



November 10, 2011

TO WHOM IT MAY CONCERN:

Attached is the Request for Proposals (RFP) for Collection Services for the New York State Insurance Fund (NYSIF).

The due date for submission of proposals is 12/9/2011.

The attached *No Bid* form should be completed and returned **only by those Bidders who choose not to bid** on this RFP. Please return via email (contracts@nysif.com) or fax (518-437-4209).

If you have any questions, contact one of the Designated Contacts listed in the RFP.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Gilchrist".

Michelle Gilchrist
Chief Clerk

Attachments:

No Bid form
RFP



NO BID FORM

RFP # 2011-23

DESCRIPTION: Collection Services

CONTRACT PERIOD: Five years

PROPOSALS DUE:

DATE:

12/9/11

TIME:

2:00 p.m.

SUBMIT BIDS TO:

Michelle Gilchrist
NYSIF - Procurement Unit
Bid # 2011-23
15 Computer Drive West
Albany, NY 12205-1690

Vendors choosing not to submit a proposal 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 PROPOSAL" IS CONSIDERED A RESPONSE.

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



NEW YORK
STATE INSURANCE FUND
REQUEST FOR PROPOSALS

for

Collection Services

Bid 2011-23

11/10/2011

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RFP CALENDAR

DATE	EVENT	COMMENTS
11/10/2011	RFP Issued	NYSIF requires Bidders to submit: 1. One (1) hard copy 2. One (1) electronic copy
11/28/2011	Final date for Bidder inquiries	Written inquiries only by 12:00 p.m. to: Email: contracts@nysif.com Fax: 518-437-4209
12/2/2011	Responses to Inquiries	Written responses will be posted on NYSIF's website at: www.nysif.com/procurement
12/9/2011 2:00 pm	Final date for submission of bids	Deadline for response to this RFP. All sealed bids MUST be addressed to: Mail: NYSIF – Procurement Unit Bid # 2011-13 15 Computer Drive West Albany, NY 12205-1690 Email: contracts@nysif.com and received by 2:00 p.m.
Week of 1/9/2012	Bidder Presentations/Interviews	Bidder presentations expected to begin
6/1/2012	Anticipated Start Date	Subject to the required approvals.

GENERAL INFORMATION

A. OVERVIEW OF THE NEW YORK STATE INSURANCE FUND

The New York State Insurance Fund (NYSIF) is a non-profit agency of the State of New York, consisting of two separate "funds" – the Workers' Compensation Fund, created in 1914, insuring employers against occupational injury and disease suffered by their employees, and the Disability Benefits Fund, established in 1949, which insures against disabling off-the-job sickness or injury sustained by employees.

The five components of the agency's mission are: provide timely and appropriate indemnity and medical payments to injured workers; drive down the cost of workers' compensation insurance for businesses operating in New York State; ensure that all New York businesses have a market for workers' compensation insurance available to them at a fair price; maintain a solvent state insurance fund that is always available for New York businesses; and be a competitive force in the marketplace and an industry leader in price, quality, and service.

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.

Approximately 168,500 employers hold NYSIF workers' compensation insurance policies, constituting about 31 percent of the market, while 61,000 employers maintain active disability benefits policies.

B. INQUIRIES/ISSUING OFFICE/DESIGNATED CONTACT

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

Michelle Gilchrist	Lydia Osika
Chief Clerk	Administration Aide
Phone: (518) 437-4230	Phone: (518) 437-4360
Fax: (518) 437-4209	Fax: (518) 437-4209
E-Mail: mgilchri@nysif.com	E-Mail: contracts@nysif.com

All **questions** should be submitted in writing (via facsimile, or email), citing the particular bid section and paragraph number. Prospective Bidders should note that all clarifications and exceptions are to be resolved 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 of the designated contacts. Questions should be submitted in writing via fax or e-mail, citing the particular section/paragraph. No telephone questions will be answered. Official answers to the questions will be posted on NYSIF's website at www.nysif.com/procurement, by the date indicated in the RFP Calendar.**

C. PURPOSE OF THIS RFP

NYSIF is searching for Collection agency (-cies) to provide Full Collection Services. The successful bidder(s) will receive referrals of delinquent, unpaid Workers' Compensation and Disability Benefits insurance premium accounts.

GENERAL INFORMATION

NYSIF anticipates selecting one or more Collection Agencies as a result of this RFP. Final selection is at NYSIF's sole discretion. For ease in reading, when referring to the successful bidder(s) in this RFP, in lieu of "Collection agency (-cies)", "Collection agency" shall be written.

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 in an acceptable format (section B above) by the date listed in the RFP Calendar.

E. DUE DATE

The due date for submission of proposals is **12/9/2011, 2:00 p.m. (Eastern)**.

F. METHOD OF AWARD; DISTRIBUTION OF WORK

Award will be made on the basis of "best value", as determined by the evaluation process. The ability to perform the services will be deemed most important when evaluating bids.

NYSIF anticipates selecting one or more Collection Agencies as a result of this RFP. If NYSIF makes multiple awards, the accounts will be assigned by final score, highest to lowest.

G. INSURANCE REQUIREMENTS

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

All insurance required by the RFP shall be obtained at the sole cost and expense of the Bidder, shall be maintained with insurance carriers licensed 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, and shall be sent in accordance to the 'Notice' provision of the Agreement and shall name NYSIF, its officers, agents, and employees as additional insureds hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85).

The Bidder 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 Bidder shall require that any subcontractors hired carry insurance with the same limits and provisions provided herein.

GENERAL INFORMATION

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 NYSIF and rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report.

The Bidder shall cause all insurance to be in full force and effect as of the commencement date of the contract awarded as a result of this RFP, and to remain in full force and effect throughout the term of the contract and as further required by this RFP. The Bidder 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 Bidder shall supply NYSIF with updated replacement Certificates of Insurance, and amendatory endorsements.

The Bidder, throughout the term of the contract, or as otherwise required by this RFP, 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 RFP, 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 \$2,000,000 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. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.
3. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.
4. 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 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 \$2,000,000 each occurrence, with a limit not less than \$2,000,000 aggregate. The Contractor shall be responsible for payment of all claim expenses and loss payments with the deductible.

GENERAL INFORMATION

5. Crime Insurance, including Fidelity Bond coverage in the amount not less than \$2,000,000 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. Bidder 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 Bidder 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 Bidder 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 Bidder 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: (1) 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 the resulting contract, 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.

The successful Bidder will indemnify NYSIF against any and all liability which may be assessed against it as a result of the actions, activities, neglect, or malpractice of the successful Bidder, its officers, employees' agents, subcontractors or corresponding attorneys relating to its performance of the functions required.

H. PARTICIPATION OF NYS BUSINESS ENTERPRISES (MWBE)

NYSIF is committed to diversity and equal employment opportunities among its contractors. NYSIF will make a good faith effort to achieve MWBE participation for contracted services, and will use its best effort so that qualified MWBE firms are included in the selection. NYSIF encourages all firms, including firms that are MWBE certified, to submit proposals to this RFP.

