



June 29, 2009

TO WHOM IT MAY CONCERN:

Attached is the Request for Proposals (RFP) for Emerging Manager of Managers for New York State Insurance Fund (NYSIF).

**The due date for submission of proposals is 8/12/09.**

The attached *No Bid* form should be completed and returned by those Bidders who choose not to bid on this RFP. If you have any questions, contact the Procurement Unit at (518) 437-4230.

Attachments:

*No Bid* Form  
RFP



NO BID FORM

RFP # 2009-09-INV

DESCRIPTION: Emerging Manager of Managers

CONTRACT PERIOD: Three (3) year contract, with 2 one-year extension options

Table with 2 columns: PROPOSALS DUE (DATE: 8/12/09, TIME: 2:00 p.m.) and SUBMIT BIDS TO (Ms. Michelle Gilchrist, NYSIF - Procurement Unit, 15 Computer Drive West, Albany, NY 12205-1690). Includes instruction: WITH NOTATION on mailing envelope: FORMAL BID 2009-09-INV

Firms choosing not to submit a bid are requested to complete and return only this page. Please check all boxes that apply:

- 1. We do not provide the requested services. Please remove our firm from your mailing list for these services.
2. We are unable to submit a proposal at this time because
3. Please retain our firm on this list.

FAILURE TO RESPOND TO THIS RFP WILL RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE. A "NO BID" IS CONSIDERED A RESPONSE.

Name of Firm: FEIN: Address: Telephone: Email Address: Fax: Signature: Date: Typed Name & Title:



NEW YORK  
STATE INSURANCE FUND  
REQUEST FOR PROPOSALS

for

2009-09-INV

Emerging Manager-of-Managers

June 29, 2009

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## RFP CALENDAR

<b>DATE</b>	<b>EVENT</b>	<b>COMMENTS</b>
6/29/09	RFP Issued	NYSIF requires Bidders to submit: <ol style="list-style-type: none"> <li>1. 1 hard copy</li> <li>2. 2 electronic (CD/DVD) copies</li> </ol>
7/17/09	Final date for Bidder inquiries	<b><u>Written inquiries via email only</u></b> by 12:00 p.m. EDT to: Email: <a href="mailto:mgilchri@nysif.com">mgilchri@nysif.com</a>
7/29/09	Responses to Inquiries	Q&A will be posted on .NYSIF's web-site: <a href="http://www.nysif.com/procurement">www.nysif.com/procurement</a>
<b>8/12/09</b>	Final date for submission of bids	Deadline for response to this RFP. All sealed bids MUST be addressed to:  Ms. Michelle Gilchrist NYSIF - Procurement Unit 15 Computer Drive West Albany, NY 12205-1690  <b>FORMAL BID</b> <b>2009-09-INV</b>  and received by 2:00 p.m. EDT Faxed/mailed bids will NOT be accepted.
8/12/09	Bid Opening	Please inform the designated contact if you wish to attend
9/2/09	Semi-finalists Interviews	Anticipated start date
9/16/09	Finalist Interviews	Anticipated start date
10/7/09	Contract Award	Subject to the required approvals

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**GENERAL INFORMATION**

**A. OVERVIEW OF NYSIF**

The New York State Insurance Fund (NYSIF) has served the people of New York State for over 90 years.

NYSIF successfully provides an uninterrupted, guaranteed source of workers' compensation insurance for thousands of New York businesses in every industry, in all market conditions, meeting the needs of employers and injured workers from one century to the next.

As envisioned and mandated by legislative foresight all these years ago, NYSIF insures every risk – from New York's "mom and pop" stores, to crews who maintain the spans across our many waterways, to contractors who help build our towns and cities.

As New York State implements legislative and regulatory changes brought about by the historic workers' compensation reforms passed in 2007, we are continuing to move forward by shaping a better, more affordable workers' compensation system for all New Yorkers.

Through experience and adaptation, NYSIF continues to respond to the challenges facing New York State's employers and workforce with programs aimed at reducing workers' compensation costs, promoting workplace safety, and developing resources to help more effectively serve businesses and workers in the 21<sup>st</sup> century.

Workers' compensation is an important part of the economic structure of New York. Through decades of prudent leadership, NYSIF remains an integral part of the New York workers' compensation system.

**B. INQUIRIES/ISSUING OFFICE/DESIGNATED CONTACT**

All inquiries concerning this solicitation will be addressed to the following Designated Contact:

Michelle Gilchrist  
Purchasing Agent  
Phone: (518) 437-4230  
Fax: (518) 437-4209  
Email: [mgilchri@nysif.com](mailto:mgilchri@nysif.com)

All **questions** should be submitted in writing (via e-mail), citing the particular bid section and paragraph number. Prospective Bidders should note that all clarifications and exceptions, including those relating to the terms and conditions of the contract, are to be submitted prior to the submission of a bid. Answers may be included in a bid addendum.

Only questions received during the Question and Answer period (as outlined in the RFP Calendar) will be addressed. **All questions relating to this RFP or contract process should be addressed to one the designated contact. Questions should be submitted in writing via e-mail, citing the particular section/paragraph. No telephone questions will be answered. Questions and answers will be posted on NYSIF's website.**

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**GENERAL INFORMATION**

All amendments, clarifications and any announcements related to this procurement will be posted on the NYSIF's website at: [www.nysif.com/procurement](http://www.nysif.com/procurement).

It is the responsibility of the Bidder to check the website for any amendments, clarifications or updates. All applicable amendment information must be incorporated into the Bidder's proposal. Failure to include this information in your proposal may result in the Bidder's proposal being deemed non-responsive.

**C. PURPOSE OF THIS RFP**

NYSIF is seeking investment management firms specializing in creating discretionary "emerging" manager of manager programs (later defined) focused on active US domestic equity investment managers. For purposes of this RFP, the products must be benchmarked against a US equity index that is equivalent to any of the following: S&P 500 Index, Russell 1000 Index, Russell 3000 Index, or Wilshire 4500 Index. The products should have a track record of at least 3 years.

The expected mandate size is \$150,000,000. NYSIF reserves the right to contract with one or multiple investment managers of managers ("Managers") for the mandate or none. NYSIF reserves the right to change mandate size at any time.

*The service must be provided through a separate account structure.* Managers will be required to sign a contract materially similar to that in Appendix C. A more complete description of the investment management services sought is provided in the following sections. Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

**D. BIDDERS' CONFERENCE**

**No Bidder's Conference will be held regarding this RFP.** Prospective Bidders may submit questions prior to the due date listed in this RFP.

**E. DUE DATE**

The due date for submission of proposals is 8/12/09, 2:00 p.m. EDT.

**F. CONTRACT TERM**

A three (3) year contract, with 2 one-year extension options, covering services requested in this RFP is anticipated.

**G. INSURANCE REQUIREMENTS**

Prior to the commencement of the work to be performed by the successful Bidder, the Contractor shall file with NYSIF, Certificates of Insurance evidencing compliance with all requirements contained in this RFP. Acceptance and/or approval by NYSIF of such certificates do not and shall not be construed to modify the requirements of this RFP or relieve Contractor of any obligations, responsibilities or liabilities under the awarded Contract.

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**GENERAL INFORMATION**

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers authorized to do business in New York State, and acceptable to NYSIF; shall be primary and non-contributing to any insurance or self insurance maintained by NYSIF; shall be endorsed to provide written notice be given to NYSIF at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent in accordance to the 'Notice' provision of the Agreement and shall name NYSIF, its Commissioners, officers, agents, and employees as additional named insureds thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 26 11 85**)

The Contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by NYSIF. Such approval shall not be unreasonably withheld.

If NYSIF allows subcontracting, the Contractor shall require that any subcontractors hired, carry insurance with the same certificate requirements, limits and other provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the NYSIF and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply NYSIF updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence, with a limit of not less than \$2,000,000 aggregate. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
2. Professional Liability Insurance, covering actual or alleged negligent acts, errors or omissions committed by the Contractor, its agents or employees, arising out of the work performed

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**GENERAL INFORMATION**

under this Agreement. The policy coverage shall extend to include bodily injury and property damage from negligent performance of professional services and personal injury liability coverage for claims arising out of performance of services. The policy shall have limits of liability of not less than \$1,000,000 per claim. The Contractor shall be responsible for payment of all claim expenses and loss payments with the deductible.

3. Crime Insurance, including Fidelity Bond coverage in the amount not less than \$500,000 including employee dishonesty coverage on money, securities or property other than money and securities including contract and temporary, whether identified or not, acting alone or in collection with others.

**Waiver of Subrogation.** Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against NYSIF, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against NYSIF or (ii) any other form of permission for the release of NYSIF.

Awarded Contractor shall furnish evidence of all policies to NYSIF, before any work is started. Certificates of Insurance may be supplied as evidence of such aforementioned policies; however, if requested by the Agency, the Contractor shall deliver to NYSIF within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted it must: (2) be signed by an authorized representative of the insurance carrier or producer and notarized; (2) disclose any deductible, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (3) indicate the Additional Insurers and Named Insureds as required herein; (4) reference the Agreement by number on the face of the certificate; and (5) expressly reference the inclusion of all required endorsements.

If, at any time during the term of this Agreement, insurance as required is not in effect, or proof thereof is not provided to NYSIF, NYSIF shall have the option to: (i) direct the Contractor to suspend work with no additional cost or extension of time due on account thereof, or (ii) treat such failure as a breach in contract.

**H. MINORITY AND WOMAN OWNED BUSINESS ENTERPRISE PARTICIPATION**

It is the policy of NYSIF to encourage the greatest possible participation by Minority and Women-Owned Business Enterprises (M/WBEs) as bidders, subcontractors and suppliers on its procurement contracts, consistent with New York State laws. NYSIF has established the following M/WBE goals for this contract. Goals are applicable to the total contract price / fees.

By resolution of the Board of Commissioners of NYSIF, NYSIF has established a minimum goal of 20% M/WBE participation for investment manager services. By signing this proposal or contract, successful Bidders certify they will make reasonable efforts to encourage the participation of M/WBE enterprises as suppliers, subcontractors and brokers. Successful Bidder(s) are expected to make a good faith effort to ascertain a minimum goal of 20%

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**GENERAL INFORMATION**

participation of M/WBE brokers, subcontractors and suppliers. These efforts are to be documented and provided to NYSIF quarterly, or upon request. NYSIF may impose sanctions if the successful Bidder fails to demonstrate good faith efforts for M/WBE participation.

**I. POLICY GUIDELINES AND RESTRICTIONS**

The Contractor(s) shall be responsible for reviewing and agreeing to adhere to the NYSIF Investment Policy Statement (IPS) and associated exhibits in Appendix P of this RFP and any legislative requirements imposed upon the types of securities in a successful Bidder's portfolio. Such restrictions include, but are not limited to, the investment in equity securities (common and/or preferred shares) of solvent American companies rated A- or better by at least one of following rating agencies: Moody's, Standard & Poor's, or Fitch.

NYSIF's policy defines "emerging" managers as follows:

1. Registered under the Investment Advisors Act of 1940 or has an exemption (and will maintain such registration or exemption)
2. Total assets under management of less than \$2 billion at the time of the search
3. A measureable track record for the product under consideration or for a product with a similar investment philosophy and process as the product under consideration. A Manager-of-Manager will determine the appropriate length of time.
4. Portfolio manager(s) with a minimum two-year track record directly or indirectly attributable to that portfolio manager(s) in an investment style and process similar to that which is under consideration
5. Historical performance must be CFA Institute compliant.

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**TECHNICAL SPECIFICATIONS**

Bidders should carefully review the instructions; mandatory requirements, specifications, and contract set out in this RFP, and promptly notify the Designated Contact identified in Section I-B (via e-mail) of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this RFP. This should include any terms or requirements within the RFP that either preclude the Bidder from responding to the RFP or add unnecessary cost. **This notification must be accompanied by an explanation and suggested modification and be received by the final date for Bidder inquiries, as noted in the RFP Calendar.**

NYSIF will make and communicate any final determination of changes to the RFP.

**A. BACKGROUND**

NYSIF has investment management responsibility for \$12.1 billion. NYSIF has contracted with J.P Morgan to provide custodial services, securities accounting, securities lending, and performance and analytical services. NYSIF's Investment Consultant is R.V. Kuhns & Associates. NYSIF's most recent Annual Report is available at its website [www.nysif.com](http://www.nysif.com).

The fundamental principle in determining NYSIF's investment strategy and risk tolerance is to ensure fulfillment of NYSIF's statutory mission. The emerging manager program is established to accomplish this mission by identifying and hiring investment managers deemed emerging as defined in Section I-I that meet or exceed risk-adjusted return expectations set forth for all investment managers. By identifying and gaining early access to talented investment managers in their nascent business stages, NYSIF strives to generate superior performance and further diversify NYSIF's overall investment program.

**B. SERVICES SOUGHT**

1. **Investment Organization.** Professional investment firms with specific expertise in actively managing emerging investment manager of managers programs focused on US equity investments and related client services.
2. **Investment Objective.** To achieve investment returns "net of fees" exceeding the appropriate broad market US index and achieve above average peer group rankings over a full market cycle.
3. **Investment Restrictions.** Contactor(s) is responsible for implementing and monitoring its investment duties pursuant to NYSIF's legal requirements as outlined in the Investment Policy Statement, Exhibit A – Securities Guidelines, which is located in Appendix P of this RFP. Primary among these Guidelines is that the investment managers selected by the Contractor may only invest in the equity securities (common and/or preferred shares) of solvent American companies which have been given the highest quality designation by the Securities Valuation Office of the National Association of Insurance Commissioners or are rated A- or better by at least one of following rating agencies: Moody's, Standard & Poor's, and Fitch. In addition, Contractor may not invest in non-U.S. domiciled companies. Bidders should review the Investment Policy Statement and associated exhibits for a complete understanding of NYSIF investment regulatory requirements.
4. **Investment Duties.** To create and manage a **separate account** consisting of investment

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**TECHNICAL SPECIFICATIONS**

managers who invest in US equity securities which meet the objectives of this RFP. Contractor agrees to have a representative attend at least one NYSIF meeting per year (in person) as requested by staff, as well as one additional meeting with NYSIF staff at the offices of NYSIF, or at some other agreed-upon location, at such time as requested by NYSIF staff. Contractor agrees to assist NYSIF and staff by providing general information on subjects related to “emerging” managers, as requested. Contractor agrees to work cooperatively with NYSIF’s custodian and investment consultant.

5. **Report to NYSIF.** Contractor shall furnish an electronic performance report monthly to NYSIF, listing the market values by sub-manager and in aggregate and the rates of returns of the sub-managers and their respective benchmarks and the aggregate account and its benchmark. Contractor shall oversee reconciling the asset statement by shares between the sub-manager and the Custodial Bank’s records and provide NYSIF with a reconciliation statement and a list of discrepancies. Contractor shall also report performance, characteristic and risk attributes to NYSIF on a monthly basis.

Contractor shall have four quarterly meetings, a reasonable time after calendar quarter end. Three of the meetings may be conference calls, but one must be at NYSIF’s New York City office, in which the Contractor’s investment staff is mandatory.

6. **Contract Manager.** NYSIF’s Chief Investment Officer will serve as the Contract Manager and in that role will be responsible for:
- a) monitoring Contractor progress against contractual commitments
  - b) approving Contractor payment; and
  - c) selecting specific NYSIF staff for day-to-day liaison with Contractor.

**C. MINIMUM REQUIREMENTS**

As of May 1, 2009, candidate firms must satisfy the minimum requirements as outlined below in order to be considered for contract award:

1. Bidder must agree to provide the minimum investment management services and each of the investment products detailed in the “Services Sought” section, as well as all other requirements stated in this RFP.
2. Bidder must certify in writing to that it will act as a fiduciary when performing these services.
3. Firms offering to provide manager of managers services must have at least three (3) years of performance history (including a model/pro forma account of prior documented decisions) for investments benchmarked against the Index for which they are proposing to manage NYSIF funds.
4. The lead portfolio manager(s) assigned to NYSIF’s account must have had at least three (3) years experience managing manager of managers programs against the Index for which the firm is proposing to manage NYSIF funds.
5. The firm must be a U.S Securities and Exchange Commission-Registered Investment Advisor

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**TECHNICAL SPECIFICATIONS**

- or an advisor exempt from registration (Form ADV, Parts 1 and 2, or disclosure of the exemption must be submitted).
6. The firm and its personnel must have all authorizations, permits, licenses, and certifications as may be required under federal, state or local law to perform the services specified in this RFP at the time it submits a response to the RFP.
  7. The firm must comply with all applicable CFA Institute performance presentation standards.
  8. The firm must maintain sufficient procedures and capabilities to ensure the timely and accurate backup and full recovery for all computers and other data storage systems related to NYSIF's accounts.
  9. The firm must have policies and practices of equal employment opportunity and non-discrimination based on race, creed or gender.
  10. The key professionals and/or organization of the manager of managers must not have, nor could they potentially have, a material conflict with NYSIF, its Investment Consultant, or its Custodial Bank.
  11. The manager of managers should be willing to enter into a contract with NYSIF upon selection. The material terms, conditions, and approach to the contract shall be based on the contract provided as Appendix C. (It is recommended that the Bidder have their legal representative review the contract format upon notification of being selected as a finalist.) Please note that all sub-managers will be expected to enter into a contract with NYSIF, subject to the terms and conditions of the contract also provided as Appendix C.
  12. The firm must demonstrate an existing Minority or Women-Owned Business Enterprise (M/WBE) program which promotes business opportunities for women and/or minorities, consistent with the program administered by Empire State Development (<http://www.nylovesmwbe.ny.gov/index.htm>)
    - a. List, maintain and forward a record of all solicitations and offers for all sub-consultants and suppliers for the contract. Include circulation of solicitations to Minority and Women Business Associations, Minority and Women Media Publications, and other businesses and organizations. List the efforts undertaken to subdivide portions of the work into smaller components in order to increase certified M/WBE participation. List any information relating to your firm's efforts to assist the formation of joint ventures in order to increase certified M/WBE participation.
    - b. List resources used in identifying certified M/WBEs. Did the firm utilize the Directory of Certified Minority and Women-Owned Businesses as a resource document in meeting its participation goals? Did the firm seek additional assistance from the Division of Minority and Women Business Development?
    - c. List any special considerations and/or concerns which are preventing adequate M/WBE participation.
    - d. Provide any information attesting to your participation at the following meetings:

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**TECHNICAL SPECIFICATIONS**

- i) The Minority Business Leadership Council & Member Organization Events
- ii) State procurement conferences and workshops
- iii) Workshops for small and minority businesses
- iv) Similar organizational efforts to establish contracts and working relationships within the NY State business community.

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**BID/PROPOSAL FORMAT**

**IMPORTANT NOTICE TO POTENTIAL BIDDERS:** Receipt of these bid documents does not indicate that NYSIF has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.

The following procedures shall be used for bid submittals:

**A. BID PREPARATION**

- For any Appendices that must be completed and returned, please use the forms provided.
- Proposals and other forms must be signed by an official of your firm authorized to sign contracts and bind the firm.
- The *Fee Schedule Proposal* should be separately bound and placed in a sealed envelope. No references to costs are to be included in the detailed proposal.
- Bidders must respond to each and every item stated in the Bid Format section.
- Bidders must list and clearly explain any and all exceptions and/or alternatives and/or caveats to any item contained in this RFP in the *Comments and Limitations* section of their Proposal.

A proposal that does not comply with the requirements and that does not include all the information requested may be negatively affected in the overall evaluation and may be subject to rejection.

**B. BID FORMAT**

- Submission must include **one (1) hard copy** of the proposal, organized as outlined below, with original signatures. Submission must also include **two (2) electronic copies** (CD/DVD-ROM) of the proposal. Please do not submit proposals in binders. Rubber bands or large binder clips are preferred.
- Bids/Proposals are to be submitted with each numbered item listed in Section III-B below as a separate section. Each proposal must follow the format and order defined below, starting with the *Title Page* and *Table of Contents*.
- Appendix Z, the *Fee Schedule Proposal*, should be in a separate sealed envelope and included with the proposal.

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**BID/PROPOSAL FORMAT**

**PLEASE PROVIDE THE INFORMATION IN THE SAME ORDER IN WHICH IT IS REQUESTED.  
USE THE FOLLOWING FORMAT AS YOUR TABLE OF CONTENTS.**

**NOTE: Each item must be thoroughly addressed. Bidders taking exception to any requirements in this section may be found non-responsive or be subject to point deductions.**

1. Title Page and Table of Contents

The *Title Page* should identify the RFP for which the proposal is being submitted; the Bidder's name; and the name, address and telephone number of the Bidder's contact person(s).

The *Table of Contents* should identify each numbered section of the proposal, according to this proposal format.

