

DRAFT CONTRACT
NEW YORK STATE COMPTROLLER
MEDICAL EXAMINER MANAGEMENT SERVICES AGREEMENT
WITH

CONTRACTOR'S NAME

NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER XXXXXXXX

THIS AGREEMENT (the "Agreement") is between the New York State Comptroller, as Administrative Head of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System ("NYSLRS"), 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 the Comptroller, as authorized by Retirement and Social Security Law, requires the services of medical doctors to conduct independent medical and/or psychiatric examinations ("IMEs") of NYSLRS members ("Members") for NYSLRS' Medical Board (the "Board") in connection with applications for various retirement benefits; and

WHEREAS, the Contractor is a medical group that has a minimum of five years' experience in providing qualified medical doctors (each, a "Physician") to perform IMEs; and

WHEREAS, the Contractor has a minimum of five years' expertise in the facilitation of IMEs, including scheduling, reporting, and coordinating the services required, as further defined in Section VI (Services); and

WHEREAS, the Contractor has at least one orthopedic, neurological, and psychiatric Physician on staff who is available to perform IMEs; and

WHEREAS, the Contractor is affiliated with licensed Physicians having general and specialized medical education, experience, and expertise; and

WHEREAS, the Contractor is a responsible entity with the ability to provide the Services.

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

I. TERM

The terms of this Agreement will begin upon approval of the New York State Office of the State Comptroller's ("OSC") Bureau of Contracts and will continue for a period of five years.

II. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES

This Agreement includes the following documents and appendices:

- A. Appendix A – Standard Clauses for New York State Contracts;
- B. Agreement – this document, including:
 - o Appendix B –Proposer and Contractor Compliance Requirements and Procedures for Participation by Minority Group Members and Women With Respect to OSC Contracts;
 - 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;

- Appendix F – Disclosure of Prior Non-Responsibility Determinations;
- Appendix G – OSC Consultant Disclosure Reporting Requirements; and
- Appendix H – Proposer/Contractor Compliance Requirements and Procedures for Participation by Service-Disabled Veteran-Owned Businesses;

C. Attachments, including:

- Attachment 1 – Fee Schedule; and
- Attachment 2 – Certifications.

Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A – Standard Clauses for New York State Contracts;
2. This Agreement (this document), including Appendices B through and including H; and
3. Attachments 1 and 2.

III. **PAYMENT AND INVOICES**

- A. NYSLRS will compensate the Contractor in the ordinary course of business upon receipt of the Contractor's invoice. Invoices must be submitted on a monthly basis, unless the total invoice amount covering a billing period of one month is less than \$1,000, in which event the invoice may be submitted quarterly. Approved invoices will be paid in accordance with Article 11-A of New York State Finance Law.

The Contractor shall not collect Members' personal insurance information or charge Members for the Services.

- B. All invoices must include the following information:

1. NYSLRS Agreement #XXXXXXX, Contractor's taxpayer identification number, and the Contractor's New York State Vendor Identification Number;
2. The name of the Physician providing the Services;
3. A detailed description of Services provided, including the Member name, case number, and date each billed Service was provided;
4. An itemized list and appropriate documentation describing and supporting all items billed as expenses;
 - a. Travel (transportation, lodging, meals) documentation must be sufficient to demonstrate conformance with applicable New York State reimbursement rates, as stated in Section VII(B) (Compensation);
 - b. Third-party testing expenses must include receipts and documentation for that testing;
5. The total amount billed for Services and expenses for the invoice period;
6. The beginning and ending dates of the billing period included in the invoice;
7. The expiration date of this Agreement;
8. A completed Form AC 3239-H (M/WBE Expenditure Report of Appendix B), which must include (i) the actual total cost of the contract work performed by each certified M/WBE for the invoiced services, and (ii) the actual amounts of payments made by the Contractor to each certified M/WBE as of the invoice submission date; and
9. A completed Form AC 3322-2 (Contractor's SDVOB Utilization Report), which must include (i) the actual total cost of the contract work performed by each certified SDVOB for invoiced services, and (ii)

the actual amounts of payments made by the Contractor to each certified SDVOB as of the invoice submission date.

NYSLRS may request Services pertaining to more than one assignment, matter, or case, and any associated testing, to be separately itemized on the invoice.

- C. All invoices are subject to NYSLRS' acceptance of the Services for which billing is being made and must be submitted via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

**Office of the State Comptroller
Bureau of Finance
Contract Payment Unit
110 State Street, Stop 13-2
Albany, NY 12236-0001**

IV. EQUAL EMPLOYMENT OPPORTUNITY ("EEO") REPORTING

The Contractor shall comply with applicable federal, New York State, and local requirements concerning equal employment opportunities for minorities and women, including 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) the Contractor submit to OSC its EEO Policy Statement, and Form AC 3239-A Proposer's EEO Staffing Plan of Anticipated Workforce. Further, the Contractor shall submit on a semi-annual basis Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report) and shall require each of its subcontractors, if any, to submit such report on a quarterly basis during the term of the Agreement.

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

Attn: Director of Finance
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 Division of Finance and Administration 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).

V. NOTICES

Any legal notice or other legal communication given under this Agreement must be in writing and addressed to such party at the address stated in this Agreement. Such notices will become effective:

- (i) When delivered personally to the party for whom intended; or

- (ii) Upon actual receipt by the intended party if such notice or other communication is sent by overnight mail service or United States Postal Service mail (certified mail, return receipt requested, or first-class postage prepaid).

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

OSC:

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

NYSLRS – Disability Services:

Name: Kevin Mack
Title: Director of Disability Services
Address: 110 State Street, Mail Stop 7-1
Albany, NY 12244
Phone: (518) 473-1347
E-mail: IME_Recruitment@osc.ny.gov

Contractor:

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

VI. SERVICES

A. Contractor Services

All requests to the Contractor for Physician assignment are made at the discretion of NYSLRS.

NYSLRS will request a Physician assignment electronically or by letter. NYSLRS request for Services will include the necessary instructions and the Member's relevant medical and employment files and may include questions for the examining Physician to answer in the Physician's IME Report.

NYSLRS does not guarantee the volume of work, if any, that will be requested from the Contractor or assigned to any Physician. Physicians must be available on an as-needed basis. All Services may only be performed with the prior, written approval of NYSLRS.

The Contractor shall:

1. Assign a Primary Contact to coordinate activities and be responsible for resolving day-to-day problems and questions from NYSLRS, and inform NYSLRS of any change to the Primary Contact.
2. Use (and ensure that its Staff uses) appropriate safeguards to maintain and ensure the confidentiality, privacy, and security of all personal information that may be transmitted to, or accessed or collected by the Contractor or Contractor's Staff under this Agreement, in accordance with the standards and requirements of applicable law. The Contractor shall monitor its security program and audit the security programs of its Staff at least annually. Personal information may include "Protected Health Information" as defined in the Health Insurance Portability and Accountability Act.

3. Upon execution of this Agreement, provide NYSLRS with a list of licensed Physicians available to perform the Services (the "Physician List"). The Contractor shall provide NYSLRS with a revised Physician List as changes occur throughout the term of this Agreement. The Physician List must be sent via Biscom Secure File Solutions ("Biscom"), NYSLRS' secure email service or, at the discretion of NYSLRS, by mail or an alternative method of secure file transfer.
 - a. The Physician List must:
 - i. include only Physicians that are available to perform IMEs;
 - ii. Include at least one orthopedic, neurological, and psychiatric Physician;
 - iii. include each Physician's specialty and any sub-specialty;
 - iv. identify those Physicians whose fees are greater than those fees listed on Attachment 1 (Fee Schedule);
 - v. identify the locations (state and city/towns) in which the Physician will be available to perform IMEs; and
 - vi. be an unlocked Microsoft Excel document.
 - b. The Physicians on the Physician List must:
 - i. be licensed to practice medicine or psychiatry;
 - ii. be certified by the American Board of Medical Specialties ("ABMS") in their specialty and any sub-specialty;
 - iii. not have any professional misconduct proceedings pending against them and must not have been previously found guilty of any misconduct; and
 - iv. have sufficient proficiency in English, both verbal and written, to responsibly provide the Services.
4. Schedule IMEs in accordance with the process stated in Section VI.B(1)(b) (Process for Scheduling IMEs).
 - a. If, after scheduling an IME with a Member or the Member's employer, the Contractor or the Physician scheduled to perform the IME must change the IME date, time, and/or location, the Contractor shall notify the Member or the Member's employer of the change, and the Member or Member's employer must approve of the change, before changing the date, time, or location.
 - b. The Contractor shall reschedule an IME upon the request of NYSLRS, the Member, or the Member's employer. The Contractor shall immediately notify NYSLRS of any IME rescheduled at the request of a Member or the Member's employer.
 - c. The Contractor shall immediately notify NYSLRS if a Physician is not available to provide a requested IME, or provide any other part of the Services. The Contractor may not substitute a different Physician without the prior written approval of NYSLRS.
 - d. The Contractor shall respond to all scheduling requests within seven business days.
5. Remove a Physician from its Physician List upon NYSLRS' request.
6. Ensure that the Physicians on its Physician List are qualified to perform the Services. This includes:
 - a. Upon commencement of this Agreement, verifying that its Physicians do not have any pending misconduct proceedings against them and have never been found guilty of any misconduct.
 - b. Routinely checking, not less than every six months, with those licensors and other resources necessary to ensure (i) its Physicians are not under investigation for professional misconduct or Physician discipline, and (ii) Physicians' medical license and ABMS certifications have not expired or been revoked.
 - c. Immediately notifying NYSLRS of any information that would adversely affect a Physician's professional standing or credibility as an expert witness (including, but not limited to, any criminal or professional misconduct proceedings brought against the Physician).

7. Ensure that the Physician List includes at least one orthopedic, neurological, and psychiatric Physician, through the term of this Agreement. If at least one orthopedic, neurological, or psychiatric Physician is not included on the Physician List, NYSLRS may immediately terminate this Agreement per Section XIX (Termination and Suspension).
8. Ensure that any subcontractor, non-physician, or other health care provider currently disciplined, sanctioned, censured, or suspended by any government regulatory agency will not be allowed to provide Services under this Agreement.
9. Notify NYSLRS if the locations in which a Physician performs IMEs changes.
10. Respond to all NYSLRS inquiries within seven business days.

