe the Proposer's history with respect to clients gained or lost within the last five years.
- v. Describe any litigation that the Proposer has been involved in with respect to administrative or actuarial services rendered.
- vi. List the actuarial qualifications of staff who will be assigned to provide Services (e.g., Enrolled Actuary accreditation), include resumes for staff proposed.
- vii. Attach resume of the proposed Program Liaison.
- viii. Describe the Proposer's ability to provide alternative qualified staff if key staff are incapacitated or leave the Proposer's company.
- ix. Describe the Proposer's ability to work collaboratively with the Trustee, including joint efforts to promote the Programs.
- x. Describe the Proposer's process to ensure timely collection of receipts and transfer of monies to Trustee.
- xi. Describe the Proposer's process for maintaining the appropriate administrative records, including all required forms for LOSAP programs.
- xii. Describe the Proposer's annual process for meeting the filing and plan sponsor billing requirements of an OSC-administered LOSAP program. Include relevant timeline and follow-up procedures for obtaining necessary information.
- xiii. Describe the Proposer's ability to provide all necessary actuarial services related to a defined benefit plan.
- xiv. Describe the Proposer's ability to provide the other Services described in Section 3.0.
- xv. Provide an overview of Proposer's information security practices. State whether Proposer adheres to one or more recognized security frameworks and/or codes of

conduct to ensure that systems and applications used by Proposer to perform the Services are secure from vulnerabilities and defects, and identify such frameworks with specificity (e.g., such frameworks may include, among others, the following: International Organization for Standardization (ISO/IEC) 27001 (Information Security Management) or 27701:2019 Privacy Information Management Systems (PIMS). If Proposer does not adhere to a widely recognized security framework, describe, with specificity, the measures that Proposer takes with respect to its systems and applications to mitigate against cybersecurity vulnerabilities and threats to unauthorized access to and/or disclosure of confidential information.

- xvi. Provide an overview of your firm's disaster recovery plan. Subsequent to preliminary contract award, the selected Proposer must provide the full disaster recovery plan to OSC.
- xvii. List any subcontractors the Proposer plans to use (if any) and describe what the Subcontractor's role will be.

F. References

Provide references using Attachment D (References) for three companies to whom you provide administrative and actuarial services. Provide firm names, addresses, contact names, telephone numbers, and email addresses.

G. Insurance

The Proposer should maintain insurance coverage and limits commensurate with industry best practices for the nature and scope of Services to be provided throughout the Term of any awarded contract, and, as applicable, for a period of three years after the expiration or termination of the Agreement.

The Proposer's organization/company and all staff should be insured, throughout the contract term, against any financial losses resulting from the Proposer's employees' actions.

Provide a summary of the Proposer's current insurance coverage, under any policy or endorsement that would apply to the Proposer's provisioning of the Services as set forth in this RFP, and any losses relating thereto, including the applicable limits and effective dates for each of the following:

- general liability,
- excess/umbrella liability,
- privacy/information and data security/cyber coverage (including coverage for: (i) failure to protect confidential information; (ii) failure of the security of the Proposer's computer systems; and (iii) ransomware, cyber extortion, Distributed Denial of Service ("DDoS"), or other cyber-attacks, and specify whether each of such coverages in items (i) – (iii) are without geographic or territorial limitation, or if so limited, the geographic or territorial limitations thereon). Identify also whether such coverages are subject to exclusions for acts of war, cyber terrorism and/or foreign state-sponsored hacking, acts by foreign sovereigns or governments, or other like-kind events, or whether Proposer's coverage will respond in such instances,
- directors and officers/errors and omissions,
- computer crime and/or employee dishonesty, and
- any insurance required by law.

Specify if the Proposer is self-insured for any of the above-referenced coverages.

Specify whether such coverages provide first-party and/or third-party coverage and whether the Office of the New York State Comptroller are or may be included as additional insureds for any of these coverages by blanket or specific endorsement.

Contractor's availability of insurance coverage and corresponding limits (whether through a third-party insurer or self-insured) or lack thereof will not be deemed a limitation on the Contractor's liability to the Office of the New York State Comptroller under any resulting contract.

Upon notification of conditional award, the selected Proposer may be required to provide OSC with certificates of insurance showing the conditional awardee's respective coverages and applicable limits (including applicable deductibles and self-insured retention amounts) or relevant portions of certain policies, subject to Proposer's reasonable redactions. If the selected Proposer is self-insured for any portion of its insurance program, a letter indicating the coverage and limits of such self-insurance, signed by the selected Proposer's authorized representative with direct knowledge of and responsibility for that insurance/risk management program, may be required.

6.3. Cost Proposal

Submit a completed and signed Attachment C (Cost Proposal). The Cost Proposal shall comply with the mandatory format and content requirements as detailed in this document and in Attachment C. Failure to comply with the mandatory format and content requirements may result in disqualification.

7.0 PROPOSAL SUBMISSION

7.1. Submission of Proposal Components

Each Proposer must submit SEPARATE Administrative, Technical, and Cost proposals, via one of the submittal options identified below.

Note: Documents requiring signature should be signed with an ink pen (i.e., wet signature). Proposals submitted with e-signatures or scanned signatures may be accepted by OSC, at OSC's discretion, subject to the requirements set forth herein.²

A. Option #1: USB Flash Drive (Preferred)

The Proposer may submit each of the complete Administrative, Technical, and Cost proposals **as separate files** on a **single** USB flash drive. An acceptable format for the files is unlocked Adobe PDF. OSC prefers that such files be searchable. The files must be representative copies of the original documents, **including signatures**.

Clearly mark the envelope and the USB flash drive as "RFP 0011 [Proposer's name]."

The Proposer must retain the original proposal documents in its records. If the Proposer is selected for award, the Proposer must submit wet ink signed documents to OSC prior to contract execution.

It is the Proposer's responsibility to ensure that the USB drive is free from malicious software and that the files are accessible and uncorrupted. The Proposer should scan the USB flash drive before submission to ensure there is no malicious software (i.e., malware) on the drive and that all files are accessible and uncorrupted. OSC will perform a security scan on the USB flash drive before

² If wet ink signatures cannot be provided, OSC may accept proposals submitted with e-signatures or scanned signatures, but OSC retains the right to require submission of documentation verifying the identity of the signer and intent to sign on behalf of the Proposer and will require submission of wet ink signatures upon notice of award. Failure to provide appropriately signed original documents after notice of award may result in disqualification.

accessing the stored files. If the security scan identifies malicious software, or the files are inaccessible or corrupted, OSC will reject the submission and disqualify the Proposer from further consideration.

