



August 23, 2019

TO WHOM IT MAY CONCERN:

Attached is the Request for Proposals (RFP) for Construction Manager at Risk for the New York State Insurance Fund (NYSIF).

The due date for submission of proposals is October 17, 2019.

The attached *No Bid* form should be completed and returned by those Bidders who choose not to bid on this RFP. Please email questions to contracts@nysif.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Megan McClune".

Megan McClune
Contract Management Specialist

Attachments:

No Bid form
RFP



NO BID FORM

RFP # 2019-47-RE

DESCRIPTION: Construction Manager at Risk (CM) NYC

CONTRACT PERIOD: Not to exceed 5 years

PROPOSALS DUE:		SUBMIT BIDS TO:
DATE:	October 17, 2019	NYSIF - Procurement Unit Bid # 2019-47-RE 15 Computer Drive West Albany, NY 12205-1690
TIME:	2:00 p.m. (Eastern)	

Bidders choosing not to bid are requested to complete and return only this page.

- ☐ 1. ____ We do not provide the requested services. Please remove our firm from your mailing list.
- ☐ 2. We are unable to bid at this time because _____

FAILURE TO RESPOND TO THIS BID SOLICITATION MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST. A "NO BID" IS CONSIDERED A RESPONSE.

Name of Firm: _____ FEIN: _____

Address: _____

Web Page: _____ Telephone: _____

Email Address: _____ Fax: _____

Signature: _____ Date: _____

Typed Name & Title: _____



NEW YORK
STATE INSURANCE FUND

REQUEST FOR PROPOSALS

for

Construction Manager at Risk (CM)
New York City

2019-47-RE

August 23, 2019

NYSIF encourages the participation of Minority and Women-Owned Business Enterprises (M/WBE) in its procurement projects. NYSIF is committed to achieving the statewide goal of increasing opportunities for New York State Minority and Women-owned Business Enterprises. Any firm that feels it may meet the state requirements for certification is encouraged to visit the [NYS Empire State Development](#) for more information about the program and how to apply for certification.

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Appendix P.	Site Visit Attendance Notification
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Attachment 1	Appendix M, Form 102, Work Force Employment Utilization (Excel)
Attachment 2	Question Submission Form (Excel)
Exhibit 1	Building Floor Plan (Typical)

RFP CALENDAR

2019-47-RE CONSTRUCTION MANAGER AT RISK (CM) NYC

DATE	EVENT	COMMENTS
8/23/19	RFP Issued	
9/18/19	Submission of Appendix P, Site Visit Attendance Notification	Appendix P, Site Visit Attendance Notification, is to be completed and returned to contracts@nysif.com
9/19/19 1:00 PM EST	Bidders' Conference / Site Visit	<u>ATTENDANCE IS MANDATORY</u> Attendees must have positive picture identification and arrive 15 minutes early for security check in. 199 Church Street, New York, NY 10007
9/26/19 6:00 PM EST	Final date for Bidder inquiries <u>Attachment 2 Question Submission Form</u>	<u>Written inquiries only</u> using <u>"Attachment 2 Question Submission Form"</u> by 6:00 p.m. (EST) to: Email: contracts@nysif.com Fax: 518-437-4209
10/9/19	Responses to Inquiries	Written responses will be posted on NYSIF's website at: www.nysif.com/procurement
10/17/19 2:00 PM EST	Final date for submission of bids	Deadline for response to this RFP. All sealed bids MUST be addressed to: Mail: NYSIF – Procurement Unit Bid # 2019-47-RE 15 Computer Drive West Albany, NY 12205-1690 and received by 2:00 p.m. (EST)
October/November	Bidder Presentations/Interviews	Bidder presentations expected to begin
TBD	Anticipated Start Date	Subject to the required approvals.

SECTION 1 – GENERAL INFORMATION

1.1 OVERVIEW OF THE NEW YORK STATE INSURANCE FUND

The New York State Insurance Fund (NYSIF) was established in 1914 as part of the original enactment of the New York State Workers' Compensation Law. NYSIF's mission is to guarantee the availability of workers' compensation insurance at the lowest possible cost to New York employers and to provide timely, appropriate indemnity and medical payments to injured workers, while maintaining a solvent fund. Since inception, NYSIF has fulfilled the dual roles for which it was created: to compete with other carriers to ensure a fair market place and to be a guaranteed source of coverage for employers who cannot secure coverage elsewhere.