This procurement is being conducted in accordance with Article 15-A of the Executive Law, Title 5 NYCRR parts 140-145, and pursuant to Governor Cuomo's Executive Order No. 8, "Removing Barriers to Minority and Women Business Enterprises Participation in State Contracting." It is the goal of NYSIF to utilize qualified contractors that have a demonstrated history of hiring, training, developing, promoting and retaining minority and women employees and to encourage participation by qualified certified MWBE firms. NYSIF has established a goal

GENERAL INFORMATION

that at least 20% of the total amount of fees paid by NYSIF the required services would be paid to certified MWBE firms.

NYSIF's diversity goals can be achieved in two (2) ways: (1) NYSIF awards to a certified MWBE firm(s); or (2) NYSIF selects a majority firm that has an MWBE joint venture or other partnership that can account for at least 20% of the fees. NYSIF encourages majority firms to utilize minorities and women comprising 20% or more of the staff assigned to NYSIF's engagement

Firms responding to this RFP are encouraged to consider partnering or other joint venture arrangements with other firms so as to give certified MWBE firms the opportunity to participate in the services performed pursuant to this RFP.

Please note that all certified MWBE firms submitting proposals to this RFP should be registered as such with the New York State Department of Economic Development. For firms that are not certified but have applied for certification, please provide evidence of filing, including the filing date.

BID 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.

NOTICE TO BIDDERS: NYSIF will receive bids pursuant to the provisions of Article XI of the State Finance Law or the provisions of the State Printing and Public Documents Law. The following procedures shall be used for bid submittals:

A. BID PREPARATION

- Prepare your proposal on 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. No references to costs are to be included in the technical proposal.
- Bidders must respond to each and every specification stated in this RFP. Moreover, 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 – in the format required – 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. Submission must also include **one (1) electronic copy** (i.e. CD/DVD-rom, USB flash drive) 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 below as a separate section. Each proposal must follow the provided format, or the bid may be deemed non-responsive.
- Appendix Z, the *Fee Schedule Proposal*, should be in a separate sealed envelope and included with the proposal.
- Use the following format as your Table of Contents.

PLEASE PROVIDE THE INFORMATION IN THE SAME ORDER IN WHICH IT IS REQUESTED.

BID FORMAT

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, as well as the name, title, address, telephone number, and e-mail address of the bidder's contact person(s).

Please also include the name, title, address, telephone number, and e-mail address of the person(s) authorized to make representations for the bidder and bind the firm, if other than the contact person identified above.

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

2. Bidder Certification

Each Bidder is required to submit the Bidder Certification included at the end of the *Technical Requirements* section of this RFP.

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 and bidder's staffing capability and competency to complete the work within established deadlines. Include the following information for the Bidder:

- Name and address of bidder's firm, other affiliates, other locations.
- Length of time in the collections field.
- Other city, state or federal government agencies previously under contract with the Bidder's firm within the last five (5) years.
- Other city, state or federal government agencies currently under contract with the Bidder's firm.
- Proof of Bidder's (and subcontractor's, if applicable) authority to conduct business in New York State.
- Provide a list of at least three (3) clients for whom you have performed services of a similar scope to those required for this project in the last five years (use Appendix I).
- If the bidder proposes to subcontract, subcontractors should submit at least two (2) clients for whom they have performed services similar to those the subcontract will perform under this RFP (use Appendix J).
- The Bidder shall supply a current Dun & Bradstreet 'Business Information Report' as part of their bid.

BID FORMAT

If requested, Bidder must document its ability to service a contract with collection volume similar to scope of this bid through submission of financial statements documenting past history. The Bidder must be financially stable and able to substantiate the financial statements of its company. In addition, 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.

- A brief synopsis of any on-going investigations being conducted by the NYS Attorney General's Office, Better Business Bureau or any other government or regulatory agency pertaining to your agency.
- A List of Debt Collection Associations or other professional associations to which the firm belongs.

4. Technical Experience / Description of Proposed Services

Submit a preliminary work plan for performance of the scope of services described in Technical Requirements section of this RFP. No references to the dollars or fee amounts are to be included in this detailed proposal. Also include the following:

- a. The preliminary work plan should address the Mandatory Requirements in the Technical Requirements Section A and the Services to be Provided in Technical Requirements Section B of this RFP. The work plan should be formatted to follow the numbering and lettering of these sections. Each item should be addressed even if the answer is "Not Applicable", a duplicate answer, or that the "Bidder does not have the capacity to perform this function".
- b. Provide information about the Bidder's organization, such as day-to-day operations and services, including the location of the office from which the assignments will be managed.
- c. Provide escalation procedures NYSIF can use for reporting problems to higher levels of management within the Bidder's organization.
- d. Explain your organization's structure including a description of the reporting relationships of everyone involved in the contract and the home office of each staff member.
- e. Provide information why your company should be chosen over all other bidding companies.

All technical publications cited in the Bidder's proposal should be included at the end of the proposal

BID FORMAT

5. 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.

6. 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.

Note well: 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*.

7. Appendices

In addition to the appendices previously required, the following appendices must be completed and returned with your proposal:

- ***MacBride Questionnaire, Appendix D***
- ***Vendor Responsibility Questionnaire, Appendix E***
- ***Bidder Questionnaire, Appendix F***
- ***Procurement Lobbying Legislation, Appendix H***
- ***Bidder References, Appendix I***
- ***Financial Institution, Appendix M***
- ***Fee Schedule, Appendix Z*** The *Fee Schedule* must be bound and placed in a sealed envelope separately and **enclosed** with the Bid

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 may be rejected.

- **Hand Deliveries / US Postal Service / Courier**
An envelope and/or package containing a bid should be clearly marked as follows, and shall be delivered to:

NYSIF – Procurement Unit
Bid # 2011-23
15 Computer Drive West
Albany, NY 12205

Bidders assume all risks for timely, properly submitted deliveries.

METHOD OF EVALUATION & CRITERIA

As required by New York State Finance Law §163, 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 by a committee of NYSIF personnel. The committee will recommend the award be made to the Bidder whose proposal receives the highest overall evaluation score based on the criteria stated herein.

NYSIF reserves the right to award the contract based solely on paragraph A below. However, NYSIF may request, at its sole discretion, that evaluators interview the Bidder's staff, as stated in paragraph B below, if NYSIF determines that additional clarifications are required.

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.

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

A. EVALUATION CRITERIA

1. Capability of Bidder to perform the required services at the time of the bid, demonstrated ability to recruit and retain qualified staff for similar services, and the Bidder's experience in providing collection services of a similar scope. Includes references for Bidder and Bidder's liaison to NYSIF. (70% of the overall score)
2. Total cost to NYSIF. (30% of the overall score)

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 mandatory evaluation criteria.

B. PRESENTATION/INTERVIEW

NYSIF, at its own discretion, may require Bidders to give a presentation/interview. If NYSIF conducts presentations/interviews as part of the technical evaluation, NYSIF evaluators may use the information gathered during this process in revising the evaluation scores given, based on the merits and clarification provided.