2. Transmittal Letter

A transmittal letter, which shall be considered an integral part of the proposal, shall be signed by the individual or individuals authorized to bind the firm contractually. An unsigned proposal may be rejected. The letter shall include the following:

- a. Transmittal letter must indicate the signer is so authorized to sign the proposal and the contract, and must include the title or position the signer holds in the Bidder's firm. If the signer is not the contact person identified on the title page, also include the address and telephone number of the authorized signatory.
- b. A statement that the Bidder is in compliance with or meets all Bidder Certification Requirements (Appendix B, #38).
- c. A statement that the Bidder will act as a fiduciary when performing the services.
- d. A statement that the Bidder has reviewed and agrees to adhere to the NYSIF Investment Policy Statement (IPS) and associated exhibits (Appendix P) and any legislative requirements imposed upon the types of securities in a successful Bidder's portfolio.
- e. A statement as to the willingness of the Bidder's firm to enter into a contractual agreement containing, at a minimum, those terms and provisions identified in this RFP. **Any exceptions to these terms and conditions must be explicitly stated in a separate section of the proposal.**

3. Company Background

Provide a background description of the Bidder's firm, including, but not limited to, the date the company was organized, and, if a corporation, when and where incorporated.

Include the size and number of staff in the company. Briefly describe any prior experience in performing similar assignments, particularly experience with public funds and insurance companies, and Bidder's staffing capability and competency to complete the work within established deadlines. Include the following information for the Bidder:

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**BID/PROPOSAL FORMAT**

- a. Other city, state or federal government agencies *previously* under contract with the Bidder's firm within the last five (5) years.
  - b. Other city, state or federal government agencies *currently* under contract with the Bidder's firm.
  - c. If requested, Bidder must be financially stable and able to substantiate the financial statements of its company. Current financial statements may be requested and must be provided within five (5) business days. NYSIF reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services. NYSIF reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this bid.
4. Services Sought
- If no explanation or clarification is required in the Bidder's response for this section, the Bidder shall indicate so in the point-by-point response for the entire section with the following statement: **"(Bidder's Name)" understands and will comply.** (Details of each item are found Section II-B.)
- a. Investment Organization
  - b. Investment Objective
  - c. Investment Duties
  - d. Report to NYSIF
  - e. Contract Manager
5. Technical Experience / Description of Proposed Services
- In order for NYSIF to determine the capabilities of a Bidder to perform the services specified in Section 3 above, the Bidder must respond to the following requests for information regarding its ability to meet NYSIF's requirements. **THE RESPONSE "(BIDDER'S NAME) UNDERSTANDS AND WILL COMPLY" IS NOT APPROPRIATE FOR THIS SECTION.**
- a. Describe your firm's definition of an "emerging" manager mandate for an unrestricted client portfolio.
  - b. What in general is the representation of minority and women owed entities in the emerging managers' universe and within your client programs?
  - c. Explain how your firm can accommodate client-specific investment restrictions? What impact will that have on the investible universe of managers?

**BID/PROPOSAL FORMAT**

6. Questionnaire

**Section A – Organizational Background**

1. When was your firm established? Describe the ownership structure of your firm, including the names of the top 50% owners of the firm. Identify affiliated or subsidiary organization(s).
2. Within the past three (3) years, have there been any significant developments in your organization (changes in ownership, personnel reorganization, new business ventures, etc.)? If so, please describe. Provide detail on the effects such developments have had on resources. Do you expect any changes over the next five (5) years?
3. Over the past three (3) years, has your organization or any officer or principal been involved in any litigation or other legal proceedings relating to your investment activities? If so, provide a brief explanation and indicate the current status.
4. Is your firm registered with the Securities Exchange Commission or a state authority?

**Section B – Professional Staff**

5. List your firm’s key professionals in the format provided below. Identify with an asterisk (\*) those who will be assigned to NYSIF’ account. In an Attachment to this questionnaire, provide a detailed biography, description of present responsibilities, the number of accounts and total assets being managed for each person identified.

Name	Title/Role	Years of Investment Experience		Credentials
		Firm	Industry	

6. Provide a brief description of your firm’s compensation arrangements for investment professionals (e.g., salary, bonus, group/individual performance incentives, profit sharing, equity ownership, etc.).
7. Please list all additions and departures of professional staff over the past three (3) years.

Name	Title/Role	Hire Year	Departure Year	Reason

**Section C – Accounts and Assets under Management**

8. What are your total assets currently under management as of March 31, 2009? Provide

**BID/PROPOSAL FORMAT**

a breakdown by number of accounts and assets (\$MM) for separate accounts versus commingled funds. Provide a similar breakdown of accounts by benchmark (i.e., S&P 500, Russell 3000, equity & fixed income blended benchmark, etc.).

9. Please indicate the number of equity accounts and amount of assets gained or lost for the periods listed below:

	Accounts Gained		Accounts Lost	
Date	Number	\$ Million	Number	\$ Million
2005				
2006				
2007				
2008				
2009 (YTD)				

10. What is the size of your largest separate account?
11. Provide a list of investment managers currently under contract with your firm, indicating the investment style(s) of the product(s) in which assets are invested. Please specify which of these managers meet NYSIF's definition of an emerging manager.

**Section D – Investment Strategy and Process**

12. Describe in detail your firm's due diligence process prior to investment.
13. Provide detailed criteria for the inclusion and removal of managers in your program. List those features that you believe distinguishes your investment approach from your competitors.
14. Describe the process by which you structure programs for your clients. Please explain how the manager selection and manager structure aspects of your process are combined. Include a detailed explanation of how you intend to comply with the NYSIF Securities Guidelines, Exhibit A in Appendix P.
15. How do you select/structure benchmarks for investment managers?
16. How do you evaluate and validate investment managers' returns?
17. Describe your firm's research capabilities.
18. Please describe your emerging manager database with an emphasis on the number of managers included, how managers are identified for inclusion in the database and the extent of familiarity your firm has with the managers in the database.
19. Approximately how long would it take to structure NYSIF's emerging manager program? Approximately how long would it take for the underlying managers to invest

**BID/PROPOSAL FORMAT**

NYSIF’ assets?

**Section E – Portfolio Management**

20. How do you rebalance portfolios in the fund of funds? What triggers rebalancing? What tools do you use to determine reallocation of assets?
21. How does your firm handle emerging managers who grow their assets to such an extent that they no longer meet your client’s definition of an “emerging” manager?
22. Describe your process and the tools you use for monitoring the managers including structure, style consistency, and changes to the investment process.
23. How do you measure and monitor risk, ensuring that risk parameters are in line with portfolio returns?
24. What is the turnover of managers (number and percentage) with whom your firm contracted services in the proposed product?

	Additions	Graduations	Terminations	Mgrs at Yr-End
2005				
2006				
2007				
2008				
2009 YTD				(YTD)

25. Please characterize the anticipated tracking error of your proposed product relative to the benchmark/index.

**Section F – Returns**

26. Please provide quarterly performance in an excel spreadsheet for entire history ending March 31, 2009 for the investment style being proposed in this questionnaire. Please note if the returns are for a separate account, commingled account, or composite. If a composite is used, provide equal-weighted results; identify the number of accounts included; and the annual performance of the best and worst accounts. In addition, provide the market value for each year, ending December 31, 2008, while identifying the benchmark and the benchmark return. If the number of accounts used in the composite is different from the number of equity accounts identified in the “Accounts and Assets under Management” section of this questionnaire, please explain why certain accounts were excluded. Please note if returns are net or gross of fees (gross preferred), and if they are CFA Institute GIPS compliant.

**Section G – Client Servicing and References**

27. Describe your firm’s capabilities for providing customized reports.
28. Please list three (3) clients as references for whom you have provided equity

**BID/PROPOSAL FORMAT**

management in the proposed investment category. Include client name, address, name and telephone number of contact person, and portfolio size. Please list two (2) clients for whom you no longer provide emerging manager services.

Client Name and Address	
Contact Name and Title	
Contact Phone Number and Email	
Client Inception Date	
Portfolio Mandate and Size	

7. Statement of Competing Commitments

Each Bidder must provide a *Statement of Competing Commitments*, a list of any contractual obligations they have entered into which requires effort on the part of their key personnel during the period in which these personnel will be working on the contract resulting from this RFP.

8. Comments and Limitations

Any exceptions, caveats or additional information to the Bidder's responses to specifications in this RFP must be listed, cross referenced to the response to which it applies and clearly explained. No comments, limitations or changes are permitted with respect to any of the terms and conditions contained in Appendix A, *Standard Clauses for New York State Contracts*

9. Appendices

The following appendices must be completed and returned with your proposal:

- ***MacBride Questionnaire, Appendix***
- ***Vendor Rep Questionnaire, Appendix***
- ***Bidder Questionnaire, Appendix***
- ***Procurement Lobbying Legislation, Appendix***
- ***Bidder and Subcontractor Offices in New York State, Appendix***
- ***Statement of Non-Collusion, Appendix***
- ***Fee Schedule Proposal, Appendix Z*** The *Fee Schedule Proposal* must be bound and placed in a sealed envelope separately and **enclosed** with the Proposal

10. SEC Registration

Form ADV, Parts 1 and 2 (or disclosure of exemption) must be submitted.

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**BID/PROPOSAL FORMAT**

**C. BID DELIVERY**

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to NYSIF prior to the date of the bid opening. LATE BIDS will be rejected. E-mail and faxed bid submissions are not acceptable and will not be considered.

- Bids shall be delivered to:

Ms. Michelle Gilchrist  
NYSIF - Procurement Unit  
15 Computer Drive West  
Albany, NY 12205-1690

- The package MUST be clearly marked as follows:

**FORMAL BID**  
**2009-09-INV**

- *No Bid* responses may be returned via email ([mgilchri@nysif.com](mailto:mgilchri@nysif.com)), fax (518-437-4209) or via regular mail (address above).
- Those firms which are not submitting a proposal but wish to remain on NYSIF's Bidders' list must submit the *No Bid* form. (Firms submitting bids are **not** required to return this form.) All Bidders who do not submit either a bid/proposal or a *No Bid* form will be removed from NYSIF's Bidders' list for all future solicitations.

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**METHOD OF EVALUATION/CRITERIA**

The award will be made on the basis of best value (the proposal which optimizes quality, cost and efficiency) to the responsive and responsible Bidder, as determined in the evaluation process. The contract will not be awarded solely on the basis of low bid. However, the Bidder with the low bid may be awarded the contract if it provides the best value, as defined above.

All proposals received will be reviewed and evaluated. The award(s) will be made to the Bidder whose proposal receives the highest overall evaluation score based on the criteria stated herein.

Bidders may be requested by NYSIF to clarify the contents of their proposals. Other than to provide such information as may be requested by NYSIF, no Bidder will be allowed to alter its proposal or add new information after the final filing date and time.

**A. EVALUATION CRITERIA – OVERVIEW**

The ability to perform the requested services is most important in evaluating proposals. The evaluation criteria are listed below in order of importance to NYSIF.

1. Capability of Bidder
2. Total cost to NYSIF

In addition, proposals will be evaluated for existing or potential conflicts of interest, for financial and operational stability, for adequacy and completeness, and to determine that all requirements of the RFP have been met. NYSIF reserves the right to disqualify a Bidder if, in NYSIF's sole opinion, the proposal does not pass the evaluation for any or all of the evaluation criteria.

**B. METHODOLOGY**

The evaluation committee will evaluate the proposals in a three-step process. Semi-finalists will be chosen based on a maximum possible value of 100 points for Step One. Once semi-finalists are chosen, they will move on to Step Two for a maximum possible value of 100 points (which includes points for fees/costs). Points from Step One will not be added to points for Step Two to choose finalists. Once the finalists are chosen, they will move on to Step Three for a maximum possible value of 100 points. The awarded finalist(s) will be chosen solely on the scores received in Step Three.

Step One will consist of a scored process based on the submitted proposals as described in Section C below.

Step Two will consist of interviews by the semi-finalists as described in Section D below. Costs will also be evaluated at this step, and combined with the technical scores to determine finalists.

Step Three will consist of interviews by finalists as described in Section E below.

**Scoring:**

In awarding points to the evaluation criteria, the evaluator/evaluation committee will consider the following guidelines:

**Superior Response (95-100%):** A superior response is a highly comprehensive, excellent reply that meets all of the requirements of the RFP. In addition, the response covers areas not originally

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**METHOD OF EVALUATION/CRITERIA**

addressed within the RFP and includes additional information and recommendations that would prove both valuable and beneficial to the agency.

**Good Response (85-94%):** A good response meets all the requirements of the RFP and demonstrates in a clear and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

**Fair Response (60-84%):** A fair response minimally meets most requirements set forth in the RFP. The Bidder demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

**Failed Response (0-59%):** A failed response does not meet the requirements set forth in the RFP. The Bidder has not demonstrated sufficient knowledge of the subject matter.

**C. STEP ONE**

**100% of points for a possible 100 points**

<b>Criteria</b>	<b>Points</b>
Organization/Assets under Management	15
Investment Staff	20
Investment Philosophy and Process	40
Product Performance and Risk Management	25
<b>Total Points</b>	<b>100</b>

In order to progress to Step Two, a Bidder must receive a minimum score of sixty (60) points. Any proposal scored 59 or lower will be automatically disqualified from further evaluation.

The top scoring firms will advance to the next evaluation step (semi-finalists).

**D. STEP TWO**

Semi-finalists will be required to participate in an interview with the evaluation committee. This interview will be an opportunity for the semi-finalists to further define their offer based on the topics of the BID/PROPOSAL FORMAT section, item 5, including the data submitted via eVestment. This interview will be an opportunity for the evaluation committee to ask questions of the semi-finalists to allow further elucidation on these topics.

The top scoring firms will advance to the next evaluation step (finalists).

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**METHOD OF EVALUATION/CRITERIA**

Step Two will be evaluated based on the criteria set forth below:

	<b>100% of points for a possible 100 points</b>
<b>Criteria</b>	<b>Points</b>
Organization/Assets under Management	10
Investment Staff	15
Investment Philosophy and Process	35
Product Performance and Risk Management	30
Fees	10
<b>Total Points</b>	<b>100</b>

**E. STEP THREE**

Finalists will be required to participate in a second interview. This interview will be an opportunity for the finalists to further define their offer based on the topics of BID/PROPOSAL FORMAT section, item 5. The interview will be an opportunity to ask questions of the finalists to allow further elucidation on these topics. The interview will be evaluated based on the criteria set forth below.

	<b>100% of points for a possible 100 points</b>
<b>Criteria</b>	<b>Points</b>
Ability to articulate the Bidder's capabilities	60
Ability to address questions	40
<b>Total Points</b>	<b>100</b>

**Final selection will be based solely on the scores received in Step Three.**

**NYSIF reserves the right to award to one or more Bidders, or to not make an award at all.**

**F. CONTRACT APPROVAL**

The contract between NYSIF and the successful Bidder(s) will be subject to approval by the NYSIF Board of Commissioners and the NYS Insurance Department.

**RFP CHECKLIST**

**The 7 Most Critical Things to Keep in Mind When Responding to an RFP for NYSIF**

- \_\_\_\_\_ **1. Read the *entire* document.** Note critical items such as: mandatory requirements; services required; submittal dates; number of copies required for submittal; funding amount and source; and contract requirements.
- \_\_\_\_\_ **2. Note the procurement officer's name, address, phone number and e-mail address.** This is the only person you are allowed to communicate with regarding the RFP and is an excellent source of information for any questions you may have.
- \_\_\_\_\_ **3. Follow the format required in the RFP** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
- \_\_\_\_\_ **4. Provide complete answers/descriptions.** Read and answer all questions and requirements. Don't assume NYSIF or evaluator/evaluation committee will know what your capabilities are or what services you can provide, even if you have previously contracted with NYSIF. The proposals are evaluated based solely on the information and materials provided in your response.
- \_\_\_\_\_ **5. Submit one (1) hard copy and two (2) disks (CD/DVD)** containing an exact duplicate of the hard copy.
- \_\_\_\_\_ **6. Submit your response on time.** Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late bids will not be accepted.
- \_\_\_\_\_ **7. Please do not submit promotional material.** Material deemed to be promotional in nature will be discarded.

**This checklist is provided for assistance only and should not be submitted with Bid.**

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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**STANDARD CLAUSES FOR NYS CONTRACTS**

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

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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. 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.

**4. 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 because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. 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.

**5. 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.

**6. 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.

**7. 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 (2NYCRR 105.4).

**8. 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.

**9. 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.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) FEDERAL EMPLOYER IDENTIFICATION

NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 section. 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 Governor's Office of Minority and Women's Business Development pertaining hereto.

**12. 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.

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

**14. 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.

**15. 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.

**16. 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.

**17. 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 State Finance Law §165. (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.

**18. 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.

**19. 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  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

**20. 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**21. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

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**APPENDIX B1**

**GENERAL SPECIFICATIONS**

**PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE**

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**GENERAL****1. APPLICABILITY**

The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by NYSIF where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

**2. GOVERNING LAW**

This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

**3. ETHICS COMPLIANCE**

All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

**4. CONFLICT OF TERMS**

Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. Appendix A (Standard Clauses for NYS Contracts)
- b. Mini-Bid Project Definition if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
- c. Contract and other writing(s) setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
- d. Bid Documents (Other than Appendix A).
- e. Bid Specifications prepared by the Authorized User.
- f. Appendix B (General Specifications).
- g. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.
- h. Contractor's Bid or Mini-Bid Proposal.
- i. Unincorporated Appendices (if any).

**BID SUBMISSION****5. NOTIFICATION TO ALL BIDDERS**

NYSIF is responsible for providing addenda or responding to questions only from those persons or firms having obtained the Bid Documents from NYSIF. Persons or firms obtaining the Bid Documents from sources other than NYSIF bear the sole responsibility for obtaining any addenda issued, or responses to questions regarding this project. If it is necessary to revise the Bid Documents before the due date for bids, revisions will be provided only to firms who have requested the documents from NYSIF.

By submitting a bid, Bidders are certifying they are qualified to perform the proposed work. Bidders shall have the necessary staff, equipment, compliance, etc. as set forth in the Bid Documents.

**6. INTERNATIONAL BIDDING**

All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

## 7. BID OPENING

Bids may, as applicable, be opened publicly. NYSIF reserves the right at any time to postpone or cancel a scheduled Bid opening.

## 8. BID SUBMISSION

All Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their Bids to the location set forth in the Bid Specifications prior to the stated Bid opening date/time.

All Bids must have a label on the outside of the package or shipping container outlining the following information:

**BID ENCLOSED** (bold print, all capitals)  
IFB or RFP Number  
IFB or RFP Title  
Bid Submission date and time

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the receiving entity reserves the right to open the shipping package or envelope to determine the proper Bid number or Product group, and the date and time of Bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Notwithstanding the receiving agency's right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).

"No Bid" responses must also be submitted in a clearly marked, **sealed** envelope. Please use the *No Bid / Bidders' List Update* form.

Those firms that are not submitting a bid but wish to remain on NYSIF's bidders' list must submit the *No Bid/Bidders' List Update* form. (Firms submitting bids are **not** required to return this form.)

## 9. LATE BIDS

For purposes of Bid openings held and conducted by NYSIF, a Bid must be received in such place as may be designated in the Bid Documents at or before the date and time established in the Bid Specifications for the Bid opening.

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of NYSIF. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of NYSIF shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of NYSIF.

## 10. BID CONTENTS

Bids must be complete and legible. All Bids must have original signatures. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by NYSIF or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by NYSIF after the time specified for the Bid opening, may not be considered.

## 11. ERRORS AND OMISSIONS

If a bidder discovers any ambiguity, conflict, discrepancy, omission or other error in Bid Documents, immediately notify one of the Designated Contacts of such error and request the clarification or modification thereof. Notice to NYSIF of any problems described above must be made in writing and received at NYSIF on or before the date shown as the final date for bidder inquiries. Any modifications deemed necessary by NYSIF shall be given by written notice to all parties who receive the Bid Documents from NYSIF.

If a bidder fails prior to the final filing date for submission to notify NYSIF of a known error or an error that reasonably should have been known, the bidder shall assume the risk. If awarded the contract, the bidder shall not be entitled to additional compensation or time by reason of the error or its late correction.

## 12. EXTRANEIOUS TERMS

Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed “material,” shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and NYSIF or Authorized User expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

## 13. CONFIDENTIAL/TRADE SECRET MATERIALS

- a. **Contractor** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by NYSIF to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.
- b. **NYSIF** Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or NYSIF hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of NYSIF, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

## 14. RELEASE OF BID EVALUATION MATERIALS

Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to NYSIF.

## 15. FREEDOM OF INFORMATION LAW

During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to NYSIF to not

disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, NYSIF reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

NYSIF will not consider fee schedules and attachments thereto as proprietary information. As such, these documents will be subject to release under the Freedom of Information Law.

## 16. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

### a. “Public Works” and “Building Services” - Definitions

- i. **Public Works** Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.
  - ii. **Building Services** Labor Law Article 9 applies to Contracts for building service work over \$1,500 with a public agency, that: (i) involve the care or maintenance of an existing building, or (ii) involve the transportation of office furniture or equipment to or from such building, or (iii) involve the transportation and delivery of fossil fuel to such building, and (iv) the principal purpose of which is to furnish services through use of building service employees.
- b. **Prevailing Wage Rate Applicable to Bid Submissions** A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.
- c. **Wage Rate Payments / Changes During Contract Term** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.
- d. **Public Posting & Certified Payroll Records** In compliance with Article 8, Section 220 of the New York State Labor Law:
- i. **Posting** The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.
  - ii. **Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.
  - iii. **Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For “agency specific” Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the Authorized User, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services contracts.
  - iv. **Records Retention** Contractors and Subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

**Day's Labor** Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

## 17. TAXES

- a. Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.
- b. Purchases made by NYSIF are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by NYSIF or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.
- c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.

