

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
AUDIT SERVICES FOR THE IDENTIFICATION, COLLECTION, AND PROCESSING OF OUT-OF-STATE
ABANDONED PROPERTY AGREEMENT WITH
KELMAR ASSOCIATES, LLC
NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C001151

THIS AGREEMENT ("Agreement") is made effective as of the date of approval by the New York State Office of the State Comptroller's Bureau of Contracts after execution by all parties, and is by and between the New York State Office of the State Comptroller ("OSC"), by the Department of Audit and Control, whose main office and principal place of business is 110 State Street, Albany, New York 12236, and Kelmar Associates, LLC, (the "Contractor") whose office is located at 500 Edgewater Drive, Suite 525, Wakefield, Massachusetts 01880.

W I T N E S S E T H

WHEREAS, OSC's Office of Unclaimed Funds ("OUF") is responsible for the collection, custody and return to the rightful owner(s) of unclaimed property in accordance with the requirements of the New York State Abandoned Property Law ("APL"); and

WHEREAS, to meet this responsibility OSC issued a Request for Proposals #21-04, dated July 29th, 2021 ("RFP") and attached hereto as Exhibit A, soliciting proposals from vendors operating in New York State ("State") to assist in the identification, record analysis and processing, collection, and reporting of unclaimed property due to the State and held by out-of-state entities ("Services"); and

WHEREAS, the Contractor, among others, responded to the RFP with a proposal dated September 22nd, 2021 ("Proposal"), attached hereto as Exhibit B, indicating its willingness to perform the necessary Services; and

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

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

I. TERM

This Agreement will be for a period of 10 years, commencing on approval by OSC's Bureau of Contracts, and subject to earlier termination as provided in Section XVIII. "Termination and Suspension." The first five years of the Agreement will be the "Opening Period" and the second five years of the Agreement will be the "Closing Period."

During the Opening Period, the Contractor may identify and open new comprehensive compliance audits as described in Section 3.0 of the RFP. During the Closing Period, the Contractor may only finalize those audits begun during the Opening Period; the Contractor may not begin any new compliance audits during the Closing Period. OSC may elect to extend this Agreement for a period of up to one year beyond the initial 10-year term. Such extension will only be permitted to allow the Contractor to finalize those comprehensive compliance audits already begun.

II. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES

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

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

- Appendix B – Proposer and Contractor Compliance Requirements and Procedures for Participation by Minority Group Members and Women With Respect to OSC Contracts;
 - Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
 - Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
 - Appendix E – Contractor's Certifications/Acknowledgements;
 - Appendix F – Disclosure of Prior Non-Responsibility Determinations;
 - Appendix G – OSC Consultant Disclosure Reporting Requirements; and
 - Appendix H – Executive Order on Independence of Auditors Performing Services For The Office Of The State Comptroller And The Common Retirement Fund;
3. Exhibit A – RFP #21-04, including the Questions and Answers and any Addenda or Amendments; and
 4. Exhibit B – Proposal (Exhibits B1 – Technical Proposal, B2 – Cost Proposal, and B3 – Administrative Proposal), including any clarifications thereto.

III. **COMPENSATION**

OSC shall compensate the Contractor pursuant to this Agreement in accordance with the Fee Schedule as set forth in the RFP (see Sections 3.1 Services, 3.2 Exclusions and Limitations, and Section 3.3 Commission Fees) and Exhibit B2 (Contractor's Cost Proposal).

Total compensation for Services provided under this Agreement must not exceed the sum of \$5,000,000.

There is no minimum guaranteed payment to the Contractor under the terms of this Agreement.