NYSIF will provide a list of subjects to be covered in the presentation/interview and questions to be addressed. Presentations should include how the Bidder would perform the services required in the contract. Contributions of the proposed lead personnel should be included.

METHOD OF EVALUATION & CRITERIA

Presentations may be up to 45 minutes. Questions may be asked by the evaluation committee based on material covered in the presentation/interview and/or in the proposal.

Presentation/interviews will be conducted in New York City or Albany. It will be the responsibility of the Bidder to present the proposed staff at the scheduled time. Bidders will be responsible for any and all costs associated with the presentation. Appointments will be made one week prior to the scheduled presentation/interview date.

C. CONTRACT APPROVAL

The contract between NYSIF and the successful Bidder will not be binding until it has been approved in accordance with the New York State contract approval process.

TECHNICAL REQUIREMENTS

No oral statements of any person shall modify or otherwise effect the terms, conditions or specifications noted herein or in the contract for the service. Any amendments to this RFP that may be necessary will be issued in writing and posted to NYSIF's website (www.nysif.com/procurement).

A. MANDATORY REQUIREMENTS

1. Bidder must be a Collection Agency and licensed by the City of New York and City of Buffalo. The bidder must comply with all Federal, State and City legal requirements for the collection of debts.
2. The Collection agency must be licensed to do business in New York State. Eighty percent of the collection work currently performed by the bidder must be commercial debt collection.
3. The Collection agency must have a minimum of three years experience, with extensive experience in insurance premium collection, specifically in New York State Workers' Compensation and Disability Benefits' insurance. The Collection agency will be required to demonstrate their experience and understanding of workers' compensation and disability benefits' insurance underwriting. Additional, the Collection agency will be required to demonstrate their experience and understanding of the auditing of policyholder's accounting records for the determination of audit premium.
4. The Collection agency must have a separate Trust Account into which all funds collected from NYSIF's policy creditors are deposited. The Collection agency must also have a fidelity bond in the minimum amount of \$2,000,000 against loss to NYSIF for debts collected on behalf of NYSIF while the account is in the possession of the Collection agency.
5. The Collection agency must have the ability to produce statistical reports and transmit data electronically to NYSIF. All reports and data transfer are required to be performed on a timely basis.
6. The Collection agency must have the ability to provide NYSIF with secure web based access to our accounts. This on-line access should provide NYSIF with an account history and also information regarding the current balance and collection status.
7. Legal Services – The Collection agency must have the ability to obtain a judgment and to collect the obtained judgment.
8. The Collection agency must be able to handle, at a minimum, 10,000 new account referrals annually.

B. SERVICES TO BE PROVIDED

NYSIF reserves the right, at its sole discretion, to have any account returned to NYSIF. The Collection agency shall not have any further claim for fees, nor have any further rights with respect to such accounts.

1. Full Collection Services

For purposes of this RFP, the following information is provided for bidders' use in preparing

TECHNICAL REQUIREMENTS

their proposals:

General Information

	2009	2010
Written Premium	1,309,601,079	1,309,759,094
Policies In Force	180,008	172,384
Dollars Referred to Collection agency	\$63,333,638.02	\$46,311,084.53
Dollar Average of Each Policy	\$5,732.07	\$5,048.63
Average Number of Monthly Referrals	921	764

Policies Referred by Dollar Amount

Policies	2009	2010
Under \$1,000	2705	2663
\$1,000 to \$4,999	4440	3558
\$5,000 to \$9,999	1899	1509
\$10,000 to \$24,999	1667	1441
\$25,000 to \$49,999	327	131
Over \$50,000	11	7
Total	11049	9173

Number of Policies Referred by Month

Month	2009	2009	2010	2010
January	828	\$4,495,813	831	\$4,819,398
February	780	\$4,463,294	794	\$4,702,192
March	1098	\$5,530,386	881	\$4,957,073
April	943	\$5,262,211	1063	\$5,564,187
May	989	\$5,656,966	619	\$3,105,233
June	1090	\$5,911,717	758	\$3,731,906
July	1028	\$6,592,970	640	\$2,833,787
August	940	\$5,784,697	795	\$3,392,672
September	847	\$5,153,631	689	\$3,436,185
October	992	\$5,632,339	669	\$3,207,471
November	657	\$3,647,030	662	\$3,035,050
December	857	\$5,202,586	772	\$3,525,931
Total	11049	\$63,333,638	9173	\$46,311,085
Average	921	\$5,277,803	764	\$3,859,257

An estimated half of the referrals are downstate, mostly in the five boroughs of New York City, and in Nassau, Suffolk, Westchester and Orange Counties.

NYSIF may place a ceiling on the dollar value for referred accounts.

TECHNICAL REQUIREMENTS

The referred account shall be at least \$30.00.

Bidder must provide the maximum number of accounts for which bidder can perform full collection services annually.

a. Collection letters and subsequent activity

Initial contact with the policyholder shall be made by letter which shall advise the policyholder that the account has been turned over by NYSIF to the Collection agency for collection purposes. The letter shall include:

- 1) All information required by law.
- 2) The amount of premium due, plus late payment fee, plus the collection fee shall be itemized.
- 3) Information regarding future attempts at insuring with NYSIF should be included as Section 93(b) and (c) of the New York State Workers' Compensation Law which states that the debtor or any entity referred to in these sections cannot be issued a new policy by NYSIF, once a policy is cancelled, with an outstanding premium balance due and owing.
- 4) A statement that policyholder's credit rating may be affected by policyholder's non-payment of premium. Bidders must have the ability to report adverse payment history to at least one major credit reporting company. However, the successful bidder must have approval from NYSIF prior to reporting to the Credit Reporting Company.

All further collection efforts shall be by methods and techniques, short of litigation, selected by the Collection agency, based on their expertise in the collection field, and consistent with state and federal laws and regulations.

b. Information that may be provided by NYSIF regarding overdue Workers' Compensation and Disability Benefits

- 1) Name, phone number and address of the debtor (policyholder)
- 2) Name and address of insurance representative
- 3) Period of coverage
- 4) Cancellation or ending date
- 5) Policy number
- 6) Copy of Workers' Compensation or Disability Benefits insurance policy and application
- 7) Delinquent account balance
- 8) Audit worksheets
- 9) Statement of account
- 10) Back-up bills and documents for each item listed on statement of account

c. Skip tracing

TECHNICAL REQUIREMENTS

The Collection agency shall locate the policyholder, the policyholder's place of business, current employer, telephone number, address and location of assets utilizing at least the following resources:

- 1) The United States Post Office,
- 2) Telephone Directory Assistance,
- 3) Credit Bureaus,
- 4) Bureau of Licensing,
- 5) Bureau of Corporations,
- 6) Tax Assessor Office, property owner searches, and
- 7) Interest Entity Search.

d. Referral to attorney

After the Collection agency has exhausted its collection efforts, the Collection agency, based on its knowledge and experience, shall decide whether to refer the account for litigation. Upon referral, the attorney shall, based on his/her knowledge and experience, make further telephone/letter contacts and/or bring suit against the policyholder for judgment.