## 18. EXPENSES PRIOR TO CONTRACT EXECUTION

NYSIF is not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid or best and final offers or for any work performed prior to Contract execution.

## 19. ADVERTISING RESULTS

The prior written approval of NYSIF is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of NYSIF relative to the Bid or Contract for press or other media releases.

## 20. PRODUCT REFERENCES

- a. "**Or Equal**" In all Bid Specifications the words "or equal" are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. NYSIF's decision as to acceptance of the Product as equal shall be final.
- b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

## 21. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS

Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

**22. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS**

Bids offering Products that are manufactured or produced in public institutions will be rejected.

**23. PRICING**

- a. **Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of NYSIF, such unit pricing is obviously erroneous.
- b. **Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.
- c. **“No Charge” Bid** When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid “no charge” on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of NYSIF.
- d. **Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to NYSIF.
- e. **Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of NYSIF, shall be immediately reduced to the lower price.
- f. **Price Decreases** Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:
  - i. **GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or
  - ii. **Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor’s list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; orUnless otherwise specified in the Bid Specifications, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) without being in conflict with, or obligation to comply on a global basis, with the terms of this clause.
- g. **Best and Final Prices** As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

**24. DRAWINGS**

- a. **Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by NYSIF, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.
- b. **Drawings Submitted During the Contract Term** Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Commissioner’s representative.
- c. **Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

**25. SITE INSPECTION**

Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

**26. SAMPLES**

- a. **Standard Samples** Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by NYSIF and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Specifications.
- b. **Bidder Supplied Samples** NYSIF reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.

A sample may be held by NYSIF during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct NYSIF as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

- c. **Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, NYSIF may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- d. **Conformance with Sample(s)** Submission of a sample (whether or not such sample is tested by, or for, NYSIF) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of NYSIF the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, NYSIF may reject the Bid. If an award has been made, NYSIF may cancel the Contract at the expense of the Contractor.
- e. **Testing** All samples are subject to tests in the manner and place designated by NYSIF, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor.

**BID EVALUATION****27. BID EVALUATION**

NYSIF reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if NYSIF determines the best interests of the State will be served. NYSIF, in its sole discretion, may accept or reject illegible, incomplete or vague Bids and its decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.

**28. CONDITIONAL BID**

Unless the Bid Specifications provides otherwise, a Bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

**29. CLARIFICATIONS / REVISIONS**

Prior to award, NYSIF reserves the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Bid.

**30. PROMPT PAYMENT DISCOUNTS**

While prompt payment discounts will not be considered in determining the low Bid, NYSIF may consider any prompt payment discount in resolving Bids which are otherwise tied. However, any notation indicating that the price is net, (e.g., net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11-A of the State Finance Law, which are applicable in any case, may render the Bid non-responsive and may be cause for its rejection.

**31. EQUIVALENT OR IDENTICAL BIDS**

In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of NYSIF to award a Contract to one or more of such Bidders shall be final.

**32. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS**

NYSIF reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by NYSIF, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid. If NYSIF determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, NYSIF may reject such Bid or terminate the Contract.

**33. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY**

Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or contracts or is deemed non-responsive.

**34. QUANTITY CHANGES PRIOR TO AWARD**

NYSIF reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

**35. TIMEFRAME FOR OFFERS**

NYSIF reserves the right to make awards within one hundred eighty (180) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Pursuant to Section 163(9)(e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the one hundred eighty (180) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to NYSIF written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of NYSIF, be accepted or rejected.

ADMINISTRATIVE**36. NYSIF PREROGATIVES**

The contract award is subject to the availability of funds. Moreover, NYSIF is not liable for any costs incurred by any firm for work performed to prepare its proposal or for any travel and/or other expenses incurred in the preparation and/or submission of its proposal or with respect to any presentation/interview that may be required by NYSIF. Further, NYSIF is not liable for any costs incurred by the successful Offeror for services performed or costs incurred until the contracting process has been completed and all required approvals obtained.

NYSIF reserves the right to exercise the following:

- a. Reject any or all bids received in response to the solicitation.
- b. Adjust or correct any arithmetical error in the bid and so notify the Bidder.
- c. Waive or modify minor irregularities in bids received after prior notification to the Bidder.
- d. Adopt as NYSIF property all submitted bids and to use any portions thereafter which are not specifically noted as proprietary by the submitting firms.
- e. Change the bid due date.
- f. To not award a contract.
- g. Cancel or limit the scope of the contract for any reason.
- h. Accept or reject any of the Bidder's employees assigned to this contract and to require their replacement at any time.
- i. Consider modifications to bids at any time before the award is made, if such action is in the best interest of NYSIF.
- j. Amend and modify the RFP specifications after their release and so notify all Offerors.
- k. Negotiate with Offerors to serve the best interests of the State.
- l. Accept a bid for the contract other than the lowest cost.
- m. Begin contract negotiations with another Bidder in order to serve the best interest of the State of New York in the event that the State is unsuccessful in negotiating a contract with the selected Bidder.
- n. Split the contract between several Offerors.
- o. Eliminate mandatory requirements unmet by all Offerors.
- p. Reject all bids which do not comply with the bid specifications. However, NYSIF may elect to award to the Bidder who receives the highest overall combined evaluation score providing that the Bidder's non-compliance is deemed by NYSIF to be non-material to overall performance of the services.
- q. Review Bidder's records used in determining bid.
- r. Require the Bidder to demonstrate to the satisfaction of NYSIF any feature(s) presented as a part of its bid.
- s. Make inquiries, at NYSIF's discretion and by means which it may choose, into the Bidder's background or statements made in the bid to determine the truth and accuracy of all statements made therein.
- t. After an unsuccessful attempt to speak with the contact person noted on the reference form, survey another person knowledgeable and familiar with the Bidder from the submitted reference due to time constraints.
- u. Invalidate an Bidder's scores at any time during the evaluation process if the Bidder's bid is deemed non-responsive or is disqualified.
- v. Evaluate, accept and/or reject any and all bids, in whole or in part, and waive technicalities, irregularities and omissions if, in NYSIF's considered judgment, the best interests of NYSIF will be served. Separable portions of offers may also be accepted or rejected. In the event compliant bids are not received, NYSIF reserves the right to consider late or non-conforming bids as offers.
- w. In any case where a question of non-performance of a contract arises, payment may be withheld in whole or in part at the discretion of NYSIF. Should the amount withheld be finally paid, a cash discount originally offered may be taken by NYSIF as if no delay in payment had occurred.
- x. Submission of an invoice and payment, or electronic transmission, thereof by NYSIF shall not preclude NYSIF from reimbursement or demanding a price adjustment in any case where the service delivered is found to deviate from the terms and

conditions of the bid and award documents. Any delivery made which does not meet such terms and conditions may be rejected, or accepted on an adjusted price basis as may be determined by NYSIF.

- y. If a contract is not approved by the State Comptroller, or if a contract is awarded but terminated within 120 days, NYSIF reserves the right to contract with the next lowest bidder (IFB)/next highest ranking offer (RFP).

### 37. NEW YORK STATE PROCUREMENT RIGHTS

To enable the State to acquire commodities, technology and services at the lowest price or best value from responsible and responsive bids, the State reserves the rights to:

- a. Define requirements to meet Agency needs and to modify, correct and clarify requirements at any time during the process provided the changes are justified and maintain fairness in contracting with the business community;
- b. Accept and/or reject any or all bids, and waive technicalities or portions of the bids in the best interest of the State;
- c. Establish terms and conditions which must be met by all bidders and/or, where permitted by the solicitation, eliminate mandatory requirements that are not met by any bidder;
- d. Establish, where permitted by solicitation, conditions under which the scope of the contract can be expanded and criteria for price increases or decreases during the contract period;
- e. Award contracts for any or all parts of the bid solicitation in accordance with the Method of Award;
- f. Consider every bid as firm and not revocable for a period of up to one hundred eighty (180) days from the bid opening or such other period of time specified in the solicitation. Subsequent to such one hundred eighty (180) day or other specified period, a bid may be withdrawn in writing.
- g. Have the option to require a bond or other guarantee of performance, and to approve the amount, form and sufficiency thereof.

### 38. BIDDER CERTIFICATION REQUIREMENTS

Any company submitting a bid in response to this solicitation *must certify in writing* acceptance of the following contract conditions which relate to consideration of the bid:

- a. NYSIF reserves the sole right of judgment and acceptance of a company's written bid.
- b. The submitted bid must remain in effect for one hundred-eighty (180) days from the bidding deadline. However, a non-successful bidder may withdraw its bid any time after the selection of the successful bidder, upon written notice to NYSIF. Bidders whose bids have been rejected by NYSIF shall be notified of such rejection.
- c. Compensation shall be paid by the State of New York, in accordance with the standard payment practices of the State of New York.
- d. The bidder certifies that, if selected, all services described in the bid document can and will be provided.
- e. The successful bidder agrees to submit an Equal Employment Opportunity Policy Statement and Staffing Plan to NYSIF, upon request, as outlined under Participation of New York State Business Enterprises.
- f. The bidder warrants that, if selected, it will not delegate, assign, encumber or subcontract, in whole or in part, its agreement and/or its responsibilities under the contract without prior written approval from NYSIF.

For any bid that includes services to be provided by subcontract with a third party, the bidder will be responsible for the conduct and performance of the third party. NYSIF will consider the bidder to be the prime contractor and the sole point of contact in regard to any contractual items specified or required in the bid documents.

The bidder should obtain the consent of the proposed subcontractor and include it in the bid.

- g. The bidder warrants that all information provided by it in connection with this bid is true and accurate.
- h. The bidder agrees not to make any claims for or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any lack of information.
- i. The bidder warrants that 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 Bidder or with any competitor. 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 prior to the opening, directly or indirectly, to any Bidder or competitor and that no attempt has been made or will be made by the Bidder to induce any other person, partnership, or corporation to submit or not submit a bid for the purpose of restricting competition. In addition, a bidder is prohibited from

making multiple bids in a different form, e.g., as prime bidder and as a subcontractor to another prime bidder.

A bidder must include a statement in the bid describing all actual or potential relationships which may be considered to be a "conflict of interest." The "conflict of interest" will be taken under consideration by NYSIF's Bid Evaluation Committee. The Committee's determination of a disqualifying "conflict of interest" is final.

- j. The bidder will conform to all provisions of Appendix A, *Standard Clauses for All New York State Contracts*.
- k. The bidder agrees that no New York State or local sales tax, transportation tax or Federal excise tax will be charged on any part of this project since NYSIF is an agency of the State of New York and tax exempt by statute.
- l. The bidder will save and hold harmless NYSIF and its management from all claims, suits, litigation and legal liability from any acts or omissions committed by the bidder during the course of the contract.
- m. The contractor is an independent contractor of the State and may not hold itself out nor claim to be an officer, employee or subdivision of the State nor may contractor make any claim, demand or application to or for any right based upon any different status.
- n. Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract, at the contractor's expense. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of NYSIF that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by NYSIF. Failure to comply or failure to provide proof may constitute grounds for NYSIF to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by NYSIF. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law
- o. All contractors and contractor employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law, and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees, and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the bid, each bidder has guaranteed knowledge and full compliance with those provisions for this and any other dealings, transactions, sales, contracts, services, offers or relationships involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as required by law.
- p. If NYSIF causes any delay in completing or impedes the successful Bidder's work, then NYSIF should be notified immediately in writing of the delay and reason(s) for the delay.
- q. Tax Law 5-a is effective with all solicitations to purchase issued by covered agencies on or after January 1, 2005. It applies to contracts where (1) the total amount of such persons' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates, subcontractors, or affiliates of subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and (2) the contracts or agreements with state agencies or public authorities for the sale of commodities or services having a value in excess of \$100,000. The law imposes upon certain contractors the obligation to certify whether or not the contract, its affiliates, its subcontractors and affiliates of the subcontractors are required to register to collect state sales and compensating use tax.
- r. Pursuant to State Finance Law §§139-j and 139-k, this RFP includes and imposes certain restrictions on communications between NYSIF and an Bidder during the procurement process. An Bidder is restricted from making contacts from the earliest notice of RFP through final award and approval of the Procurement Contract by NYSIF and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3)(a). Designated staff, as of the date hereof, is identified in Section I.D. (Designated Contacts / Questions) of this RFP. NYSIF employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award, and in the event there are two findings within a 4 year-period, the Bidder is debarred from obtaining governmental Procurement Contracts.

### 39. PARTICIPATION OF NYS BUSINESS ENTERPRISES

It is the policy of New York State to maximize the opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as Offerors, subcontractors and suppliers on its procurement contracts.

For all contracts estimated to be \$25,000 or more:

- a. Contractors and subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination and rates of pay or other forms of compensation.
- b. Prior to the award of a State contract, the contractor shall submit an Equal Employment Opportunity Policy Statement to NYSIF within the time frame established by NYSIF.
- c. The contractor's EEO Policy Statement shall contain, but not necessarily be limited to, and the contractor, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
  - i. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and 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.
  - ii. 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.
  - iii. At the request of NYSIF, 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.
- d. Except for construction contracts, prior to award of a State contract, the contractor shall submit to NYSIF a staffing plan of the anticipated work force to be utilized on the State contract or, where required, information on the contractor's total work force, including apprentices, broken down by specified ethnic background, gender and Federal Occupational Categories or other appropriate categories specified by NYSIF. The form of the staffing plan shall be supplied by NYSIF.
- e. After an award of a State contract, the contractor shall submit to the contracting agency a work force utilization report, in a form and manner required by the agency, of the work force actually utilized on the State contract, broken down by specified ethnic background, gender and Federal Occupational Categories or other appropriate categories specified by the contracting agency.

**(Note: The contractor shall include the language of the above provisions in every subcontract in such a manner that the requirements of the provisions will be binding upon each subcontractor as to work in connection with the State contract. This includes the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the contractor information on the ethnic background, gender and Federal Occupational Categories of the employees to be utilized on the State contract.)**

#### 40. DEBRIEFING

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Prior to contract award, NYSIF shall, upon request, provide a debriefing which would be limited to review of bidder's proposal or bid. After contract award, NYSIF shall, upon request, provide a debriefing to any bidder that responded to the IFB or RFP, regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder within thirty days of posting of the contract award.

**APPENDIX C**

**CONTRACT PROVISIONS**

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## 1. CONTRACT DOCUMENTS

The contract documents consist of the contract agreement, proposal, bid document specifications, addenda issued prior to receipt of bids, and all subsequent modifications and changes issued pursuant to the bid documents.

The contract represents the agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral, including the bidding documents which may have resulted from the Bid Documents.

The contract may be revised, modified and/or amended by mutual written consent of both parties and the approval of the Office of the State Comptroller. The contract is made in accordance with the laws of New York State.

## 2. INCONSISTENCIES

The various documents which comprise the contract to be awarded as a result of this RFP shall prevail in accordance with precedence established below in the case of any inconsistencies contained in them:

1. Appendix A
2. The Agreement
3. Bid Documents
4. Proposal

## 3. TERM

It is the intent of NYSIF to enter into a contract for a term of three (3) years, with an option to extend the contract for one year each, up to an additional two (2) years. Fee schedules shall remain firm for the first three (3) years of the contract. Escalations, if allowed and defined in the Bid Documents, may be permitted for option years four and five.

In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by NYSIF may be extended by NYSIF for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.

## 4. TERMINATION OF CONTRACT

- a. **For Cause:** For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract may be terminated by NYSIF at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, NYSIF may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach. NYSIF shall have the right to award a new contract to a third party. In the event of termination for cause, NYSIF shall seek recovery damage incurred by NYSIF and the reasonable re-procurement costs associated in reassigning the contract.
- b. **For Convenience:** By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, NYSIF shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.
- c. **For Violation of the Sections 139-j and 139-k of the State Finance Law:** NYSIF reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, NYSIF may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.
- d. **For Violation of Revised Tax Law 5a:** NYSIF reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, NYSIF may exercise its termination right by providing written notification to the Contractor.

## 5. SUSPENSION OF WORK

NYSIF may order the contractor in writing to suspend performance of all or any part of the work for a reasonable period of time, not to exceed thirty (30) days, as determined by NYSIF.

Upon receipt of a suspension order, the contractor shall, as soon as practicable, cease performance of the work as ordered.

The contractor specifically agrees that a suspension, interruption or delay of the performance of the work pursuant to this proposal shall not increase the cost of performance of the work of this contract.

## 6. SAVINGS/FORCE MAJEURE

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or NYSIF in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide NYSIF with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor NYSIF shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and NYSIF to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of NYSIF where the delay or failure will significantly impair the value of the Contract to the State, NYSIF may:

- a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or
- b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or
- c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, NYSIF reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

## 7. DISASTER RECOVERY PLAN

### A. Disaster Recovery Plan

Contractor shall develop and deliver, upon request, to NYSIF on or before a date as reasonably determined by NYSIF, and at no additional cost to NYSIF, a Disaster Recovery Plan for the services which is acceptable to NYSIF and all appropriate regulatory organizations having jurisdiction over Contractor. The Disaster Recovery Plan, which will apply specifically and exclusively to the services under this Agreement, shall provide a description of the Plan Assumptions, Recovery Strategy, Disaster Declaration, Plan Notification and Activation, and Recovery Resources. Contractor shall make available at its premises its Master Disaster Recovery Plan applicable to all of its operations for review by NYSIF. NYSIF's approval of the disaster Recovery Plan shall not be unreasonably withheld. Review and acceptance of any Disaster Recovery Plan as may be required by any such regulatory organization shall be the responsibility of Contractor. The Disaster Recovery Plan shall provide, at a minimum, for Contractor to provide alternate electrical power for uninterrupted service. The Disaster Recovery Plan shall also designate one or more facilities (each a "Disaster Recovery Site") or separate computer resources to which Contractor shall move the Services (or affected portion of such services) upon the declaration of a Disaster requiring such a relocation (including a Disaster at a Disaster Recovery Site). Each Disaster Recovery Site must be appropriately equipped with data processing equipment which the parties reasonably believe should be sufficient to provide the Services in compliance with Attachment A. The Disaster Recovery Plan must also specify all procedures for the determination or declaration of a Disaster, which determination or declaration may not be unreasonably withheld or delayed by either party.

### B. Access to Disaster Recovery Plans

1. Contractor shall make available to NYSIF any reports or findings of any regulatory agency dealing with Contractor's disaster recovery capabilities to provide services hereunder, unless it is prohibited from making such disclosure by law or by any such agency, together with any reports of its independent auditors relating to such plans.

Contractor shall also make available to NYSIF results of any tests of Contractor's disaster recovery facilities conducted by Contractor or any third party with respect to the services provided under the Agreement. Contractor shall provide an annual briefing to NYSIF related to its disaster recovery strategy.

2. NYSIF acknowledges that Contractor's Master Disaster Recovery Plan providing disaster recovery for these services contains highly sensitive and confidential business information. It is understood and agreed that NYSIF may examine and approve the Master Disaster Recovery Plan; however, such examination shall be limited to that portion of the plan(s) which relates to the providing of services under this Agreement. Contractor may in its discretion limit NYSIF's review of its Master Disaster Recovery Plan(s) to a review of a copy maintained at Contractor's Capital Region office and not permit any copies to be made.

C. Disaster Event Notification

Contractor shall no later than twenty-four (24) hours after the occurrence of an event requiring activation of the Disaster Recovery Plan inform NYSIF that the plan has been activated. At that time, Contractor shall provide NYSIF with a description of the nature and extent of the disaster, an assessment of the impact on all services provided pursuant to this Agreement and a description of the specific recovery actions with their associated timeframes that have been or will be taken as part of the plan. Contractor will provide appropriate periodic updates of the recovery process as required by NYSIF.

8. **PRODUCT DELIVERY**

Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Unless otherwise specified in the Bid Documents, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor. The decision of NYSIF as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify NYSIF and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by NYSIF. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in NYSIF's discretion, the Contract.

9. **WEEKEND AND HOLIDAY DELIVERY**

Unless otherwise specified in the Bid Specifications, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance, in which event the convenience of NYSIF shall govern

10. **SHIPPING / RECEIPT OF PRODUCT**

- a. **Packaging** Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of NYSIF User unless otherwise specified in the Contract documents.
- b. **Shipping Charges** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (FOB) destination tailgate delivery at the dock. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.
- c. **Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of NYSIF. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

11. **PRODUCT SUBSTITUTION**

In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by NYSIF to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to NYSIF. Unless otherwise specified, any substitution of Product prior to NYSIF's written approval may be cause for cancellation of Contract.

**12. REJECTED PRODUCT**

When Product is rejected, it must be removed by the Contractor from the premises of NYSIF within ten calendar days of notification of rejection by NYSIF. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and NYSIF shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse NYSIF for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period.

**13. INSPECTION AND ACCEPTANCE OF THE WORK**

NYSIF will, from time-to-time, inspect the products being provided and/or the services being performed under the terms of the contract.

All products/work shall be subject to the approval of NYSIF. In the event that any of the products provided/work performed are not acceptable to NYSIF in its sole judgment, the contractor shall replace the product/correct that work in an expeditious manner at no additional cost to NYSIF.

The contractor shall, without charge, promptly correct any problems NYSIF finds do not conform to the contract documents, unless in the public interest NYSIF consents to accept such product or work with an appropriate adjustment to the contract price.