A. OUF will review the list of holders and will identify an approved commission fee for each holder as follows:

1. **Regular fee approved** – Commission will be paid at the full contracted fee percentage.
2. **Partial fee approved** – In the event that OUF participates or assists in the review, or if the holder or type of property is not generally approved at the "regular fee" rate, OUF may, at its option, approve a partial fee. OUF will rely on its knowledge of the costs of performing the type of holder review or compliance audit being recommended, versus the expected value of assets to be identified in determining whether OUF will only approve the performance of a specific compliance audit at a partial fee rate. OUF's determination of a fee rate it deems reasonable under the circumstances for a particular proposed engagement will be based on information from the Contractor, as well as OUF's experience performing compliance audits and managing compliance audit contractors.
3. **No fee** – No fee would be allowed in those instances where (i) the fee is specifically precluded under the contract; (ii) where a state audit is currently in progress or being planned; or (iii) based on OUF's experience it is inappropriate for OUF to pay a fee for the compliance audit being recommended and OUF is allowing the Contractor to perform the work as an accommodation to the holder. The Contractor must not assess or collect a fee from OUF if a fee has been or will be paid either by a holder or its agent to facilitate the transfer of the unclaimed property in question. The Contractor is not eligible to collect a fee on property of a corporation that has contracted with its transfer and disbursing agent to report unclaimed property as part of the services to be rendered to such corporation.

B. OUF, at its option, may identify and request that the Contractor conduct a compliance audit of an out-of-state holder that OUF's research has identified as a potential non-reporter or under-reporter of abandoned property escheatable to OUF. The Contractor will be paid the full contracted fee percentage of actual

collections from such services unless a partial fee is agreed to in accordance with paragraph A.2 above.

- C. Compliance reviews approved by OUF will be paid on a commission fee as follows: (i) regular fee rate in accordance with the rates set forth in Exhibit B2; or (ii) partial fee rate review at rates not to exceed the lesser of one half of the regular fee rate or 6%; or (iii) no fee review. Compliance reviews will only be made, and associated commission fees will only be paid, after the Contractor has obtained the written approval of OUF. OUF's approval of a proposed compliance review, however, does not prohibit OUF from rejecting payment of commission fees associated with such compliance review at a later date, should OUF determine that such payment would be inconsistent with the terms of this Agreement.
- D. Notwithstanding the fee rates set forth in Exhibit B2, the Contractor agrees that items of property remitted by the Contractor on behalf of a holder for an owner totaling \$50,000 or more per owner will be compensated at the lesser rate of one half of the approved fee rate or 6%. With respect to such items, the Contractor agrees to refund to OUF the fee paid for such items if a claim is initiated within three years of the date the item is remitted to OUF. The Contractor shall make such reimbursement to OUF within 30 days of OUF's payment of such claim, or authorize OUF to use the amount of such reimbursement as a credit against the Contractor's future invoice(s).

OSC will not compensate the Contractor for any property reported where the holder has not complied with the APL's due diligence requirements and/or the SEC required database searches.

There is no minimum guaranteed payment to the Contractor under the terms of this Agreement.

If the abandoned property report(s), which is required to be submitted with all remittances, is not provided, or is not provided in the format acceptable to the OUF, payment may be withheld by OSC until a proper abandoned property report is received.

IV. PAYMENT AND INVOICES

- A. The compensation for Services will be payable by OSC in the ordinary course of State business upon OSC's receipt of the Contractor's invoice. Approved invoices for payment will be processed in accordance with Article 11-A of the New York State Finance Law.
- B. All invoices must include the following information:
 - 1. OSC's Agreement #C001151, Contractor's taxpayer identification number, and Contractor's New York State Vendor Identification Number;
 - 2. A detailed description of Services provided, including:
 - (a) an itemized list describing all items for which a fee is charged;
 - (b) the total amount billed for Services for the invoice period;
 - (c) the beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement;
 - (d) the due diligence certification as described in Section 3.1.C of the RFP; and
 - 3. AC 3239-H M/WBE Expenditure Report of Appendix B, which will include the actual total cost of the contract work performed by each certified M/WBE for the work relating to the submitted invoice and the actual amounts of any payments made by the Contractor to each certified M/WBE as of the date the invoice is submitted. Failure to comply with the M/WBE participation goals set forth in the RFP may result in penalties as delineated in Appendix B.

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

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

With a copy via email (preferred) to rtambini@osc.ny.gov and kkuracina@osc.ny.gov, or via hard copy mail to:

**Office of the State Comptroller
Unclaimed Funds
59 Maiden Lane, 23rd Floor
New York, NY 10038
ATTENTION: Rob Tambini**

V. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REPORTING

The Contractor agrees to comply with applicable federal, State, and local requirements concerning equal employment opportunities for minorities and women, including but not limited to Executive Law §312 and its implementing regulations. 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 agrees to submit to OSC its EEO Policy Statement, and Form AC 3239-A Proposer's EEO Staffing Plan of Anticipated Workforce. Further, Contractor shall submit on a semi-annual basis Form AC 3239-B Contractor's/Subcontractor's EEO Workforce Utilization Report and shall require each of its subcontractors, if any, to submit such Report on a quarterly basis during the term of 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).