Proposers may mitigate the risk associated with submitting via USB flash drive by providing one paper copy of each of the Administrative, Technical, and Cost proposals along with its USB flash drive submission.

- If a Proposer submits a paper copy with its USB submission and OSC is unable to access the proposal files on the USB flash drive, OSC will request a replacement USB drive from the Proposer and use the paper copies to verify the Proposer did not make any revisions to its proposal past the proposal due date.
- In the absence of a paper copy, if OSC is unable to access the proposal files on the USB flash drive, OSC will reject the submission and disqualify the Proposer as stated above.

NOTE: SUBMISSION OF OTHER TYPES OF DATA STORAGE DEVICES WILL NOT BE ACCEPTED.

B. Option #2: Paper

The Proposer may submit paper documents of each of the complete Administrative, Technical, and Cost proposals as follows:

Administrative Proposal	Submit TWO paper copies.
Technical Proposal	Submit THREE paper copies.
Cost Proposal	Submit TWO paper copies.

Submit each of the complete Administrative, Technical, and Cost proposals in a separate sealed package, all of which may be submitted within one complete proposal package.

If the Proposer elects to submit paper proposals, OSC requests that the Proposer also submit a USB flash drive with electronic copies of the proposals.

Clearly mark the outside envelope of the sealed proposals, the original, each copy, and USB flash drive (if applicable) as "RFP 0011 [Proposer's name]."

8.0 EVALUATION PROCESS/CRITERIA

8.1. General Information

OSC will evaluate each proposal based on the "Best Value" concept. This means that the proposal that best "optimizes quality, cost, and efficiency among responsive and responsible offerers" shall be selected for award (State Finance Law, Article 11, § 163(1)(j)).

OSC, at its sole discretion, will determine which proposal(s) best satisfies its requirements. OSC reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this document may be eliminated from consideration. The evaluation process will include separate technical and cost evaluations, and the result of each evaluation shall remain confidential until both evaluations have been completed and a selection of the winning proposal is made.

The evaluation process will be conducted in a comprehensive and impartial manner, as set forth herein, by an Evaluation Committee. The Technical Proposal and compliance with other RFP requirements (other than the Cost Proposal) will be weighted **80%** of a proposal's total score and the information contained in the Cost Proposal will be weighted **20%** of a proposal's total score.

Proposers may be requested by OSC to clarify the contents of their proposals. Other than to provide such information as may be requested by OSC, no Proposer will be allowed to alter its proposal or add information, except as provided in Section 5.8.H above, after the Deadline for Submission of Proposals.

8.2. Submission Review

OSC will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in Section 6.0 (Proposal Content) and Section 7.0 (Proposal Submission), and include the proper documentation, including all documentation required for the Administrative Proposal, as stated in this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of OSC, may be rejected.

8.3. Technical Evaluation

The evaluation process will be conducted in a comprehensive and impartial manner. A Technical Evaluation Committee comprised of OSC staff will review and evaluate all proposals.

All proposals will undergo a preliminary technical evaluation to verify Minimum Qualifications to Propose (Section 4.0).

The Technical Evaluation Committee members will independently score each Technical Proposal that meets the submission requirements of this RFP. The individual Committee Member scores will be averaged to calculate the Technical Score for each responsive Proposer.

The technical evaluation is **80% (up to 80 points)** of the final score.

8.4. Cost Evaluation

The Cost Evaluation Committee will examine the Cost Proposal documents. The Cost Proposals will be opened and reviewed for responsiveness to cost requirements. If a Cost Proposal is found to be non-responsive, that proposal may not receive a cost score and may be eliminated from consideration.

Each proposal that meets the submission requirements, passes the preliminary evaluation, and meets the cost proposal requirements will receive a cost score. The Cost Proposals will be scored based on a maximum cost score of 20 points. The maximum cost score will be allocated to the proposal with the lowest all-inclusive not-to-exceed maximum price. All other responsive proposals will receive a proportionate score based on the relation of their Cost Proposal to the proposals offered at the lowest final cost, using this formula:

Cost points awarded = XX potential points x (Lowest Cost Proposal / Cost of Proposal Being Evaluated).

The cost evaluation is **20% (up to 20 points)** of the final score.

8.5. Preliminary Composite Score

A preliminary composite score will be calculated by the OSC Finance Office by adding the preliminary Technical Proposal points and the Cost Proposal points. Finalists will be determined based on preliminary composite scores.

8.6. Finalists

The proposals with the three highest preliminary composite scores will be deemed Finalists. Any proposal scoring within ten percent of the third highest preliminary composite scoring proposal will also be deemed a Finalist. Finalists may be interviewed at the discretion of the Evaluation Committee. If the Finalists do not include the proposal with the maximum cost score, the cost scores for the Finalists will be re-calculated by awarding the maximum cost score to the Finalist with the lowest combined cost. The remaining Finalists will receive a proportionate score based on the relation of their cost proposal to the proposal of the Finalist with the lowest cost, using the formula in Section 8.4 (Cost Evaluation). The composite scores will be adjusted accordingly.

8.7. Interviews

Interviews, if determined to be necessary, will be held for all Finalists in person at 110 State Street, in Albany, NY or, at the discretion of the Technical Evaluation Committee, by telephone or videoconference. Finalists who cannot be contacted via telephone to arrange the interview after three attempts by OSC may be disqualified.

The purpose of an interview is to allow the evaluators to validate the Proposer's experience and qualifications.

The interview should confirm the Proposer's ability to provide the required services. The Proposer, including any key personnel, should be present and participate in the interview. **No new material will be permitted to be introduced during the interview.**

After the interview, the evaluators may adjust Proposers' preliminary technical scores to reflect their enhanced understanding of the Proposer's experience.

8.8. Reference Checks

The Proposer will submit references using Attachment D (References). At the discretion of the Evaluation Committee, references may be checked at any point during the process.

8.9. Final Composite Score

A Final Composite Score will be calculated by the OSC Finance Office by adding the Final Technical Proposal points, reflecting any adjustments that may result from interviews, and the Cost Proposal points.

8.10. Award Recommendation

The Technical Evaluation Committee will submit to OSC's Executive Deputy Comptroller for the New York State and Local Retirement System a recommendation for award to the Finalist(s) with the highest composite score(s) whose experience and qualifications have been verified. If the recommendation is accepted, it will be forwarded to OSC's Finance Office for review. The award recommendation will only become final after approval by the Director of Finance.