If the contractor does not promptly correct rejected product/work, NYSIF may replace such product/correct such work and charge the cost thereof to the contractor, or terminate the contract in accordance with this Agreement.

**14. TITLE AND RISK OF LOSS**

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to NYSIF until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by NYSIF personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by NYSIF.

**15. EMERGENCY CONTRACTS**

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or NYSIF determines pursuant to his/her authority under Section 163 (10) (b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, NYSIF reserves the right to obtain such Product from any source, including but not limited to this Contract(s), if NYSIF in its sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this paragraph. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

**16. ASSIGNMENT**

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of NYSIF. Failure to obtain consent to assignment from NYSIF shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to NYSIF and seek written agreement from NYSIF which will be filed with the Comptroller. NYSIF reserves the right to reject any proposed assignee in his/her discretion.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes NYSIF responsibilities for the Contract.

**17. POLICY COMPLIANCE**

Contractor warrants, covenants and represents that it will comply fully with all policies and procedures of NYSIF in performance of the Contract including but not limited to security, physical, facility, documentary and cyber security rules, policies, procedures and protocols

**18. SUBCONTRACTORS / SUPPLIERS**

NYSIF reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; NYSIF determines that the company is not qualified; NYSIF determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (M/WBE) Bidders as required by prior Contracts

**19. CONTRACT BILLINGS**

Contractor shall provide complete and accurate billing invoices to NYSIF in order to receive payment. Invoices must contain all information required by the Contract and the State Comptroller. Payments shall be made in accordance with ordinary State procedures and practices.

Submission of an invoice and payment thereof shall not preclude NYSIF from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of NYSIF, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by NYSIF and in a media commercially available from the Contractor. NYSIF may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

**20. REMEDIES FOR BREACH**

It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

- a. **Cover/Substitute Performance** In the event of Contractor's material breach, NYSIF may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If NYSIF is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, NYSIF may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may, in the discretion of NYSIF, be deducted from the Contract quantity and payments due Contractor.

- b. **Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of NYSIF. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

- c. **Bankruptcy** In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, NYSIF may, at its discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit NYSIF the amounts owed by the Contractor arising out of the same transactions.

- d. **Reimbursement of Costs Incurred** The Contractor agrees to reimburse NYSIF promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by NYSIF in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, NYSIF may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to NYSIF promptly by the Contractor or deducted by NYSIF from payments due or to become due the Contractor on the same or another transaction.

- e. **Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by NYSIF from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to NYSIF the amount of such claim or portion of the claim still outstanding, on demand.

NYSIF reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

**21. INSTALLATION**

Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to NYSIF(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**22. TOXIC SUBSTANCES**

Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User agency representative.

**23. COOPERATION WITH THIRD PARTIES**

The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of NYSIF, as necessary to ensure delivery of Product or coordination of performance of services

**24. ASSIGNMENT OF CLAIM**

Contractor hereby assigns to the State any and all its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq

**25. INDEPENDENT CONTRACTOR**

It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of NYSIF, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide NYSIF with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**26. EMPLOYEES, SUBCONTRACTORS AND AGENTS**

All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of NYSIF. NYSIF reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with NYSIF's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. NYSIF reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

**27. OWNERSHIP OF DOCUMENTS**

All drawings, specifications, computations, sketches, test data, survey results, reports and other documents including models, photographs, renderings and other material prepared for or relating to the project, including any material furnished by NYSIF are the property of NYSIF.

**28. INFORMATION SECURITY CLAUSE**

In the event of a Breach of Security as defined in NY CLS Gen Bus §899-aa and NY CLS State Technology Law §208, or otherwise, involving NYSIF supplied Personal Information or Private Information from systems owned, operated, sub-contracted or otherwise conduited through Contractor's systems or networks, Offeror shall notify NYSIF immediately, without unreasonable delay, pursuant to the NOTICE provision of this Agreement. "Breach of security" shall mean the unauthorized acquisition or acquisition without valid authorization of computerized data containing personal or private information. "Personal Information" shall mean any information concerning a person which, because of name, number, mark or other identifier, can be used to identify such person. "Private Information" shall mean personal information in combination with any one or more of the following data elements, when either the personal information or the data information or the data element is not encrypted or encrypted with an encryption key that has also been acquired: (i) social security number; (ii) driver's license number or non-driver identification cards number; or (iii) account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account. Additionally, Offeror undertakes to, solely at its own cost and expense, provide any requisite notices that either Contractor or NYSIF would have to provide pursuant to NY CLS Gen Bus §899-aa and NY CLS State Technology Law §208, or any other applicable statute, both on behalf of Contractor and on behalf of NYSIF. Offeror's notification shall include but not be limited to a description of the categories of information that were, or are reasonably believed, to have been acquired by a person without valid authorization, including specification of which of the elements of personal information and private information were, or are reasonably believed to have been, so acquired, or as otherwise provided for by applicable law.

**29. CONFIDENTIALITY CLAUSE**

NYSIF Confidential Information includes but is not limited to: (i) the meaning ascribed to "Nonpublic Personal Information" in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA"), as it relates to NYSIF's consumers, (ii) "Protected Health Information ('PHI')" as such term is defined in the Health Insurance Portability and Accountability Act of 1996, or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("HIPAA") and (iii) any personally identifiable information protected under any other applicable state or federal statute, rule or regulation.

All material made available to the contractor or its staff will remain the property of NYSIF. In addition, the contractor, subcontractor and staff shall maintain the confidentiality of all material, including the identity of any parties and content of any material to which they are exposed or have access. All improvements to applications and processes developed at NYSIF's expense and within the scope of the services provided to NYSIF shall be the sole and exclusive property of NYSIF.

The contractor will not divulge, disclose or furnish to any other party the information or processes utilized at NYSIF, disclosed to the contractor or developed by the contractor or another during the course of the project unless such information is in the public domain.

The contractor will advise NYSIF if it is engaged in a project for any other insurance company, or subsidiary, that has a Workers' Compensation or Disability Benefits product line.

Any request for information from third parties shall be reported to NYSIF in writing within 24 hours. News releases pertaining to this project will not be made without prior NYSIF approval.

**30. INDEMNIFICATION**

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless NYSIF from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of NYSIF.

**31. LIMITATION OF LIABILITY**

Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

- a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the contract, or (ii) one million dollars (\$1,000,000), whichever is greater.
- b. NYSIF may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against NYSIF unless Contractor at the time of the presentation of claim shall demonstrate to the NYSIF's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- c. Notwithstanding the above, neither the Contractor nor NYSIF shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by NYSIF, the Contractor, or by others

### 32. NON-SOLICITATION

The Contractor shall contact NYSIF employees, including employees designated by NYSIF to receive marketing material and negotiate contracts only in connection with the transaction of business set forth herein. The Contractor shall be cognizant of sections 73 and 74 of the NYS Public Officers Law, which govern the conduct of the state employees, and sections 139-j and 139-k of the NYS Finance Law which governs the conduct of the state employees and their relations with outside parties.

The Contractor shall not contact or solicit NYSIF employees in connection with any contests, lotteries, challenges, or competitions, whether or not prizes, awards, gifts, remuneration or items of value are awarded. The Contractor shall neither solicit nor market directly to any NYSIF employees in their individual capacities. If the Contractor maintains identifiable records of NYSIF employees in connection with its performance hereunder, such records shall not be commercially exploit its relationship with NYSIF nor use NYSIF, its name, trademarks or logo for any advertising, marketing or other commercial purpose without prior written approval. This clause shall survive termination of any awarded contract.

### 33. CONTRACTOR CONSULTANT LAW

Effective June 19, 2006, Chapter 10 of the Laws of 2006 amended the Civil Service and State Finance Laws, relative to maintaining certain information on contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as "contracts entered into by a state agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*". The amendments require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), the Division of the Budget (DOB) and the Department of Civil Service (CS).

To meet these new requirements, the awarded contractor agrees to complete Form A - Contractor's Planned Employment Form, and Form B – Contractor's Annual Employment Report (Appendix O).

### 34. INSURANCE

Prior to the commencement of the work, Contractor shall file with NYSIF Certificates of Insurance evidencing compliance with all requirements contained in the Bid Documents. Acceptance and/or approval by NYSIF do not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under this Agreement.

Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Agreement and to remain in full force and effect throughout the term of this Agreement and as further required by this Agreement. Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

### 35. PERFORMANCE / BID BOND

NYSIF reserves the right to require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by NYSIF

**36. NOTICE**

Any communications between NYSIF and contractor and notices provided herein, to be given or made, may be given or made by mailing the same to:

New York State Insurance Fund  
Procurement Unit  
15 Computer Drive West  
Albany, New York 12205

or to such addressee as may be hereafter designated by notice. All notices become effective only when received by the addressee and all notices mailed shall be mailed certified mail, return receipt requested.

**37. MODIFICATIONS TO THE AGREEMENT**

This Agreement may not be modified, renewed or discharged, except as herein specifically provided, or by an agreement in writing signed by both parties and, if applicable, approved by the Office of the State Comptroller.

During the term of the contract, the contract may be amended as changes occur within the industry. NYSIF reserves the right to consider amendments which are not specifically covered by the terms of the contract but are judged to be in the best interest of the State. Examples of amendments may include but are not limited to new job titles under the Department of Labor Prevailing Wages, new categories of expertise, ancillary job classifications, on-going services, etc. NYSIF or the contractor may suggest changes. If the contractor offers new job titles or services, these services may be made available under this contract and may be offered at maximum not to exceed prices. It shall be the contractor's responsibility to submit to NYSIF service changes for consideration for contract amendment. These changes, if approved, shall take effect upon written notification by NYSIF and may be subject to pre-audit by the Office of the State Comptroller.

**38. SEVERABILITY**

In the event that any provision of this Agreement shall be considered void, voidable, illegal or invalid for any reason, such provision shall be of no force and effect only to the extent that it is so declared void, voidable, illegal or invalid. All of the provisions of this Agreement not specifically found to be so deficient shall remain in full force and effect.

**39. CHOICE OF LAW: VENUE**

This Agreement shall be governed by and construed under the laws of the State of New York, without giving effect to the choice of law or conflict of law provisions thereof.

## APPENDIX D

### MacBRIDE QUESTIONNAIRE

**YOU ARE REQUIRED TO ANSWER THE QUESTIONS BELOW IN ORDER TO BE CONSIDERED FOR SELECTION IN THE AWARD OF A CONTRACT WITH AN AGENCY OF THE STATE OF NEW YORK:**

“NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:  
MacBRIDE FAIR EMPLOYMENT PRINCIPLES”

In accordance with Chapter 807 of the Laws of 1992, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:

(Answer YES or NO to one or both of the following, as applicable:)

- (1) have business operations in Northern Ireland:

YES  NO

If yes,

- (2) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

YES  NO

This questionnaire should be signed by a person authorized to enter into contracts on behalf of the bidder.

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**Signature**

---

**Typed Name**

---

**Company Position**

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**Company Name**

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**Date Signed**

## APPENDIX E

### VENDOR RESPONSIBILITY QUESTIONNAIRE

Each Contracting Agency conducts a review of prospective contractors (“vendors”) to provide reasonable assurances that the vendor is responsible. This questionnaire is used for all non-construction contracts with a contract value of \$100,000.00 or more and is designed to provide information to assess a vendor’s authorization to do business in New York State, as well as your business integrity, financial and organizational capacity, and performance history. (Review of construction contractors will be based upon the Uniform Contracting Questionnaire developed by the Council of Contracting Agencies.)

Each vendor must answer every question contained in this questionnaire. Where a response requires additional information, the vendor must attach a written response that adequately details the requested information. Please number each response to match the question number. The completed questionnaire and attached responses will become part of the procurement record.

In order to expedite the required review, when providing additional information for a “YES” answer to Questions 14 a-s, or any other response which requires additional explanation, your information and responses should address the relationship of the issue to the proposed contract. Be brief, concise and to the point. Discuss as appropriate the following:

- Provide a description of the issue and identify the actions taken or currently being implemented to ensure that the issue will not occur again.
- State whether the staff and/or organizational component involved in the identified issue(s) will work on the proposed contract. If so, provide information to assure the agency that the issue will not be repeated.
- Identify the relationship (or lack thereof) between the product/services involved in the issue and the type of product/services proposed for this contract.
- State whether the issue will affect your financial or organizational ability to perform under the proposed contract.
- Provide copies of relevant documents or any other information that would assist the agency in its vendor responsibility evaluation.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing vendor’s business and operations, as an owner or officer of the vendor must attest to the questionnaire information. Please be advised that at the end of this questionnaire, you must certify, under oath, all responses given.

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

1. Legal Business Name: \_\_\_\_\_

2. Federal Employer ID # (FEIN): \_\_\_\_\_

3. D/B/A — Doing Business As (if applicable): \_\_\_\_\_

County filed: \_\_\_\_\_

4. Website Address (if applicable): \_\_\_\_\_

5. Principal Place of Business Address: \_\_\_\_\_

6. Telephone Number: \_\_\_\_\_ 7. Fax Number: \_\_\_\_\_

8. Authorized Contact for this Questionnaire:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

9. Type of Business: (please check appropriate box and provide additional information)

Corporation. State of Incorporation: \_\_\_\_\_

Sole Proprietor. State/County filed in: \_\_\_\_\_

General Partnership. State/County filed in: \_\_\_\_\_

Not-for-Profit Corporation. Charities Registration Number: \_\_\_\_\_

Limited Liability Company (LLC). Jurisdiction filed: \_\_\_\_\_

Limited Partnership. State/County filed in \_\_\_\_\_

Other - Specify: \_\_\_\_\_ Jurisdiction filed (if applicable) \_\_\_\_\_

10. If not incorporated or formed in New York State, please provide a current Certificate of Good Standing from your state or applicable local jurisdiction.

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

11. List Name and Title of each principle, owner, officer, major stockholder (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), director, and member, as applicable:

- a) \_\_\_\_\_
- b) \_\_\_\_\_
- c) \_\_\_\_\_
- d) \_\_\_\_\_
- e) \_\_\_\_\_
- f) \_\_\_\_\_
- g) \_\_\_\_\_
- h) \_\_\_\_\_

12. Authorized Contact for the Proposed Contract:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

13. Does the vendor use, or has it used in the past five (5) years, any other business name, FEIN, or D/B/A other than what is listed in Questions 1-3 above?

Yes

No

**If yes**, provide the name(s), FEIN(s) and D/B/A(s) and the address for each such company and D/B/A on a separate piece of paper and attach to this response.

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

14. Within the past five (5) years, has the vendor, any principal, owner, officer, major stockholder (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate<sup>1</sup> or any person involved in the bidding, contracting or leasing process been the subject of any of the following:

(a) a judgment or conviction for any business-related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?  Yes  No

---

(b) a criminal investigation or indictment for any business-related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?  Yes  No

---

(c) an unsatisfied judgment, injunction or lien for any business-related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency?  Yes  No

---

(d) an investigation for a civil or criminal violation for any business-related conduct by any federal, state or local agency?  Yes  No

---

(e) a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?  Yes  No

---

(f) a federal, state or local government suspension or debarment from the contracting process?  Yes  No

---

(g) a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract?  Yes  No

---

(h) a federal, state or local government denial of a lease or contract award for non-responsibility?  Yes  No

---

(i) an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease?  Yes  No

---

<sup>1</sup> "Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

(j) a federal, state or local determination of a willful violation of any public works or labor law or regulation?  Yes  No

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

- |  |                          |     |                          |    |
|--|--------------------------|-----|--------------------------|----|
| (k) a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license?   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (l) a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws?                           | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (m) an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful?  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (n) a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles?  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (o) a citation, violation order, pending administrative hearing or proceeding or determination issued by a federal, state or local government for violations of  |                          |     |                          |    |
| - health laws, rules or regulations  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| - unemployment insurance or workers' compensation coverage or claim requirements   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| - ERISA (Employee Retirement Income Security Act)  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| - human rights laws  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| - federal U.S. Citizenship and Immigration Services laws   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| - Sherman Act or other federal anti-trust laws   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (p) entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (q) a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status?  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (r) a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (s) a finding of non-responsibility by an agency or authority due to a violation of State Finance Law §139-j?  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |

**For each YES answer to Question 14, items a-s, provide details on additional sheets regarding the finding, including but not limited to Cause, Current Status, Resolution, etc.**

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

15. During the past three (3) years, has the vendor failed to:

(a) File returns or pay any applicable Federal, State, or Local Government Taxes  Yes  No

**If yes**, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability:

\_\_\_\_\_

(b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE?  Yes  No

**If yes**, indicate the years the company failed to file/pay the insurance and the current status of the liability:

\_\_\_\_\_

16. Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates, regardless of the date of filing?  Yes  No

**If yes**, indicate if this is applicable to the submitting vendor or one of its affiliates: \_\_\_\_\_

If it is an affiliate, include the affiliate's name and FEIN: \_\_\_\_\_

Provide the court name, address and docket number: \_\_\_\_\_

Indicate if the proceedings have been initiated, remain pending or have been closed: \_\_\_\_\_

If closed, provide the date closed: \_\_\_\_\_

17. Does vendor have the financial resources necessary to fulfill the requirements of the proposed contract?  Yes  No



**APPENDIX F**  
**BIDDER QUESTIONNAIRE**

Company Name: \_\_\_\_\_

Is your firm a New York resident business?

Yes                       No

Total number of people employed by your firm:

company-wide: \_\_\_\_\_

in New York City: \_\_\_\_\_

Is your firm a New York State certified MINORITY ENTERPRISE?

Yes                       No

*(If yes, attach a copy of your current New York State certification letter.)*

Is your firm a New York State certified WOMEN-OWNED ENTERPRISE?

Yes                       No

*(If yes, attach a copy of your current New York State certification letter.)*

Does your firm purchase goods or services or subcontract with any New York State certified minority or women-owned enterprises?

Yes                       No

# APPENDIX G

## AFFIDAVIT OF NON-COLLUSION

I hereby attest that I am the person responsible within my firm for the final decision as to the price(s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

- (1) The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition with any other contractor, bidder or potential bidder.
- (2) Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder on this project, and will not be disclosed prior to bid opening.
- (3) No attempt has been made nor will be made to solicit, cause or induce any firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid, or other form of complementary bid.
- (4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary bid.
- (5) My firm has not offered nor entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit a complementary bid on this project.
- (6) My firm has not accepted nor been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary bid, or agreeing to do so, on this project.
- (7) I have made a diligent inquiry of all members, officers, employees and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Typed Name**

\_\_\_\_\_  
**Company Position**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Date Signed**

**Sworn to before me this**

\_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
**Notary Public**

## APPENDIX H

### PROCUREMENT LOBBYING LEGISLATION

#### Non-Responsibility Determinations

##### **Background:**

New York State Finance Law §139-k(2) obligates a NYSIF to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

##### **Instructions:**

NYSIF must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to NYSIF with the Offeror’s proposal.

APPENDIX H

Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

Date: \_\_\_\_\_

- 1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer questions 2-4; otherwise, proceed to 5:

- 2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle):

No Yes

- 3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

- 4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

- 5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

APPENDIX H

**Disclosure of Prior Non-Responsibility Determinations**

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

Offerer/Bidder certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX I**

**BIDDER AND SUBCONTRACTOR OFFICES IN NEW YORK STATE**

**Contractors and Subcontractors** - separately list all offices located in New York State.

**Contractors:**

Name of Firm \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

**SUBCONTRACTORS:**

**SERVICE:** \_\_\_\_\_

Name of Firm \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

**SERVICE:** \_\_\_\_\_

Name of Firm \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

**SERVICE:** \_\_\_\_\_

Name of Firm \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Use as many pages as necessary*

## APPENDIX N

### **CONTRACTOR CONSULTANT LAW Form A**

Effective June 19, 2006, Chapter 10 of the Laws of 2006 amended the Civil Service and State Finance Laws, relative to maintaining certain information on contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as “contracts entered into by a state agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*”. The amendments require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), the Division of the Budget (DOB) and the Department of Civil Service (CS).

To meet these new requirements, the Contractor agrees to complete Form A - Contractor’s Planned Employment Form.

A listing of employment categories, which is a required column on the form, can be found at the following link:

<http://www.bls.gov/oco/oco2007.htm>



## APPENDIX N

### CONTRACTOR CONSULTANT LAW Form B

Form B - Contractor's Annual Employment Report. By May 15<sup>th</sup> of each year of the contract, the contractor agrees to report the following information to the State agency awarding the contract, or, if the contractor has provided contract employees pursuant to an OGS centralized contract, such report must be made to the State agency purchasing from such contract:

1. Total number of employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such employees.
3. Total compensation paid to all employees that performed consultant services under such Contract.\*

Form B is required for each covered consultant contract in effect at any time between the preceding April 1<sup>st</sup> through March 31<sup>st</sup> fiscal year or for the period of time such contract was in effect during such prior State fiscal year.

*\*NOTE: The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.*

Contractor agrees to simultaneously report such information to the Department of Civil Service and the Office of the State Comptroller as designated below:

<b>NYSIF</b>	<b>Department of Civil Service</b>	<b>OSC-Bureau of Contracts</b>
15 Computer Drive West	Alfred E. Smith Office Building	110 State St., 11 <sup>th</sup> Floor
Albany, NY 12205	Albany, NY 12239	Albany, New York 12236
Attn: Procurement Unit	Attn: Counsel's Office	Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual employee names or social security numbers are set forth on a document, the State agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information is available in the Office of the State Comptroller's Bulletin G-226 <http://www.osc.state.ny.us/agencies/gbull/g-226.htm> regarding the Contractor Consultant Law requirements and report Forms A and B.





# Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-CA

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

## Instructions

### General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

### When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally appeared \_\_\_\_\_,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
\_he resides at \_\_\_\_\_,
Town of \_\_\_\_\_,
County of \_\_\_\_\_,
State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): \_he is a \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).
This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.
Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.
Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.
This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?
Internet access: www.nystax.gov (for information, forms, and publications)
Fax-on-demand forms: 1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931
To order forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.



# Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-TD

(5/07)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name				
Contractor's principal place of business		City	State	ZIP code
Contractor's mailing address (if different than above)				
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		Contractor's telephone number ( )
Covered agency or state agency	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address			Covered agency telephone number	

## General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at [www.nystax.gov](http://www.nystax.gov). Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

## Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

## Need help?



**Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



**Fax-on-demand forms:** 1 800 748-3676



**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

**Sales Tax** Information Center: 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

**Hearing and speech impaired** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
*(name)* *(title)*  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

**Complete Sections 1, 2, and 3 below. Make only one entry in each section.**

**Section 1 — Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 — Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 — Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
*(sign before a notary public)*

\_\_\_\_\_  
*(title)*





**Questions and Answers  
Concerning  
Tax Law Section 5-a  
(as amended, effective April 26, 2006)**

**Contractor, Affiliate and  
Subcontractor Sales and  
Compensating Use Tax  
Certification**

*Note: Although accurate, some of the definitions given in this publication have been simplified. If there is any discrepancy between the definitions of the terms in this publication and applicable New York law or regulations, then the law and regulations will govern.*

1) **Q:** What does Tax Law section 5-a require?

**A:** The statute requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring state entity that they filed the certification with the Tax Department and that it is correct and complete.

2) **Q:** What is the purpose of section 5-a?

**A:** The statute's aim is to ensure that contractors do not get state work unless they, their affiliates and their subcontractors are, when required by section 5-a, registered to collect New York State and local sales and compensating use taxes. Included within the statute's scope are out-of-state businesses making sales of more than \$300,000 into New York but having no physical presence in the state. Other businesses, if affiliated with, or subcontractors of, a bidder for a state contract, would similarly have to consent to registration as a condition of the contractor's obtaining state work, providing the affiliate's or subcontractor's sales exceed the \$300,000 sales threshold.

3) **Q:** Under what circumstances does section 5-a apply?

**A:** A contract is covered by section 5-a if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Q & A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Q & A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000, and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Q & A 8 and 9). Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

If all of the above criteria are met, amended section 5-a is applicable and, as general matter, two certifications (Forms ST-220-CA and ST-220-TD) are required to be filed. These forms are available at [www.nystax.gov](http://www.nystax.gov).

If any of the above criteria are not met, amended section 5-a is not applicable and no certifications (no forms) are required to be filed.

4) **Q:** Are any contracts expressly exempted from application of section 5-a?

**A:** Yes. A contract will be exempted from application of section 5-a if the procuring covered agency and OSC, or other contract reviewer if OSC is not required to approve the contract, find in writing that the contract is necessary to:

- (a) address an emergency, within the meaning of Article 11 of the State Finance Law<sup>1</sup>; or
- (b) ensure the public health, safety, or welfare when an urgent event with a compelling public purpose arises.

In addition, the agency's and contract reviewer's written finding must explain the reasons supporting the determination.

5) **Q:** What governmental entities are *covered agencies* for purposes of Tax Law section 5-a?

**A:** Tax Law section 5-a defines a *covered agency* to mean:

- a *state agency* for purposes of Article 11 of the New York State Finance Law; or
- a public authority or public benefit corporation at least one of whose members is appointed by the Governor.

For purposes of Article 11 of the New York State Finance Law, the term *state agency* includes all state departments, boards, commissions, offices or institutions. As such, the Department of Law, Office of the State Comptroller and the Education Department are included. Local government entities are **not** covered agencies for purposes of section 5-a.

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<sup>1</sup> An *emergency* within the meaning of the State Finance Law is "an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk."

6) **Q:** Who is a *contractor* for purposes of section 5-a?

**A:** The statute defines a *contractor* as a person awarded a contract by a covered agency. The term *person* is defined as an individual, partnership, limited liability company, society, association, joint stock company or corporation.

The term *person* does **not** include a public corporation or an education corporation, as such terms are defined in section 66 of the New York State General Construction Law, a not-for-profit corporation whose contracts are subject to approval in accordance with Article 11-B of the New York State Finance Law, a board of cooperative educational services created pursuant to Article 40 of the New York State Education Law, or a soil and water conservation district created pursuant to section 5 of the New York State Soil and Water Conservation Districts Law.

As defined in the New York State General Construction Law:

- The term *public corporation* includes a municipal corporation, a district corporation and a public benefit corporation.
- A *municipal corporation* includes a county, city, town, village and school district.
- A *district corporation* includes any territorial division of the state, other than a municipal corporation, established by law, which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, whether or not such territorial division is expressly declared to be a body corporate and politic by the statute creating or authorizing the creation of such territorial division.
- A *public benefit corporation* is a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which inure to the benefit of New York State or other states, or to the people thereof.
- As defined in the New York State General Construction Law and the New York State Education Law, the term *education corporation* means a corporation
  - chartered or incorporated by the Board of Regents of the University of the State of New York or otherwise formed under the New York State Education Law, or
  - formed by a special act of New York State with its principal purpose an education purpose and which is a member of the University of the State of New York, or
  - formed under laws other than the statutes of New York State which, if it were to be formed currently under the laws of New York State, might be chartered by the Board of Regents of the University of the State of New York, and which has been authorized to conduct its activities in this state by the Regents or as an authorized foreign education corporation with the consent of the New York State Commissioner of Education.

7) **Q:** When does award of a contract occur for purposes of section 5-a?

**A:** A contract is awarded when the procuring covered agency notifies a person either orally or in writing that the person has been selected to provide the commodities or perform the services being procured. The certifications required by section 5-a are only required to be filed by the person awarded a contract.

8) **Q:** What contracts let by covered agencies are subject to section 5-a?

**A:** The statute defines the term *contract* as an agreement between a contractor and a covered agency for the purchase by the covered agency, pursuant to Article 11 of the New York State Finance Law, of commodities or services having a value in excess of \$100,000. The statute also expressly includes within the definition of *contract* centralized contracts with values in excess of \$100,000.

The definition of *contract* in section 5-a is broad enough to include, but is not limited to, the following types of contracts:

- backdrop contracts;
- single source contracts;
- sole source contracts;
- multiple award contracts;
- piggybacking contracts;
- strategic partnership procurement contracts; and
- contracts for the state.

### Definitions

The term *commodities* has the meaning given by Article 11 of the New York State Finance Law, and includes (other than with respect to contracts for state printing) material goods, supplies, products, construction items, or other standard articles of commerce, other than technology, which are the subject of any purchase or other exchange.

The term *services* has the meaning given by Article 11 of the New York State Finance Law. *Services* means (other than with respect to contracts for state printing) the performance of a task or tasks, and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For Article 11 purposes, *services* includes technology.<sup>2</sup> The term *services* does **not** apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article 11-B of the New York State Finance Law.

9) **Q:** Is a contract for information technology (IT) services subject to Tax Law Section 5-a?

**A:** Yes, assuming the criteria identified in Q & A 3 are met. When an IT service contract is awarded to a contractor, the section 5-a certifications must be made on Forms ST-220-CA and ST-220-TD irrespective as to whether the contractor is providing (1) only custom software, (2) only hardware and pre written off-the-shelf software, or (3) a combination of (1) and (2).

On Form ST-220-TD, a certification is made by the contractor as to whether the contractor, an affiliate(s) and/or subcontractor(s) made sales in New York State of *tangible personal property* (TPP) or *taxable services*, as set forth under the Tax Law, that exceeded \$300,000 over a certain look-back test period. If such sales threshold is met, then a certification is made that the contractor, affiliate(s) and/or subcontractor(s) is (are) registered to collect sales tax in New York. If the threshold is not met, then the contractor marks the box on Form ST-220-TD indicating that fact.

Pre written computer software (including software delivered electronically) and computer hardware constitute TPP for sales tax purposes, and therefore, are counted towards the \$300,000 New York sales threshold. In contrast, custom software (which is computer software designed to the specifications of a specific purchaser) is **neither** TPP nor a taxable service. Thus, the amount of sales derived from custom software is **not** counted towards this \$300,000 sales tax threshold.

**Example:**

*A contractor made sales in New York State valued at \$1,000,000 during the test period specified in section 5-a of **only** custom software, which is neither TPP nor a taxable service. Under such circumstances the contractor would certify on Form ST-220-TD that it did **not** meet the \$300,000 sales threshold by marking the bottom box in Section 1 of the form. Although total sales exceeded \$300,000, custom software does not fit the criteria of being TPP or taxable services and cannot be counted toward the \$300,000 sales threshold.*

*However, if the contractor also made sales of pre-written computer software (TPP) in the amount of \$500,000 during the same look-back test period, then the contractor must certify that it was registered to collect sales tax in New York. Accordingly, the contractor must mark the first box in Section 1 on Form ST-220-TD.*

Under both scenarios above, the contractor must also certify to the procuring agency on Form ST-220-CA that it also filed Form ST-220-TD with the Tax Department.

10) **Q:** What contract types are excluded from the definition of *contract* under section 5-a?

**A:** The following are not included within the definition of *contract* in section 5-a:

- contracts based on formal mini-bid solicitations pursuant to centralized contracts;
- grants;
- revenue contracts;
- intergovernmental agreements; and
- contracts with preferred sources as defined in Article 11 of the New York State Finance Law.

11) **Q:** Is the more than \$100,000 threshold determined based on total contract value, or on an annualized basis?

**A:** The more than \$100,000 threshold is determined based on the value (estimated, if necessary) of the contract over its full term, excluding possible renewal terms.

Also, multiple purchases of commodities or services by a covered agency from the same contractor during a state fiscal year are not to be aggregated for purposes of determining whether the more than \$100,000 threshold has been met.

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<sup>2</sup> The term *technology* is defined by Article 11 of the New York State Finance Law as either a good or a service or a combination of the two, that results in a technical method of achieving a practical purpose or in improvements in productivity. Goods may be either new or used.

- 12) Q:** If a contract is not let pursuant to Article 11 of the State Finance Law, is it subject to section 5-a?
- A:** Contracts not let pursuant to Article 11 of the State Finance Law are **not** subject to section 5-a.
- 13) Q:** Does Tax Law section 5-a apply to an agency accessing a centralized contract through issuance of a purchase order?
- A:** Assuming all criteria identified in Q&A 3 are met, Tax Law section 5-a applies to award of the centralized contract and not to covered agency access to the centralized contract through issuance of a purchase order. However, the requirements of Tax Law section 5-a do apply to covered agency purchases using **all-copy purchase orders**. For information regarding all-copy purchase orders, contact the Office of the State Comptroller, Bureau of Contracts at (518) 474-4622.
- 14) Q:** Is a mini-bid contract, which is let by a covered agency from a backdrop contract, subject to Tax Law Section 5-a?
- A:** No. A backdrop contract is one in which a procuring agency selects a pool of qualified vendors that are deemed eligible to bid on a procurement via a mini-bid. A mini-bid is an abbreviated process during which contract users solicit final pricing from the pool of pre-selected back-drop contractors.
- A state agency backdrop procurement is deemed awarded to a contractor at the point in time when the vendor is selected to be included in the pool of contractors eligible to participate in a mini-bid process. In view of that, a contractor is required to submit the Tax Law section 5-a forms when selected as a backdrop vendor by a state agency. During a mini-bid process, additional section 5-a certifications by a backdrop contractor are not required unless there are changes necessitating a new filing. For instance, if during a mini bid, a contractor hires a new subcontractor which was not previously reported on its Form ST-220-TD, then the contractor should report the new subcontractor by filing of a new Form ST-220-TD (assuming the subcontractor meets the more than \$300,000 sales in New York State threshold).
- 15) Q:** Who is an *affiliate* for purposes of Tax Law section 5-a?
- A:** Section 5-a defines an *affiliate* as a person which directly, indirectly or constructively controls another person; is controlled by another person; or is, along with another person, under the control of a common parent. *Control* means possession of the power to direct, or cause the direction of, the management and policies of another person. Determining whether control exists is a factual inquiry to be based upon the circumstances in each case. Responsibility for determining whether a person is an affiliate rests with the contractor.
- 16) Q:** Who is a *subcontractor* for purposes of Tax Law section 5-a?
- A:** A *subcontractor* is a person engaged by a contractor or another subcontractor to perform a portion of the contractor's obligations under a contract.
- 17) Q:** Which contractors, affiliates and subcontractors must be certified as registered to collect New York State and local sales and compensating use taxes pursuant to section 5-a prior to a contract taking effect?
- A:** Those contractors, affiliates and subcontractors making sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of \$300,000 during a specified period must be certified as registered to collect New York State and local sales and compensating use taxes.
- All** sales of tangible personal property or taxable services within New York State during the specified period (not merely sales to covered agencies) are taken into account in determining whether the more than \$300,000 cumulative sales threshold has been met. This also includes the amount of any sales made which are exempt from sales tax (see Q & A 20).
- 18) Q:** Over what period must the more than \$300,000 cumulative sales threshold occur so as to require a contractor, affiliate, or subcontractor to be certified under Tax Law section 5-a as registered with the Tax Department to collect sales and compensating use taxes?
- A:** The registration requirement applies if the person made a cumulative total of more than \$300,000 in sales in New York State during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June-August, September-November, December-February and March-May.
- If a person has not closed its books for the sales tax quarter immediately preceding the sales tax quarter in which the certification is being made, such person should use its sales information from the four most recent sales tax quarters for which such information is available to determine whether the more than \$300,000 cumulative sales threshold has been met.

Application of the above rule is illustrated by the following example:

**Example:** Contractor A is awarded a \$150,000 contract by covered agency B in June, 2006. Contractor A would determine whether the more than \$300,000 threshold was met by examining its sales of tangible personal property or taxable services within New York State during the June, 2005-August, 2005; September, 2005-November, 2005, December, 2005-February, 2006 and March, 2006-May, 2006 sales tax quarters. If Contractor A has not completed its accounting for the March, 2006-May, 2006 sales tax quarter, then it should, in lieu of that sales tax quarter, use data from the March, 2005-May, 2005 sales tax quarter.

**19) Q:** How are the terms *sale*, *tangible personal property* and *taxable services* defined for purposes of determining whether the more than \$300,000 cumulative sales threshold has been met?

**A:** *Sale* has the meaning given for New York State and local sales and compensating use tax law purposes, and includes any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor.

*Tangible personal property* has the meaning given for New York State and local sales and compensating use tax purposes. For such purposes, the term means corporeal personal property of any nature having a material existence and perceptible to the human senses. Tangible personal property includes, but is not limited to:

- raw materials, such as wood, metal, rubber and minerals;
- manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, clothing, motor vehicles, appliances, boats, yachts, lighting fixtures, building materials;
- computers and pre-written (canned/off-the-shelf/standard) software;
- artistic items, such as sketches, paintings, photographs, moving picture films and recordings;
- animals, trees, shrubs, plants and seeds;
- bottled water, soda, beer;
- candy and confections;
- cigarettes and tobacco products;
- cosmetics and toiletries;
- coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange;
- postage stamps, when purchased for purposes other than mailing; and
- precious metals in the form of bullion, ingots, wafers and other forms.

Tangible personal property does **not** include real property or intangible personal property.

*Taxable services* means services, the receipts from the sale of which are taxable for New York State and local sales and compensating use tax purposes. The term includes those services specifically enumerated in New York State and local sales and compensating use tax law as taxable. Taxable services are determined without regard to exemptions provided for in the sales and compensating use tax law. The term includes, but is not limited to:

- providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons;
- processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale;
- installing tangible personal property, or maintaining, servicing or repairing tangible personal property that is not held for sale by the purchaser of the service;
- storing tangible personal property that is not being held for sale, and the rental of safe deposit boxes or similar space;
- maintaining, servicing or repairing real property, whether inside or outside buildings;
- providing parking, garaging or storing for motor vehicles;
- interior decorating and designing services;
- protective and detective services; and
- furnishing entertainment or information services by means of telephony or telegraphy.

**20) Q:** Are exempt sales taken into account in determining whether the more than \$300,000 sales threshold of section 5-a is met?

**A:** Yes. In determining whether more than \$300,000 in sales of tangible personal property or taxable services were made during the specified period, contractors must count exempt sales of tangible personal property or taxable services. Contractors should determine whether sales are of tangible personal property or taxable services with reference to Articles 28 and 29 of the New York State Tax Law, disregarding relevant exemptions provided for therein, including, but not limited to, the exemption for sales to exempt organizations.

**Example:**

*During the four specified sales tax quarterly periods, an out-of-state contractor made \$400,000 in sales of tangible personal property into New York State. The entire \$400,000 in sales during such periods was made to exempt state agencies. The contractor has exceeded the \$300,000 threshold and must be certified as registered for New York State and local sales and compensating use tax purposes.*

**21) Q:** Who is responsible for making the certifications required by section 5-a?

**A:** The contractor is responsible for making the certifications required by the statute. The contractor's certification must include whether its affiliates and/or subcontractors whose sales exceeded the \$300,000 threshold during the specified period, are registered for New York State sales and compensating use tax purposes. The contractor's certification must be made to the best of its knowledge.

**22) Q:** How does a contractor make the certifications required by the statute?

**A:** The contractor must file a properly completed Form ST-220-CA (with the procuring covered agency) and Form ST-220-TD (with the Tax Department). The covered agency must include Form ST-220-CA in the procurement record for the contract.

These requirements must be met before a contract may take effect.

**Renewals:** In addition, after a contract has taken effect, a Form ST-220-CA must be filed again with a covered agency if a contract, which by its terms may be renewed, is being renewed. In this case, the Form ST-220-CA must be filed with the contracting covered agency prior to the commencement date of the renewal term(s). In addition, a new Form ST-220-TD may be required to be filed with the Tax Department. A new Form ST-220-TD would be required to be filed with the Tax Department if no previous Form ST-220-TD has been filed by the contractor with the Tax Department or, if a previously filed Form ST-220-TD is no longer correct and complete.

**Example:**

*Contractor A is awarded a contract by Covered Agency B. The contract is Contractor A's first with a covered agency, and is subject to the requirements of section 5-a. Contractor A has one affiliate and one subcontractor, and all three entities exceeded the \$300,000 threshold during the specified period. Contractor A must file Form ST-220-TD with the Tax Department, certifying that all three entities are registered for New York State and local sales and compensating use tax purposes. In addition, Contractor A must file Form ST-220-CA with Covered Agency B, certifying that it has filed Form ST-220-TD with the Tax Department, and that it is correct and complete.*

*During the term of its contract with Covered Agency B, Contractor A acquires two new affiliates and one additional subcontractor. One of the affiliates, as well as the subcontractor, exceeded the \$300,000 threshold during the specified sales tax quarters. Contractor A must, as soon as possible after learning of the changed circumstances, file a new Form ST-220-TD with the Tax Department, certifying that the affiliate and the subcontractor exceeding the \$300,000 threshold are registered for New York State and local sales and compensating use tax purposes. If Contractor A does not file the new Form ST-220-TD with the Tax Department, then the consequences specified in Q&A 29 below could apply.*

*Contractor A's contract with Covered Agency B provides that the contract may be renewed for one additional two-year term, at the option of the parties. The parties agree to renew the contract. Thus, Contractor A must, prior to the commencement date of the renewal term, file a new Form ST-220-CA with Covered Agency B certifying that it has filed Form ST-220-TD with the Tax Department, and that it is correct and complete. If Contractor A cannot make such certification to Covered Agency B because information shown on the current Form ST-220-TD filed with the Tax Department is not correct and complete, then it must immediately file a new Form ST-220-TD with the Tax Department reflecting current information. Contractor A must then file Form ST-220-CA with Covered Agency B before the commencement date of the renewal term.*

*Following commencement of Contractor A's renewal term with Covered Agency B, Contractor A is awarded a new contract by Covered Agency C. The new contract is covered by section 5-a. If the information shown on Contractor A's last filed*

*Form ST-220-TD is correct and complete, it need not file a new Form ST-220-TD with the Tax Department. However, Contractor A must file Form ST-220-CA with Covered Agency C certifying that it has previously filed Form ST-220-TD with the Tax Department, and that it is correct and complete as of the date of the new certification (Form ST-220-CA) filing with Covered Agency C.*

- 23) Q: If the contractor filed Form ST-220 prior to amendment of section 5-a on April 26, 2006, and the contract has, since April 26, 2006, been amended, extended, renewed or assigned, must a Form ST-220-TD be filed with the Tax Department?
- A: Yes, if the contract meets the criteria set forth in Q & A 3.
- 24) Q: Must Form ST-220-TD be filed with the Tax Department if the contractor filed Form ST-220 prior to amendment of section 5-a on April 26, 2006, and the contractor is then awarded another contract after that date?
- A: Yes, if the contract meets the criteria set forth in Q & A 3.
- 25) Q: When is a contractor, affiliate or subcontractor required to be listed in Schedule A of Form ST-220-TD?
- A: A contractor, affiliate or subcontractor is required to be listed in Schedule A of Form ST-220-TD when such contractor, affiliate or subcontractor has exceeded the more than \$300,000 cumulative sales threshold during the specified period as discussed in Q & A 18.
- 26) Q: When is a contractor who previously filed Form ST-220-TD with the Tax Department required to file a new Form ST-220-TD certification with the Tax Department?
- A: If a contractor or an affiliate or subcontractor, is not registered with the Tax Department for sales and compensating use tax purposes on the contractor's original certification, and such contractor, affiliate, or subcontractor makes sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of \$300,000 during any consecutive four sales tax quarters which follow the sales tax quarter in which the contractor's original certification was made, then the contractor shall, as soon as possible after such occurrence, file a new Form ST-220-TD with the Tax Department certifying that it, and/or its affiliates and/or subcontractors, as applicable, are registered for sales and compensating use tax purposes.
- 27) Q: If a contractor, affiliate or subcontractor is required by section 5-a to be registered with the Tax Department to collect New York State and local sales and compensating use taxes, and such person is not registered, what must such person do to register?
- A: The contractor, affiliate or subcontractor must complete Form DTF-17, *Application for Registration as a Sales Tax Vendor*, to register. Upon registration, the Tax Department will issue a certificate of authority, which authorizes the recipient to collect New York State and local sales and compensating use taxes. Form DTF-17 is available on the Tax Department's Web site, [www.nystax.gov](http://www.nystax.gov), or may be obtained by calling the Sales Tax Information Center at 1 800 698-2909. For additional information regarding registration, see Publication 750, *A Guide to Sales Tax in New York State*.
- 28) Q: If a contractor, affiliate or subcontractor has submitted Form DTF-17, to register to collect New York State sales and compensating use taxes at the time of filing the certifications required under section 5-a, but has not yet received its certificate of authority from the Tax Department, how should the contractor complete the certifications?
- A: The contractor should complete the certifications as required. The column on Schedule A asking whether the person listed is in the process of registering should be checked. If there is a problem with the registration (see Tax Law section 1134(a)(4)(B) for reasons why registration may be denied), the Tax Department will notify the applicant.
- 29) Q: Who is responsible for signing Forms ST-220-TD and ST-220-CA?
- A: An individual authorized to sign on behalf of the contractor may execute the certifications.
- 30) Q: Can Form ST-220-TD be provided to the Tax Department electronically?
- A: Form ST-220-TD **cannot** be provided electronically to the Tax Department at this time. If the Tax Department later determines that electronic submission is feasible, instructions will be issued as to how to electronically sign and file Form ST-220-TD.