B. Physician Services

The Contractor shall provide the services of Physicians having general and specialized medical education, experience, and expertise meeting the criteria of the NYSLRS Board. Only those Physicians who have been approved by the Board to perform the Services, and who do not have a conflict in providing such Services, may perform the Services. A conflict exists when the Physician has treated or previously examined an individual Member or any person in that Member's immediate family, or if another member of the preferred provider organization or managed care provider to which the Physician belongs has treated or examined the Member or any person in that Member's immediate family.

The Physician services shall include (i) performing IMEs of Members who apply for disability retirement benefits, (ii) producing comprehensive narrative medical reports ("IME Reports"), and (iii) possibly testifying at administrative disability hearings.

1. Independent Medical Examinations

The purpose of an IME is to determine whether a Member is permanently disabled with respect to performing the Member's job duties. **The Physician must not recommend a course of treatment to the Member or release IME Reports or test results to the Member. Neither the Contractor nor any Physician may collect a Member's health insurance information or charge a Member for the Services.**

a) IME Requirements

- i. IMEs must be performed in medical facilities suitable for such examinations and accessible to persons with disabilities, with due regard and respect for the privacy and dignity of the Members.
- ii. IMEs must be performed during regular business hours, Monday through Friday, 9am – 5pm, except when the Member or Member's employer requests an appointment outside of regular business hours, e.g., evening or weekends.
- iii. The Physician must thoroughly review the Member's relevant records before performing the IME.

b) Process for Scheduling IMEs

- i. NYSLRS will select a Physician from the Physician List.
- ii. NYSLRS will send a letter and a copy of the Member's record to the Contractor via NYSLRS' Biscom Secure File Solution ("Biscom"), advising the Contractor of:
 - The type of IME to be performed;
 - Any questions from NYSLRS, including questions regarding causal relationship, diagnosis, safe and reasonable treatment of disability, maximum medical improvement, ability to return to work, and/or permanency;
 - The name of the Physician to conduct the IME; and
 - The location where the IME must be performed.
- iii. NYSLRS will send a letter to the Member or the Member's employer requesting that the Member call the Contractor to schedule the examination.

- iv. The Member or Member's employer will call the Contractor and schedule the IME.
- v. The Contractor shall notify NYSLRS of the date and time of the scheduled IME.
- vi. The Contractor shall inform the Physician of the date, time, and location of the IME, the type of IME to be performed, and provide the Physician with all relevant records at least 48 hours before the scheduled IME.

2. The IME Report

- a) The Contractor shall deliver the Physician's IME Report to NYSLRS via Biscom within 30 days following the IME. The IME Report must be signed by the Physician and must include the following information:
 - i. The Member's name, age, gender, home address, NYSLRS identification number, and dates of injury (if applicable);
 - ii. A photocopy or digital photograph of the Member's photo I.D. (e.g., driver's license) unless the Member declines to provide their photo I.D. (Physicians must still conduct IMEs if a Member declines to provide their photo I.D.);
 - iii. The Physician's name and their specialty;
 - iv. A copy of any new records provided by the Member to the Physician during the IME;
 - v. Summary of all records provided by NYSLRS and/or the Member;
 - vi. Medical history of the Member including:
 - History of the relevant accident/injury and any intervening history,
 - If re-examination, intervening history since the last IME, and
 - History of any prior conditions, which may include work injuries, off-the-job injuries, unrelated physical and mental conditions, and medical comorbidities/complicating factors;
 - vii. All correspondence reviewed by the Physician;
 - viii. Scope of examination and findings, including copies of medical test results and reports, including:
 - A description of the examination, including any review of tests performed (if applicable),
 - Copies of any test results performed by the Physician or at the Physician's request,
 - Discussion of issues regarding causal relationship, diagnosis, safe and reasonable treatment of disability, maximum medical improvement, ability to return to work, and/or permanency, and
 - The Physician's conclusion, containing answers to the questions asked by NYSLRS. The Physician should stay within the Physician's specialty and only respond to issues requested for review;
 - ix. The Physician's availability for testimony at hearings; and
 - x. Per NYSLRS' request, the Physician's responses to issues regarding causal relationship, diagnosis, safe and reasonable treatment of disability, maximum medical improvement, ability to return to work, and/or permanency.
- b) IME Report Submission
 - i. The Contractor shall submit the IME Report to NYSLRS via Biscom or, at the discretion of NYSLRS, via hard copy, sent via certified mail, return receipt requested, to the following address:

NYSLRS
 Disability Services Bureau
 110 State Street, Mail Stop 7-1
 Albany, NY 12244

NYSLRS will not accept the submission of IME Reports in a different manner (e.g., fax or email) without NYSLRS' prior written approval.

- ii. Upon receipt, NYSLRS will review the IME Report. If NYSLRS determines that the IME Report contains any errors or is missing any pertinent information, the Contractor must correct or amend, or require the Physician who wrote the IME Report to correct or amend, the report. Once corrected, the Contractor must resubmit the updated IME Report to NYSLRS at no additional cost to NYSLRS, within 14 calendar days from the date of NYSLRS' request. Such report is not a supplemental IME Report.

c) Record Review or Supplemental IME Report

Where OSC requests a record review (i.e., no physical examination occurs) or supplemental report, the record review or supplemental report must be completed within 14 calendar days from the date of OSC's request. If this timeframe cannot be met, the Contractor must notify OSC as soon as possible.

Providing any pertinent information that was found to be missing from the initial IME Report is not considered a supplemental report.

3. Expert Witness Services

The Contractor shall make the Physician who conducted the IME available to testify as an expert witness if an administrative disability hearing is requested pursuant to 2 NYCRR Part 317. During such hearing, the Physician will testify under oath regarding the Physician's findings and render an expert medical opinion concerning the Member's alleged disability and, where directed by the NYSLRS's attorney, the cause of that disability.

The assigned Physician must be available for pre-hearing consultations with the attorney representing NYSLRS, and must adequately review relevant records in preparation for the hearing so as to allow for full and effective testimony. Hearings are scheduled at the convenience of all parties, sufficiently in advance of the proposed date of the hearing. The Contractor shall direct the assigned Physician to make reasonable adjustments to the Physician's schedule so as not to unduly delay the hearing process. The assigned Physician shall be present for live hearings either in-person or on-camera during a Webex conference. The assigned Physician may not testify by telephone unless a waiver to this requirement is granted at the discretion of NYSLRS.

NYSLRS may reschedule or cancel a hearing. In such instances, NYSLRS will notify the Contractor (electronically or over the phone) as soon as possible. If NYSLRS notifies the Contractor at least 48 hours before the scheduled hearing, no payment is due to the Contractor related to such hearing. If NYSLRS notifies the Contractor less than 48 hours before the scheduled hearing, the Contractor will receive a cancellation fee as stated in Attachment 1 (Fee Schedule).

NYSLRS may modify this scheduling process at anytime during the term of this Agreement, effective upon NYSLRS' written notice to the Contractor.

VII. COMPENSATION

NYSLRS will compensate the Contractor as follows:

A. Fees

1. NYSLRS will pay the Contractor for Services performed for the fees and at the rates stated in Attachment 1 (Fee Schedule). NYSLRS may update the fees and rates stated in Attachment 1 at any time during the term of this Agreement. Fee changes will become effective 60 days after the Contractor's receipt of the updated Attachment 1.
2. In extraordinary circumstances, such as a hearing exceeding 90 minutes, the hearing fees may be increased by NYSLRS upon the Contractor's timely request, at NYSLRS' discretion.
3. The Contractor may make Physicians available to NYSLRS whose rates and fees are greater than those stated in Attachment 1. The rates and fees payable for the Services provided by such Physicians will be mutually agreed upon by NYSLRS and the Contractor, provided, however, such fees and rates

may not exceed two times the pertinent fees and rates stated in Attachment 1.

B. Expenses

1. Testing Expenses. The Contractor, or a Physician on Contractor's behalf, shall obtain pre-approval from NYSLRS for any single test that costs more than \$500 or for two or more tests for the same IME that cost more than \$1,000. Failure to obtain pre-approval from NYSLRS may result in NYSLRS' refusal to pay any such testing expense. All tests conducted by third-party providers must be billed through the Contractor. Upon NYSLRS' payment to the Contractor, the Contractor shall promptly pay such testing expense to the third-party provider.
2. Travel Expenses. NYSLRS will reimburse the Contractor's travel expenses only where NYSLRS has authorized that travel in advance. NYSLRS will limit such reimbursement to the following unless written authorization to exceed the specified limits, or to include other items of expense, is obtained in advance:
 - a. To the extent permissible under New York State law, NYSLRS will pay the Contractor's travel and meal expenses while traveling out of town on business relating to the Services. Travel expense reimbursement will be paid in accordance with guidelines established by the Office of the State Comptroller (see OSC Travel Manual, available at <http://www.osc.state.ny.us/agencies/travel/manual.pdf>). For current per diem reimbursement rates only, visit the U.S. General Services Administration Domestic Per Diem Page (available at <https://www.gsa.gov/travel/plan-book/per-diem-rates>), as such rates may be amended from time to time. NYSLRS will reimburse air travel at coach rates.
 - b. NYSLRS will reimburse pre-approved travel expenses upon the Contractor's submission of appropriate invoices accompanied by copies of receipts for individual expenses.

C. Total compensation under this Agreement must not exceed \$XXXXXXX.

VIII. COOPERATION

The Contractor and NYSLRS and their respective agents, employees, and officers shall cooperate with each other to the fullest extent in connection with the Services. NYSLRS shall supply and make available necessary information and personnel to assist the Contractor to perform the Services.

IX. STAFF

The Contractor's "Staff" includes its Physicians, employees, consultants, owners, officers, directors, subcontractors (and subcontractors' staff), subsidiaries, affiliates, partners, and agents of the Contractor.

The Contractor states that the Staff provided to perform the Services possesses the necessary integrity and professional capacity to meet NYSLRS' reasonable expectations. During the term of the Agreement, whenever the Contractor learns that any member of its Staff providing Services to NYSLRS no longer possesses the necessary integrity or professional capacity to provide such Services, the Contractor shall immediately discontinue the use of such Staff and notify NYSLRS. NYSLRS may refuse to allow any member of the Contractor's Staff to perform Services under the Agreement. NYSLRS may bar anyone from access to NYSLRS' premises and/or access to NYSLRS' information resources.