The Collection agency shall act as agent for NYSIF in obtaining an attorney or attorneys to whom policyholders' delinquent files shall be referred for legal action. The Collection agency shall submit attorneys' names for pre-approval by NYSIF. Attorneys must be licensed in New York State.

NYSIF shall have the right to direct, with respect to any legal action brought, settlement of such action. The Collection agency will receive all fees payable (pursuant to the fee schedule) upon amounts collected.

- 1) The retained attorney shall represent the Commissioners of the State Insurance Fund as "Of Counsel" to the General Attorney of NYSIF.
- 2) The attorney must bring suit in the county where the policy was underwritten and where NYSIF has an office, unless expressly authorized by NYSIF, and name Commissioners of the State Insurance Fund as the plaintiff.
- 3) In the event the attorney should fail to perform in the manner prescribed herein or shall otherwise be unsatisfactory to NYSIF, in its sole discretion, NYSIF shall have the right to require discharge of said attorney from NYSIF accounts and require the release of the account(s) to another NYSIF approved attorney of the Collection agency or return of the account(s) to NYSIF. In such latter event, the discharged attorney and, in those cases where the accounts are returned to NYSIF, the Collection agency shall not have any further claim for fees, nor have any further rights with respect to such accounts. This shall not affect any other rights or remedies NYSIF shall have in relation to return of accounts as otherwise provided in the RFP.
- 4) The Collection agency shall report judgments to NYSIF within 15 business days of

TECHNICAL REQUIREMENTS

being obtained, detailing the amount of the judgment, the court in which the judgment was entered and appropriate account information. Copies of judgments are to be provided to NYSIF at NYSIF's request.

- 5) Attorneys must be mindful when considering litigation that certain outcomes may potentially have impact, including precedent setting impact, on a wider scope than just the account in question. In such situations the attorney must discuss the matter with NYSIF's legal department to determine if litigation is warranted.

e. Bankruptcy

When a referral is not collectible due to the debtor's filing bankruptcy, the Collection agency shall file the requisite proof of claim with the appropriate bankruptcy court; and, may elect to return the account to NYSIF after receiving acknowledgement from the bankruptcy court that the claim has been received. Any additional Bankruptcy related documents received by the Collections Agency should be forwarded to NYSIF.

f. Receipt and Recording of Payments

The Collection agency shall be responsible for all collections made and shall receive all payments from the policyholder, including those resulting from judgments, either made directly to the Collection agency or to the attorney. All payments received by the Collection agency and/or Collection agency's attorneys, subcontractors, etc., shall be transmitted to NYSIF subject to the controls and in the manner described in this RFP and any procedures to be negotiated after contract award or subject to federal and state laws.

All collections that have cleared shall be remitted to NYSIF at a schedule approved by NYSIF. The total remittances, without reduction for collection fees, shall be made via electronic transfer to a designated NYSIF account. Payment details shall be transmitted at the policy level by SFTP.

NYSIF shall not offer incentive programs to the Collection agency or Collection agency's employees or subcontractors except as stated in this RFP. At their discretion, the Collection agency may institute such programs; however, NYSIF will not reimburse the Collection agency or pay for such programs.

Payments shall be made payable to the Collection agency and deposited the same day of receipt into the Collection agency's account. The funds will remain in the Collection agency's account until they have cleared. The Collection agency's account shall be in a financial institution whose name was submitted in Appendix M, *Financial Institution*, in the proposal and subsequently approved by NYSIF. The account must be in a financial institution that meets New York State and/or federal laws, including the Gramm-Leach-Bliley Act, Public Law 106-102. The financial institution must:

- 1) Be chartered to engage in depository services and have depository facilities within New York State;

TECHNICAL REQUIREMENTS

- 2) Demonstrate that its total assets and total deposits each exceed \$500 million;
- 3) Be a member of The National Automated Clearing House Association;
- 4) Have sufficient experience and can act as an Originating Depository Financial Institution for the direct deposit of recurring payments in large volume; and
- 5) Agree to, and be able to perform all services described in this RFP that are applicable to the Financial Institution.

The Collection agency must agree to instruct its financial institution to issue duplicate bank statements to NYSIF. The separate account established by the Collection agency is to be used exclusively for the business conducted between the Collection agency and NYSIF. Note: The Collection agency is not to use the account for other business purposes. The account must reflect only activity between NYSIF and the Collection agency.

g. Collection Expense

Section 18 (5) of the State Finance Law allows NYSIF to charge up to a 22 percent collection fee to cover the cost of processing, handling and collecting such debt.

The collection fee is calculated at the time of the referral to the Collection agency based upon the account balance at that time. Subsequently, an estimated delinquent account balance may increase or decrease based upon audit. No recalculation increasing the collection fee above 22 percent of the initial delinquent account balance is permitted. Therefore, the collection fee may not be revised upward after the original letter is sent to the policyholder. However, the collection fee must be revised downward if the delinquent account balance decreases.

The Collection agency will be prepared to assert NYSIF's claim for all applicable statutory interest charges, costs and disbursements, which NYSIF is entitled, either prior or subsequent to the entry of judgment.

For example, a delinquent account balance of \$100.00 is referred to the Collection agency. The Collection agency sends a collection letter to the policyholder itemizing the amount due of \$100.00 premium balance and \$22.00 collection fee for a total amount due of \$122.00 ($\$100.00 + \$22.00 = \122.00). A payroll report is received after the \$122.00 letter is sent to the policyholder. The delinquent account balance is now \$200.00. A second adjusted letter would be sent requesting \$222.00. This amount includes the \$200.00 for the revised delinquent account balance plus the original \$22.00 collection fee.

Using the \$100.00 delinquent account balance above, if the premium account balance decreases, from \$100.00 to \$75.00, a second, adjusted letter would be sent requesting a total of \$91.50 (the past due amount of \$75.00 plus the 22% collection fee of \$16.50).

Bidders shall complete Appendix Z, Fee Schedule Proposal. Bidders should provide the rate bids for five levels of service:

TECHNICAL REQUIREMENTS

- 1) 3rd party (Vendor) Collection
- 2) Pre Litigation (referred to an Approved Attorney, suit not filed)
- 3) Litigation (Suit must be filed)
- 4) Second Referrals (these will be accounts that were with one collection vendor and the collection efforts were unsuccessful and are now being referred for a second attempt by a different collection vendor)
- 5) Bankruptcy Collections

NYSIF intends to make the award(s) based on "Best Value", which takes into consideration quality, efficiency and cost.

2. Premium Audits

Upon cancellation, a policy must be billed to reflect payroll for all coverage periods up to and including the cancellation date. For the majority of our accounts we attempt to perform audits at time of cancellation. Our final actual audit success rate is less than 50%, and approximately 85% of the accounts that are referred to collection agencies have a final bill based on an estimated audit.