**31) Q:** What are the consequences if Form ST-220-TD and/or Form ST-220-CA are not provided, or if provided, are determined to be false?

**A:** If a contractor fails to make the certifications required by section 5-a, by law, the contract cannot take effect. If during the term of the contract, the Tax Department or the covered agency discovers that a certification is false, then such false certification may subject the contractor to civil or criminal sanctions, and a finding of nonresponsibility for future procurements. Under certain circumstances, the statute provides that the contract shall be subject to termination if the covered agency determines that termination of the contract is in the best interests of New York State.

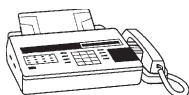
**32) Q:** What is the effect of registering with the Tax Department to collect New York State and local sales and compensating use taxes?

**A:** Once registered, a person is a *vendor* within the meaning of New York State and local sales and compensating use tax law, and must file returns and collect and pay, or pay over, tax. Failure to file returns and collect and pay, or pay over, tax will result in imposition of penalty and interest charges.

## Need help?



**Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



**Fax-on-demand forms:** Forms are available 24 hours a day, 7 days a week. 1 800 748-3676



**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931  
To order forms and publications: 1 800 462-8100  
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### Hotline for the hearing and speech impaired:

If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.



**New York State Insurance Fund**  
**Investment Policy Statement**

NEW YORK STATE INSURANCE FUND  
INVESTMENT POLICY STATEMENT  
As Amended and Adopted July 24, 2008

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EMERGING MANAGER INVESTMENT POLICY

NEW YORK STATE INSURANCE FUND  
INVESTMENT POLICY STATEMENT  
As Amended and Adopted July 24, 2008

I. INTRODUCTION

Pursuant to the laws of the State of New York, the New York State Insurance Fund (“NYSIF” or “Fund”) is vested with the authority and responsibility for the investment growth and preservation of its capital, surplus and reserves in support of its mission to insure employers against liability for personal injuries or death sustained by their employees. NYSIF’s portfolio of investments is comprised of the Workers’ Compensation Fund and the Disability Benefits Fund. NYSIF is also responsible for the administration and investment of the assets of the Aggregate Trust Fund. The Fund is managed by administrative officers and employees appointed pursuant to Section 82 of the Workers’ Compensation Law (hereinafter, “Fund Management”). The Executive Director is, subject to the direction of the Board of Commissioners, responsible for the direction and operation of the Fund.

The purpose of the Investment Policy Statement (“IPS”) is to communicate within NYSIF and its fiduciary officers and personnel, the processes for managing, deploying and monitoring its investment of assets and investment managers. The NYSIF Investment Committee and Fund Management will recommend changes to the IPS for approval by the Board of Commissioners (“Board”). It is intended to be sufficiently specific to be meaningful, yet flexible enough to be practical to meet NYSIF’s long term investment objectives. The Board, Investment Committee and Fund Management will review the IPS on at least an annual basis.

II. OBJECTIVES

The fundamental principle in determining NYSIF’s investment strategy and risk tolerance is to ensure fulfillment of NYSIF’s statutory mission. The following objectives are established in conjunction with a comprehensive review of the current and projected financial requirements of NYSIF:

- A. Provide adequate liquidity to support NYSIF’s operations;
- B. To ensure sufficient funding to meet expected liability payments over time;
- C. To preserve and increase surplus through consistent growth of income and total return;
- D. To safeguard the assets of NYSIF;
- E. To maintain the lowest possible premium rates consistent with the maintenance of a solvent Fund and of reasonable reserves and surplus;

- F. Maximize NYSIF's total rate of return consistent with acceptable levels of risk or portfolio volatility;
- G. To achieve a total annualized average rate of return during each rolling three-year period, which equals or exceeds the discount rate as mandated by Section 86 of the Workers Compensation Law;
- H. To achieve an aggregate rate of return during each rolling three year period that exceeds generally accepted and broadly recognized conventional indicators of the overall rate of inflation (*e.g.*, the GDP deflator) for such period; and
- I. To ensure that all investments conform to applicable laws of the State of New York, including, without limitation, Section 87 of the Workers' Compensation Law, Section 235 of the Banking Law and Section 1404 of the Insurance Law.

Quarterly performance and compliance evaluations shall be done to test progress toward the attainment of longer-term return and risk targets. There are likely to be short-term periods during which performance deviates from market indices and longer-term absolute and relative performance objectives. Peer performance comparisons shall be employed when available to analyze overall performance and any deviations from return/risk objectives. In addition, investment objectives may need to be amended periodically as a result of changes to insurance operations, which may include such factors as the loss reserve discount rate, adjustment in the level of reserves or legislative change(s) in adjustment of benefit levels.

### III. DEFINITION OF RESPONSIBILITIES

#### A. Board of Commissioners

The Board is responsible for setting policy for NYSIF's investments. The Board shall discharge their duties in good faith with the care that an ordinary prudent person in a like position would exercise under similar circumstances and in a manner the Commissioners reasonably believe to be in the best interest of NYSIF and its policyholders. The general responsibilities of the Board relating to investments include the following:

1. Investment policy setting as communicated from time to time by the IPS, Board resolution, rule, regulation or statute;
2. Determine asset allocation through review of NYSIF's specific liquidity needs, risk tolerance and investment horizon;
3. Approve the hiring and, when necessary, termination of investment consultants, including External Investment Managers, Investment Consultant(s), and Custodial Bank(s);

4. Regularly evaluate the performance of NYSIF's investments, in consultation with the CIO and investment consultants; and
5. As appropriate, adopt and establish transparent procurement guidelines and procedures with respect to the engagement of all external investment manager(s), consultant(s), custodian(s) or advisor(s).

B. Investment Committee

The Board may appoint an Investment Committee to assist in gathering information and to make recommendations to the Board. The Investment Committee shall periodically report to the Board.

The Investment Committee, as a committee of the Board, shall have the responsibility and ability to monitor, report and recommend to the Board guidelines, policies and procedures pertaining to investment of NYSIF capital, reserves and surplus. The Investment Committee shall:

1. Periodically review NYSIF's strategic investment policy and allocation of assets in light of any changes in financial, operational or market conditions, or other factors affecting the investment environment including statutory changes;
2. Recommend to the Board performance measures for NYSIF's investments, and to review the actual performance against these benchmarks;
3. Annually review the IPS, and recommend to the Board any amendment deemed necessary or appropriate;
4. Review, consider and recommend to the Board, for their approval, the engagement of Investment Consultants and Managers;
5. Ensure that adequate criteria are established pursuant to these guidelines for the placement and retention of qualified investment managers;
6. Periodically review the criteria and procedures developed by the Chief Investment Officer for the engagement of Investment Managers, with criteria and procedures incorporated into the IPS; and
7. Periodically review and report to the Board on the performance of investments, outside fund managers and investment consultants.

C. NYSIF Investment Staff Responsibilities

Chief Investment Officer

The Chief Investment Officer (“CIO”) shall be an employee of the Fund subject to the supervision and direction of the Executive Director and NYSIF Board, in accordance with Workers Compensation Law §82. The CIO shall have the primary responsibility to implement and supervise the provisions of the IPS and operational investment policies, as otherwise referenced herein. The duties of the CIO shall, among other things, include:

1. Implementing and monitoring the IPS and its objectives;
2. Establish, implement, and monitor investment strategies for NYSIF’s internal investment management;
3. Implementing and monitoring NYSIF’s External Investment Manager roster, reporting any significant changes to the Investment Committee and Board;
4. Daily monitoring of any securities belonging to the NYSIF which, by order of the Board, approved by the Superintendent of Insurance, are loaned under a security loan agreement, as defined in paragraph IV (C) herein, to ensure that the value of the collateral posted will not fall below the market value of the loaned securities;
5. Periodically report performance to the Board and the Investment Committee;
6. Make recommendations to the Executive Director for the hiring of NYSIF investment staff;
7. Implement practices and procedures for the daily administration of NYSIF investment staff;
8. Maintenance, training and supervision of Investment Department staff sufficient to carry out responsibilities as set forth herein, within the limitations of civil service and other State agency personnel requirements;
9. Engaging other NYSIF departments (*e.g.* Claims and Underwriting) regarding cash flow requirements;
10. Ensuring procedures for voting of investment proxies by external and internal managers in accordance with NYSIF’s proxy voting guidelines, which guidelines shall be consistent with the proxy voting guidelines utilized by the New York State Comptroller;

11. Monitoring for ethical or legal breaches or non-compliant actions by Investment Department staff and, in consultation with the Chief Compliance Officer, reporting any material breaches or non-compliant actions to the Board Chair, Executive Director and General Attorney;
12. Serving on the Investment Committee; and
13. Recommending policy changes to the Investment Committee for Board consideration.

#### Chief Fiscal Officer

The Chief Fiscal Officer (“CFO”) shall be an employee of the Fund subject to the supervision and direction of the Executive Director and Board, in accordance with Workers Compensation Law §82. The CFO and staff shall have the primary responsibility to provide back office accounting functions as described below:

1. Daily processes of loading trades, prices, and factors. Reconcile accountings to custodian transactions, process previous days transactions;
2. Weekly processes of loading dividend records and performing cash roll forward;
3. Monthly processes of cash roll forward and reconciliations for Department of Taxation and Finance. Ensure accurate prices for all investment types. Run yield calculations and accounting updates. Run Schedule D reports and interface files; and
4. Quarterly processes of submitting portfolio to the Securities Valuation Office (“SVO”) and the Automated Valuation Service for NAIC pricing and rating (“AVS”). Receive and load NAIC pricing and ratings. Run various CAMRA reports for impairment analysis. Prepare all impairment related schedules and analysis and process approved impairments. Run quarterly Schedule D reports and interface file.

#### Chief Compliance Officer

The Chief Compliance Officer shall be an employee of the Fund designated by the Executive Director to review matters of investment compliance. Among other things, the Chief Compliance Officer shall:

1. Review and monitor the investment trading guidelines, policies and procedures;

2. Monitor and report to the Investment Committee and Executive Director on the External and Internal Investment Managers' compliance policies, standing and status;
3. In consultation with the General Attorney, provide analytical and legal expertise for day-to day inquiries emanating from the investment management process;
4. In consultation with the General Attorney, draft memorandum on various legal issues relating to the interpretation of statutory investment authorities and procedure, as may be requested by Fund Management;
5. Provide a review of Asset Manager, Advisor and investment-related service agreements, in consultation with Fund Management; and
6. Administer the Code of Ethics and Personal Trading Policy for Investment Personnel and Fiscal Professionals, as may be required by law or regulation.

D. Investment Consultant Responsibilities

The Board may engage an independent investment consultant (“Investment Consultant”) as a fiduciary to assist in developing its Investment Policy Statement and assist the Board and Executive Director with regard to implementation of the IPS. The Investment Consultant will work closely with the Investment Committee, Executive Director, CIO and CFO, but will ultimately report to the Board.

The Investment Consultant will generally, among other responsibilities:

1. Provide independent and unbiased information and advice to the Board, Executive Director and CIO;
2. Assist in the execution of the IPS;
3. Assist in the development of strategic asset allocation targets;
4. Assist in the development of performance measurement standards;
5. Provide support services in the External Investment Manager search and selection process approved by the Board;
6. Develop and implement procedures to enable the Board to monitor and evaluate External and Internal Investment Managers;

7. Provide any other advice or services that the Board determines from time to time to be necessary, useful or appropriate within the scope of the Investment Consultant contract;
8. Report quarterly to the Board and Executive Director on the performance of the entire investment portfolio;
9. Provide copies of all documents, reports and advices relating to investment compliance to the Board and Fund Management;
10. Provide industry wide best practices from the public sector and institutional fund management in general; and
11. Appear before the Board, at a minimum, annually;
12. Maintain confidentiality of all NYSIF and NYSIF prepared data and analysis.

E. External Investment Managers' Responsibilities

Consistent with NYSIF's investment guidelines, goals, strategies and any and all regulatory requirements applicable to NYSIF, any External Investment Managers will have discretionary authority over day-to-day management of assets. External Investment Managers will be provided, and must enter into, NYSIF's standard investment manager contract and will report directly to NYSIF Investment Staff as specifically designated by the CIO.

Each External Investment Manager shall:

1. Manage NYSIF's assets under its care and/or control in accordance with the IPS and in compliance with applicable New York State law and regulation;
2. Exercise and maintain full investment discretion and responsibility over the assets in their care within the guidelines set forth herein and the stipulations and requirements of their negotiated contracts;
3. Promptly inform the Board of Commissioners and Fund Management, in writing, of all changes of a material nature pertaining to the External Investment Manager's organization and professional staff;
4. Promptly inform the Board and Fund Management, in writing, of all regulatory actions instituted against such External Investment Manager by the Securities and Exchange Commission, or other regulatory authorities, within 30 days of such proceeding or investigation;

5. If directed by the CIO, shall promptly vote all proxies and related actions in a manner consistent with the long-term interest and objectives of NYSIF. Each External Investment Manager designated to vote shall keep detailed records of said voting of proxies and related action and will comply with all regulatory obligations related thereto;
6. Report to the CIO, on at least a quarterly basis, but more frequently if requested, on the status of the portfolio and its performance for various time periods and meet with the CIO at least semi-annually to report on the economic outlook and compliance with NYSIF's investment goals and objectives;
7. Report directly to the Board and Fund Management, on demand, on the status of the portfolio and its performance for various time periods;
8. Meet and confer with the CIO at least annually;
9. Meet and confer with the Investment Consultant, at least annually or as otherwise required;
10. Meet and confer with Fund Management and the Investment Consultant, as may be required for periodic compliance reviews and assessments; and
11. Provide copies of all documents and reports and relating to investment compliance to the Board and Fund Management.

F. Custodian Bank

The Board will delegate the safekeeping of cash and securities and the collection of income to a qualified industry expert in the custodianship of assets. The firm will act as a fiduciary to the NYSIF. The Custodian is required at a minimum to summarize holdings (at cost and fair market value) and provide a detailed accounting of cash flows on a monthly basis in addition to any other reasonable reporting (both standard and ad-hoc) that may be required by the Board or Fund Management. The Custodian Bank will report directly to the CIO and other members of Fund Management designated by the Board.

G. Securities Lending Agent

The Board may elect to participate in a securities lending program run by either the affiliated agent lending program of its Custodian Bank or alternatively with an independent/third-party lending agent. The securities lending program will be governed by the Securities Lending Guidelines located in the procedures document. The Securities Lending Agent will

report directly to the CIO and other members of Fund Management designated by the Board. Transactions are ultimately also subject to approval by the Superintendent of Insurance.

#### IV. ETHICS AND CONFLICT OF INTEREST POLICY

Board members, Investment Committee members, Fund Management and external service providers involved in the investment process shall refrain from personal business activity that could conflict with proper execution and management of the investment program and its policies, or that could impair their ability to make impartial decisions. These parties are required to reveal all relationships that could create, or result in the appearance of, a conflict of interest in their unbiased involvement in the investment process, and shall abide by all applicable laws and ethical standards of conduct, including, but not limited to, the New York State Lobbying Act and Public Officers Law 73, 74.

#### V. GENERAL INVESTMENT PRINCIPLES

1. Investments shall be made in compliance with statutory mandates for NYSIF investments and under principles of prudent investment management.
2. The assets shall be invested with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person in a like position would exercise under similar circumstances in a manner which the Board reasonably believes to be in the best interest of NYSIF and its associated beneficiaries.
3. Investments shall be diversified as sufficiently provided by New York State law to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
4. The Board rejects the concept of market timing. Thus, NYSIF assets are to be fully invested at all times.

The Board understands that in order to achieve NYSIF's investment objectives, the portfolio will experience volatility of returns and fluctuations of market value. The Board will tolerate volatility as measured against the risk/return analysis of the appropriate market indices.

#### VI. ASSET ALLOCATION AND REBALANCING

NYSIF asset allocation will reflect the following assumptions, generally accepted in the investment industry:

1. Historical long term (ten years and greater) performance of financial assets will generally hold true in the future. More specifically, over long periods of time

higher risk assets tend to out perform lower risk assets, but with greater volatility;

2. Diversification by manager, asset class, investment style and individual securities will reduce overall risk, or volatility, of NYSIF's assets; and
3. Investments will be made consistent with NYSIF's business objectives, underlying liabilities and statutory limitations.

Asset Allocation will be reviewed at least annually, although there may be circumstances that necessitate a study sooner than normally anticipated. The study will be conducted by Investment Department staff and reviewed by the Investment Committee. The Investment Committee will recommend asset allocation changes to the Board for approval. The Board may engage an independent Investment Consultant to assist the Investment Committee and Investment Department staff.

Given NYSIF's objectives, financial status and risk tolerance, the following strategic asset allocation has been approved by the Board.

<b>Asset Class</b>		<b>Target Weight</b>	<b>Minimum Weight</b>	<b>Maximum Weight</b>
U.S. Fixed Income		89.0%	87.2%	90.8%
U.S. Equity				
U.S. Large Cap		7.5%	5.5%	9.2%
U.S. Mid Cap		2.0%	1.8%	3.3%
U.S. Small Cap		1.5%	0.7%	1.8%
<i>Total Equity</i>		11.0%	9.2%	12.8%
<b>Total Portfolio</b>		100.0%		

Investment Department staff is responsible for maintaining the Board's approved asset allocation targets within the ranges specifically designated above. Investment Department staff will consider NYSIF's liquidity and cash flow needs, investment manager allocations in rebalancing the portfolio to its target asset allocation. Investment Department staff will exercise discretion of a rebalance based on prudent review of current circumstances within the boundaries of the minimum and maximum weights. Should the actual weight approach a minimum or maximum weight, Investment Department staff will rebalance back to its IPS target allocation after prudent and diligent review of the prevailing circumstances.

It is expected that the target asset allocation will not change frequently. The Board reserves the right to revise the target allocation at any time on an interim basis to the extent it believes a revision is prudent and in the best interest of NYSIF and its beneficiaries. No material changes will be made unless they are made pursuant to the findings of an asset/liability study conducted by the Investment Committee and Investment Department staff and approved by the Board.

## VII. SECURITIES GUIDELINES

The Investment Committee and Executive Director shall recommend to the Board specific investment guidelines for approval. The CIO will implement and monitor the approved guidelines. These guidelines shall be consistent with all legal requirements as well as prudent investment management and shall be periodically reviewed and reaffirmed or revised as necessary. The approved guidelines will be incorporated into the IPS.