VI. NOTICES

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

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

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

OSC:

Title: Director of Finance
Address: Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001
Telephone: (518) 474-7574

Contractor:

Name: Catherine G. Zejnullahu
Title: Associate General Counsel
Address: 500 Edgewater Drive, Suite 525
Wakefield, MA 01880
Telephone: (781) 928-9231

VII. SERVICES

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

VIII. COOPERATION

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

IX. STAFF

- A. The Contractor's "staff" includes employees, consultants, owners, officers, directors, subcontractors, subsidiaries, affiliates, partners, and agents of the Contractor. The Contractor is fully responsible for performance of work by its staff.
- B. The Contractor shall assign Michael Gizzi as the designated principal who will serve as the primary contact person for OUF during the term of this Agreement.
- C. The Contractor shall assign Michael Gizzi and Kate A. Stevens as senior auditors, each of whom possess

at least two years' experience providing identification, collection, and processing of unclaimed property for any state.

- D. If either the primary contact person or a senior auditor is removed from, reassigned, or leaves the employ of the Contractor for any reason, his or her replacement must match or exceed the replaced individual in terms of skill level and experience. OSC reserves the right to approve or disapprove any proposed replacement designated principal. For each replacement, the Contractor must provide OSC with a summary of the experience of the proposed replacement and an opportunity to interview that person, prior to giving its approval or disapproval.
- E. The Contractor specifically represents and agrees that its staff have and will possess throughout the term of the Agreement, the experience, knowledge, and character necessary to qualify them individually for the duties to be performed hereunder.
- F. OSC reserves the right to remove any of the Contractor's staff if, in OSC's discretion, such staff is not performing in accordance with this Agreement, or for any other reasonable work-related cause.
- G. The Federal Immigration Reform and Control Act, as amended, (8 USC section 1324a et. al.) obligates employers, such as the Contractor and its subcontractors, if any, to verify that their staff are legally entitled to work in the United States. The Contractor warrants to OSC that it has verified staff assigned to provide Services to OSC are eligible for employment in the United States. The Contractor is responsible for ensuring that staff retain the authorization to legally work in the United States throughout the term of the Agreement. In order to confirm that the staff are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to the legal entitlement to work in the United States for any of the Contractor's staff assigned work under the Agreement. In accordance with such law, OSC does not discriminate against individuals on the basis of national origin or citizenship.

X. SUBCONTRACTORS

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

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

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

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

XI. RELATIONSHIP OF PARTIES

The relationship of the Contractor and its staff to OSC is that of an independent contractor, and not that of an agent or employee of OSC. The Contractor will not have the authority to contract for or bind OSC for any purpose. Neither the Contractor nor its staff will hold themselves out as agents, officers, or employees of OSC.

Neither the Contractor nor its staff will make any claim, demand, or application for any right or privilege applicable to any officer or employee of OSC, including but not limited to, Workers' Compensation coverage, Social Security coverage, or New York State Retirement System benefits.

XII. WARRANTY

The Contractor warrants that the Services will be performed in a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, "highest applicable industry standards" 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. The Contractor shall re-perform, at its own expense, any work not in compliance with this warranty brought to its attention within 90 days of the initial performance/re-performance of such work.

XIII. CONFLICTS OF INTEREST

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

XIV. CONFIDENTIALITY AND SECURITY

A. Definition

The term "Confidential Information" means any and all information which is disclosed by either party ("Owner") to the other ("Recipient") verbally, electronically, visually, or in written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third-party software).

B. Treatment

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

C. Confidentiality of OSC Information

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

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

The Contractor agrees to preserve the confidentiality of any and all Confidential Information viewed, accessed, or developed under the Agreement, and agrees:

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

D. Security

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 in performing the Services.