The Federal Immigration Reform and Control Act, as amended (8 USC § 1324a et al.), obligates employers, to verify that their staff are legally entitled to work in the United States. NYSLRS may request documentation attesting to the legal right to work in the United States of any member of the Contractor's Staff providing Services under the Agreement. NYSLRS does not provide sponsorship. The Contractor must ensure that its Staff providing Services are eligible for employment in the United States throughout the term of this Agreement.

NYSLRS does not discriminate against individuals on the basis of national origin or citizenship.

X. SUBCONTRACTORS

- A. The Contractor is responsible for the acts and omissions of its Staff in connection with the performance of Services.
- B. The Contractor shall obtain prior written approval from NYSLRS before entering into an agreement for services to be provided by any non-Physician subcontractor. NYSLRS may approve or disapprove, after appropriate review and/or interviews, any and all non-Physician subcontractors of the Contractor before their performance of services.
- C. All Contractor's subcontracts must contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this Agreement, and that the subcontractor specifically agrees to be bound by the confidentiality provisions of Section XIV (Confidentiality and Background Investigations). NYSLRS may request a copy of such subcontractor agreement at any time.
- D. The Contractor shall require all approved subcontractors to complete such Appendices included in this Agreement as are deemed necessary by NYSLRS before any such proposed subcontractor's performance of Services. This requirement is ongoing for the term of this Agreement.

XI. RELATIONSHIP OF PARTIES; RIGHTS TO WORK PRODUCT

The relationship of the Contractor and its Staff to NYSLRS is that of an independent contractor, and not that of an agent or employee of NYSLRS. The Contractor, as an independent contractor, does not have the authority to contract for or bind NYSLRS for any purpose. The Contractor states that its Staff will not hold themselves out as agents, officers, or employees of NYSLRS, and that they will not make any claim, demand, or application for any right or privilege applicable to any officer or employee of NYSLRS, including Workers' Compensation coverage, Social Security coverage or Retirement System benefits.

All work performed by the Contractor or its Staff for NYSLRS under this Agreement, including all deliverables, supporting materials, modifications, customizations, custom programs, tools, data, modules, components, and any properties embodied therein and furnished to NYSLRS under this Agreement by or through Contractor or its Staff is a work for hire. Such work is specially ordered and commissioned for use as contributions to a collective work, or is other such work as specified by the U.S. Copyright Act [17 U.S.C. § 101(2)], and is intended to be a work for hire that is made for the use and ownership of New York State. Title and ownership of IME Reports will pass to New York State upon acceptance of the work. The Contractor and its Staff who have been or may be used in regard to the Agreement forfeit all claims of title or ownership to work produced under the Agreement. Any and all reports and other materials (preliminary, final, and otherwise), analyses and data (whether statistical or otherwise), transmitted to OSC by the Contractor will become the exclusive property of NYSLRS for such use as NYSLRS deems appropriate, other than Contractor's work papers, which Contractor may retain.

This Agreement does not preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques, and experience developed in the course of Contractor's business.

XII. WARRANTY

The Contractor shall ensure that the Services will be performed in a professional manner, in accordance with highest applicable industry standards. For purposes of this Agreement, "highest applicable industry standards" is 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.

XIII. CONFLICTS OF INTEREST

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

XIV. CONFIDENTIALITY AND BACKGROUND INVESTIGATIONS

A. Confidential Information Definition

The term “Confidential Information” includes, but is not limited to, Member personal information including Member Protected Health Information and medical records, Member employment records, information that would normally be protected by a physician-patient relationship, OSC or NYSLRS security information, OSC or NYSLRS policies or guidelines, documents in respect of any of the foregoing, as any such information may be accessed by or disclosed to the Contractor or its Staff in connection with the Services or received from OSC or NYSLRS of on their behalf, and all other information whether accessed or disclosed verbally, electronically, visually, or in written or other tangible form that is either identified or should be reasonably understood to be confidential.

B. Treatment of Confidential Information

Confidential Information must be treated as strictly confidential by the Contractor and its Staff and may not be disclosed 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.” The Contractor and its Staff shall protect Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices, and procedures that they may use to maintain their own confidential information but in no event less than an industry-appropriate standard of care. Upon NYSLRS’ written request, The Contractor shall return all Confidential Information to NYSLRS. The Contractor shall:

- View, access and use only the Confidential Information relevant and necessary to provide Services;
- Use its best efforts to preserve the confidentiality of the Confidential Information;
- Use its best efforts to prevent disclosure of the Confidential Information to any person other than to NYSLRS employees or those members of its Staff with a “need to know”;
- Abide by all New York State confidentiality policies and procedures;
- Treat all reports and other materials, preliminary, final, and otherwise, prepared for or relating to the Services (other than Contractor’s work papers) as Confidential Information by the Contractor; and
- Destroy all Confidential Information using the highest industry-standard secure disposal methods, other than that Confidential Information that must be retained per statute. The Contractor shall destroy all Confidential information within 30 days after the expiration or termination of this Agreement. NYSLRS may require the Contractor certify as to the method of destruction.

C. Background Investigations

OSC policy requires that background investigations be conducted on Contractor Staff who will have access to OSC’s IT systems, access to OSC or NYSLRS confidential information/data, or routine access to any OSC facility. For purposes of this policy, “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. The Contractor states that it has or will conduct a background investigation on all its Staff to whom the policy applies within the 12 months prior to the Staff commencing Services under this Agreement. The Contractor shall undertake a background investigation of any new/replacement Staff during the term of the Agreement.

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

- identity verification, including Social Security Number or National Identity number search;
- employment eligibility, including verification of U.S. citizenship or legal immigration status, where appropriate;

- criminal history/court records (Federal, New York State, and local for the past five years);
- work experience/history for the past five years;
- pertinent skills, qualifications, educational, and professional credentials; and
- references.

The Contractor shall obtain the consent of its Staff to allow NYSLRS, upon request: (i) to review the background investigation records, including all supporting documentation, and (ii) to conduct its own background investigation.

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

XV. HIPAA

The Contractor and its Staff shall, at all times in the performance of the Services, ensure that it maintains compliance with the Health Insurance Portability and Accountability Act ("HIPAA") of 1966 and Balanced Budget Act of 1997, as amended, governing the protection of patient information.

XVI. Security

Throughout the term of this Agreement, the Contractor shall maintain a comprehensive data security, disaster recovery, and business continuity programs (together, the "Security Programs") reasonably designed to protect information and conduct its business in accordance with current industry standards and applicable law and shall ensure that its Staff maintain appropriate safeguards to ensure the confidentiality, privacy, and security of all Confidential Information that may be disclosed to, or accessed or collected by the Contractor or Contractor's Staff per this Agreement.

The Contractor shall monitor its Security Programs and audit such Security Programs at least annually, and verify the security programs of its Staff.

To the extent not prohibited by applicable law, the Contractor shall promptly notify NYSLRS in writing upon the occurrence of any exploited vulnerability or unauthorized or unlawful access to Confidential Information, including 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 the Contractor's Staff, subcontractors or service providers that access, store, process, or otherwise interact with Confidential Information) (a "Security Incident"). A Security Incident includes any occurrence where it can be reasonably assumed under the circumstances that Confidential Information was exposed, accessed, or disclosed without NYSLRS' prior written authorization. If a Security Incident occurs, the Contractor must notify NYSLRS of such Security Incident in the most expedient time possible and without unreasonable delay, but in any event no later than within 24 hours of such occurrence.

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

XVII. INDEMNIFICATION AND LIABILITY

- A. The Contractor, OSC, NYSLRS, and New York State will not be liable for any delay or failure in performance beyond its control resulting from acts of war, hostility, or sabotage; act of God; electrical, internet or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than 90 days, either party may terminate all or any agreed upon portion of the Agreement immediately upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or NYSLRS' obligation to pay for Services provided by the Contractor which have been approved by NYSLRS.

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

The State may join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving a significant public interest.

- C. Neither party will be liable for any consequential, indirect, or special damages that may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by NYSLRS, the Contractor, or by others.
- D. NYSLRS may, in addition to other legal remedies available to it, retain from amounts otherwise due to the Contractor such monies as may be necessary to satisfy any claim for damages NYSLRS may have against the Contractor.

XVIII. RESPONSIBILITY TERMS

- A. The Contractor states 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 NYSLRS before execution of this Agreement. The Contractor states 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 update the Responsibility Questionnaire if any material events 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 NYSLRS.
- C. NYSLRS may at any time during the term of this Agreement, (i) require updates or clarifications to the Responsibility Questionnaire, (ii) inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) require the Contractor to provide such information to NYSLRS within a reasonable timeframe established by NYSLRS.
- D. NYSLRS may 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) State's discovery of any other material information which pertains to the Contractor's responsibility.
- E. If NYSLRS preliminarily determines the Contractor to be non-responsible, NYSLRS shall provide written notice to the Contractor detailing the reasons 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, NYSLRS may terminate this Agreement for cause per Section XIX (Termination and Suspension).

XIX. TERMINATION AND SUSPENSION

- A. NYSLRS may terminate or suspend this Agreement, or terminate or suspend the Services, in whole or in part, with or without cause upon 15 days' prior written notice.
- B. NYSLRS may terminate or suspend this Agreement, or to terminate or suspend the Services, in whole or in part, immediately upon written notice to the Contractor, if NYSLRS deems the Contractor's performance unsatisfactory.
- C. If NYSLRS terminates or suspends this Agreement, the Contractor will be entitled to compensation for Services performed through the date of termination or suspension that are acceptable to NYSLRS, in NYSLRS' discretion.

XX. TRANSITION

Upon expiration or termination of this Agreement, the Contractor shall provide NYSLRS with all necessary records in the Contractor's possession relating to the Services provided under this Agreement. At NYSLRS' request, the Contractor shall, at then current hourly rates, also make appropriate Staff available to NYSLRS during normal business hours to answer questions regarding such records and the Services that 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 are uninterrupted and are not adversely impacted.

XXI. MISCELLANEOUS PROVISIONS

A. WAIVER

The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other subsequent default or breach.

B. SEVERABILITY

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected thereby and every other term and provision of this Agreement will remain valid and enforced to the fullest extent permitted by law.

C. ETHICS COMPLIANCE

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

D. PUBLIC COMMUNICATION

The Contractor and its Staff shall not 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 NYSLRS.