A responsibility review, conflict review, and Procurement Integrity review will be required, and if applicable, a review in accordance with the Comptroller's Executive Order relating to Auditor Independence may be required before the award recommendation is final. The Director of Finance will notify the awarded Proposer(s) and Proposers not awarded. The awarded Proposer(s) will enter into a written Agreement substantially in accord with the terms of Attachment E to provide the required services as specified in this RFP. The resultant contract shall not be binding until fully executed and approved by the New York State Office of the Attorney General and the Office of the State Comptroller's Bureau of Contracts.

ATTACHMENT A

PROPOSER'S CERTIFIED STATEMENTS

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

RFP0011 ADMINISTRATIVE AND ACTUARIAL SERVICES FOR LENGTH OF SERVICE AWARD PROGRAMS FOR VOLUNTEER AMBULANCE WORKERS AND VOLUNTEER FIREFIGHTERS
1. Information with regard to the Proposer:
A. Provide the Proposer's name, address, and telephone number.
Name:
Address:
City, State, ZIP Code:
Telephone Number (including area code):
B. Provide the name, address, telephone number, and email address of the Proposer's Primary Contact with OSC with regard to this proposal.
Name:
Address:
City, State, ZIP Code:
Telephone Number (including area code):
Email Address:
C. Provide the name, address, telephone number, and email address of the person authorized to bind the Proposer contractually, if different from (B).
Name:
Address:
City, State, ZIP Code:
Telephone Number (including area code):
Email Address:
D. In accordance with paragraph 6 of the OSC Procurement Integrity Procedures included in this RFP as Appendix D, provide the name, address, telephone number, email address, place of principal employment and occupation of any person authorized to represent the Proposer. This requirement applies not only to Proposer's employees involved in the submission of the proposal, but also to every individual or organization employed or designated by the Proposer to attempt to influence the procurement process. If there is none, state that. This information must be updated if, after the Deadline for Submission of Proposals, the Proposer retains an individual or organization to attempt to influence the procurement process. Indicate also whether the individual or organization has a financial interest in the procurement.
Name:
Address:

City, State, ZIP Code:	
Telephone Number (including area code):	
Email Address:	
Place of Principal Employment:	
Occupation:	
This individual/organization has a financial interest in the procurement:	<input type="checkbox"/> Yes <input type="checkbox"/> No
No such individual/organization is authorized to represent the Proposer:	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Minimum Qualifications to Propose (Section 4.0):	
A. The Proposer is an "administrative service agency." An administrative service agency is defined as an organization duly authorized to do business in the state and which is qualified to administer and maintain records and accounts of plans that meet the requirements for qualification under the internal revenue code and governmental plans. To be qualified, an administrative service agency must satisfy the statutory requirements of § 215(14), § 219-c(13) and § 219-k(18) of the General Municipal Law (see Attachment F).	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Proposer's Acknowledgement of Proposal Requirements: [Note: alteration of any language contained in this section may render your proposal non-responsive.]	
A. The proposal, including the Technical, Administrative, and Cost Proposals, constitutes a firm and irrevocable offer for a period of <u>180</u> days from the date of submission to OSC.	<input type="checkbox"/> Yes <input type="checkbox"/> No
B. By submission of a proposal, the Proposer agrees not to make any claims for or have a right to any damages because of any misrepresentations or misunderstanding of the specifications or because of any lack of information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. The Proposer agrees to fully comply with the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures attached to this RFP as Appendix D.	<input type="checkbox"/> Yes <input type="checkbox"/> No
D. The Proposer certifies that it can and will provide and make available, at a minimum, all services as described in the RFP if selected for award.	<input type="checkbox"/> Yes <input type="checkbox"/> No
E. The Proposer certifies that staff provided to perform Services possesses the necessary integrity and professional capacity to meet OSC's reasonable expectations. Subsequent to the commencement of Services, whenever the selected Proposer becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OSC no longer possesses the necessary integrity or professional capacity, the Proposer agrees to immediately discontinue the use of such staff and notify OSC.	<input type="checkbox"/> Yes <input type="checkbox"/> No
F. The Proposer certifies that all information provided in connection with its proposal is true and accurate.	<input type="checkbox"/> Yes <input type="checkbox"/> No
G. The Proposer has read, understands, and accepts all provisions of Appendix A (Standard Clauses for New York Contracts). Appendix A contains important information related to the contract to be entered into as a result of this RFP and will be incorporated, without change or amendment, into the contract entered into between OSC and the Proposer. By submitting a response to the RFP, the Proposer agrees to comply with all the provisions of Appendix A.	<input type="checkbox"/> Yes <input type="checkbox"/> No
H. The Proposer's legal representation has reviewed and understands Attachment E (Draft Contract), and the Proposer is willing to enter into an Agreement substantially in accord with the terms of Attachment E, should the Proposer be selected for contract award.	<input type="checkbox"/> Yes <input type="checkbox"/> No

I. The Proposer agrees that OSC shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractor(s) of the Proposer prior to their performance of services under the Agreement.	<input type="checkbox"/> Yes <input type="checkbox"/> No
J. The Proposer agrees that it shall be fully responsible for performance of work by its staff and by its subcontractor's staff. OSC reserves the right to request removal of any Proposer staff or subcontractor's staff if, in OSC's discretion, such staff is not performing in accordance with the Agreement.	<input type="checkbox"/> Yes <input type="checkbox"/> No
* A "No" Response in Sections 2 or 3 of this attachment will result in disqualification.	
4. Information Required:	
A. The Proposer is (check as applicable):	
<input type="checkbox"/> A New York State Certified Minority-Owned Business Enterprise <input type="checkbox"/> A New York State Certified Woman-Owned Business Enterprise <input type="checkbox"/> A New York State Certified Minority and Woman-Owned Business Enterprise (Dual Certified) <input type="checkbox"/> A New York State Service-Disabled Veteran-Owned Business <input type="checkbox"/> None of the above	
B. Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the contract entered into as a result of this procurement. See Section VII of the Draft Contract (Attachment E), NOTICES.	
Name:	
Title:	
Address:	
City, State, ZIP Code:	
Telephone Number (including area code):	
Email Address:	
C. Proposer's Taxpayer Identification Number:	
D. Proposer's NYS Vendor Identification Number as discussed in Section 6.1.D, if enrolled:	
By my signature I affirm under penalty of perjury that I am duly authorized to legally bind the Proposer referenced above and I sign this Attachment A (Proposer's Certified Statements) as the legally binding act of the Proposer.	
_____ Typed or Printed Name of Authorized Representative of the Proposer	
_____ Title/Position of Authorized Representative of the Proposer	
_____ Signature of Authorized Representative of the Proposer	