## VIII. SECURITIES LENDING

Section 87(2) of the Workers' Compensation Law permits NYSIF's securities to be loaned under a security loan agreement, by order of the Board and approved by the Superintendent of Insurance. Securities lending will be deemed short-term securities and will be managed in accordance with the short-term securities guidelines. These guidelines shall be consistent with all statutory requirements as well as prudent investment management and shall be periodically reviewed and reaffirmed or revised as necessary. The approved guidelines will be incorporated into the IPS.

## IX. EXTERNAL INVESTMENT MANAGER SELECTION

The Investment Committee, in consultation with the CIO, shall recommend engagement of External Investment Managers to the Board. The services of an External Investment Manager shall be engaged only in accordance with a transparent and competitive procurement process as shall be approved by the Board. The selection, retention and termination of any and all External Investment Managers shall be subject to approval by the Board.

Potential External Investment Managers will be initially screened and vetted by the Investment Consultant, working with the CIO. The Investment Consultant shall provide data to evaluate such managers consistent with NYSIF peer groups and benchmarks. The Investment Consultant will review a list of suitable candidates with the CIO to identify and determine a short list of potential candidates to be interviewed by the Investment Committee. A final on-site visit is required prior to making a recommendation to the Board.

External Investment Managers must enter into NYSIF's standard External Investment Manager Contract and, further, acknowledge receipt of and maintain compliance with NYSIF's Investment Manager Guidelines.

External Investment Managers must meet the following general criteria:

1. An External Investment Manager must be a bank, insurance company, an investment management company or an investment advisor as defined by the Investment Advisors Act of 1940;
2. An External Investment Manager must demonstrate that it has achieved historical quarterly performance numbers calculated on a time-weighted basis meeting CFA Institute standards of performance measurement;

3. An External Investment Manager must provide CFA Institute compliant monthly performance, and any other data deemed necessary to the evaluation process, to the Investment Consultant and its third party database;
4. An External Investment Manager must provide detailed information on the history of the firm, key personnel, key clients, fee schedule and support personnel;
5. An External Investment Manager must clearly articulate the investment strategies and activities that would be followed and demonstrate that the manager has successfully employed these strategies and activities over time;
6. Any External Investment Manager, if selected, must immediately submit to the Board, Fund Management and the Investment Consultant a complete description of any changes the manager proposes with respect to its investment strategies, activities or personnel;
7. Any External Investment Manager shall not have any outstanding legal judgments or past judgments which in the opinion of the Board, cast material doubt on the trustworthiness of the Manager and the Manager's ability to successfully execute the mandate set by NYSIF. It must also immediately report any potential legal allegations that may arise during the search process; and
8. An External Investment Manager must satisfy all other criteria developed by the Executive Director and CIO and approved by the Board.

## X. EXTERNAL INVESTMENT MANAGER REPORTING

### A. Standard Evaluation Process

External Investment Managers are required to report a monthly investment appraisal statement to Fund Management and the Investment Consultant. Investment Department staff will review quarterly each Manager's investment performance as reported by the Board's independent Investment Consultant. Appropriate indices and peer group measurements will be determined by Fund Management and the Investment Committee with the help of its independent Investment Consultant, to assist in the performance review, and may be changed from time to time.

External Investment Managers are required to immediately report material changes in the Manager's organization, investment philosophy, personnel, investment process, acquisition or losses of major accounts, etc.

Annual performance reviews will be conducted by the Investment Committee, CIO, Executive Director and Investment Consultant on all External Investment Managers at least annually in person, and will generally include the following:

1. Quantitative analysis and attribution of historical performance reflecting both return and risk attributes. Quantitative criteria evaluation should include, at minimum, the following:
  - i. Style discipline;
  - ii. Total returns relative to the appropriate style specific index;
  - iii. Total returns relative to a style specific peer universe;
  - iv. Risk adjusted total returns; and
  - v. Fees.
2. A qualitative (or non-quantifiable) review that would include, but is not limited to, the following:
  - i. Investment Philosophy/Process
    - Discipline
    - Valuation Process
    - Implementation
    - Research Capabilities;
  - ii. Personnel
    - Structure
    - Experience/Quality/Tenure
    - Turnover; and
  - iii. Business Goals and Structure
    - Ownership/Incentive
    - Compensation/Incentive.

#### B. Watch Status

If an External Investment Manager has consistently underperformed its index and/or peer group, failure to remedy the circumstances of unsatisfactory performance by the Manager within a reasonable time is grounds for termination. Any recommendation to terminate an External Investment Manager will be treated on an individual basis and shall not be solely based on quantitative data.

Qualitative issues that Fund Management believes may have a material impact on the future performance of an investment fund or External Investment Manager such as operational issues, a significant change in the level of assets and/or number of accounts, a change in personnel, etc., can also determine whether the Investment Committee and CIO recommend the termination of an External Investment Manager.

Prior to making a decision to terminate an External Investment Manager from the Fund, the Manager may be subject to “watch” status at the discretion of the CIO. An External Investment Manager may be placed on “watch” status for a period that should not exceed twelve months. Regardless, the Board may terminate an External Investment Manager as soon as practicable without “watch” status notice if it believes that termination is in the best interest of the Fund.

The following steps should occur for “watch” list investment funds or External Investment Managers:

1. Once an External Investment Manager is formally notified of its “watch” status, the CIO will meet with the Manager to afford it with an opportunity to explain its underperformance and any action plan to remedy the poor performance and/or the qualitative issues.
2. An External Investment Manager on “watch” status must, on a monthly basis, report qualitative and quantitative data to the Investment Department and CIO. Examples of data/information that shall be included in such reports are updates on:
  - i. Status of an Action Plan;
  - ii. Personnel;
  - iii. Process;
  - iv. Investment strategy; and
  - v. Performance.
3. The Board may terminate an External Investment Manager at any time if it believes that termination is in the best interest of the Fund.
4. An External Investment Manager may be terminated if, among other things, the Board has lost confidence in the manager’s ability to:
  - i. Improve performance;
  - ii. Improve qualitative circumstances with stable performance;
  - iii. Maintain an expected investment style; or
  - iv. Comply with reporting requirements.

## XI. INVESTMENT REPORTING

- A. The CIO shall submit to the Board and Executive Director the following data:
  1. On monthly basis:
    - i. Asset Allocation;
    - ii. Aggregate Fund Performance, with index benchmarks;
    - iii. Any developing investment manager issues or general investment related issues; and

- iv. All statutorily required reports to the Board of Commissioners and the Department of Insurance.
2. On a quarterly basis:
    - i. Asset Allocation;
    - ii. Aggregate Fund Performance, with peer group universe and index benchmarks;
    - iii. Asset class level performance, with peer group and index benchmarks;
    - iv. Individual investment manager performance, with peer group and index benchmarks; and
    - v. Any developing investment manager issues or general investment related issues.
- B. The CFO and staff are responsible for all accounting and financial reporting for investments as described below:
1. Research all investment related accounting requirements to ensure proper accounting treatment for each different type of security and proper level of disclosure;
  2. Prepare monthly financial reports within Oracle Financial Management System;
  3. Maintain CAMRA investment accounting system in conjunction with Investment Office and ITS staff;
  4. Prepare quarterly and annual financial statements including Schedule D for filing with the Insurance Department of the State of New York; and
  5. Prepare year end financial reports, related footnotes, and supplemental schedules supplied in compliance with the National Association of Insurance Commissioners.
- C. The CIO, in consultation with the Executive Director, General Attorney and Chief Compliance Officer, will notify the Board on at least a monthly basis of any investment held by NYSIF that does not meet the eligibility requirements of the IPS and recommend action, including, but not limited to, the following circumstances:
1. NYSIF holds obligations, preferred or guaranteed shares or common shares or partnership interests of a particular American institution that are in excess of the allowable percentages of NYSIF's assets under the IPS; or
  2. The credit rating of obligations of a particular institution are downgraded to less than A-rated or the equivalent,

where NYSIF either holds such obligations or holds preferred or guaranteed shares or common shares or a partnership interest in such institution.

- D. The Investment Consultant is expected to meet with the Board at least annually to report on the performance of the CIO, Investment Department staff and External Investment Managers. In addition, the Investment Consultant is also required to meet with the Board on at least a quarterly basis, or as otherwise required or necessary for the implementation of the IPS.

## XII. PROCUREMENT

The Board may approve the retention of external vendors, including but not limited to, consultants, External Investment Managers, and custodians, to assist the Fund in implementing its investment policy. Consequently, all External Investment Manager(s), consultant(s), custodian(s) and advisor(s) must follow NYSIF's transparent procurement guidelines and procedures as approved by the Board.

## XIII. PROXY VOTING PROCEDURES AND GUIDELINES

The NYSIF discharges its fiduciary responsibilities in the investment of its reserves and capital in accordance with its duties under the laws of the State of New York. Guidelines and procedures have been adopted by NYSIF to reasonably ensure that proxies are voted in the best interest of shareholders and to promote long-term shareholder value. Many companies realize that it is in their financial interests to pursue business practices that are ethically, environmentally, legally and socially responsible, and these policies take into consideration actions which promote good corporate citizenship through the proxy process.

The approved proxy voting guidelines will be incorporated into the IPS.

## XIV. CORRESPONDENCE

Any investment-related correspondence directed to the Board or Fund Management shall be addressed to the Secretary to the Board with copies provided to the Executive Director, General Attorney, CIO and Chief Compliance Officer. The Secretary to the Board shall, where appropriate, forward copies of such correspondence to the Chair, Vice-Chair, Investment Committee and Commissioners.

## Exhibit A

### SECURITIES GUIDELINES

#### I. Fixed Income Securities

NYSIF's fixed income investment component shall be diversified as to portfolio style and asset types. The main purpose is to minimize risk through capital market diversification. Allocation weightings of capital market asset classes should provide the opportunity for enhanced returns. The maturity structure of the investments shall be maintained to reasonably match the cash flow needs and the interest rate market sensitivity of NYSIF's projected liabilities.

##### A. Short Term Fixed-Income Securities

1. Commercial Paper investments in obligations issued by a United States corporation maturing within 270 days provided such obligations receive the highest rating of one of the following rating agencies as designated by the Banking Board: Moody's Investor's Services, Standard & Poor's Corporation, Fitch Investor Service and Duff & Phelps Credit Rating Agency. No limitation is imposed as to the percentage of assets that are authorized for investment either overall or by a particular issuer.
2. Reverse repurchase agreements must be collateralized by direct obligations of the United States government or any agency thereof. Obligations guaranteed as to principal and interest by the United States government may also be considered as collateral. The Agreements must be collateralized by securities with an aggregate market value of at least 102% of the principal amount invested. No limitation is imposed as to the percentage of assets invested in securities collateralized by United States government obligations and guarantees.
3. Certificate of Deposit investments must be, subject to any applicable regulations of the New York State Banking Board, and issued by:
  - (a) a bank, trust company or national bank whose principal office is located within New York State;
  - (b) a banking corporation organized under the laws of the United States or any state whose deposits are insured by an agency of the United States or an agency or branch located within the United States; or
  - (c) a foreign banking corporation with total worldwide bank assets in excess of \$1 billion.

There are no aggregate limits imposed as to the percentage of assets that may be invested in certificates of deposit.

4. Bankers' Acceptances investments must meet Federal Reserve Bank eligibility requirements. This asset obligation is not to exceed 25% of the issuer's capital and surplus, or 5% of the aggregate amount credited to its depositors, whichever is less.
5. All security types permissible under the long-term investment guidelines, which mature in less than 360 days.

B. Long Term Fixed Income Securities

(Long term investments are defined as securities that mature longer than 360 days)

1. Obligations of the United States Government and Agencies: Investments in obligations of the United States government or government agencies for which the full faith and credit of the United States is pledged for the payment of interest and principal; including investments in obligations of the Federal Home Loan Bank, the Tennessee Valley Authority, obligations of or instruments issued by or fully guaranteed by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and notes, bonds or other evidences of indebtedness of the United State Postal Service. No limits are imposed as to the percentage of assets that may be invested in these securities.
2. Mortgage Backed Obligations: Investment in mortgage backed obligations guaranteed by the full faith and credit of the United States government, or issued or guaranteed by the Government National Mortgage Association, or issued or guaranteed by the government sponsored enterprises such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Association are deemed acceptable securities. No limits are imposed as the percentage of assets that may be invested in these securities.
3. Municipal Obligations: Investment in obligations of any solvent municipality of New York State to which the full faith and credit of the issuing municipality is pledged.
4. Obligations of American Institutions

Up to fifty percent (50%) of NYSIF's surplus and reserves may be invested in obligations of solvent American institutions meeting the requirements as set forth below, in aggregate with investments in common and preferred equity securities NYSIF is eligible to invest under section II (Equity Investments) of these Securities Guidelines:

- (a) Obligations of any solvent American institution or obligations which are assumed or guaranteed by such an institution which are

not in default as to principal and interest and have the following characteristics:

- (i) are adequately secured by collateral having a market value not less than the principal amount of the obligation and has investment qualities and characteristics whose speculative elements are not predominant;
- (ii) are rated A or higher (or the equivalent) by one of the following securities rating agency recognized by the Superintendent of Insurance: Moody's Investor's Services, Standard & Poor's Corporation, Fitch Investor's Service, Duff & Phelps Credit Rating Agency, or Thompson Bank Watch, or if not so rated are similar in structure and in all material respects to other obligations of the same institution which are so rated; except that up to ten percent (10%) of the surplus and reserve funds belonging to the State Insurance Fund may be invested in the obligations of any solvent American institution irrespective of the rating of such institution's obligations or other similar qualitative standards, but shall not include any derivative instrument or derivative transaction or any investment found by the superintendent of insurance to be against public policy (WCL 87(1));
- (iii) are insured by one or more authorized insurance companies that are licensed to insure obligations in the State of New York and after considering such insurance are rated Aaa or the equivalent; or
- (iv) are rated "highest quality designation" by the Securities Valuation Office of the National Association of Insurance Commissioners.

Investment Limitation. No investment in or loan upon the obligations of any institution, other than an institution which issues mortgage related securities, and no investment in any one mortgage related security, made pursuant to the provisions of this paragraph, shall exceed five per centum of NYSIF's admitted assets as shown by its last statement on file with the Superintendent of Insurance.

## II. Equity Investments

Diversification of the equity asset base into large capitalization companies and small to mid-size companies will offer the opportunity for enhanced returns. Up to fifty percent (50%) of NYSIF's surplus and reserves may be invested in the types of equity securities of solvent American institutions meeting the requirements as set forth below, in aggregate with investments in fixed income obligations of American institutions, for

which NYSIF is eligible to invest under section I(B)(4) (Fixed Income Securities) of these Securities Guidelines:

- A. Preferred or guaranteed shares of American Institutions: Such securities issued or guaranteed by a solvent American institution if such institution's obligations are eligible for investment by NYSIF under section I(B)(4) of these Investment Guidelines.

Investment Limitation. Investment in the preferred or guaranteed shares of any single institution shall be limited to 2% of NYSIF's admitted assets as filed with the Superintendent of Insurance.

- B. Common shares or partnership interests of any solvent American institution, if:

- 1. all the obligations of such institution are eligible for investment by NYSIF under section I(B)(4) of these Investment Guidelines and preferred or guaranteed shares of such institution are eligible for investment by NYSIF under section II (Equity Investments) of these Investment Guidelines; and

- 2. such equity interests of such institution, except if such institution is an insurance company, are registered on a national securities exchange or are otherwise registered pursuant to the Securities Exchange Act of 1934, (15 U.S.C. subdivision 78a-78kk) and if so otherwise registered are price quoted through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc.

Investment Limitation. Investment in equity interest in any single institution should not exceed 1% of NYSIF's admitted assets as shown by its last statement on file with the Superintendent of Insurance.

- C. Securities of any investment company registered to the Federal Investment Company Act of 1940, 15 U.S.C. Section 802, if such investment company:

- 1. invests at least 90% of its assets in the following types of securities:

- a. obligations which are not in default as to principal or interest, which are valid and legally authorized, and which are assumed, guaranteed or insured by the United States or any agency or instrumentality thereof or territory or possession of the United States or of any state of the United States;

- b. obligations of American institutions which are eligible for investment by NYSIF under section I (Fixed Income) of these Investment Guidelines;
  - c. preferred or guaranteed shares of American institutions which are eligible for investment by NYSIF under section II (Equity Investments) of these Investment Guidelines; or
  - d. in securities which are determined by the Superintendent of Insurance to be substantively similar to such investments as described above; or
2. invests at least 90% of its assets in common shares of American institutions, which are eligible for investment by NYSIF under section II(B) of these Investment Guidelines.

## Exhibit B

### SECURITIES LENDING GUIDELINES

Section 87(2) of the Workers' Compensation Law permits NYSIF's securities to be loaned under a security loan agreement, by order of the Board of Commissioners, approved by the Superintendent of Insurance. Cash and non-cash collateral generated by securities lending activities will be deemed short-term securities and will be managed in accordance with the short-term securities guidelines, subject to the following provisions:

1. For purposes of this section, "security loan agreement" shall mean a written contract, the terms of which have been approved by the Commissioner of Taxation and Finance, whereby the NYSIF (the lender) agrees to lend securities to a broker-dealer, bank or trust company (the borrower), described in paragraph 87(2) (a) Workers Compensation Law, for a period not to exceed one year. Such agreement shall also be subject to the following limitations:
  - (a) the lender must retain the right to collect from the borrower all dividends, interest, premiums, rights, and any other distributions to which the lender would otherwise have been entitled;
  - (b) the lender may waive the right to vote the securities during the term of such agreement;
  - (c) the lender must retain the right to terminate such agreement upon not more than five business days' notice;
  - (d) the borrower shall provide as collateral to the lender 102% of the value of domestic securities in cash or direct obligations of the United States of America or any agency or instrumentality thereof or obligations fully guaranteed by the United States of America that are eligible for investment by the State Insurance Fund under subdivision one of this section, provided that such obligations may in no event consist of derivative securities; and
  - (e) such agreement shall provide for payment of additional collateral on a daily basis, or at such time as the value of the loaned securities increases to agreed upon ratios.

2. Any securities belonging to NYSIF which, by order of the Commissioners, approved by the Superintendent of Insurance, is loaned under a security loan agreement shall be monitored by the Commissioners, or its assigned designee, on a daily basis, and in no event, shall the value of the collateral posted to fall below the market value of the loaned securities.
3. Securities Lending Agent will provide daily (where indicated), monthly, quarterly, and annual reporting on the Securities Lending Program which, at as minimum, details the following items:
  - (a) Outstanding Loans and Collateralization Level by Security, Borrower, Account and Asset Class on a daily basis;
  - (b) Reporting on Total Volumes lent by Borrower, Security, Borrower, Account and Asset Class detailing utilization of securities available for lending;
  - (c) Reporting providing a summary of gross and net (of earnings split and any collateral/administrative fees) Revenue for both Cash and Non-Cash Lending;
  - (d) Reporting that provides a decomposition of total earnings spread for Cash Lending activities into investment spread (collateral investment pool yields Fed Funds Open) and lending spread (Fed Funds Open less weighted average rebate rate);
  - (e) Detailed reporting on the collateral investment pool at both a detailed security level as well as in summary format; and
  - (f) Any other reporting normally and customarily provided to securities lending customers presently, and in the future, as well as ad hoc requests by the Board of Commissioners, NYSIF staff and other authorized parties.

## Exhibit C

### PROXY VOTING PROCEDURES AND GUIDELINES

The NYSIF discharges its fiduciary responsibilities in the investment of its reserves and capital in accordance with its duties under the laws of the State of New York. These guidelines and procedures have been adopted by NYSIF to reasonably ensure that proxies are voted in the best interest of shareholders and to promote long-term shareholder value. Many companies realize that it is in their financial interests to pursue business practices that are ethically, environmentally, legally and socially responsible, and these policies take into consideration actions which promote good corporate citizenship through the proxy process. These policies and guidelines reflect the usual voting position on certain recurring proxy issues, are not expected to involve unusual circumstances, may not anticipate every proposal that will appear before NYSIF's portfolio of investments, are subject to change as issues arise, and should not be construed as binding.

#### A. Analyst Independence

Generally, NYSIF will vote FOR proposals that request a company to initiate steps to eliminate conflicts of interest between investment research analysts and investment banking operations.

#### B. Auditors

These proposals relate to issues submitted to shareholders related to the selection of auditors. As a general matter, NYSIF believes that corporate auditors have a responsibility to represent the interests of shareholders and provide an independent view on the propriety of financial reporting decisions of corporate management. Conflicts of interests can arise when auditors provide both audit and non-audit services to the same company and/or when the auditor is continuously employed by a company. These conflicts can compromise auditors' independence and have the potential to adversely affect shareholder interests.

##### a. Independent Auditors

In order to ensure the integrity of the audit process, NYSIF will generally vote FOR proposals to appoint independent auditors, except for auditors who have been found to have rendered an opinion to any company found inconsistent with best accounting practices or not indicative of the company's financial situation. "Audit services" are defined as services rendered for the audit of the company's annual financial statements and review of financial statements for statutory or regulatory filings, assurances, and related services pertaining to the performance of the audit or review of the financial statements, and tax compliance and tax preparation services.

C. Board of Directors

These proposals relate to issues submitted to shareholders relating to the composition of an organization's or company's Board of Directors. As a general matter, a company's Board of Directors (rather than shareholders) is most likely to have access to important, nonpublic information regarding a company's business and prospects and is, therefore, best-positioned to set corporate policy and oversee management. The foundation of good corporate governance is generally advanced through the election of qualified, independent corporate directors who are likely to diligently represent the interests of shareholders and oversee management of the corporation in a manner that will seek to maximize shareholder value over time.