NYSIF is the largest workers' compensation carrier in New York State and among the top 10 largest workers' compensation carriers in the nation, insuring approximately 155,000 policyholders, with more than \$2 billion in annual premium and \$18 billion in assets. A self-supporting insurance carrier, NYSIF operates without taxpayer funding.

In addition to workers' compensation insurance, NYSIF provides disability benefits coverage for off-the-job injuries to more than 61,000 New York employers. In 2018, NYSIF added Paid Family leave as a component of its disability benefits product, providing New Yorkers with job-protected, paid time away from work to care for their families.

1.2 INQUIRIES/ISSUING OFFICE/DESIGNATED CONTACT

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

Alan Angelo	Megan McClune
Contract Management Specialist	Contract Management Specialist
E-Mail: contracts@nysif.com	E-Mail: contracts@nysif.com

For inquiries related specifically to Minority and Woman Owned Business Enterprises (MWBE) and Service Disabled Veteran Owned Business (SDVOB) provisions of this procurement solicitation, the designated contact is:

Damaris Torres
MWBE/SDVOB Oversight Officer
E-Mail: contracts@nysif.com

All questions related to this RFP or the contract process must be submitted in writing using “Attachment 2 Question Submission Form” to contracts@nysif.com by the date and time indicated in the RFP Calendar, citing the particular bid section and paragraph number. No telephone questions will be answered.

Only questions received during the Question and Answer period (as outlined in the RFP Calendar) will be addressed. **Official answers to the questions will be posted on NYSIF's website at www.nysif.com/procurement, on the date indicated in the RFP Calendar.**

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.

All amendments, clarifications and any announcements related to this procurement will be

posted on NYSIF's website at: www.nysif.com/procurement. It is the sole responsibility of the bidders to check the website for any amendments, clarifications or updates. All applicable amendment information must be incorporated into the firm's proposal. Failure to include this information in your proposal may result in the proposal being deemed non-responsive.

1.3 SUMMARY OF NYSIF'S POLICY AND PROHIBITIONS REGARDING PERMISSIBLE CONTACTS DURING A COVERED PROCUREMENT

Pursuant to State Finance Law §§139-j and 139-k, this RFP includes and imposes certain restrictions on communications between a Governmental Entity and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit bids through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3)(a). Designated staff, as of the date hereof, is identified in section 1.2 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 of two findings within a 4-year period, the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements is available from the designated contact(s).

1.4 PURPOSE OF THIS RFP

NYSIF seeks proposals from Construction Managers to provide, "at risk", professional construction management services during the design and construction of base building and renovation leased spaces at NYSIF's commercial office building. Services to include: base building HVAC, electrical, plumbing, fire alarm, sprinklers, and controller systems with. Updates to all interior finishes including the replacement of interior doors/hardware, updated floor, and wall finishes are also included.

The Construction Manager-at-Risk (hereinafter referred to as the "CM") is a construction manager who will contract with NYSIF to submit a Guaranteed Maximum Price (GMP) for the construction of defined projects and will assume a risk if the final actual construction cost exceeds the GMP.

Services will be performed in two phases under a single contract.

Pre-Construction phase services will occur during the design of each project. The CM will be an integral member of the Project Team, consisting of representatives from the Owner, the Design Professional, and other consultants, as required. The Owner will manage the Design Professional. Generally, it will be the responsibility of the CM to integrate the design and construction phases, utilizing their skills and knowledge of general contracting to develop schedules, prepare detailed project construction estimates, study labor conditions, and in any other way deemed necessary, to contribute to the development of the project during the Pre-Construction Phase. Upon selection of the CM by the Owner, the Pre-Construction phase contract will authorize the CM to provide Pre-Construction Phase services, including without limitation the provision of a GMP for the final completion of the Project by the CM. Provisions may be made for early bid packages to be let out should the need arise.