E. SURVIVAL

The provisions of Sections XII (Warranty), XIV (Confidentiality and Background Investigations), XV (HIPAA), XVI (Security), XVII (Indemnification and Liability), XX (Transition), and Appendix A will survive the expiration or termination of this Agreement.

XXII. ENTIRE AGREEMENT/APPROVALS

This Agreement and the appendices, exhibits, and attachments 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 in this Agreement will be binding or valid. This Agreement may not be changed, modified, or altered in any manner except by an amendment executed by the parties. This Agreement and any amendment hereof will not be deemed executed, valid, or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by OSC's Bureau of Contracts pursuant to State Finance Law § 112, and filed in the Office of the State Comptroller.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement.

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

CONTRACT NUMBER: XXXXXXXX

CONTRACTOR

**THE COMPTROLLER OF THE STATE OF NEW YORK, AS
ADMINISTRATIVE HEAD OF THE NEW YORK STATE AND
LOCAL RETIREMENT SYSTEM**

SIGNATURE

SIGNATURE

JEREMY R. DISARE

PRINTED NAME

PRINTED NAME

DIRECTOR OF FINANCE

TITLE

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 _____, and further that he/she/they is the _____ of _____, the corporation described in foregoing instrument; that, by authority of the Board of Directors of the corporation he/she/they is/are authorized to execute the foregoing instrument on behalf of the corporation for purposes stated therein; and that, pursuant to that authority, he/she/they executed the foregoing instrument in the name of and on behalf of the corporation as the act and deed of the corporation.

Notary Public Signature

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 Numbers. 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:

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;

(a) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(b) 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

(c) 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 may 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
PROPOSER AND CONTRACTOR COMPLIANCE REQUIREMENTS AND PROCEDURES
FOR PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO OSC
CONTRACTS

In an effort to eradicate barriers that have historically impeded access by minority group members and women in State contracting activities, New York State Executive Law §310–318, (Article 15-A: Participation By Minority Group Members and Women With Respect To State Contracts – hereinafter “the Article”), was enacted to promote equality of employment and economic opportunities for minority group members and women.

To demonstrate its commitment to diversity and non-discrimination, and to remedy disparities caused by discrimination, the New York State Office of the State Comptroller (“OSC”) has enacted the following Executive Orders:

- Equal Opportunity, Non-Discrimination and Affirmative Action;
- Harassment (Including Sexual Harassment), and
- Minority/Women-Owned Business Enterprise (“M/WBE”) Procurements.

In keeping with the Comptroller’s Executive Orders, applicable federal, State and local laws, rules, regulations, and the requirements as set forth under the Article, OSC has developed compliance requirements, forms, and procedures to ensure that (i) all contractors (as defined under §310[3] (to include those who submit bids/proposals in an effort to be selected for contract award [hereinafter “Proposers”] as well as those successful bidders/proposers with whom OSC enters into State Contracts, as defined in §310[13] [hereinafter “Contractors”], as well as proposed or actual “Subcontractors”, as defined in §310[14]) shall comply with requirements to ensure Equal Employment Opportunities (“EEO”) for minority group members and women, and (ii) there are meaningful participation opportunities for certified M/WBEs in the OSC procurement process.

It is the expectation of OSC and the responsibility of all proposers and contractors participating in and/or selected for procurement opportunities with OSC that such proposers and contractors shall fulfill their obligations to comply with applicable federal, State, and local requirements concerning EEO and opportunities for M/WBEs, including but not limited to the Article and its implementing regulations.

I. EEO Requirements

A. Prior to the Award of a State Contract

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), as a precondition to being selected for contract award and entering into a valid and binding State Contract, the Proposer shall provide with its bid/proposal:

1. An **EEO Policy Statement**, as described in Appendix A, Clause 12.
2. **Form AC 3239-A (Proposer’s EEO Staffing Plan of Anticipated Workforce)**, which should document:
 - a. The workforce to be utilized on the State Contract; or
 - b. Where the workforce to be utilized in the performance of the State Contract cannot be separated out from the Proposer’s and/or proposed Subcontractor’s total work force (for example, certain commodities contracts), the Proposer’s and/or proposed Subcontractor’s total workforce including apprentices, broken down by specified ethnic background, gender, and federal occupational categories or other appropriate categories specified by OSC.

A Proposer’s failure to submit an EEO Policy Statement and **Form AC 3239-A – Proposer’s EEO Staffing Plan of Anticipated Workforce** shall result in the rejection of the Proposer’s bid/proposal, unless the Proposer provides OSC with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan where a Proposer has a work force of 10 employees or less), or makes a commitment to submit an EEO Policy Statement and an EEO Staffing Plan of Anticipated Workforce within the time frame specified in writing by OSC.

If, after scoring, a Proposer is selected for award, before that award is completed (e.g., during contract negotiations), OSC will conduct a review of the substance of the EEO Policy Statement and the EEO Staffing Plan of Anticipated Workforce to determine whether the Proposer appears to be in compliance with Appendix A, Clause 12 and the

Article, i.e., whether such documents demonstrate that the Proposer is committed to Equal Employment Opportunity. If, upon review, OSC comes to the conclusion that such commitment to EEO principles is lacking, OSC shall contact the Proposer and make every effort to resolve the deficiencies identified in the bid/proposal and to bring the substance of the bid/proposal into compliance with such requirements. Failure to correct such deficiency within a time frame specified by OSC may result in the rejection of the Proposer's bid/proposal.

B. After the Award of the State Contract

After OSC's award of a State Contract and during the performance of the State Contract, the Contractor shall periodically¹ submit to OSC:

1. Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report), which should document:

- The workforce to be utilized and, thereafter, actually utilized on the State Contract, broken down by specified ethnic background, gender, and federal occupational categories or other appropriate categories specified by OSC.

In addition to general compliance monitoring of State Contracts, OSC shall conduct in-depth compliance reviews on selected State Contracts during the course of the year, in accord with 5 NYCRR §143.4.

The Contractor's/Subcontractor's EEO Workforce Utilization Reports shall be reviewed as part of OSC's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce submitted with a bid/proposal 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 during OSC general contract compliance monitoring or during in-depth compliance reviews, 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 Human Resources and Administration at OSC agrees 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).

II. M/WBE Requirements

It is the policy of the State of New York and of OSC that M/WBEs (as defined under §310[7] and [15] and as certified pursuant to 5 NYCRR Part 144) shall be given the opportunity for meaningful participation in the performance of State Contracts. Accordingly, **Proposers and Contractors shall make good faith efforts** to solicit active participation by M/WBEs identified in the Empire State Development ("ESD") directory of certified businesses², which can be viewed at: www.nylovesmwbe.ny.gov/cf/search.cfm.

For the purposes of this Appendix B, the question of whether a proposer or contractor has engaged in and documented "good faith efforts" to solicit active participation by M/WBEs in the performance of State Contracts shall be determined by OSC after a thorough consideration of the factors listed in 5 NYCRR §142.8.

The separate MBE and WBE participation goals established by OSC for this procurement are based on the overall

¹ If the workforce utilized in the performance of the contract can be separated out from the Contractor's and/or Subcontractor's total workforce, quarterly reports are required. If the workforce utilized in the performance of the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, semi-annual reports are required.

² All M/WBE firms to be utilized are required to be certified by ESD or must be in the process of obtaining certification from ESD. Should the Proposer/Contractor identify a minority-owned or woman-owned firm that is not currently certified by ESD, the Proposer/Contractor should request that the firm submit a certification application to OSC for eligibility determination. OSC will work with ESD to expedite the application; however, it is the responsibility of the Proposer/Contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement in order to facilitate full M/WBE participation.

availability of M/WBEs that have been certified to perform the specific scope of work identified in this procurement. **For compliance purposes, these goals should not be construed as rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort** to make all aspects of the entire M/WBE Program work.

A. Prior to the Award of a State Contract

Bidders/Proposers shall document and/or demonstrate in their bids/proposals every good faith effort to solicit active M/WBE participation at least equal to the participation goals established by OSC. The M/WBE utilization should be measured by comparing (in detail) the dollar value of the component services/deliverables/materials provided/supplied by M/WBEs to the total dollar value of the services/deliverables/materials required by the State Contract. The following must be submitted with the bid/proposal:

1. **Form AC 3239-C (M/WBE Goal Requirements – Certification of Good Faith Efforts)**, which should document:
 - Actions taken by the Bidder/Proposer to solicit M/WBEs as subcontractors and/or suppliers so that the Bidder/Proposer could achieve the overall prescribed M/WBE participation percentage goals set forth in the procurement in the performance of the contract to be awarded.
2. **Form AC 3239-D (Proposer's M/WBE Utilization Plan)**, which should document:
 - Actions taken and/or to be taken to meet established goals and the time frames need to achieve results which could reasonably be expected by putting forth every good faith effort to achieve the overall prescribed M/WBE participation percentage (%) goals set forth in the procurement.
3. **Form AC 3239-E (Proposer's M/WBE Subcontractor's/Supplier's Notice of Intent to Participate)**, which should document:
 - The names and signatures of certified MBEs and/or WBEs which have agreed to participate as Subcontractors if the Proposer is awarded the State Contract.

When M/WBE participation goals higher than 0% (zero percent) are included in OSC's procurement documents, a Proposer's failure to submit a completed **Form AC 3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts**, **Form AC 3239-D – Proposer's M/WBE Utilization Plan**, and a completed **Form AC 3239-E – Proposer's M/WBE Subcontractor's/Supplier's Notice of Intent to Participate** shall result in the rejection of the Proposer's bid/proposal, unless the Proposer provides OSC with a completed **Form AC 3239-F (Request for Waiver)** or makes a commitment to submit a completed **Form AC 3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts**, **Form AC 3239-D – Proposer's M/WBE Utilization Plan**, and **Form AC 3239-E – Proposer's M/WBE Subcontractor's/Suppliers Notice of Intent to Participate** within the time frame specified in writing by OSC.

If, after scoring, a Proposer is selected for award, before that award is completed (e.g., during contract negotiations), the "Successful Proposer" will be required to submit **Form AC 3239-G (Contractor's M/WBE Utilization Plan)**. OSC will review the substance of such Plan and within twenty (20) days from the receipt thereof issue a written notice of acceptance or deficiency.

A Successful Proposer must provide OSC with a written remedy in response to a written notice of deficiency within seven (7) business days of receipt or within a reasonable time frame as specified by OSC to correct the specific deficiency. Failure to correct a deficiency and/or demonstrate compliance can result in (i) the necessity of the Successful Proposer to submit to OSC a completed **Form AC 3239-F (Request for Waiver)**, or (ii) disqualification of the bid/proposal.