Date

ATTACHMENT B

PROPOSAL DOCUMENTS CHECKLIST

RFP0011			
ADMINISTRATIVE AND ACTUARIAL SERVICES FOR LENGTH OF SERVICE AWARD PROGRAMS FOR VOLUNTEER AMBULANCE WORKERS AND VOLUNTEER FIREFIGHTERS			
FOR THE ADMINISTRATIVE PROPOSAL			
TAB	RFP §	REQUIREMENT	INCLUDED
1	§ 6.1.A	The Proposer's EEO Policy Statement, as described in Clause 12 of Appendix A – Standard Clauses for NYS Contracts	<input type="checkbox"/>
		Form AC3239-A – Proposer's EEO Staffing Plan of Anticipated Workforce	<input type="checkbox"/>
2	§ 6.1.B	Appendix E – Contractor's Certifications/Acknowledgements, completed and signed	<input type="checkbox"/>
3	§ 6.1.C	Appendix F – Disclosure of Prior Non-Responsibility Determinations, completed and signed	<input type="checkbox"/>
4	§ 6.1.D	Vendor Responsibility Questionnaire, certified within six months of the Proposal due date (<u>unless filed and certified online</u>)	<input type="checkbox"/>
		If Vendor Responsibility Questionnaire was completed and certified online, check here and do not attach a paper copy.	<input type="checkbox"/>
5	§ 6.1.E	Written statements of the necessity for protective treatment under Freedom of Information Law	<input type="checkbox"/>
FOR THE TECHNICAL PROPOSAL			
TAB	RFP §	REQUIREMENT	INCLUDED
1	§ 6.2.A - B	Title Page and Table of Contents	<input type="checkbox"/>
2	§ 6.2.C	Attachment A – Proposer's Certified Statements, completed and signed	<input type="checkbox"/>
3	§ 6.2.D	Minimum Qualification substantiation as described in RFP Section 6.2.D	<input type="checkbox"/>
4	§ 6.2.E	Technical Qualifications as described in RFP Section 6.2.E (i. – xvii.)	<input type="checkbox"/>
5	§ 6.2.F	Attachment D (References)	<input type="checkbox"/>
6	§ 6.2.G	Summary of insurance coverage	<input type="checkbox"/>
FOR THE COST PROPOSAL			
TAB	RFP §	REQUIREMENT	INCLUDED
1	§ 6.3	Attachment C (Cost Proposal), completed	<input type="checkbox"/>
FOR ALL PROPOSALS			
TAB	RFP §	REQUIREMENT	INCLUDED
N/A	§ 7.1.A OPTION 1	Submit a single USB flash drive that has been scanned for malware and contains each of the complete Administrative, Technical, and Cost Proposals <u>as separate files</u> as stated in Section 7.1.A. (preferred)	<input type="checkbox"/>
		Optional: Submit one paper copy of each complete Administrative, Technical, and Cost Proposals (recommended)	<input type="checkbox"/>
N/A	§ 7.1.B OPTION 2	TWO Copies of the Administrative Proposal	<input type="checkbox"/>
		THREE Copies of the Technical Proposal	<input type="checkbox"/>
		TWO Copies of the Cost Proposal	<input type="checkbox"/>
		Submit a single USB flash drive that has been scanned for malware and contains each of the complete Administrative, Technical, and Cost Proposals as separate files as stated in Section 7.1.B. (requested)	<input type="checkbox"/>

ATTACHMENT C

COST PROPOSAL

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

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

RFP0011 ADMINISTRATIVE AND ACTUARIAL SERVICES FOR LENGTH OF SERVICE AWARD PROGRAMS FOR VOLUNTEER AMBULANCE WORKERS AND VOLUNTEER FIREFIGHTERS	
6.3.A. <u>Defined Benefit Plans:</u>	
1. Annual Fee for Plan Administration:	
a. Base Fee	\$ _____
b. Fee Per Pre-Entitlement Age Participant	\$ _____
c. Fee Per Post-Entitlement Age Participant	\$ _____
2. Per Participant Fee to Process NEW Distributions:	
a. Fee Per Distribution	\$ _____
3. Per Determination Fee to calculate the estimated annual costs for a proposed defined benefit service award program:	
a. Base Fee	\$ _____
b. Fee Per Participant	\$ _____
4. Per Determination Fee to calculate the estimated annual costs to transfer an existing plan from local administration to State administration, in the case of volunteer firefighter programs:	
a. Base Fee	\$ _____
b. Fee Per Participant	\$ _____
6.3.B. <u>Defined Contribution Plans:</u>	
i. Per Participant Fee for Plan Administration:	
a. Fee Per Participant	\$ _____
ii. Per Participant Fee to Process Distributions:	
a. Fee Per Distribution	\$ _____
iii. Per Participant Fee to calculate estimated annual cost of a proposed defined contribution service award program:	
a. Fee Per Participant	\$ _____
iv. Per Determination Fee to calculate the estimated costs to transfer an existing plan from local administration to State administration, in the case of volunteer firefighter programs:	
a. Base fee	\$ _____
b. Fee Per Participant	\$ _____
6.3.C. <u>General Fees:</u>	

i.	Fee for preparing relevant plan documents for NEW ambulance worker and firefighter programs, per plan:	\$ _____
ii.	Fee for modifying plan documents for existing ambulance workers and firefighter programs, per plan, as necessary:	\$ _____
6.3.D. Termination Fees:		
i.	Per Participant Fee for calculating the cost of terminating a defined benefit program, including the cost of making up any funding deficiency:	
a.	Fee Per Participant	\$ _____
ii.	Per Participant Fee for calculating the cost of terminating a defined contribution program:	
a.	Fee Per Participant	\$ _____

Name of Proposer		

Signature of Person Authorized to Bind the Proposer		

Name and Title of Authorized Signatory		

Date		

ATTACHMENT D

REFERENCES

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

Expand fields and duplicate this page as necessary.