The Contractor may not connect any non-State computer, electronic storage device, or telecommunications equipment to OSC network; e.g., personal and corporate laptop computers, personal and corporate USB devices, smartphones, and tablets are included in this prohibition.

Where performance of Services involves use by the Contractor of State-owned or licensed, or OSC-owned or licensed, papers, files, computer disks or other electronic storage devices, data, or records at OSC or State facilities or offices, the Contractor shall not remove such records therefrom without the prior written approval from an authorized representative of OSC.

XV. INDEMNIFICATION AND LIABILITY

- A.** The Contractor will be fully liable for any act or omission of the Contractor and its staff and shall fully indemnify, defend, and hold harmless OSC and the State, their officials, agents and employees, without limitation, from suits, actions, damages and costs of every name and description (including reasonable attorney's fees and expenses) arising from personal injury (including wrongful death) and/or damage to real or tangible personal property (including electronic systems, software, and databases) or intellectual property caused by any intentional act or negligence of the Contractor or any of its staff, or the Contractor's breach of this Agreement; provided, however, that the Contractor is not be obligated to indemnify OSC for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of OSC.

For third-party claims, OSC shall give the Contractor:

1. prompt written notice of any action, claim, suit, proceeding, or threat of such action relating to this Agreement;
2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Contractor's sole expense; and
3. reasonable assistance in the defense of any such action at the expense of the Contractor.

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

- B. For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, the Contractor will be liable for any act or omission of the Contractor or any of its staff, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges paid to the Contractor. The Contractor will not be responsible for loss of records or data unless the Contractor is required to back-up the records or data.
- C. Notwithstanding the above, neither party will be liable for any consequential, indirect, or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OSC, the Contractor, or by others.
- D. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due to the Contractor such moneys as may be necessary to satisfy any claim for damages OSC may have against the Contractor.

XVI. FORCE MAJEURE

Neither the Contractor, OSC, nor the State will be liable for any delay or failure in performance beyond its control resulting from an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party, such as act of God; strikes, fires, explosions. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than 90 days, either party may terminate all or any agreed upon portion of the Services immediately upon written notice. This paragraph does not excuse either party's obligation to exercise reasonable diligence or to take reasonable steps to follow its normal disaster recovery procedures, or OSC's obligation to pay for Services provided by the Contractor which have been approved by OSC.

XVII. RESPONSIBILITY

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

XVIII. TERMINATION AND SUSPENSION

- A.** OSC may terminate or suspend this Agreement, or terminate or suspend the Services, with respect to a specific matter or matters, with or without cause upon 15 days' prior written notice.
- B.** OSC reserves the right to terminate or suspend this Agreement, or to terminate or suspend the Contractor's Services with respect to a specific matter or matters, immediately upon written notice to the Contractor, if OSC, in its sole discretion, deems the Contractor's performance unsatisfactory at any time during the term of this Agreement.
- C.** In the event of termination or suspension of the Agreement, or termination or suspension of the Services, the Contractor will be entitled to compensation for Services performed through the date of termination or suspension that are acceptable to OSC, in its sole discretion.
- D.** Upon expiration, termination, or suspension of this Agreement, the Contractor shall provide access to any successor contractor, or to OSC should no successor contractor be in place, all necessary records in the Contractor's possession relating to the Services provided under this Agreement. At OSC's request, the Contractor shall make appropriate staff available to OSC and to the successor contractor 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 fully cooperate with OSC and any successor contractor in order to accomplish a smooth and orderly transition, so that the Services are uninterrupted and are not adversely impacted by the Agreement's termination or suspension.

XIX. 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 be valid and enforced to the fullest extent permitted by law.

C. PUBLIC COMMUNICATION

Neither the Contractor nor any of its staff will make any statement to the press or issue through any media of communication any statement bearing on the Services performed or data collected under this Agreement, without the prior written approval of OSC.

No party grants to the other the right to use any of its trademarks, trade names, logos, seals, or other designations, whether in any promotion, publication, or otherwise, without the other party's prior written consent.

D. SURVIVAL

The provisions of Sections XII. "Warranty," XIV. "Confidentiality and Security," XV. "Indemnification and Liability," and Appendix A will survive the expiration or termination of this Agreement.