B. After the Award of the State Contract

After OSC's award of a State Contract and during the performance of the State Contract, except where OSC has granted the Contractor a total waiver³, the Contractor shall submit to the Program with every invoice:

1. **Form AC 3239-H – M/WBE Expenditure Reports.**

Failure to timely submit a **Form AC 3239-H – M/WBE Expenditure Reports** and/or other reports or information as requested may result in payments under the contract being delayed until such reports or other information have

³ If OSC has granted a partial waiver to the Successful Proposer, prior to award OSC must have approved a Contractor's M/WBE Utilization Plan and a completed Contractor's M/WBE Subcontractor's/Supplier's Notice of Intent to Participate, and after award the Contractor must still submit the Contractor's Quality Assurance Report/Checklist.

been received⁴.

OSC shall review the substance of the Contractor's **Form AC 3239-H – M/WBE Expenditure Reports** and shall be responsible for evaluating and determining whether the Contractor has demonstrated compliance with its previously approved **Form AC 3239-G – Contractor's M/WBE Utilization Plan**. In making such determination, OSC may review and investigate whether the participation goals are being achieved with certified minority- and women-owned business enterprises and whether information made available to OSC through monitoring, onsite inspections, progress meetings regarding work required by the State Contract, review of payrolls or other OSC actions provides evidence of compliance.

Where it appears that a Contractor cannot, after a good faith effort, comply with its previously approved **Form AC 3239-G – Contractor's M/WBE Utilization Plan**, such Contractor may submit a completed **Form AC 3239-F (Request for Waiver)** setting forth the reasons for such Contractor's inability to meet any or all of the participation requirements, together with an explanation and supporting documentation demonstrating the efforts undertaken by such Contractor to obtain the required M/WBE participation⁵.

If OSC determines that the Contractor has not demonstrated compliance with its previously approved **Form AC 3239-G – Contractor's M/WBE Utilization Plan** and has made no good faith effort to do so, OSC shall make every effort to resolve the deficiencies identified and to bring the Contractor into compliance with such requirements.

If OSC is unsuccessful in its efforts, and, upon review, the Deputy Comptroller for Human Resources and Administration agrees that the Contractor is non-compliant, OSC shall either:

(i) submit a written complaint to the New York State Department of Economic Development's Division of Minority and Women's Business Development ("DMWBD") regarding the Contractor's/Subcontractor's noncompliance and recommend to DMWBD that it review and attempt to resolve the noncompliance matter. 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 §142.12), including potential temporary debarment of the Contractor where the Contractor is found to have engaged in fraudulent or intentional misrepresentation or willful or intentional disregard of the M/WBE participation requirement in the State Contract; or

(ii) withhold payment from the Contractor as liquidated damages in accordance with 5 NYCRR §142.13, if the Deputy Comptroller for Human Resources and Administration determines that the Contractor has breached the State Contract by willfully and intentionally failing to comply with the MWBE participation goals set forth in the State Contract. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the State Contract.

Nothing herein shall diminish or supersede OSC's authority and responsibility to enforce the requirements of its contracts.

All Affirmative Action, EEO, and M/WBE compliance forms required to be submitted along with bids and/or proposals for OSC procurements are attached hereto. These forms are to be submitted without change to participation goals specified in the procurement documents.

By submitting a bid/proposal, the Proposer/Contractor agrees to provide to OSC access to all documentation, records, reports, facilities, etc., which OSC may deem necessary to determine Proposer/Contractor compliance.

After the award of a State Contract, submit two originals and two copies of all required reports, forms,

⁴ Contractors will be requested to provide additional compliance reports and information (i) to verify payments made to M/WBEs, (ii) to verify M/WBE utilization and/or, (iii) as needed to evaluate any other aspect of Contractor compliance with the requirements set forth herein.

⁵ Requests for a partial or total waiver made subsequent to award of a State Contract may be made at any time during the term of the State Contract but prior to the submission of a request for final payment on that State Contract.

information, and Requests for Waivers (if applicable) to OSC the following address:

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

Requests for technical assistance in meeting these requirements can be obtained by contacting OSC at (518) 474-7574.

Forms attached to this Appendix B:

- **AC 3239-A – Proposer’s EEO Staffing Plan of Anticipated Workforce**
 - To be submitted with the Administrative Proposal
- **AC 3239-B – Contractor’s/Subcontractor’s EEO Workforce Utilization Report**
 - To be submitted as part of post-contract documents
- **AC 3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts**
 - To be submitted with the Administrative Proposal
- **AC 3239-D – Proposer’s M/WBE Utilization Plan**
 - To be submitted with the Administrative Proposal
- **AC 3239-E – Proposer’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate**
 - To be submitted with the Administrative Proposal
- **AC 3239-F – Request for Waiver**
 - To be submitted with the Administrative Proposal (if applicable)
- **AC 3239-G – Contractor’s M/WBE Utilization Plan**
 - To be submitted as part of post-contract documents
- **AC 3239-H – M/WBE Expenditure Reports**
 - To be submitted as part of post-contract documents on a per-invoice basis
- **AC 3239-I – Contractor’s Quality Assurance Report/Checklist**
 - To be submitted as part of post-contract documents

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE**

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this form as part of its Administrative Proposal.															
Proposer Name:								Federal Identification Number:							
Address:								Procurement Number:							
City, State, Zip Code:								M/WBE Participation Goals: MBE ____% WBE ____%							
Does the Proposer have an existing affirmative action program? (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (if Yes, attach current copy of EEO Policy Statement.)								Is the Proposer 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 Proposer 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 Proposer's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.</p> <p>By submitting a bid/proposal, the Proposer/Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Proposer/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 within thirty (30) days after award of a State Contract.															
Contractor/Subcontractor Name:															
Address:								Federal Identification Number:							
City, State, Zip Code:								Procurement Number:							
Does the Proposer have an existing affirmative action program? (Check one): <input type="checkbox"/> Yes (if Yes, attach current copy of EEO Policy Statement.) <input type="checkbox"/> No															
Does the Proposer have an existing affirmative action program? (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (if Yes, attach current copy of EEO Policy Statement.)								Is the Proposer 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.							
PART B – WORKFORCE UTILIZATION: <input type="checkbox"/> Check box if workforce is the same as reported on Proposer's EEO Staffing Plan of Anticipated Workforce (AC 3239-A) and skip to PART C.															
Enter in the following Job Categories the total number of staff by race, sex, and ethnic status to be utilized by the Proposer 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 to be Provided (expand as necessary):

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

RACE AND ETHNIC IDENTIFICATION*	
For the purpose of completing this form, OSC has adapted the race and ethnic designations used and obtained in accordance with the requirements administered by the Equal Employment Opportunity Commission, which do not denote scientific definitions of anthropological origins. Definitions of the race and ethnicity categories are as follows:	
Hispanic or Latino	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
White	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
Black or African-American	A person having origins in any of the black racial groups of Africa.
Native Hawaiian or Other Pacific Islander	A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
Asian	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
American Indian or Alaska Native	A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment
Two or More Races	All persons who identify with more than one of the above five races.

CONTRACTOR'S/SUBCONTRACTOR'S EEO WORKFORCE UTILIZATION REPORT SUBMISSION REQUIREMENTS
<p>Please submit completed Form AC 3239-B within thirty (30) days after award of a State Contract to:</p> <p style="padding-left: 40px;">New York State Office of the State Comptroller Bureau of Financial Administration, Attn: M/WBE Specialist 110 State Street, Stop 13-2 Albany, NY 12236</p> <p>Submission of this form constitutes the Contractor's/Subcontractor's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.</p> <p>By submitting a bid/proposal, the Proposer/Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Proposer/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
M/WBE GOAL REQUIREMENTS – CERTIFICATION OF GOOD FAITH EFFORTS

Bidders/Proposers must document "good faith efforts" to provide meaningful participation by New York State Certified Minority and Women-Owned Business Enterprises ("M/WBE"s) as subcontractors and/or suppliers in the performance of this State Contract.

The undersigned hereby certifies under penalty of perjury that he/she has taken the following actions on behalf of the Bidder/Proposer to demonstrate the aforesaid good faith efforts:

- a) The Bidder/Proposer attended any pre-bid meetings that were scheduled by OSC or the NYS Department of Economic Development ("DED") or its designee to inform M/WBEs of contracting and subcontracting opportunities available on the project;
- b) The Bidder/Proposer identified economically feasible units of the project that could be contracted or subcontracted to M/WBEs in order to increase the likelihood of participation by such enterprises;
- c) The Bidder/Proposer advertised in general circulation, trade association and trade-oriented, minority and women-focused publications, if any, concerning the contracting or subcontracting opportunity;
- d) The Bidder/Proposer solicited and provided written notice to a reasonable number of M/WBEs identified from current certified lists of such business enterprises provided or maintained by the NYS Empire State Development's ("ESD") Division of Minority and Women-Owned Business Development ("DMWBD"), or its designee, of the contracting or subcontracting opportunity in sufficient time to allow the M/WBEs to participate effectively;
- e) The Bidder/Proposer followed up initial solicitations by contacting the M/WBEs to determine whether the M/WBEs were interested in such contracting or subcontracting opportunity;
- f) The Bidder/Proposer provided interested M/WBEs with adequate information about the plans, specifications, and requirements for the contracting or subcontracting opportunity;
- g) The Bidder/Proposer used the services of community organizations, contractor groups, State and federal business assistance offices and other organizations identified by DED or its designee that provide assistance in the recruitment and placement of M/WBEs; and
- h) The Bidder/Proposer negotiated in good faith with M/WBEs submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals, or quotations prepared by any M/WBE. "Good faith" negotiating means engaging in good faith discussions with M/WBEs about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the M/WBEs, including sharing with them any cost estimates from the procurement documents, if available.

I have provided information on the above as requested for (Procurement #) in Attachment A, Proposer's Certified Statements, Section 4.

Signature

Printed or Typed Name and Title

Procurement Number

Date

STATE OF NEW YORK)

) ss:

COUNTY OF _____)

On the _____ day of _____ in the year 202____ before me personally came _____ to me known, who, being by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____ which executed the above instrument; and that (s)he signed his/her name thereto as the _____ thereof.