Construction phase services will include the award and management of numerous principal and specialty trade contracts in order to provide the actual construction of the Project as well as the award and management of general conditions work items (i.e. site security, temporary utilities, etc.). The contract will stipulate the accepted GMP and authorize the CM to receive bids and award Trade Contracts to accomplish the construction of the Project. During the construction phase, the CM will be responsible for affecting the construction of the project within the GMP providing all necessary construction services through Trade Contractors selected as hereinafter provided.

A Project Labor Agreement (PLA) will be established for base building and fit out work completed at NYSIF's direction. The CM will be a signatory and abide and uphold the provisions of the established PLA.

Liquidated damages will be assessed in the amount of \$5,000.00 per day for each and every calendar day that the CM fails to complete within the agreed upon project timeframe. Please refer to Section 2.3.6.1 of this RFP for the Liquidated Damages provision.

1.5 BIDDERS' CONFERENCE / SITE VISIT

Attendance at the Site Visit is **mandatory** and will be held on **9/19/19 at 1:00 PM EST**. Bids will only be accepted from firms that attended the Site Visit. The date and time of the Site Visit is stated in the RFP Calendar. Attendees must have positive picture identification and arrive 15 minutes early for security check in.

Prospective Bidders may submit questions in an acceptable format (section 1.2 above) by the date listed in the RFP Calendar. No Questions will be addressed during the site visit. All questions must be submitted in writing in accordance with section 1.2. A summary of the Q&A will be posted on [NYSIF's website](#) by the date and time indicated in the RFP Calendar.

If your firm plans to be represented, submit Appendix P as directed in the RFP Calendar. A maximum of two (2) representatives from each firm may attend. **Walk-ins may not be allowed.**

1.6 DUE DATE

The due date for submission of proposals is 10/17/19, 2:00 p.m. (Eastern).

1.7 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. A Single award will be made for the procurement.

1.8 INSURANCE & BOND 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 authorized to do business in New York State and

acceptable to NYSIF, shall be primary and non-contributing to any insurance or self-insurance maintained by NYSIF, shall be endorsed to provide written notice be given to NYSIF at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail, and shall be sent in accordance to the 'Notice' provision of the Agreement.

The Contractor shall cause to be included in the Commercial General Liability and the Umbrella and/or Excess Liability, required below, coverage for on-going and completed operations.

The liability and protective liability Insurance policies shall provide primary and non-contributory coverage to NYSIF for any Claim arising from the Contractor's work under this contract, or as a result of the Contractor's activities. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) so as to limit coverage against Claims that arise out of the work, or that remove or modify the "insured contract" exception to the employers liability exclusion, or that do not cover the Additional Insured for Claims involving injury to employees of the Named Insured or subcontractors, are not acceptable.

The Contractor shall cause to be included in each of the liability Insurance policies, here Commercial General Liability, the Comprehensive Business Automobile Liability and the Umbrella and/or Excess Liability, coverage naming as Additional Insureds (via ISO coverage forms CG 20 10 04 13 or CG 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage) : The People of the State of New York, as applicable, NYSIF, and their officers, agents and employees. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and Indemnify the above-named Additional Insureds with respect to Commercial General Liability, the Comprehensive Business Automobile Liability and the Umbrella and/or Excess Liability, in the same manner that the Contractor would have been required to pursuant to this section had the Contractor obtained such insuranceInsurance policies.

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.

Should the Contractor engage a subcontractor, the Contractor shall impose the Insurance requirements of this document on the subcontractor, as applicable, without regard to privity of contract. The Contractor shall determine the required Insurance types and limits, commensurate with the work of each subcontractor and maintain the Certificate of Insurance or the Certificate of Insurance and Endorsements for each subcontractor hired as part of the Contractor's records. The Certificate of Insurance or the Certificate of Insurance and Endorsements must show the required amount of each type of Insurance policy required by this Contract and set forth that such Insurance policy provides the Owner, Client and Construction Manager with the coverage required by this Contract. Required Insurance limits should be determined, commensurate with the work of the subcontractor. Proof thereof shall be supplied to NYSIF.