Upon referral to a collection agency, the cancelled policyholder may request a revised audit to determine accuracy. In addition, at the time of litigation, a judge may request/order an audit be completed prior to further action, judgment, etc.

a. NYSIF Audits

Upon referral to a Collection agency, the cancelled policyholder may request that an audit be performed in order to have an estimated audit revised. The estimated final bill results from the failure of the cancelled policyholder to complete a report audit, a statement audit or to have an on site audit conducted. NYSIF agrees to work with the Collection agency to schedule audits and re-audits as the need arises. The Collection agency will be provided with a contact or contacts in the Premium Audit Department to allow the scheduling of audits. NYSIF requires that the Collection agency work with NYSIF's Premium Audit Department in establishing audit appointments. NYSIF auditors currently schedule appointments four weeks in advance.

If cancelled policyholders are willing to work cooperatively, then the scheduling of an audit after the issuance of an estimated final bill is desirable.

3. Policyholder's Payment Plan and Settlement of Accounts

While NYSIF is looking for immediate, complete payment, the Collection agency can establish payment plans which result in full payment within the shortest time period possible.

NYSIF authorizes the collection agency to accept less than the full amount while reserving its

TECHNICAL REQUIREMENTS

Worker's Compensation Law Section 93 (b) & (c) rights, unless specially waived by NYSIF, if in the collection agency's professional judgment this is the most money that can be recovered at this point. NYSIF will monitor this activity closely. Partial collections are not preferred, and if in NYSIF's opinion this collection "tool" is being abused, the receipt of future referrals will be jeopardized.

Any settlement offered by or on behalf of the policyholder may be discussed with the designated NYSIF personnel prior to acceptance. However, NYSIF is empowering the collection agency to maximize our joint collection efforts through the above mentioned methods. Any settlement less than the full amount requires a reason. NYSIF reserves the right to change its policy regarding collection agencies making settlements and will consider the number and nature of settlements made when evaluating the effectiveness of an agency.

4. Account Returns

The Collection agency must return any specifically requested delinquent account to NYSIF. In such event, the Collection agency shall have no right to any fees.

The Collection agency shall continue full collection services until, in the Collection agency's professional opinion, the account cannot be collected, at which time the account will be returned to NYSIF with a list detailing such collection efforts, copies of notes of conversations with policyholder, letters sent to and received from policyholder and reason why collection cannot be accomplished. Bidders should include in their proposals a list of determining factors in discontinuing collection attempts. Collection agency must retain all records relating to an account for at least seven years after closing the account.

5. Electronic Reports

The Collection agency shall maintain a database of all referred accounts and reporting shall be available to NYSIF online. All reports and their designs will be developed by the Collection agency and NYSIF. Reports shall be available at any time. The reports should be set up for a monthly reporting cycle.

Listed below are the current data fields that will be used to support activity on this contract. NYSIF reserves the right to include additional data fields if in NYSIF's best interest.

a. Collection Services Data and Reports

Referrals and updated payment information will be transmitted to the agency via SFTP on a daily basis. The agency will be expected to transmit to NYSIF updated payment information via the same method.

Two separate databases capable of producing reports must be maintained for referred Workers' Compensation accounts and Disability Benefits accounts.

TECHNICAL REQUIREMENTS

The following data must be maintained in each database:

- NYSIF policy number
- NYSIF policy name
- NYSIF policy period
- Date cancelled
- Date referred
- Account balance initially referred
- Adjustments made by NYSIF
- Collection fee
- Collection fee collected
- Credit rating
- Status of referred account
- Final Bill
 - Report Audit Final Bill (report form used by Underwriting)
 - Statement Audit Final Bill (report form used by Premium Audit)
 - Audit conducted by Premium Audit
- Estimated Final Bill
- Status of Referral
- Initial demand (date made)
- Cancelled policyholder requests to have an audit conducted (date requested)
- Audit status - NYSIF
- Appointment made (date)
- NYSIF auditor
- Date and time of scheduled audit
- Audit location
- Policyholder's contact person
- Audit conducted (date)
- Audit has not been conducted 60 days from the date of referral
- Audit submitted to NYSIF Underwriting (date submitted)
- Audit billed by NYSIF Underwriting (date billed)
- Final demand (date)
- Collected (amount collected to date)
- Payment Terms in progress (date terms made)
 - Number of approved installments
 - Installment amount
 - Installment types - monthly, biweekly, weekly
 - Last payment date
- Deemed uncollectable by contractor (date)
- Reason not collectable
- Bankruptcy filed
- Formal Dissolution filed
- Litigation
 - Demand for payment (date letter sent)
 - Index Number (date obtained)

TECHNICAL REQUIREMENTS

Summons and complaint filed with court (date of filing)
Court where suit brought
Debtor Served (date)
Additional Notices
 Type
 Date sent
Default judgment entered
 Date
 Amount
 County
Answer Received
 Date
 Defendant's Attorney
 Address
 Phone number
Discovery Demands (D&I notice served and date served)
Type of Demand
Date Served
Responding to Discovery Demands
Date request received
Date request complied with
Change of Venue requested (date requested)
Venue request answered
Date
Disposition
 Obtained (date obtained)
 Denied (date denied and reason denied)
Motion for Summary Judgment (date filed)
Obtained (date obtained)
Denied (date denied and reason denied)
Scheduled for trial (trial date required)
Requested Jury Trial (date)
Judgment entered (date obtained)
Judgment satisfied (date obtained)
Restraining order issued (date)
Execution sent to Sheriff or Marshall for collection (date referred)
Execution returned from Sheriff or Marshall (date returned)
 Satisfied (date obtained)
 Partial satisfaction (date obtained)
 Unsatisfied (date denied and reason denied)
Settlement Offer (include amount)
Settlement recommendation (include reason)
Settlement made (date)
Settlement authorized by (NYSIF employee name)
Settlement amount

TECHNICAL REQUIREMENTS

6. Collection Agency's Invoice and Payment Mechanism

NYSIF will reconcile all payments assigned to the Collection agency to the Collection agency's electronic file. The Collection agency shall receive the agreed to fee according to the *Fee Schedule Proposal* submitted.

The Collection agency will submit, at a minimum, weekly to NYSIF an electronic file in a format specified by NYSIF itemizing the individual collections and showing the total amount collected for the week.

NYSIF will reconcile the report verifying that the total of the individual remittances adds up to the total being remitted by the Collection agency.

The Collection agency shall ACH/wire the total remittance to NYSIF as scheduled. The amount of the ACH/wire is the gross amount collected without reduction for fees. Before wiring any money, NYSIF and the Collection agency confirm the amount of the ACH/wire.

The Collection agency will submit an electronic file, in a format specified by NYSIF, listing the accounts where payments were received directly by NYSIF, and showing the fees billed, on a schedule to be determined. Money received within seven (7) calendar days of referral will not warrant a collection fee being paid. NYSIF audits the fees requested and any discrepancies found are reported to the Collection agency and the fees requested are adjusted accordingly. The adjusted fees are paid to the Collection agency via ACH.