Notary Public

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S M/WBE UTILIZATION PLAN**

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this M/WBE Utilization Plan as part of its Administrative Proposal. Proposers must submit a separate M/WBE Utilization Plan for each M/WBE utilized.

Contractor Name:	Federal Identification Number:
Address:	Procurement Number: _____
City, State, Zip Code:	M/WBE Participation Goals: MBE _____% WBE _____%

LIST ALL M/WBE SUBCONTRACTORS AND/OR SUPPLIERS TO BE UTILIZED (ATTACH ADDITIONAL SHEETS IF NECESSARY).

M/WBE Name, Address, Email Address, and Telephone Number	Certification Classification (check all that apply.)	Federal ID No.	Estimated Dollar Value of Work/Supplies	Please provide a brief description of services or supplies to be provided by each M/WBE identified here on Page 2.
A.	NYS ESD Certified: <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD Certified: <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
C. ESD Certification Number: _____		D. ESD Certification Expiration Date: _____		

If Contractor will not be utilizing an M/WBE, check here ☐ and attach Form AC 3239-F, Request for Waiver, and supporting documentation.
If Contractor has previously submitted AC 3239-F, Request for Waiver, for this procurement, check here ☐ and enter date submitted: _____.

Prepared by (Signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

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 procurement 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.

THIS SECTION FOR OSC USE ONLY

Reviewed by:	Date Received:	Utilization Plan Approved	Date Approved:	M/WBE Certification Status:
		<input type="checkbox"/> Yes <input type="checkbox"/> No		MBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No WBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No
Deficiencies Identified:	Notice of Deficiency Issued:	Date of Notice of Deficiency:	Waiver Requested:	
MBE <input type="checkbox"/> Yes <input type="checkbox"/> No / WBE <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No (Partial <input type="checkbox"/> Total <input 3"="" type="checkbox/>)</td> </tr> <tr> <td>Waiver Granted</td> <td>If Waiver Granted</td> <td colspan="/> Waiver Approved by (Signature):	
<input type="checkbox"/> Yes <input type="checkbox"/> No	Total Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No Partial Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No			

NOTES:

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S/CONTRACTOR'S M/WBE UTILIZATION PLAN

Provide a brief description of the services or supplies to be identified by the subcontractor(s) identified above:

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

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S M/WBE SUBCONTRACTORS/SUPPLIERS NOTICE OF INTENT TO PARTICIPATE**

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this form as part of its Administrative Proposal. Part A must be completed and signed by the Proposer. Parts B and C must be completed and signed by each of the M/WBE subcontractors/suppliers identified on Form AC 3239-D (Proposer's M/WBE Utilization Plan).

PART A – TO BE COMPLETED BY THE PROPOSER FOR EACH M/WBE IDENTIFIED ON AC 3239-D

Proposer Name:		Federal Identification Number:		
Address:		Procurement Number: _____		
City, State, Zip Code:		M/WBE Participation Goals: MBE _____% WBE _____%		
Telephone Number:		Email Address:		
Name of Proposer's Preparer	Title of Preparer	Date	Telephone Number	Email Address

PART B – TO BE COMPLETED BY EACH MBE/WBE IDENTIFIED ON AC 3239-D ACKNOWLEDGING THAT THE NAMED VENDOR INTENDS TO PROVIDE SERVICES OR SUPPLIES IN CONNECTION WITH THE ABOVE CONTRACTOR AND PROCUREMENT.

Name of Subcontractor/Supplier:		Federal Identification Number:		
Address:		NYS ESDC Certification Status (Check one): <input type="checkbox"/> MBE <input type="checkbox"/> WBE (attach copy of ESD Certification) <input type="checkbox"/> Have applied to ESDC for certification as <input type="checkbox"/> MBE <input type="checkbox"/> WBE		
City, State, Zip Code:		Provider type (Check one): <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier		
ESD Certification Number:		ESD Certification Expiration Date:		

Please provide a brief description of services or supplies to be provided on Page 2.

The undersigned is prepared to provide the services or supplies described on Page 2 and will enter into a formal agreement to do so with the Proposer named above upon execution of a State Contract between the Proposer and the Office of the State Comptroller.

Signature of Authorized Representative of the M/WBE Firm: _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

Estimated Total Dollar Value of the Agreement to be entered into with the Subcontractor/Supplier: \$ _____

THIS SECTION FOR OSC USE ONLY

Reviewed by	Date	Utilization Plan Approved	Date	Certification Verified
		<input type="checkbox"/> Yes <input type="checkbox"/> No		MBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No WBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No

NOTES:

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER’S M/WBE SUBCONTRACTORS/SUPPLIERS NOTICE OF INTENT TO PARTICIPATE

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

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
REQUEST FOR WAIVER**

**INSTRUCTIONS AND SUBMISSION REQUIREMENTS: PROPOSERS/CONTRACTORS MUST FOLLOW THE INSTRUCTIONS ON PAGE 2
OF THIS FORM TO REQUEST A WAIVER OF THE M/WBE PARTICIPATION GOALS INCLUDED IN THIS PROCUREMENT.
THIS FORM MAY BE USED PRIOR TO AND/OR AFTER AWARD OF A STATE CONTRACT.**

Proposer/Contractor Name:	Federal Identification Number:
Address:	Procurement/Contract Number: _____
City, State, Zip Code:	M/WBE Participation Goals: MBE _____% WBE _____%

COMPLETE THIS SECTION ONLY IF THIS WAIVER IS REQUESTED AFTER AWARD OF A STATE CONTRACT.

Contract Award Date: _____ **Contract Start Date:** _____ **Contract End Date:** _____

**All Requests for Waiver (AC 3239-F) submitted prior to or after award of a State Contract must be accompanied by the information requested on
Page 2 of this form, Instructions and Submission Requirements.**

Proposer/Contractor is requesting a Waiver of the following M/WBE participation goals as follows (check as appropriate):

- | | | |
|---|---------------------------------------|---|
| <input type="checkbox"/> MBE Waiver – A waiver of the MBE participation goal for this procurement is requested. | <input type="checkbox"/> Total Waiver | <input type="checkbox"/> Partial Waiver |
| <input type="checkbox"/> WBE Waiver – A waiver of the WBE participation goal for this procurement is requested. | <input type="checkbox"/> Total Waiver | <input type="checkbox"/> Partial Waiver |

Prepared by (Signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

**SUBMISSION OF THIS FORM CONSTITUTES THE PROPOSER'S ACKNOWLEDGMENT AND AGREEMENT TO ADHERE TO THE M/WBE REQUIREMENTS AND PROCEDURES SET FORTH
UNDER THIS PROCUREMENT 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 AND THE IMPLEMENTING REGULATIONS SET FORTH UNDER 5 NYCRR. FAILURE TO
SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN NON-COMPLIANCE AND PROPOSAL DISQUALIFICATION.**

THIS SECTION FOR OSC USE ONLY

Date Waiver Request Received		Reviewed by		Date	
Waiver Requested	Waiver Granted	If Waiver Granted			
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	Total Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE Partial Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> MBE <input type="checkbox"/> WBE				

Signature of OSC Reviewer:

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
REQUEST FOR WAIVER**

PLEASE READ THESE INSTRUCTIONS AND DOCUMENT SUBMISSION REQUIREMENTS CAREFULLY.

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS FOR REQUEST FOR WAIVER OF M/WBE PARTICIPATION GOALS

PART 1. INSTRUCTIONS FOR PROPOSER/CONTRACTOR REQUEST FOR WAIVER (AC 3239-F):

- I. (PRIOR TO AWARD OF A STATE CONTRACT):** Proposers requesting a waiver of M/WBE Participation Goals must submit the information listed in PART II as part of its Administrative Proposal.
- II. (AFTER AN AWARD OF A STATE CONTRACT):** Contractors may request a waiver of M/WBE Participation Goals at any time during the term of the contract but prior to the submission of a request for final payment on that contract. Contractors requesting a waiver of M/WBE Participation Goals must submit the information listed in PART II.

All waiver requests must be submitted 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

PART II. DOCUMENTATION SUBMISSION REQUIREMENTS FOR REQUESTING WAIVERS

- 1. The names of general circulation, trade association, and minority and women oriented publications in which bids/proposals were solicited for purposes of complying with participation goal requirements established for certified M/WBE participation;**
- 2. The dates bid solicitations for certified M/WBE participation were published in any of the publications listed in #1;**
- 3. List of certified M/WBEs appearing in the directory which were solicited in writing to provide bids/proposals for purposes of complying with participation goal requirements established for certified M/WBE participation;**
- 4. Proof of dates on which such solicitations were made in writing and copies of solicitations made, or a sample copy of the solicitation if an identical solicitation was made of all certified M/WBEs;**
- 5. Copies of responses made by certified M/WBEs to solicitations made by the Proposer/Contractor;**
- 6. A description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids/proposals, and the dates and manner in which these documents were made available;**
- 7. Documentation of any negotiations between the Proposer/Contractor and certified M/WBEs undertaken for the purposes of complying with participation goal requirements established for certified M/WBE participation;**
- 8. Any other information determined relevant by OSC; and**
- 9. A statement setting forth the Proposer's/Contractor's basis for requesting a partial or total waiver of M/WBE participation goals.**

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S M/WBE UTILIZATION PLAN**

INSTRUCTIONS: After the award of a State Contract, Contractors must complete and submit this Contractor's M/WBE Utilization Plan as part of their compliance reporting. Contractors must submit a separate M/WBE Utilization Plan for each M/WBE utilized on the State Contract.

Contractor Name:	Federal Identification Number:
Address:	Contract Number: _____
City, State, Zip Code:	M/WBE Participation Goals: MBE _____% WBE _____%

LIST ALL M/WBE SUBCONTRACTORS AND/OR SUPPLIERS TO BE UTILIZED (ATTACH ADDITIONAL SHEETS IF NECESSARY).

M/WBE Name, Address, Email Address, and Telephone Number	Certification Classification (check all that apply.)	Federal ID No.	Estimated Dollar Value of Work/Supplies	Please provide a brief description of services or supplies to be provided by each M/WBE identified here on Page 2.
A.	NYS ESD Certified: <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD Certified: <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
C. ESD Certification Number: _____		D. ESD Certification Expiration Date: _____		

If Contractor will not be utilizing an M/WBE, check here ☐ and attach Form AC 3239-F, Request for Waiver, and supporting documentation.
If Contractor has previously submitted AC 3239-F, Request for Waiver, for this procurement, check here ☐ and enter date submitted: _____.