RFP0011	
ADMINISTRATIVE AND ACTUARIAL SERVICES FOR LENGTH OF SERVICE AWARD PROGRAMS FOR VOLUNTEER AMBULANCE WORKERS AND VOLUNTEER FIREFIGHTERS	
PROPOSER:	
Provide the following information for each reference submitted. Fields will expand as you type.	
Reference Company #1:	
Contact Person:	
Address:	
City, State, Zip:	
Telephone Number:	
Email Address:	
Number of years Proposer provided services to this entity:	
Brief description of the services provided:	
Reference Company #2:	
Contact Person:	
Address:	
City, State, Zip:	
Telephone Number:	
Email Address:	
Number of years Proposer provided services to this entity:	
Brief description of the services provided:	
Reference Company #3:	
Contact Person:	
Address:	
City, State, Zip:	
Telephone Number:	
Email Address:	
Number of years Proposer provided services to this entity:	
Brief description of the services provided:	

ATTACHMENT E

DRAFT CONTRACT

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

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

STATE OF NEW YORK

OFFICE OF THE STATE COMPTROLLER

AGREEMENT WITH

[Contractor Name]

NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C00XXXX

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

W I T N E S S E T H

WHEREAS, Article 11-AA of the General Municipal Law ("GML") authorizes certain political subdivisions to adopt defined contribution service award programs for the volunteer ambulance workers of certain ambulance companies; and

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

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

WHEREAS, Article 11-A of the GML authorizes certain political subdivisions to adopt defined contribution service award programs and defined benefit service award programs for the volunteer firefighters of volunteer fire companies or volunteer fire departments (the defined contribution service award programs and the defined benefit

service award programs authorized by Article 11-A of the GML being hereinafter sometimes referred to collectively as the "Volunteer Firefighter Programs"); and

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

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

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

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

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

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

WHEREAS, based upon the evaluation of the various proposals submitted in response to the RFP, it has been determined that the Contractor's proposal offered the best value and that it would be in the best interests of OSC to retain the Contractor to perform the Services in accordance with the terms and conditions of this Agreement.

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

I. DEFINITIONS

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

- (a) "Account" shall mean the bookkeeping account established for a Participant in a defined contribution or defined benefit service award program.
- (b) "Account Balance" shall mean, as of any given time, the value of all contributions credited to a Participant's Account in a defined contribution plan Program or a defined benefit plan Program, plus all interest, earnings and gains thereon, and minus all losses, distributions, forfeitures and necessary administrative costs charged thereto.
- (c) "Adoption Agreement" shall mean the standard form of agreement by which a Sponsor agrees to establish a Program and by which a Sponsor may select options with respect to the design of the Program and the benefits to be provided under the Program.

- (d) "Benefit Amount" shall mean a payment for each year of volunteer ambulance service in such amount as may be authorized by GML Section 219-n(1) (in the case of defined benefit Volunteer Ambulance Worker Programs), or shall mean a payment for each year of volunteer firefighter service in such amount as may be authorized by GML Section 219 (in the case of a defined benefit Volunteer Firefighter Program), as selected by the Sponsor.
- (e) "Program Liaison" shall mean the lead person assigned by the Contractor to serve as the primary point of contact, responsible for managing the contractual relationship with OSC and the Trustee, and overseeing of the delivery of all Services.
- (f) "Participant" shall mean: (i) in the context of a defined contribution Volunteer Ambulance Worker Program, a volunteer ambulance worker who has satisfied the age and service requirements provided for in Article 11-AA of the GML, or (ii) in the context of a defined benefit Volunteer Ambulance Worker Program, a volunteer ambulance worker who has satisfied the age and service requirements provided for in Article 11-AAA of the GML, or (iii) in the context of a defined contribution or a defined benefit Volunteer Firefighter Program, a volunteer firefighter who has satisfied the age and service requirements provided for in Article 11-A of the GML, or (iv) in the context of a Supplemental Award Program, a volunteer firefighter or volunteer ambulance worker who has satisfied the age and service requirements provided for in Article 11-AAAA of the GML. The term "Participant" shall be deemed to include beneficiaries of Participants who are entitled to benefits under the terms of the Programs.
- (g) "Program" or "Programs" shall mean, as the context shall require, one or more service award programs adopted pursuant to Article 11-A, Article 11-AA, Article 11-AAA, and Article 11-AAAA of the GML. As used in this Agreement, the term "Program" shall have the same meaning ascribed to the term "plan" by the applicable Article of the GML.
- (h) "Program Administrator" shall mean the Proposer selected as a result of RFP0011 (Administrative and Actuarial Services for Length of Service Award Programs (LOSAP) for Volunteer Ambulance Workers and Volunteer Firefighters).
- (i) "Program Agreement" shall mean the "Program Agreement for Defined Contribution Plan Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters" and/or the "Program Agreement for Defined Benefit Plan Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters," as the same may be amended from time to time, and as the context shall require.
- (j) "Regulations" shall mean those regulations promulgated by OSC pursuant to Article 11-A, Article 11-AA, Article 11-AAA, or Article 11-AAAA of the GML, as the same may be amended from time to time, and as the context shall require.
- (k) "Sponsor" shall mean a political subdivision which adopts a Program pursuant to the provisions of Article 11-A, Article 11-AA, Article 11-AAA, or Article 11-AAAA of the GML.
- (l) "Trust" shall mean a trust created by a Trust Agreement.
- (m) "Trust Agreement" shall mean, depending on context, the "Trust for the New York State Volunteer Ambulance Workers Defined Contribution Service Award Program," as the same may be amended from time to time, the "Trust for the New York State Volunteer Ambulance Workers Defined Benefit Service Award Program," as the same may be amended from time to time, the Trust for the New York State Volunteer Firefighters Defined Contribution Service Award Program," as the same may be amended from time to time, or the "Trust for the New York State Volunteer Firefighter Defined Benefit Service Award Program," as the same may be amended from time to time. The Trusts for said Programs shall, at all times, be separate and distinct from one another, and the funds with respect to each Trust shall not be commingled in any manner.
- (n) "Trustee" shall mean the Proposer selected as a result of RFP0010 (Financial Organization (Trustee) Services for Length of Service Award Programs for Volunteer Ambulance Workers and Volunteer Firefighters).

- (o) "Valuation Date" shall mean, with respect to Defined Contribution Programs, the last day of each calendar quarter, and each other day as of which the Program Administrator is required, under the GML or the Regulations, to determine the value of Participants' Account Balances.

II. TERM

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

III. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES

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

1. Appendix A – Standard Clauses for New York State Contracts;
2. Agreement – (This Document):
 - o Appendix B – Form AC 3239-A Contractor's EEO Staffing Plan of Anticipated Workforce and Form AC 3239-B, Contractor's/Subcontractor's EEO Workforce Utilization Report;
 - o Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
 - o Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
 - o Appendix E – Contractor's Certifications/Acknowledgements;
 - o Appendix F – Disclosure of Prior Non-Responsibility Determinations; and
 - o Appendix G – OSC Consultant Disclosure Reporting Requirements.
3. Exhibit A – The RFP number 0011, including the Questions and Answers [and any Addenda or Amendments (if applicable)]; and
4. Exhibit B – The Proposal (Exhibits B1 – Technical Proposal, B2 – Cost Proposal, and B3 – Administrative Proposal), including any clarifications thereto.