7. Penalties

- a. Complaints: If NYSIF receives a complaint regarding the Collection agency or Collection agency's agent, the Collection agency must respond to the complaint and resolve it to NYSIF's satisfaction. At NYSIF's direction, the Collection agency must immediately remove any designated Collection agency employee or subcontractor from NYSIF's account. NYSIF may cancel the contract with 10 days written notice with or without cause.
- b. If, in NYSIF's sole discretion, the Collection agency does not appear to be successful in number and dollar amount of collections, NYSIF may transfer cases to another Collection agency, recover cases for NYSIF collection, or cancel the contract with 10 days written notice.

8. Other

- a. A detailed description of the proposed procedures will be developed by the Collection agency in conjunction with NYSIF.
- b. The Collection agency's legal, other staff, and its subcontractors, shall be deemed to be under the direct supervision of the Collection agency.

TECHNICAL REQUIREMENTS

- c. The Collection agency's and subcontractor's staff shall agree to participate in training and meetings called by NYSIF.
- d. Scripts, notices, letters, legal forms and other documents must be pre-approved by NYSIF and be based on law, regulations and the Collection agency's knowledge and experience.
- e. Databases are required to be updated, at a minimum, daily.
- f. The Collection agency's staff and attorneys must be knowledgeable of general NYS Worker's Compensation Laws and follow at a minimum the following law and regulations:
 - 1) NYS Worker's Compensation Law, sections 54, 56, 76, 92, 93, 94, 95, and 131.
 - 2) Code of Ethics and Standards of the American Collectors Association (www.collector.com)
 - 3) Fair Debt Collection Practices
 - 4) Federal Privacy Act of 1984
 - 5) New York State Debt Collection Procedures Law
 - 6) Fair Credit Reporting Act
 - 7) New York City Consumer Protection Regulations Number 10, for New York City accounts only.

C. TERM

A five (5) year contract covering services requested in this RFP is anticipated, with an estimated start date of June 1, 2012.

D. SUBCONTRACTING

Subcontract will be permitted only with prior written approval from NYSIF.

The Collection agency must warrant that it will not delegate or subcontract its responsibilities under the contract without prior written approval from NYSIF.

The bidder should obtain the consent of the proposed subcontractor and include it in the bid proposal. Moreover, qualifications of the subcontractor in addition to two references and subcontractors financial statements shall also be included in the bid proposal.

The Collection agency will be responsible for the conduct and performance of any subcontractor(s). NYSIF will consider the Collection agency to be the prime contractor and the sole point of contact in regard to any contractual items specified in this RFP.

BIDDER CERTIFICATION

Please initial where indicated for each item. Failure to complete and return this form will result in your bid being deemed non-responsive.

Certifications:

_____ The person or persons signing below are duly authorized to sign the proposal and the contract, and is (are) identified on the *Title Page*.

_____ Bidder is willing 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.*

_____ The Bidder agrees to comply with all terms of Appendix A, Standard Clauses for All NYS Contracts.

_____ The Bidder is in compliance with or meets all Bidder Certification Requirements (Appendix B, #38)

_____ The fee(s) quoted in the Fee Proposal Schedule is a firm and irrevocable offer for 180 days.

_____ The Bidder meets or exceeds all Mandatory Bidder Qualifications. If awarded, Bidder will comply with the RFP Technical Specifications.

_____ The Bidder understands the work to be done, and is committed to performing the work as expeditiously as possible.

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:

- _____ 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.

BIDDER CERTIFICATION

- _____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 A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or

reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment 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.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce

Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely

affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) 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.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a

contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and **by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:**

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

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without

discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to

service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th 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.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) 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.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX B

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. **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.
- c. **Bid Documents** (Other than Appendix A).
- d. **Appendix B** (General Specifications).
- e. **Contractor's Bid or Mini-Bid Proposal**.

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.

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).

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 awards; 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 and time shown as the final date for bidder inquiries. Any modifications deemed necessary by NYSIF shall be given by written notice and posted on NYSIF's Procurement website (www.nysif.com/procurement).

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 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. WARRANTIES

Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

- a. **Product Performance** Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer’s specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.
- b. **Title and Ownership Warranty** Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.
- c. **Contractor Compliance** Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give 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. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker’s compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds

for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

- d. **Product Warranty** Unless recycled or recovered materials are available in accordance with the “Recycled or Recovered Materials” clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer’s recommendations and standard practice.

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer (“Project warranty period”). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees (“extended warranty”).

Where Contractor, the Independent Software Vendor “ISV,” or other third party manufacturer markets any Project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor’s warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer’s Product.

Where Contractor, ISV or other third party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Contractor shall notify the Authorized User and pass through the manufacturer’s standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third party extended warranty after expiration of the Project warranty and extended warranty period(s).

- e. **Replacement Parts Warranty** If during the regular or extended warranty period’s faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the warranty period under paragraph (d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

- f. **Virus Warranty** The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee’s site.
- g. **Date/Time Warranty** Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor’s business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

- h. **Workmanship Warranty** Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
- i. **Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract.

23. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS

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

24. 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; or

Unless 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. Contractors are encouraged to reduce their pricing upon receipt of such request.

25. 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.

26. 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.

27. 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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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

37. 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. **Withdraw the IFB/RFP at any time, at NYSIF's sole discretion**
- b. **Make an award under the IFB/RFP in whole or in part**
- c. **Reject any or all bids received in response to the solicitation**
- d. **Cancel or limit the scope of the contract for any reason**
- e. **To not award a contract**
- f. **Seek clarifications and revisions of proposals**
- g. **Accept a bid for the contract other than the lowest cost**
- h. **Make multiple contract awards pursuant to the solicitation**
- i. **Waive any requirements that are not material**
- j. **Eliminate mandatory requirements unmet by all bidders**
- k. **Change any of the scheduled dates**
- l. **Waive or modify minor irregularities in bids received after prior notification to the Bidder**
- m. **Consider modifications to bids at any time before the award is made, if such action is in the best interest of NYSIF**
- n. **Amend and modify the specifications after their release and post to NYSIF's procurement website (www.nysif.com/procurement)**
- o. **Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB/RFP**
- p. **Reject/disqualify a bid if, in NYSIF's sole opinion, the bid price is determined to be excessive**
- q. **Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation**
- r. **Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB/RFP**
- s. **Review bidder's records used in determining bid**
- t. **Require the Bidder to demonstrate to the satisfaction of NYSIF any feature(s) presented as a part of its bid**
- u. **Investigate or make any inquiry into the capabilities of any bidder to properly perform under any resultant contract**
- v. **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**
- w. **Adjust or correct bidders' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the bidder**
- x. **Request any additional information deemed necessary for proper evaluation of bids**
- y. **Adopt as NYSIF property all submitted bids and to use any portions thereafter which are not specifically noted as**