Prepared by (Signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

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 procurement 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.

THIS SECTION FOR OSC USE ONLY

Reviewed by:	Date Received:	Utilization Plan Approved	Date Approved:	M/WBE Certification Status:
		<input type="checkbox"/> Yes <input type="checkbox"/> No		MBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No WBE Certified <input type="checkbox"/> Yes <input type="checkbox"/> No
Deficiencies Identified:	Notice of Deficiency Issued:	Date of Notice of Deficiency:	Waiver Requested:	
MBE <input type="checkbox"/> Yes <input type="checkbox"/> No / WBE <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No (Partial <input type="checkbox"/> Total <input 3"="" type="checkbox/>)</td> </tr> <tr> <td>Waiver Granted</td> <td>If Waiver Granted</td> <td colspan="/> Waiver Approved by (Signature):	
<input type="checkbox"/> Yes <input type="checkbox"/> No	Total Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No Partial Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No			

NOTES:

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S M/WBE UTILIZATION PLAN

Provide a brief description of the services or supplies to be identified by the subcontractor(s) identified above:

Please submit completed Form AC 3239-G 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 procurement 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 a bid/proposal, the Proposer/Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Proposer/Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
M/WBE EXPENDITURE REPORT**

INSTRUCTIONS: The Awarded Contractor is required to complete and submit this M/WBE Expenditure Report on a per-invoice basis upon award of the State Contract for each M/WBE Subcontractor/Supplier identified in its Utilization Plan (AC 3239-D and AC 3239-G).

Contractor Name:		Federal Identification Number:
Contract Start Date:	Projected End Date:	Contract Number:
Report for Period (MM/DD/YY) _____ to (MM/DD/YY) _____		Total Amount of Awarded Contract: \$

M/WBE SUBCONTRACTOR AND/OR SUPPLIER UTILIZED

M/WBE Name and Address, including Email Address and Telephone Number of Contact Person	Certification Classification	Federal ID No.	Brief Description of Work/Supplies
	NYS ESD Certified: <input type="checkbox"/> MBE <input type="checkbox"/> WBE		

ESD Certification Number:		ESD Certification Expiration Date:	
Actual Payment for This Period	Total Payment Made To Date	Total Percentage of Participation Goal Paid to Date	
\$	\$	%	

Prepared by (Signature): _____

Name of Preparer	Title of Preparer	Date	Telephone Number	E-mail Address

BY SUBMISSION OF THIS FORM, THE CONTRACTOR CERTIFIES THAT PAYMENT HAS BEEN MADE OR WILL BE MADE TO THE M/WBE NAMED ABOVE IN THE AMOUNT REPORTED, IN ACCORDANCE WITH THE TERMS OF THE M/WBE PARTICIPATION GOALS STATED IN THE CONTRACTOR'S PROPOSAL.

THIS SECTION FOR OSC USE ONLY

Reviewed by	Date	Utilization % to be Applied	Actual Utilization to date:
		MBE ____% WBE ____%	MBE ____% WBE ____%
Waiver Requested	Waiver Granted	If Waiver Granted	Notice of Deficiency Issued
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	Total Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No Partial Waiver <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

NOTES:

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR’S QUALITY ASSURANCE REPORT/CHECKLIST

INSTRUCTIONS: Contractors/Subcontractors are required to submit a completed Form AC 3239-I (Contractor’s Quality Assurance Report/Checklist and all submission documents required by the fifth (5th) day of the month, beginning thirty (30) days following the award of a State Contract.

Contractor Name:		Federal Identification Number:		
Address:		Procurement/Contract Number:		
		Contract Award Date:		
City, State, Zip Code:		Contract Start Date:		
		Contract End Date:		

SECTION I. WORKFORCE UTILIZATION

1. Contractor’s/Subcontractor’s Checklist of EEO Compliance Documents for Submission:

☐ Current EEO Policy Statement was submitted on _____ (date)
☐ Contractor’s/Subcontractor’s EEO Workforce Utilization Report (AC 3239-B) was submitted on _____ (date)

SECTION II. M/WBE UTILIZATION

2. Contractor’s/Subcontractor’s Checklist of M/WBE Utilization Documents for Submission:

☐ Contractor’s M/WBE Utilization Plan (AC 3239-G) (A separate Utilization Plan is required for each M/WBE identified.)
☐ Copy of Contractor’s/Subcontractor’s executed written agreement with the M/WBE Subcontractor/Supplier. (A separate Agreement is required for each M/WBE identified.)

3. Has Contractor/Subcontractor requested any of the following? (Check all that apply.)

☐ Waiver of the MBE participation goal for the above procurement/contract. Date requested: _____
☐ Waiver of the WBE participation goal for the above procurement/contract. Date requested: _____

4. Has Subcontractor’s ESD Certification Number and Expiration Date been entered? ☐ Yes ☐ No

Prepared (Signature):	by _____			
Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address

Submit completed forms and documentation 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

FOR OSC USE ONLY

RECEIVED DATE	WAIVER STATUS	OSC STATUS	WORKFORCE UTILIZATION PLAN	M/WBE UTILIZATION PLAN
	<input type="checkbox"/> Approved <input type="checkbox"/> Pending <input type="checkbox"/> Denied Date: ____	<input type="checkbox"/> Responsive <input type="checkbox"/> Non-Responsive	<input type="checkbox"/> Approved <input type="checkbox"/> Denied	<input type="checkbox"/> Approved <input type="checkbox"/> Denied

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, Division of Legal Services.** 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 services⁶ 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 vendor⁷ 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 question⁸ 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.ny.gov 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 influence⁹ relating to the vendor's bid or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.

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 process¹⁰. If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.
11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the

¹⁰ 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.

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 SIGNATURES BELOW INDICATES AGREEMENT WITH EACH OF THE ABOVE CERTIFICATIONS/
ACKNOWLEDGEMENTS**

<hr/> PROPOSER NAME	<hr/> JOINT PROPOSER NAME (IF ANY)
<hr/> SIGNATURE	<hr/> SIGNATURE
<hr/> PRINTED OR TYPED NAME	<hr/> PRINTED OR TYPED NAME
<hr/> TITLE	<hr/> TITLE
<hr/> DATE	<hr/> DATE

Add additional signature lines below for additional Joint Proposers, as necessary.

APPENDIX F

DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Have you been found by any governmental entity to be non-responsible within the past four (4) 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 (4) 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

XXXXXXX

Contract 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, 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.

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 from Contract Start Date through the End of the Contract Term** 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, and 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:

Upon notification of contract award, use Form A, State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term, 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 occupations, as listed in the O*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract. (Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration website at www.online.onetcenter.org.)
- **Number of employees:** the total number of employees in the employment category employed 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 State contractor under the contract, for work by the employees in the employment category, for services to be provided during the Report Period.

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

FORM B:

Use **Form B, State Consultant Services Contractor's Annual Employment Report**, attached to these Instructions, to report the annual employment information required by the statute. This form will capture 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 (DCS), 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 occupations, as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, through the US Department of Labor's Employment and Training Administration website at www.online.onetcenter.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 State 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: Director of Financial Administration
Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

By email: rfp@osc.ny.gov

To the Consultant Reporting Section of the Bureau of Contracts at OSC:

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

By fax: (518) 474-8030 or (518) 473-8808

To DCS:

By mail: NYS Department of Civil Service
ESP, Agency Building 1
20th Floor
Albany, NY 12239

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
29-1069.00 Physicians and Surgeons, All other			
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)

Page of

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)

Page of

APPENDIX H

**PROPOSER/CONTRACTOR COMPLIANCE REQUIREMENTS AND PROCEDURES
FOR PARTICIPATION BY SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Use of Service-Disabled Veteran-Owned Businesses in Contract Performance

Article 3 of the Veterans' Services Law seeks to encourage and support eligible service-disabled veteran-owned businesses (SDVOBs) to play a greater role in the State's economy by providing for meaningful participation in New York State's contracting opportunities. It is the policy of the Office of the State Comptroller (OSC) to make every effort to use SDVOBs in accordance with State laws in the purchasing and contracting activities of OSC.

Article 3 sets a Statewide participation goal of 6% for SDVOBs on all contracts for commodities, services, and technology valued over \$25,000 and for all construction contracts valued over \$100,000. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, proposers/contractors are expected to consider SDVOBs in the fulfillment of the requirements of this procurement. Such participation may be as subcontractors, suppliers, consultants, joint ventures, or other type of partnering or supporting roles.

SDVOBs can be readily identified on the directory of certified businesses at:

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

Proposers/contractors are reminded that they must continue to use small, minority- and women-owned businesses consistent with current State law and with the goals set forth in the attached procurement.

A. SDVOB Participation Requirements

The SDVOB participation goals established by OSC for this procurement are based on the current availability of qualified SDVOBs able to perform the specific scope of work identified in this procurement. Questions for technical assistance in meeting these requirements can be obtained by contacting OSC at (518) 474-7574.

B. Prior to the Award of a State Contract

As a precondition to being selected for contract award and entering into a valid and binding State contract, a proposer must submit Form AC3322-1 (Proposed Use of SDVOBs in Contract Performance or the "Utilization Plan") with its proposal. The Utilization Plan must document the SDVOBs that will perform work under the State contract.

Failure to submit a Utilization Plan will result in the rejection of a proposal, unless the proposer provides OSC with a reasonable justification in writing for such failure, or makes a commitment to submit a Utilization Plan within the timeframe specified in writing by OSC.

1. OSC will review the proposed Utilization Plan and issue a written notice of acceptance or deficiency before the contract award is complete.

If a notice of deficiency is issued, proposer must submit a written remedy to OSC. If the written remedy is inadequate or not timely, OSC will notify the proposer and work with the proposer to resolve the deficiency identified or direct the proposer to submit a request for either a partial or total waiver of the SDVOB participation goals. Failure to exercise good faith efforts, correct the deficiency, or file the waiver in a timely manner may be grounds for disqualification of the proposal.

2. Requests for Waivers (if applicable) may be sent to OSC at the following address:

New York State Office of the State Comptroller
Bureau of Finance: SDVOB Specialist
110 State Street, Stop 13-2
Albany, NY 12236

C. After the Award of the State Contract

1. Contractor certifies that if awarded a contract, it will follow the submitted Utilization Plan for the performance of SDVOBs on the contract.
2. Contractor agrees to provide OSC access to all documentation, records, reports, facilities, etc. that OSC may deem necessary to determine Contractor compliance.
3. Contractor must include Form AC3322-2 (Contractor's SDVOB Utilization Report) with each invoice submitted to OSC during the contract term. Form AC3322-2 documents SDVOBs *actually used* on the Contract.