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

IV. COMPENSATION

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

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

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

V. PAYMENT AND INVOICES

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

Office of the State Comptroller
Financial Administration
Contract Payment Unit
110 State Street, Stop 13-2
Albany, NY 12236-0001

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

Attn:
Office of the State Comptroller
NYSLRS – Bureau of Accounting
110 State Street, XX Floor [or Mail Stop #]
Albany, New York 12236-0001

VI. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REPORTING

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

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

Attn: Director of Finance
New York State Office of the State Comptroller

Bureau of Finance
110 State Street, Stop 13-2
Albany, NY 12236

These Reports are reviewed as part of OSC's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce and the Contractor's/Subcontractor's EEO Workforce Utilization Reports, the Contractor/Subcontractor may be subject to an in-depth EEO compliance review. If deficiencies are identified, OSC shall make every effort to resolve the deficiencies identified and to bring the Contractor/Subcontractor into compliance with such requirements. If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for the Bureau of Finance at OSC determines that the Contractor/Subcontractor is non-compliant, such Deputy Comptroller shall submit a written complaint to the New York State Department of Economic Development's Division of Minority and Women's Business Development ("DMWBD") regarding the Contractor's/Subcontractor's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Contractor/Subcontractor by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law § 316) and regulation (5 NYCRR § 143.6).

VII. NOTICES

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

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

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

OSC:

Title: Director of Finance
Address: Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

Copy to:

Name: Jeff Mabb
Office of the State Comptroller
NYSLRS – Bureau of Accounting
Title: Accounting Bureau Management
Address: 110 State Street, Mail Drop 4-2
Albany, New York 12236-0001
Telephone: (838) 910-4522
Email: jmabb@osc.ny.gov

Contractor:

Name: []
Title: []
Address: []
[]
[]
Telephone: []

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

OSC – Legal Counsel

Name: Nelson R. Sheingold, Counsel to the Comptroller
Address: 110 State Street, Mail Stop 14-2
Albany, NY 12236
Phone: (518) 474-3444
Email: nsheingold@osc.ny.gov

Contractor – Legal Counsel

Name: []
Title: []
Address: []
[]
[]
Telephone: []

VIII. SERVICES

- A. OSC hereby retains the Contractor to perform the Services, and the Contractor hereby agrees to perform the Services, which shall include all deliverables, work and/or work products as described in Section 3.0 of the RFP.
- B. Nothing contained herein shall prohibit OSC from contracting at any time with third parties or from performing any of the work itself or through other State entities, for any Services that otherwise may be requested or required of the Contractor pursuant to this Agreement, and the Contractor shall not assert an exclusive right to perform such Services.

IX. FIDUCIARY RESPONSIBILITY

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

X. COOPERATION

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

XI. STAFF

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

The Contractor shall assign the Program Liaison as the lead person and other such staff as necessary to oversee the day-to-day operations. The replacement for the Program Liaison and any other such key staff removed from, reassigned or who leaves the employ of the Contractor for any reason must reasonably match or exceed the replaced staff member in terms of skill level and experience, as determined by OSC. OSC reserves the right to approve or disapprove any proposed changes in key staff. OSC in each instance will be provided with a summary of the experience of the proposed key staff member and an opportunity to interview that person, prior to giving its approval or disapproval. Said approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its partners, members, employees, agents, consultants, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties to be performed hereunder.

OSC reserves the right to remove any of the Contractor's staff if, in OSC's discretion, such staff is not performing in accordance with this Agreement, or for any other reasonable work-related cause. The Contractor shall be fully responsible for performance of work by its staff and by subcontractor's staff.

XII. SUBCONTRACTORS

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

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

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

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

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

XIII. RELATIONSHIP OF PARTIES

The relationship of the Contractor and its staff to OSC shall be that of an independent contractor, and not that of an agent or employee of OSC. The Contractor, as an independent contractor, shall not have the authority to contract for or bind OSC for any purpose whatsoever. The Contractor covenants and agrees that its staff will not hold themselves out as agents, officers, or employees of OSC, and that they will not make any claim, demand, or application for any right or privilege applicable to any officer or employee of OSC, including but not limited to, Workers' Compensation coverage, disability coverage, Social Security coverage, or Retirement System benefits.

XIV. GENERAL WARRANTY AND REPRESENTATIONS

The Contractor hereby warrants and represents:

- A. Contractor warrants that the Services provided to OSC under this Agreement will be performed in a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances. Contractor shall re-perform, at its own expense, any work not in compliance with this warranty. Such re-performance of Services will be completed within 90 days of notification to the Contractor of non-compliant work.
- B. The Federal Immigration Reform and Control Act, as amended, (8 USC section 1324a et. al.) obligates employers, such as the Contractor and its subcontractors, if any, to verify that their staff are legally entitled to work in the United States. The Contractor warrants to OSC that it has verified staff assigned to provide Services to OSC are eligible for employment in the United States. The Contractor is responsible for ensuring that staff retain the authorization to legally work in the United States throughout the term of this Agreement. In order to confirm that the staff are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to the legal entitlement to work in the United States for any of Contractor's staff assigned work under this Agreement. In accordance with such law, OSC does not discriminate against individuals on the basis of national origin or citizenship. OSC does not provide sponsorship.
- C. Contractor is a business corporation duly authorized to do business in the State of New York, and is qualified to administer and maintain records and accounts of plans which meet the requirements for qualification under the Internal Revenue Code and governmental plans, and shall continue at all times to qualify as an "financial organization" under § 215(15), § 219-c(14) and § 219-k(19) of the GML.
- D. Contractor, at all times during the term of this Agreement, shall comply with the provisions of Article 11-A, Article 11-AA, Article 11-AAA, and Article 11-AAAA of the GML, the Regulations, and the Program Agreements in relation to its performance of Services.
- E. Contractor shall notify OSC, including the OSC - Legal Counsel, as soon as reasonably possible following Contractor's discovery of criminal acts, potential criminal acts, fraud or potential fraud with respect to any Program that is administered by the Contractor as set forth in this Agreement.

XV. CONFLICTS OF INTEREST

The Contractor hereby covenants and represents that it currently has no conflicts of interest with respect to Services and any other client engagements, consultant contract or employment, and that the Contractor shall immediately advise OSC whenever it becomes aware of any situation that involves or appears to involve such a conflict of interest or potential conflict.