- proprietary by the submitting firms
- z. Utilize any and all ideas submitted in the proposals received
 - aa. Adopt all or any part of a bidder's proposal in selecting the optimum configuration
 - bb. 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
 - cc. 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
 - dd. Reject an obviously unbalanced bid or to make "NO AWARD" on individual listings or sub-items if individual bid prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. In such case, ranking and evaluation of bids may be made on remaining items. Award would be made on the remaining items. The determination of an unbalanced bid shall be at the sole discretion of NYSIF. Options contained in this paragraph shall also be at NYSIF's sole discretion
 - ee. Terminate the contract(s) if it deems the price adjustment pursuant to the solicitation or contract is not in the best interests of NYSIF or the State
 - ff. The State reserves the right to implement changes in price based on unforeseen factors such as dramatic changes in availability, delivery, costs, etc., for product, supplies, etc., that substantively affect the contractor's business processes or that may impact contract pricing. Such changes may be based on information from the U.S. Bureau of Labor Statistics, industry data, or other sources
 - gg. 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
 - hh. Review and consider other known clients of the Bidder in addition to those provided and to disqualify based on unsatisfactory reports and records of services provided
 - ii. 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
 - jj. Invalidate an Bidder's scores at any time during the evaluation process if the Bidder's bid is deemed non-responsive or is disqualified
 - kk. 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
 - ll. Stop the work covered by this solicitation and any contract(s) resulting there from at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the state's satisfaction
 - mm. Disqualify a bidder from receiving the award if the bidder, or anyone in the bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts
 - nn. Negotiate with Bidders to serve the best interests of the State and NYSIF
 - oo. Begin contract negotiations with another Bidder in order to serve the best interest of NYSIF in the event that the State is unsuccessful in negotiating a contract with the selected bidder
 - pp. Split the contract between several bidders
 - qq. If a contract is not approved by the State Comptroller or the Department of Insurance, where applicable, 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)
 - rr. If two or more bids are found to be substantially equivalent, NYSIF, at its sole discretion, will determine award
 - ss. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening

- tt. **Accept or reject any of the bidder's employees assigned to this contract and to require their replacement at any time**
- uu. **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**
- vv. **Have any service completed via separate competitive bid or other means, as determined to be in the best interest of NYSIF**

38. Adjust any bidder's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said bidder will cause the State to incur additional 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.

39. 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 a 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 or Department of Insurance ("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.

40. 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.)

41. DEBRIEFING

Any unsuccessful bidder may request a debriefing by notifying NYSIF within seven (7) business days after receiving notification of the contract non-award.

A debriefing will be limited to a review of an unsuccessful bidder's own submission and the scoring of that submission. An unsuccessful bidder is not entitled to review the submission of the successful bidder beyond being informed of the total scoring of the successful bidder.

See also: <http://www.osc.state.ny.us/agencies/gbull/g234.htm>

42. NYSIF'S VENDOR PROTEST PROCEDURE

NYSIF's Vendor Protest Procedure (Protest), which provides vendors with an opportunity to administratively resolve disputes related to NYSIF's procurement decisions, is as follows:

a. Protesting NYSIF's Procurement Decisions

i. Protest Phases

Solicitation Phase Protest

A prospective proposer, Offeror or Bidder may, during the procurement solicitation phase, protest the content of a Request for Proposal (RFP) or Invitation for Bid (IFB) or any aspect of NYSIF's conduct of the solicitation phase of the procurement. Such protests must be submitted in writing to NYSIF's Director of Administration, via certified mail or overnight mail service, and must be received by NYSIF no later than 1:00 p.m. on the 7th (seventh) business day prior to the date when proposals or bids are due. Solicitation phase protests are to be addressed as follows:

*Director of Administration
New York State Insurance Fund
15 Computer Drive West
Albany, NY 12205
Attn: Vendor Protest*

Post Award Protest

An actual proposer, Offeror or Bidder that has submitted a bid or proposal in response to a solicitation may protest the award of the contract for that solicitation. Such protest must be submitted in writing to NYSIF's Director of Administration, via certified mail or overnight mail service, and must be received by NYSIF no later than 1:00 p.m. on the 10th (tenth) business day following: 1) NYSIF's issuance of a Notice of Contract Award (RFP's), or Bid Tab Certification (for IFBs) or; 2) NYSIF's issuance of a letter to the Proposer indicating that its proposal was not selected. Post award protests are to be addressed as follows:

*Director of Administration
New York State Insurance Fund
15 Computer Drive West
Albany, NY 12205
Attn: Vendor Protest*

ii. Protest Contents

Written protests must contain all the detail necessary for the Director of Administration to evaluate the protester's issue and make a determination. The written protest must, at a minimum, include the following:

- Name and title of person(s) filing the protest;
- Company name and address, telephone and fax numbers, and email address;
- The solicitation title and number;
- A detailed statement of the grounds for the protest, including any supporting documents and information; and
- A statement as to the form of relief requested.

b. Protest Determination

NYSIF's Director of Administration shall make a determination for every solicitation phase and post award protest submitted in accordance with this Procedure. A copy of the decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the General Attorney of NYSIF, shall be sent to the protester or its agent by regular mail within thirty (30) days of receipt of the protest, except that upon notice to the protester such period may be extended.

NYSIF shall include the protest and all determinations thereon in the Procurement Record relevant to the bid being protested."

c. Appeal Process

Should the protester be dissatisfied with NYSIF's Director of Administration's determination, the protester may file a written appeal. Such written appeal must be sent via certified mail or overnight mail service and must be received by NYSIF no later than 1:00 p.m. of the 10th (tenth) business day following the protester's receipt of the determination. The appeal should be directed to NYSIF's General Attorney at the following address:

*General Attorney
New York State Insurance Fund
15 Computer Drive West
Albany, NY 12205*

Attn: Vendor Protest

An appeal of the decision shall not include any new facts and information unless requested in writing by the General Attorney.

The final determination on the appeal shall be issued within thirty (30) days of receipt of the appeal, except that upon notice to the protester such period may be extended. The decision of the General Attorney shall be a final and conclusive agency determination.

For contracts requiring approval by the Office of the State Comptroller (OSC), the protester may appeal to OSC directly. See Bulletin G-232 (http://osc.state.ny.us/agencies/gbull/g_232.htm) for further information.

d. Legal Appeals

Nothing contained in these provisions is intended to limit or impair the rights of any vendor or contractor to seek and pursue remedies of law through the judicial process.

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 where applicable the approval of the Office of the State Comptroller (OSC) or the Department of Insurance (DOI). The contract is made in accordance with the laws of New York State.

2. TERM

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, where required, OSC or DOI approval. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.

3. 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 NYSIF 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.

4. 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.

5. 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 NYSIF 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 NYSIF; 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 its 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.

6. 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.

7. 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.

8. 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

9. 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.

10. 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.

11. 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

12. 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.

13. 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.

14. 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.

15. 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 NYSIF. 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, where required 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.

16. 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.

17. RIGHT TO AUDIT

MANAGER shall maintain accurate records and accounts of services performed and money expended under this agreement and shall furnish or make available such supplemental accounts, records or other information as are required to substantiate any estimate, expenditures or report as required by NYSIF (or its designee), or as may be necessary for auditing purposes or to verify that expenditures were made only for the purpose authorized by this agreement and consistent with all requirements as stated in the Request for Proposal. Such records and accounts and all supportive documentation shall be kept for at least six (6) years subsequent to dates of final payment hereunder, or until a final audit has been made by NYSIF (or its designee).