1. Classified Board

NYSIF believes that annual elections provide the best governance system for accountability to shareholders. NYSIF will generally vote AGAINST proposals for a Classified Board and vote FOR proposals to eliminate a Classified Board and elect all Directors on an annual basis.

2. Cumulative Voting

NYSIF will generally not support proposals that request the adoption of a cumulative voting policy. Rationale: Cumulative voting generally allows shareholders to increase the number of votes by the number of Directors to be elected, which could result in shareholders casting all votes for an individual or slate of candidates and result in a minority block of stock that can be represented on the Board.

3. Direct Nomination of Board Members

Generally, NYSIF will vote AGAINST proposals to eliminate shareholder abilities to nominate Director's directly. NYSIF will vote FOR proposals permitting shareholder ability to nominate Directors directly.

4. Election of Directors

Generally, NYSIF will vote FOR a nominee for the position of Director of a United States company in an uncontested election, except for a nominee who has missed at least two meetings and, as a result, attended less than 75% of meetings of the Board of Directors. In addition, NYSIF will generally withhold support under the following circumstances:

- i. Directors who failed or refused to implement as corporate policy the resolve of a shareholder resolution which received a favorable vote from a majority of the ballots cast during the preceding annual meeting;
- ii. Directors who failed or refused to adopt all independent audit, compensation, and nominating committees at the corporation; or
- iii. Directors who have failed to fulfill their committee duties and ignored the best interests of shareholders.

5. Independent Directors

In general, a Board of Directors independent from management is of vital importance to a company and its shareholders. NYSIF will generally vote FOR proposals that ask a majority or a substantial majority of a company's Board of Directors to consist on independent Directors. Independence will be evaluated based upon a number of factors, including but not limited to, past or current employment by the company or one of its paid advisors or consultants, financial transactions, and family relationships of key employees of the company.

6. Supervisory Board Members

Generally, NYSIF will vote FOR proposals seeking elections of supervisory Board members.

D. Capital Structure

These proposals generally relate to various requests, principally from management, for approval of amendments that would alter the capital structure of a company, such as an increase in authorized shares. As a general matter, NYSIF supports requests that are believed to enhance the rights of common shareholders and oppose requests that appear to be unreasonably dilutive.

1. Dual Class Stock

NYSIF will generally vote AGAINST proposals that authorize the creation or extension of dual class voting stock. Rationale: Dual Class voting stock creates a second class of stock which may result in unequal voting rights for shareholders and otherwise allow management the ability to perpetrate itself without the true majority of shareholders.

2. Share Repurchase Plan

Generally, NYSIF will vote FOR management proposals seeking the approval of open-market share repurchase plans in which all shareholders may participate on equal terms.

E. Corporate Governance and Director Responsibilities

NYSIF believes that companies should act consistent with the principles of organizational corporate governance, and will support those proposals seeking to increase a company's accountability, operational transparency and the highest degree of ethical and legal conduct.

1. Director Liability and Indemnification

Indemnification provides for payment by a company for the expenses of Directors who become involved in litigation as a result of service to the company. Proposals to indemnify a company's Directors differ from those to eliminate or reduce their liability as Directors may still be liable for an act or omission, but the company will bear the expense under principles of indemnification. NYSIF will generally vote FOR proposals that ask a company to limit Director Liability and/or provide indemnification. However, NYSIF will generally vote AGAINST proposals that provide Director indemnification for the following actions:

- i. breach of the duty of loyalty;
- ii. acts or omissions not in good faith or involving intentional misconduct, criminal wrongdoing, or knowing violations of law;
- iii. unlawful purchase or redemption of stock;
- iv. payment of unlawful dividends; or
- v. receipt of improper personal benefits

*Rationale:* Limitations on directors' liability can sometimes benefit the company and its shareholders by facilitating the attraction and retention of qualified directors. At the same time, shareholders should be protected in situations of egregious misconduct by directors.

2. Establishment of Board of Director Committees

NYSIF will vote FOR proposals that request companies to establish audit, compensation, governance and nominating committees of the Board of Directors. NYSIF will also vote FOR proposals that request such committees be comprised solely and exclusively of independent Directors.

3. Independent Board Chairman

NYSIF will generally vote FOR proposals that a company initiate steps to separate the roles of Chairman and Chief Executive Officer.

4. Board Diversity

NYSIF will support proposals that encourage diversified representation on the Board and those that aim to expand the search for women and minority candidates, including proposals asking companies to make greater efforts to diversify their boards and proposals to report to shareholders on those efforts and on the process of selecting nominees.

Rationale: Modern corporations operate in a diverse, multi-cultural environment. Long-term financial performance is likely to be enhanced when Boards reflect and draw upon talent from the widest choice of candidates.

F. Disclosure and Operational Transparency

NYSIF believes that operational transparency and more accurate disclosures by companies would result in informed-decision-making by shareholders.

1. Dividend Report

NYSIF will generally vote FOR proposals that request a company report on its dividend policy.

2. Subsidiary Operations

NYSIF will generally vote FOR proposals that request a company to disclose information about its subsidiary operations.

3. Statutory Reporting

NYSIF will generally vote FOR proposals that request a company to report on compliance with legislative requirements or statutory filing requirements, to the extent that the information provided is not proprietary.

G. Executive and Director Compensation

These proposals generally concern those issues submitted to shareholders regarding management compensation and employee benefits. As a general matter, NYSIF favors disclosure of a company's compensation and benefit policies and opposes excessive compensation. NYSIF will generally support proposals that request shareholder approval of future severance packages ("golden parachutes"). NYSIF also favors proposals that request companies to obtain shareholder approval of all new and amended stock-based compensation plans.

1. Retirement Benefits for Outside Directors

NYSIF will generally vote AGAINST proposals seeking to establish retirement benefits for outside directors and vote FOR proposals to eliminate retirement benefits for outside directors.

2. Repricing of Stock Options

NYSIF will generally vote AGAINST proposals to reprice stock options.

3. Employee Stock Purchase Plan

NYSIF will generally vote FOR proposals to approve, authorize or amend employee stock purchase plans that apply to all employees.

4. Disclosure of Executive Pay

NYSIF will generally vote FOR proposals seeking further disclosure of executive pay or requiring companies to report on their supplemental executive retirement benefits.

5. Expense Stock Options

NYSIF will generally vote FOR proposals requiring a company to expense stock options in their annual income statements.

H. General Voting Provisions

1. Confidential Voting

NYSIF will generally vote FOR proposals in favor of calling for confidential voting.

2. Supermajority Requirements

NYSIF will generally vote FOR proposals that ask a company to eliminate any requirement that corporate actions be approved by more than a simple majority vote of shareholders. NYSIF will generally vote AGAINST proposals seeking to create any requirement that corporate actions be approved by more than a simple majority vote of shareholders.

3. Unequal Voting Rights

NYSIF will not generally support proposals that allow a company to issue shares with special voting rights.

*Rationale:* Unequal voting rights can benefit some shareholders at the expense of others. Such rights can effectively deter premium takeover offers.

I. Equal Employment

1. Sexual Orientation

NYSIF will support proposals asking companies to adopt or amend equal employment opportunity policies to explicitly prohibit discrimination based on sexual orientation. The Fund will oppose proposals asking companies to adopt or amend policies to exclude reference to sexual orientation.

*Rationale:* Modern corporations operate in a diverse environment. Long-term financial performance is likely to be enhanced when a corporation is committed to respect and tolerance; prohibits all forms of discrimination; and encourages the recruitment, hiring and promotion of employees from the widest choice of candidates.

2. Glass Ceiling

NYSIF will support proposals requesting a report on steps taken to break the “glass ceiling” – barriers to women’s and racial minorities’ advancement to senior management positions. Reports may include information on company policies to address diversity and leadership development, links between executive compensation and efforts to break the glass ceiling, and top company wage earners broken down by gender and race.

NYSIF will support proposals requesting that corporations enforce federal anti-discrimination laws and their own anti-discrimination policies.

3. EEO Reporting

NYSIF will support proposals that ask corporations to report to shareholders on equal employment opportunity activities. These reports may include a copy of the annual consolidated EEO-1 reports filed with the U.S. Equal Employment Opportunity Commission.

*Rationale:* Successful corporations are likely to be those that demonstrate a commitment to respect and tolerance; prohibit all forms of discrimination; and recruit, hire and promote employees from the widest choice of candidates. Proposals that require additional disclosure about such activities can enhance shareholder value by providing shareholders with information critical to informed decision-making.

EXHIBIT D

**NEW YORK STATE INSURANCE FUND  
EMERGING MANAGER INVESTMENT POLICY**

**EXHIBIT D**

**NEW YORK STATE INSURANCE FUND  
EMERGING MANAGER INVESTMENT POLICY STATEMENT  
As Adopted June 24, 2009**

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**NEW YORK STATE INSURANCE FUND**  
**Statement of Investment Policy and Objectives**

**I. Introduction**

Pursuant to the laws of the State of New York, the New York State Insurance Fund (“NYSIF” or the “Fund”) is vested with the authority and responsibility for the investment growth and preservation of its capital, surplus, and reserves in support of its mission to insure employers against liability for personal injuries or death sustained by their employees. NYSIF’s portfolio of investments is comprised of the Workers’ Compensation Fund and the Disability Benefits Fund. NYSIF is also responsible for the administration and investment of assets of the Aggregate Trust Fund. The Fund is managed by administrative officers and employees appointed pursuant to Section 82 of the Workers’ Compensation Law (herein, “Fund Management”). The Executive Director is, subject to the direction of the Board of Commissioners, responsible for the direction and operation of the Fund

The purpose of this Emerging Manager Investment Policy Statement (“EM Policy”) is to communicate within NYSIF and its fiduciary officers and personnel, the processes for managing, deploying, and monitoring its investment assets and investment managers. The NYSIF Investment Committee and Fund Management will recommend changes to the EM Policy for approval by the Board of Commissioners (the “Board”). It is intended to be sufficiently specific to be meaningful, yet flexible enough to be practical to meet NYSIF’s long term investment objectives. The Board, Investment Committee, and Fund Management will review the EM Policy on at least an annual basis.

**II. Scope**

The EM Policy governs the NYSIF Emerging Manager Program (“EMP”) and shall apply to any asset class of the NYSIF Total Return Operating Plan (“TROP”). The EM Policy is intended to be an addendum to the Investment Policy Statement (“IPS”) and therefore shall be subject to all provisions of applicable law and the applicable limitations and requirements of the NYSIF IPS. The Board reserves the right to amend, supplement, or rescind this EM Policy at any time.

**III. Purpose**

The purpose of this EM Policy is to establish a framework for the development and administration of NYSIF’s Emerging Manager Program (“EM Program”), consistent with the Board’s fiduciary responsibilities in the investment of the Fund. The EM Policy does not preclude NYSIF from hiring such investment managers that qualify for the EM Program through any other NYSIF search process.

#### **IV. Ethics and Conflict of Interest Policy**

Board members, Investment Committee members, Fund Management, and external service providers involved in the investment process shall refrain from personal business activities that could conflict with proper execution and management of the investment program and its policies, or that could impair their ability to make impartial decisions. These parties are required to reveal all relationships that could create, or result in the appearance of, a conflict of interest in their unbiased involvement in the investment process, and shall abide by all applicable laws and ethical standards of conduct, including, but not limited to, the New York State Lobbying Act and Public Officers Law 73, 74.

#### **V. Definition of an Emerging Manager**

For the purpose of this EM Policy, NYSIF defines an emerging investment manager as follows:

1. Registered under the Investment Advisors Act of 1940 or has an exemption (and will maintain such registration or exemption)
2. Total assets under management of less than \$2 billion at the time of the search
3. A measureable track record for the product under consideration or for a product with a similar investment philosophy and process as the product under consideration. A Manager-of-Manager will determine the appropriate length of time.
4. Portfolio manager(s) with a minimum two-year track record directly or indirectly attributable to that portfolio manager(s) in an investment style and process similar to that which is under consideration
5. Historical performance must be CFA Institute compliant.

#### **VI. Program Objectives**

The fundamental principle in determining NYSIF's investment strategy and risk tolerance is to ensure fulfillment of NYSIF's statutory mission. The EM Program is established to accomplish this mission by identifying and hiring investment managers deemed emerging as defined in Section V that meet or exceed risk-adjusted return expectations set forth for all investment managers.

#### **VII. Investment Goals and Portfolio Construction**

##### **A. Goals**

The primary goals of the EM Program are to

1. Identify and gain early access to talented investment managers in their early business stages,
2. Generate superior Fund return performance through the EM Program, and

3. Further diversify the Fund's overall investment program, so as to enhance the risk-adjusted returns of the Fund.

**B. Allocation**

The Board will initially allocate approximately \$150,000,000 from TROP to fund the EM Program. Such an allocation may be amended or eliminated by the Board at any time.

**C. Structure**

Preference should be given to those investment managers deemed by Fund Management to meet the objectives, goals, and definition of emerging manager as described in Section V and are minority- or women-owned investment management firms as defined by the Empire State Economic Development and the Division of Minority and Women's Business Development. Such investment manager firms are business enterprises, which have been approved by the director of the Division of minority and women's business development for minority-owned business enterprise or women-owned business enterprise status subsequent to verification that the business enterprises are owned, operated and controlled by minority group members or women.

**D. Standards**

All investment managers selected through the EM Program shall comply with and be subject to any and all performance-related and other standards, requirements, and expectations set forth in NYSIF's IPS, other than requirements regarding criteria for inclusion in NYSIF's standard investment managers search process.

All investment managers selected through the EM Program shall also comply with and be subject to any and all other NYSIF Board policies, procedures, and guidelines that pertain to investment managers.

**E. Process**

The Board may delegate the selection process to a Manager-of-Managers, subject to any and all NYSIF Board policies, procedures, and guidelines that pertain to investment managers. Fund Management may also be responsible for identifying and recommending individual emerging managers.

**VIII. Roles and Responsibilities**

**A. Board of Commissioners**

The Board shall be responsible for approving the EM Program and governing Policy, including establishing any goals. The Board, with input from the Investment Committee, shall review the EM Policy annually to determine

whether modifications are necessary. The Board, with input from the Investment Committee and Fund Management, shall be responsible for the retaining and terminating the Manager-of-Managers and/or Emerging Manager.

**B. Investment Committee**

In addition to and including the duties described in the NYSIF IPS, the Investment Committee shall monitor compliance of the EM Policy. It shall evaluate proposals for the EM Policy modifications, as needed, and make recommendations for consideration by the Board. The Investment Committee shall review the EM Policy annually and make any necessary recommendations to the Board with respect to retaining and terminating the Manager-of-Managers and/or individual Emerging Manager.

**C. Fund Management**

In addition to and including the duties described in the NYSIF IPS, Fund Management shall be responsible for oversight of the EM Program. Fund Management's responsibilities shall include, but are not be limited to the following:

1. Developing and maintaining specific procedures, as approved by the Investment Committee, subject to periodic reviews by and updates to the Board, to comply with the approved EM Policy;
2. Developing and recommending changes to the EM Policy;
3. Implementing the EM Policy and managing the EM Program;
4. Monitoring the individual Emerging Managers' (through the Managers-of-Managers and/or directly) compliance with the NYSIF investment guidelines and the EM Policy;
5. Conducting comprehensive annual reviews of the EM Program and the Manager-of-Managers and/or Emerging Manager;
6. Initiating searches, making recommendations, and negotiating contracts of selected Manager-of-Managers and/or Emerging Manager;
7. Evaluating opportunities with the Consultant and making recommendations to the Investment Committee; and
8. Evaluating and making recommendations for retaining and terminating the Manager-of-Managers and/or Emerging Manager.

**D. Investment Consultant**

The Investment Consultant shall assist Fund Management with developing the EM Policy and implementing the EM Program. The Investment Consultant's responsibilities include the following:

1. Assisting Fund Management with identifying, evaluating, and hiring Manager-of-Managers and/or Emerging Managers;
2. Providing ongoing performance monitoring of the EM Program; and
3. Analyzing the effectiveness of the EM Program and make recommendations to Fund Management, the Investment Committee, and the Board.

**E. Manager-of-Managers**

The Manager-of-Managers and shall serve as a fiduciary and prudently manage the assets in the best interest of NYSIF, abide by all NYSIF policies and procedures, and comply with the specific investment guidelines set forth in the NYSIF IPS and this EM Policy. The Manager-of-Managers' responsibilities shall also include the following:

1. Maintain a comprehensive database of emerging managers and continuously conduct due diligence on prospective emerging managers;
2. Construct a diversified portfolio of separately managed accounts consisting of emerging managers based on the objectives and benchmarks set by the Manager-of-Managers;
3. Maintain discretion to retain or terminate emerging managers based on the NYSIF investment guidelines and the evaluation criteria set by the Manager-of-Managers; and
4. Provide performance evaluation reports on the individual managers and the Manager-of-Managers fund itself on a regular basis.

**F. Emerging Managers**

The Emerging Manager shall abide by all NYSIF policies and procedures and comply with the specific investment guidelines set forth in the NYSIF IPS and this EM Policy. The Emerging Manager's responsibilities shall also include the following:

1. Subject to the terms and conditions of the NYSIF IPS, this EM Policy, the negotiated contract, and applicable New York State laws and regulations, the manager shall exercise and maintain full investment discretion and responsibility over assets in their care;
2. Promptly inform the Board and Fund Management, in writing, of all changes of a material nature pertaining to the Emerging Manager's organization and professional staff;
3. Promptly inform the Board and Fund Management, in writing, of all regulatory actions instituted against such Emerging Manager by the Securities Exchange Commission, or other regulatory authorities, within 30 days of such proceeding or investigation;
4. The emerging manager shall use its best efforts to obtain execution

of orders through reputable dealers/brokers or banks at the most favorable prices and competitive commission rates;

5. Provide to the Committee and their investment consultant, on a timely basis each quarter, such data as is required for proper monitoring.
6. Report to the Chief Investment Officer, on at least a quarterly basis, but more frequently if requested, on the status of the portfolio and its performance for various time periods and meet with the CIO at less semi-annual to report on the economic outlook and compliance with NYSIF's investment goals and objectives
7. Provide copies of all documents and reports and relating to investment compliance to and Fund Management.

## **IX. Monitoring and Reporting**

1. Fund Management with the assistance of its consultants will closely monitor and analyze the EM Program to ensure compliance with the EM Program's strategic objective and goals.
2. Manager-of-Managers and/or Emerging Manager are required to submit all reports to Fund Management and its consultant as directed in accordance with their respective contracts and applicable requirements set forth in Section VIII.
3. Manager-of-Managers and/or Emerging Manager shall report to the CIO, on at least a quarterly basis, but more frequently if requested, on the status of the portfolio and its performance for various time periods and meet with the CIO at least semi-annually to report on the economic outlook and compliance with NYSIF's investment goals and objectives.
4. Manager-of-Managers and/or Emerging Manager must report directly to the Board and Fund Management, on demand, on the status of the portfolio and its performance for various time periods;
5. Manager-of-Managers and/or Emerging Manager should meet and confer with the Investment Committee, at least annually or as otherwise required
6. Manager-of-Managers and/or Emerging Manager should meet and confer with Fund Management and the Investment Consultant, as may be required for periodic compliance reviews and assessments.
7. Fund Management with the assistance of its Consultant, will perform comprehensive evaluations of the EM Program, the Manager-of-Managers, and Emerging Managers annually, and will report the findings to the Investment Committee.

**X. Qualifications of Emerging Manager-of-Managers**

NYSIF seeks to retain the most talented Manager-of-Managers to invest NYSIF assets. The general qualifications of a Manager-of-Managers, will be consistent with the EM Program's Objectives and Goals, and include the following:

1. Registered under the Investment Advisors Act of 1940 or has an exemption (and will maintain such registration or exemption);
2. Maintain and update a comprehensive database of emerging managers and conduct face-to-face meetings with emerging managers;
3. Demonstrated ability to perform portfolio optimization and construction analyses;
4. Demonstrated ability to provide quarterly performance evaluation reports on individual managers and on an aggregate basis;
5. Provide at least a three-year track record of discretionary fund management of Manager-of-Manager programs (firm track record or track record attributable to the portfolio managers while with a prior firm).

Fund Management and the Investment Consultant shall conduct a comprehensive due diligence review process for each Manager-of-Managers. The specific search criteria and due diligence procedures for the Manager-of-Managers will be established by the Investment Committee, consistent with the EM Program's Objectives and Goals, at the time of the search with input and recommendations from Fund Management and the Consultant.

**APPENDIX Z**

**FEE SCHEDULE PROPOSAL**

Bidder Name	_____	Federal ID #	_____
DBA, if any	_____	Type of Firm	_____
Address	_____	DUNS #	_____
	_____	Email Address	_____
	_____	Telephone #	_____
County	_____	Fax #	_____
Web Address	_____		_____
Contact	_____	Title	_____

Please submit either an all-inclusive asset based bid or flat fee bid.

Please submit a separate fee schedule for each product the Bidder is proposing.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Typed Name: \_\_\_\_\_ Date: \_\_\_\_\_