XVI. CONFIDENTIALITY, SECURITY, AND BACKGROUND INVESTIGATIONS

A. Definition

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

B. Treatment

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

C. Confidentiality of OSC Information

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

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

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

- To view, access and use only the Confidential Information relevant and necessary to provide the Services to OSC under this Agreement;
- To use its best efforts to preserve the confidentiality of the Confidential Information;
- To use its best efforts to prevent disclosure of the Confidential Information to any person other than to OSC staff;
- To abide by all OSC and State confidentiality policies and procedures;
- That all reports and other materials, preliminary, final and otherwise, prepared for or relating to Services described herein (other than Contractor's work papers)-shall be treated at all times as Confidential Information by the Contractor;
- All Confidential Information shall remain the property of OSC; and
- That all Confidential Information shall be returned or destroyed (using highest industry-standard secure disposal methods) within thirty (30) days after the expiration or termination of this Agreement and that upon such destruction, the Contractor will certify as to the method of destruction.

D. Security

1. The Contractor and its staff shall be required to comply with all applicable facility and information security policies, standards, and procedures, including any training required, both present and future, by OSC in performing the Services.

2. The Contractor may not connect any non-OSC computer, electronic storage device, or telecommunications equipment to OSC network (e.g., personal and corporate laptop computers, personal and corporate USB devices, smartphones, and tablets are included in this prohibition).
3. Where performance of Services involves use by the Contractor of State-owned or licensed, or OSC-owned or licensed, papers, files, computer disks or other electronic storage devices, data, or records at OSC or State facilities or offices, the Contractor shall not remove such records therefrom without the prior written approval from an authorized representative of OSC.
4. Security Incident Notification. To the extent not prohibited by applicable law, the Contractor shall promptly notify OSC in writing upon the occurrence of any Security Incident, as defined in this Section, in the most expedient time possible and without unreasonable delay, but in any event no later than within 24 hours of such occurrence.

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

All notices to OSC required under this Section must be made by contacting OSC’s Information Security Office first by telephone at 518-474-9487 and then by email to: iso@osc.ny.gov. Where PII, private information, and/or other personal information have been accessible or released as a result of a Security Incident, such notice shall also be provided to OSC’s Privacy Officer at PrivacyOfficer@osc.ny.gov. The notice must include, to the extent such information is available, a description of:

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

and injunctive relief. If the Contractor fails to take such steps in a timely and adequate manner, OSC may take them at the expense of the Contractor.

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

E. Background Investigations

The Contractor and the Contractor's affiliates and subcontractors must conduct background investigations on their employees and subcontractors who will have access to OSC's IT systems, access to OSC or State confidential information and any personal identification information ("PII") or private information, as defined in applicable state or federal law, of any volunteer or Participant, or routine access to any OSC facility. For the purposes of this paragraph, "routine access" is defined as access to an OSC facility for five consecutive business days or 10 business days over the annual term of the engagement. ("Covered Staff"). Accordingly, with the signing of this Agreement, the Contractor certifies that it has or will conduct a background investigation on any Covered Staff to whom the policy applies within the 12 months prior to the Covered Staff commencing Services under this Agreement. The Contractor agrees to undertake a background investigation of any new/replacement Covered Staff during the term of this Agreement.

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

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

OSC has the right to review the results of the background investigation and its supporting documentation upon request; Contractor must therefore obtain staff consent to such review. OSC reserves the right to conduct its own background investigation of the Contractor's Covered Staff, and, if so elected by OSC, Contractor must obtain the consent of the subject staff to permit OSC to conduct such background check. Only staff who have passed the background investigation, and provided such consent shall be assigned to provide Services to OSC under this Agreement. During the term of this Agreement, and in accordance with Appendix A (Section 10, Records), the Contractor must maintain records related to the background investigations performed.

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

F. Location of Data and Staff; CONUS; Encryption

1. **Location of Data and Staff; CONUS.** All of Contractor's computer systems, networks, and staff with access to OSC Data (as defined below) shall be physically located within the contiguous United States ("CONUS"), including any customer service representatives and support staff. The Contractor shall meet the following requirements:
 - a. All Data shall remain in the CONUS.
 - b. Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.
 - c. Any Services which directly or indirectly access Data shall be performed only from locations within CONUS.

- d. All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section XVI(F)(2), Encryption.
- e. All helpdesk, online and support services which may access Data shall be performed only from locations within CONUS.
- f. No Follow the Sun support shall be allowed to access, use, or transmit Data directly or indirectly from locations outside the CONUS ("OCONUS") without OSC's prior, written permission.

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

2. **Encryption.**

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

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

- HTTPS (browser or compatible clients – pickup and drop off at OSC or OSC-approved servers only, port 443); and
- SFTP (SSH/FTP) using minimum 2048 bit key based authentication (port 22).

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

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

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

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

XVII. DISPUTES AND DISSATISFACTION

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

XVIII. INDEMNIFICATION AND LIABILITY

- A. Neither the Contractor, OSC, nor the State shall be liable for any delay or failure in performance beyond its control resulting from acts of war, hostility or sabotage; act of God; electrical outage that is not caused by the obligated party; or other force majeure event. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. This paragraph does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or OSC's obligation to pay for Services provided by the Contractor which have been approved by OSC.

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

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

- E.** For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, the Contractor shall be liable for any act or omission of the Contractor or any of its staff, in

an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges paid or payable to the Contractor as of the date(s) such damages are due.

- F. Nothing in this Article XVIII or elsewhere in this Agreement, including any attachments, exhibits, schedules or amendments, shall relieve Contractor from any statutory liabilities or obligations that it may have as a result of a violation of any state or federal privacy law, including, without limitation, New York General Business Law Section 899-aa and 899-bb.
- G. Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OSC, the Contractor, or by others.
- H. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due Contractor such moneys as may be necessary to satisfy any claim for damages OSC may have against Contractor.]

XIX. RESPONSIBILITY TERMS

- A. The Contractor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Contractor's Vendor Responsibility Questionnaire ("Responsibility Questionnaire") provided to the Contractor by OSC prior to execution of this Agreement. The Contractor further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Responsibility Questionnaire.
- B. 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.
- C. Notwithstanding Subsection (B) hereinabove, OSC reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Responsibility Questionnaire, (ii) to inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) to require the Contractor to provide such information to OSC within a reasonable timeframe to be established at OSC's sole discretion.
- D. OSC reserves the right to make a final determination of the Contractor's non-responsibility ("Determination of Non-Responsibility") at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (ii) the Contractor's failure to disclose material information; or (iii) OSC's discovery of any other material information which pertains to the Contractor's responsibility.
- E. If OSC preliminarily determines the Contractor to be non-responsible, OSC shall provide written notice to the Contractor detailing the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard before the determination is finalized.
- F. Upon a Determination of Non-Responsibility of the Contractor, OSC reserves the right to terminate this Agreement for cause pursuant to Section XX. "Termination and Suspension."