In case all or a part of such records are not made available for audit purposes, MANAGER agrees that any cost items claimed but not supported by such records shall be disallowed, or if payment has already been made, MANAGER shall, upon written demand of NYSIF, refund to NYSIF the amount disallowed.

SAS 70 Reports:

If MANAGER utilizes a Statement on Audit Standards No. 70 (SAS 70), or a Statement on Standards for Attestation Engagements (SSAE) No. 16, as developed by the American Institute of Certified Public Accountants (AICPA), within the past twenty-four months prior to the Agreement, MANAGER shall provide NYSIF with a copy of MANAGER's Service Auditor's Report(s) for either Type I or Type II (Reports), or Service Organization Control (SOC) Report types 1, 2, or 3, on an annual basis. Such Report(s) shall be used for information purposes only. NYSIF reserves the right to request a copy of the Report(s) during the Agreement duration (including option periods). Production of MANAGER SAS 70 Report(s), or SOC Reports shall not take the place of NYSIF's right under the Agreement to independently audit MANAGER

18. 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.

19. 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 (MWBE) Bidders as required by prior Contracts.

20. 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. All invoices must be sent to:

New York State Insurance Fund
Accounts Payable
199 Church Street, 6th Floor
New York, New York 10007

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.

Payments for invoices submitted by the Contractor shall be rendered electronically. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with NYSIF's procedures to authorize electronic payments. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with NYSIF's electronic payment procedures. NYSIF's policy and the authorization form may be found on NYSIF's website at www.nysif.com/procurement.

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.

21. 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 t 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.

22. 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 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.

23. 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.

24. 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

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 routed 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 that compromises the security, confidentiality, or integrity of personal information maintained by a business. "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 and intellectual 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. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS

The Contractor will also indemnify and hold NYSIF harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against NYSIF in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from NYSIF's gross negligence or willful misconduct, provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for NYSIF the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided NYSIF is given a refund for any amounts paid for the period during which Usage was not feasible.

32. 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

33. 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.

34. 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.

35. 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.

36. 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

37. NOTICE

Any communications between NYSIF and Contractor and notices provided herein, to be given or made, shall be in writing and shall be transmitted either by:

- a. certified or registered United States mail, return receipt requested
- b. facsimile transmission
- c. personal delivery
- d. expedited delivery service
- e. e-mail

Such notices shall be addressed to:

New York State Insurance Fund
 Procurement Unit
 15 Computer Drive West
 Albany, New York 12205
 Email: contracts@nysif.com
 Fax: 518-437-4209

or to such addressee as may be hereafter designated by notice.

Any such notice shall be deemed to have been given either at the time of personal delivery, or in the case of expedited delivery service or certified or registered US mail, as of the date of the first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for the purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

38. 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 or Department of Insurance.

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 approval by the Office of the State Comptroller or Department of Insurance

39. 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.

40. 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.

41. COUNTERPARTS / SIGNATURES

This Agreement may be executed in counterparts, each of which when so executed will be deemed to be an original. Such counterparts together will constitute one agreement. Signatures may be exchanged via facsimile or electronic mail and the parties hereto agree that signatures so exchanged shall be binding to the same extent as if original signatures were exchanged.

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.

Signature

Typed Name

Company Position

Company Name

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), affiliate¹ 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

¹ "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.

New York State
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

- | | | | | |
|--|--------------------------|-----|--------------------------|----|
| (j) a federal, state or local determination of a willful violation of any public works or labor law or regulation? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (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 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: _____

Bid 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)

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 REFERENCES

List three (3) verifiable references receiving service similar in scope to the services required.

Company Name _____
Address _____
Contact Name _____
Contact Title _____
Phone Number _____
Date Services Provided _____
Type of Services Provided _____

Company Name _____
Address _____
Contact Name _____
Contact Title _____
Phone Number _____
Date Services Provided _____
Type of Services Provided _____

Company Name _____
Address _____
Contact Name _____
Contact Title _____
Phone Number _____
Date Services Provided _____
Type of Services Provided _____

Company Name _____
Address _____
Contact Name _____
Contact Title _____
Phone Number _____
Date Services Provided _____
Type of Services Provided _____

**APPENDIX M
FINANCIAL INSTITUTION**

Financial Institution Name	_____		
Address	_____	DUNS #	_____
	_____	Telephone #	_____
	_____	Web Address	_____
	_____	Email Address	_____
Contact	_____	Title	_____

The financial institution named above:

- is chartered to engage in depository services and has depository facilities within New York State
- has total assets and total deposits each exceeding \$500 million
- is a member of both the New York and National Automated Clearing House Associations
- acts as an Originating Depository Financial Institution for the direct deposit of recurring payments in large volume
- agrees to and is able to perform all services required under the RFP, if the contract is awarded to the bidder

Signature: _____ Title: _____

Typed Name: _____ Date: _____



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. 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
(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)

APPENDIX O

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>

Contractor Consultant Law **Form B**

Form B - Contractor's Annual Employment Report. By May 15th 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 1st through March 31st 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:

NYSIF	Department of Civil Service	OSC-Bureau of Contracts
15 Computer Drive West	Alfred E. Smith Office Building	110 State St., 11 th 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.

APPENDIX O

FORM B

OSC Use Only: Reporting Code: Category Code:

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

Contracting State Agency Name:	Agency Code:
Contract Number:	
Contract Term: / / to / /	
Contractor Name:	
Contractor Address:	
Description of Services Being Provided:	

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

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	32	32	\$ 32.00
Grand Total			

Name of person who prepared this report: Preparer's Signature: _____ Title: _____ Phone #: _____ Date Prepared: / /
--

Use additional pages if necessary) Page of

**APPENDIX Z
FEE SCHEDULE PROPOSAL**

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

Referrals made in 2010 resulted in the following category outcomes. This is to be used for informational purposes only. No minimum amount of work is guaranteed.

Category	% of total referrals in 2010
Non-Judgment Full Collection	66%
Pre Litigation/Suit Not Filed Collection	5%
Litigation/Judgment Full Collection	25%
Second Referrals	2%
Bankruptcy Collection Services	2%

**Only percentages may be bid. Hourly rates or flat fees will not be allowed.
Bidders that submit rates other than percentages will be deemed non-responsive.
All fees are a percentage of amounts collected.**

- | | | |
|----|--|---------|
| 1. | Fee for 3 rd Party Collection (prior to referral to attorney) | _____ % |
| 2. | Fee for Pre Litigation/Suit Not Filed Collection Services (after file forwarded to attorney) | _____ % |
| 3. | Fee for Litigation (suit must be filed) | _____ % |
| 4. | Fee for Second Referrals | _____ % |
| 5. | Fee for Bankruptcy Collections | _____ % |

This percentage will be fixed for the term of the agreement. No escalations allowed.

Signature: _____ Title: _____

Typed Name: _____ Date: _____