XX. ENTIRE AGREEMENT/APPROVALS

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

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

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

CONTRACT NUMBER: C001151

KELMAR ASSOCIATES, LLC

OFFICE OF THE STATE COMPTROLLER

SIGNATURE

SIGNATURE

Mark S. McQuillen

JEREMY R. DISARE

PRINTED NAME

PRINTED NAME

President, Chief Executive Officer, & Member
TITLE

DIRECTOR OF FINANCE
TITLE

June 22, 2022

7/25/2022

DATE

DATE

CONTRACTOR'S ACKNOWLEDGEMENT

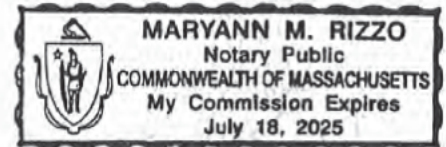
STATE OF Massachusetts }

COUNTY OF Middlesex }

SS.:

On the 22 day of June in the year 2022, before me personally appeared Mark S. McQuillen, known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she maintains an office at 500 Edgewater Dr, Ste 525, Wakefield, MA 01880, and further that he/she is the President, CEO, & Member of Kelmar Associates, LLC, the business described in the foregoing instrument; that he/she is authorized to execute the foregoing instrument on behalf of the business for the purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of the business as the act and deed of the business.

Notary Public
Registration No.



APPROVED AS TO FORM:
NYS ATTORNEY GENERAL

APPROVED:
THOMAS P. DiNAPOLI, COMPTROLLER

BY:

BY:

DATE

DATE

APPROVED
DEPT. OF AUDIT & CONTROL

Aug 19 2022
Melissa Burnash

FOR THE STATE COMPTROLLER

From: Maggi, Benjamin
To: RFP; Contract Approval
Cc: Christine C. Anderson; Ashley Hamilton; Amanda M. Orlowski
Subject: Approved - RE: OSC Contract # C001151 Kelmar Associates
Date: Thursday, July 28, 2022 10:00:37 AM

Approved as to Form: 7/28/2022 by Benjamin Maggi

Received: 7/27/2022

OAG: CAS please file and enter. "P" Amount: 5,000,000

Reminder: Agencies must forward the contract approved by the OAG Contract Approval Section along with the email in which the OAG Contract Approval Section approved the contract, to OSC via the Comptroller's EDSS system. If you are not enrolled in the EDSS system and have not made alternative arrangements with OSC on how to submit your transaction, please contact OSC at [REDACTED] or email [REDACTED]

Benjamin L. Maggi
Section Chief
Contract Approval Section
New York State Office of the Attorney General
Contract Approval Section
The Capitol, Albany, NY 12224

ATTORNEY CLIENT PRIVILEGED/NOT FOR DISSEMINATION

The information contained in this electronic mail message is privileged and confidential and intended only for the individual or individuals named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender immediately to notify us of the error and delete the original message. Thank you.

APPENDIX D

OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY

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

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

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

1. **Applicability.** This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller's fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller's fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller's fiduciary responsibilities.
2. **General Counsel.** The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. **Procedural Controls.** The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
 - a. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
 - b. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
 - c. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
 - d. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only

at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;

- e. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;
 - f. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
- 4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
 - 5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
 - 6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

/s/

Thomas P. DiNapoli
Comptroller, State of New York

Last Revised Date: March 14, 2007
Original Date: February 14, 2002

OSC PROCUREMENT INTEGRITY PROCEDURES

In order to ensure that procurements of goods or services¹ by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

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

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

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

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

1. OSC employees must provide every interested vendor² with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question³ concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC's written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: RFP@osc.state.ny.us. OSC's Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.
3. A vendor may not exert or attempt to exert any improper influence⁴ relating to the vendor's bid or proposal. Any OSC employee who has direct knowledge of any improper influence or

¹ These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller's fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities.

² For the purposes of these procedures, the term "interested vendor" means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF.

³ For the purposes of these procedures, the term "substantive question" means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal.

⁴ For the purposes of these procedures, the term "improper influence" means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74.

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

4. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor's bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process⁵. If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.
11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior

⁵ For the purposes of these procedures, the term "attempt to influence the procurement process" means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract.

to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.

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

October 11, 2011