XX. TERMINATION AND SUSPENSION

- A. **OSC Termination or Suspension.** OSC reserves the right to terminate or suspend this Agreement, or terminate or suspend the Services, with respect to a specific matter or matters, with or without cause upon 15 days, prior written notice to the Contractor.

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

Agreement or if OSC has, in its sole discretion, material concerns regarding the security of confidential information or data relating to OSC or any Participant.

- B. Effect of Termination or Suspension.** If this Agreement is terminated or suspended, the Contractor shall be entitled to compensation for Services performed through the date of termination or suspension which are acceptable to OSC, in its sole discretion.

XXI. TRANSITION

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

XXII. INSURANCE

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

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

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

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

XXIII. 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. 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.

D. ETHICS COMPLIANCE

The Contractor, its officers, directors, employees, subsidiaries, affiliates, partners, and agents shall comply with the requirements of Public Officers Law §§ 73 and 74, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of this Agreement and/or other civil or criminal proceedings as required by law.

E. SURVIVAL

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

XXIV. ENTIRE AGREEMENT/APPROVALS

This Agreement and the appendices, exhibits, and attachments hereto constitute the entire Agreement between the parties and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties. This Agreement and any amendment hereof shall not be deemed executed, valid, or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by the OSC Bureau of Contracts pursuant to Section 112 of the State Finance Law, and filed in the Office of the State Comptroller.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

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

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

CONTRACT NUMBER: [REDACTED]

[CONTRACTOR]

OFFICE OF THE STATE COMPTROLLER

SIGNATURE

SIGNATURE

PRINTED NAME

JOEL LOMBARDI

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
PROPOSER'S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE**

Contractor Name:				Federal Identification Number:											
Address:				Contract Number:											
City, State, Zip Code:				M/WBE Participation Goals Assigned: MBE ____% WBE ____%											
Does the Contractor have an existing EEO Policy? (Check one): <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
PROPOSER'S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE

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

INSTRUCTIONS FOR COMPLETING PROPOSER'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

Please submit completed Form AC 3239-B semi-annually, in accordance with the terms of the State Contract to:

New York State Office of the State Comptroller
 Bureau of Financial Administration, Attn: M/WBE Specialist
 110 State Street, Stop 13-2
 Albany, NY 12236

Submission of this form constitutes the Contractor's/Subcontractor's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this State Contract and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.

By submitting this form, the Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Contractor compliance, and (ii) to be bound by the provisions of § 316 regarding possible fines, sanctions, and penalties for violations of the Article.

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

*The Equal Employment Opportunity Commission's Description of Job Categories and Instructions for assigning employees can be viewed at www.eeoc.gov/employers/eeo1survey/2007instructions.cfm.

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 services³ 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 vendor⁴ 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 question⁵ 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 influence⁶ relating to the vendor's bid

³ 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.

⁴ 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.

⁵ 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.

⁶ 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.

or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.

4. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor's bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process⁷. 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.

⁷ 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.

11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.
12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011

APPENDIX E

CONTRACTOR'S CERTIFICATIONS/ACKNOWLEDGEMENTS

SIGNATURE AUTHORITY
The Contractor* and the person signing on behalf of the Contractor certify that such person is authorized to sign on behalf of the Contractor and has the express authority to contractually bind the Contractor.
ACKNOWLEDGEMENT OF RECEIPT OF OSC'S POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT
The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Policy on Discrimination and Harassment, Including Sexual Harassment (Appendix C), and each agrees to abide by the terms of Appendix C.
CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW § 139(L) REGARDING SEXUAL HARASSMENT POLICY AND ANNUAL TRAINING
"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law."
NON-COLLUSIVE BIDDING CERTIFICATION
<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

APPENDIX G
OSC CONSULTANT DISCLOSURE REPORTING REQUIREMENTS
CONTRACTOR INSTRUCTIONS

Background:

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

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

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

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

Instructions:

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

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

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

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

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

Form B: State Consultant Services Contractor's Annual Employment Report

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

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

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

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

To OSC (as the contracting agency):

By mail: Bureau of Finance
Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

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

To the Bureau of Contracts:

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

By email: CDMOST@osc.ny.gov

To Department of Civil Service:

By mail: NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239
Attn: Executive Office

By email: SubmitformB@cs.ny.gov

FORM A

New York State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term

State Agency Name: Office of the State Comptroller	
State Agency Department ID: 3050000	Agency Business Unit: OSC01
Contractor Name:	Contract Number:
Contract Start Date: / /	Contract End Date: / /

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

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FORM B

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

Contracting State Agency Name: Office of the State Comptroller	
Contract Number:	Agency Business Unit: OSC01
Contract Term: / / to / /	Agency Department ID: 3050000
Contractor Name:	
Contractor Address:	
Description of Services Being Provided:	

Scope of Contract (Choose one that best fits):				
<input type="checkbox"/> Analysis	<input type="checkbox"/> Evaluation	<input type="checkbox"/> Research	<input type="checkbox"/> Training	
<input type="checkbox"/> Data Processing	<input type="checkbox"/> Computer Programming	<input type="checkbox"/> Other IT consulting		
<input type="checkbox"/> Engineering	<input type="checkbox"/> Architect Services	<input type="checkbox"/> Surveying	<input type="checkbox"/> Environmental Services	
<input type="checkbox"/> Health Services	<input type="checkbox"/> Mental Health Services			
<input type="checkbox"/> Accounting	<input type="checkbox"/> Auditing	<input type="checkbox"/> Paralegal	<input type="checkbox"/> Legal	<input type="checkbox"/> Other Consulting

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

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ATTACHMENT F
STATUTES APPLICABLE TO THE RFP

DOCUMENT POSTED SEPARATELY TO THE SITE HOSTING THIS RFP.

Service Award Statutes:

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

NYCRR Part 150:

Service Award Programs for Volunteer Ambulance Workers

NYCRR Part 152:

Defined Benefit Service Award Programs for Volunteer Ambulance Workers

NYCRR Part 154:

State-Administered Defined Contribution Service Award Programs for Volunteer Firefighters

NYCRR Part 155:

State-Administered Defined Benefit Service Award Programs for Volunteer Firefighters