Failure to timely submit Form AC3322-2 and/or other reports or information as requested may result in payments under the contract being delayed until such reports or other information have been received.

- a. If deficiencies are identified during OSC general contract compliance monitoring or during in-depth compliance review, OSC will attempt to resolve the deficiencies identified and may request that the Division of Service-Disabled Veterans' Business Development (DSDVBD) within the New York State Office of General Services review and attempt to resolve the noncompliance matter.
- b. If OSC determines that Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals for participation by SDVOBs as established in the contract, OSC may, after giving Contractor an opportunity to be heard, make a determination that the Contractor has failed to meet contract goals and may withhold payment from the Contractor as liquidated damages, if the Deputy Comptroller for Finance and Administration determines that the Contractor has breached the contract by failing to comply with the SDVOB participation goals set forth in the contract. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to SDVOBs had the Contractor achieved the contractual SDVOB goals; and (2) all sums actually paid to SDVOBs for work performed or materials supplied under the contract. In addition, where a Contractor willfully and intentionally fails to comply with SDVOB requirements, the Contractor shall be liable to OSC for damages; such damages shall be calculated based on the actual cost incurred by OSC related to OSC's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing SDVOB programmatic goals.
- c. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the contract. Upon the occurrence of such a material breach, OSC shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Nothing herein shall be deemed to diminish or supersede OSC's authority and responsibility to enforce the requirements of its contracts.

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSED USE OF SDVOBS IN CONTRACT PERFORMANCE

INSTRUCTIONS

Article 3 of the Veterans' Services Law seeks to encourage and support eligible service-disabled veteran-owned businesses (SDVOBs) to play a greater role in the State's economy by providing for meaningful participation in the State's contracting opportunities. Proposers are expected to consider certified SDVOBs in fulfillment of the requirements of the attached contract. Such participation may be as subcontractors, suppliers, consultants, joint ventures, or other type of partnering or supporting roles. SDVOBs can be readily identified on the directory of certified businesses at:

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

Use of SDVOBs for non-commercially useful functions may not be counted towards contract SDVOB participation goals.

All Proposers must complete and submit this form with their proposals.

Proposer Name					
Address					
City, State, Zip Code					
Federal Identification Number <small>(do not use Social Security Number)</small>			NYS Vendor ID Number <small>(do not use Social Security Number)</small>		
Is Proposer a NY Certified SDVOB?		<input type="checkbox"/> Yes <input type="checkbox"/> No		If Yes, provide DSDVBD Certification Number	
Will NYS-certified Service-Disabled Veteran-Owned Businesses (SDVOBs) be used in the performance of this contract?		<input type="checkbox"/> Yes <input type="checkbox"/> No		Expiration Date	
SDVOB Utilization Goals for this Procurement:		_____ %		Contract or Procurement #: _____	

SDVOB Company Name	Business Address	DSDVBD Certification #	% of Total Contract Work to SDVOB	Nature of SDVOB Participation: Describe commodities, services or technology
TOTAL				

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address
Preparer signature:				

If Proposer will not use SDVOB in the performance of this contract, attach Form AC3322-3, Request for Waiver, and include supporting documentation.

Additional information about the Veterans' Services Law can be found at: <https://ogs.ny.gov/veterans>

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S SDVOB UTILIZATION REPORT

INSTRUCTIONS

Article 3 of the Veterans' Services Law seeks to encourage and support eligible service-disabled veteran-owned businesses (SDVOBs) to play a greater role in the State's economy by providing for meaningful participation in the State's contracting opportunities. SDVOBs can be readily identified on the directory of certified businesses at:

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

All Contractors must complete and return this form with each invoice submitted to OSC during the contract term.

Failure to submit complete and accurate information may result in a determination of contract non-compliance.

Additional information about the Veterans' Services Law can be found at: <https://ogs.ny.gov/veterans>

All Contractors must complete and return this form with each invoice.

Contractor Name					
Address					
City, State, Zip Code					
Federal Identification Number <small>(do not use Social Security Number)</small>			NYS Vendor ID Number <small>(do not use Social Security Number)</small>		
Is Contractor a NY Certified SDVOB?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, provide DSDVBD Certification Number		Expiration Date	
Are NYS-certified Service-Disabled Veteran-Owned Businesses (SDVOBs) being used in the performance of this contract?		<input type="checkbox"/> Yes <input type="checkbox"/> No	<i>If Yes, identify below the SDVOBs that are being used</i> <i>If No, see below re Request for Waiver</i>		Total Anticipated \$ Value of this Contract
SDVOB Utilization Goals on this Contract:		_____ %			

SDVOB Company Name	Business Address	DSDVBD Certification #	% of Total Contract Work to SDVOB	\$ Amount to SDVOB	Nature of Participation: Describe commodities, services or technology
TOTAL					

Name of Preparer	Title of Preparer	Date	Telephone Number	Email Address
Preparer's Signature:				

If Contractor is not using an SDVOB, attach Form AC3322-3, Request for Waiver, and include supporting documentation.
If Contractor has previously submitted Form AC3322-3 for this procurement, check here ☐ and enter date submitted:

_____.

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
PROPOSER'S/CONTRACTOR'S SDVOB REQUEST FOR WAIVER

Part I: INSTRUCTIONS

- Proposers responding to a solicitation and requesting a waiver of SDVOB participation goals must complete Part II and submit AC3322-3, the Request for Waiver form, as part of their solicitation response.
- Contractors may request a waiver of SDVOB participation goals at any time during the term of their contract with OSC, but prior to the submission of a request for final payment on that contract. Contractors requesting a waiver of SDVOB participation goals must complete Part II and submit the Request for Waiver form to.

New York State Office of the State Comptroller
 Bureau of Finance, Attn: SDVOB Specialist
 110 State Street, Stop 13-2
 Albany, NY 12236

Part II: DOCUMENTATION

Proposer/Contractor Name:			
Address:			
City, State, Zip Code:			
Federal Identification Number <small>(do not use Social Security Number)</small>		NYS Vendor ID Number <small>(do not use Social Security Number)</small>	
SDVOB Utilization Goals on this Contract:	_____ %	Contract or Procurement #:	

Proposer/Contractor must provide:

- A list of certified SDVOBs appearing on the Division of Service-Disabled Veterans' Business Development (DSDVBD) directory who were solicited in writing for the purpose of complying with SDVOB participation goal requirements;
- Proof of dates on which such written solicitations were made and copies of solicitations made, or a sample copy of the solicitation if an identical solicitation was made to all certified SDVOBs on the DSDVBD directory;
- Copies of responses made by certified SDVOBs to solicitations made by the Proposer/Contractor;
- A description of any contract documents, plans or specifications made available to certified SDVOBs for purposes of soliciting their participation, and the dates and manner in which those documents were made available;
- Documentation of any negotiations between the Proposer/Contractor and certified SDVOBs undertaken for the purposes of complying with SDVOB participation goal requirements;
- A statement setting forth the Proposer's/Contractor's basis for requesting a partial or total waiver of SDVOB participation goal requirements; and
- Any other information determined relevant by OSC or by the Proposer/Contractor.

THIS SECTION FOR OSC USE ONLY

Reviewed by:	Date Received:	Deficiencies Identified:	Utilization Plan Approved:	Date Approved:
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Waiver Requested:	Waiver Granted:	Waiver Type:		
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Partial <input type="checkbox"/> Total		
	Name	Signature		
Waiver Approved by:				

NOTES:

ATTACHMENT 1 – FEE SCHEDULE

SERVICES			
INDEPENDENT MEDICAL EXAMINATION FEES: including comprehensive narrative report and records review up to 200 pages, NOT including fees for testing and/or x-rays. Fees are applicable for services requested on or after the effective date listed below.			
For any of the following specialties or subspecialties:			Fees (Not to Exceed)
Allergy Cardiology Dermatology Endocrinology Gastroenterology General Surgery Gynecology Immunology	Infectious Disease Internal Medicine/Family Medicine Nephrology Neurology Neurosurgery Ophthalmology Oral Surgery Orthopedics	Orthopedic Surgery Otolaryngology Plastic Surgery Psychiatry Pulmonology Rheumatology Toxicology Urology Vascular Surgery	\$1,500.00
For each of the following specialties:			Fees (Not to Exceed)
• Additional Psychiatric examination			\$400.00
• Neuropsychiatry			\$2,000.00
• Neuropsychology			\$2,500.00
• Hematology/Oncology			\$3,000.00
Cancellation Fees:			Fees
• Cancellation or rescheduling of an IME within 48 hours of scheduled IME (includes no-shows) by the Member, the Member's employer, or NYSLRS			\$500.00
Records Review:			Fees
• Review of records in excess of 200 pages (per page)			\$1.00
• Review of records (without performing IME, up to 200 pages)			\$300.00
• Review of records (without performing IME, in excess of 200 pages, per page)			\$1.00
• Supplemental IME Report (only if such report is not required to clarify the original IME Report). No new records will be submitted			\$150.00
• Supplemental IME Report including up to 50 pages of new record review			\$200.00
• Supplemental IME Report (in excess of 50 pages, per page) of new record review			\$1.00
Hearing Rates:			Fees
• In-person or on-camera testimony (per hearing)			\$3,500.00
• In-person or on-camera testimony cancelled within 48 hours of scheduled hearing			\$1,750.00
• In-person or on-camera testimony cancelled within 24 hours of scheduled hearing			\$3,500.00
• Telephone testimony			\$1,750.00
• Telephone testimony cancelled within 48 hours of scheduled hearing			\$875.00
• Telephone testimony cancelled within 24 hours of scheduled hearing			\$1,750.00
• Pre-hearing meeting with NYSLRS attorney, if required by NYSLRS (up to 60 minutes)			\$600.00
• Review of records for hearing and Supplemental Hearing Report (including records review up to 500 pages)			\$1,500.00
• Review of records for hearing in excess of 500 pages (per page)			\$1.00

Revised Date: Not Applicable

Effective Date: Upon contract approval by OSC's Bureau of Contracts

PLACEHOLDER FOR
ATTACHMENT 2