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. Workers Compensation and NYS Disability Benefits, as required by New York State (see below for details). Visit <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp> for further information.
 - a. Workers’ Compensation (including occupational disease) and Employer’s Liability New York Statutory Endorsement with a minimum limit of \$1,000,000 as evidenced by one of the following certificates (Acord certificates are not acceptable):
 1. **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities*, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the New York State Workers’ Compensation Board’s website: (<http://www.wcb.ny.gov>);
 2. **Form C-105.2** (9/07 or most current version), *Certificate of Workers’ Compensation Insurance*, sent to the Agency by the Contractor’s insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide **Form U-26.3** to the Agency upon request; or
 3. **Form SI-12**, *Certificate of Workers’ Compensation Self-Insurance*, available from the New York State Workers’ Compensation Board’s Self-Insurance Office, or **Form GSI-105.2**, *Certificate of Participation in Workers’ Compensation Group Self-Insurance*, available from the Contractor’s Group Self-Insurance Administrator.
 - A. Disability Benefits:
 1. **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities*, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the New York State Workers’ Compensation Board’s website: (<http://www.wcb.ny.gov>);
 2. **Form DB-120.1** (May ’06, or most current version), *Certificate of Disability Benefits Insurance*, sent to the Agency by the Contractor’s insurance carrier upon request; or

3. **Form DB-155**, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.
2. Commercial General Liability Insurance with a limit of not less than \$10,000,000 each occurrence, with a limit of not less than \$11,000,000 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.
3. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$10,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
4. Umbrella and/or Excess Liability policies used to follow the form of the CGL, Automobile Liability and Employers Liability limits shown above may be warranted to be in excess of limits provided by primary CGL, Automobile Liability and Employer's Liability, but not excess to other insurance maintained by the Owner, regardless of the other Insurance clause contained in either parties' policy. The total amount of Insurance coverage shall at least be equal to the requirements set forth above and the policies shall provide coverage at least as broad as the underlying policies. The Contractor shall provide a copy of the umbrella and/or excess liability policy declarations page and the underlying schedule of insurance upon the Owner's request. Coverage shall provide and encompass at least the following:
 - a. Written on an occurrence form.
 - b. Include ISO Endorsement CG 20 10 11/85 or its equivalent.
 - c. An endorsement naming NYSIF and, if applicable, the Construction Manager, the Client, and other entities as additional insured as specified on the sample certificate of insurance in the bidding documents.
5. Contractor's Pollution Liability ("CPL"): The Contractor shall provide coverage for the following:
 - a. Asbestos Abatement Liability: The Contractor or Subcontractors performing any Work which involves asbestos shall provide asbestos liability insurance with a limit of \$2,000,000 per occurrence and aggregate. Coverage shall provide and encompass at least the following:
 1. An endorsement naming NYSIF and if applicable, the Construction Manager, the Client, and other entities as additional insured as specified on the sample certificate of insurance in the Bidding Documents.
 2. Coverage shall be on an occurrence basis.
 - b. Pollution Liability for Hazardous/Contaminated Materials: The Contractor or Subcontractors performing Work involving pollutants, including but not limited to excavation, removal, repair, installation, testing, and petroleum remediation operations for underground petroleum storage tanks shall provide coverage that encompasses at least the following:

1. Pollution Liability with a combined single limit of \$2,000,000 per occurrence and aggregate.
 2. Endorsement naming the following as additional insured's: NYSIF and if applicable, the Construction Manager, and other entities specified on the sample certificate of insurance provided by the Owner, if coverage is on an occurrence basis.
 3. If coverage is on a claims-made policy form then an extended reporting provision of up to three years after Work is completed is required. If coverage is cancelled or not renewed, then the Contractor shall purchase the extended reporting provision for a period of three years for claims made during the project but reported after the cancellation of the coverage.
 4. A maximum Self-Insured Retention of \$50,000, or an amount approved by the Owner.
6. Railroad Protective Liability: The Contractor and Subcontractors providing Work of the Contract in close proximity to railways that the Contractor determines will require entrance upon railway right of way shall provide Railroad Protective Liability coverage on policy forms AASHO or ISO-RIMA.
 - a. For information and use, the Transit Authority provides the following information: A Railroad Protective Liability policy covering the Work of the Contract and affording protection for damages arising out of bodily injuries or death, an injury to or destruction of property, shall be required.
 - b. The Protective Liability insurance policy (I.S.O. Form CG 00 35 11 85 or equivalent) must name the New York City Transit Authority (NYCTA), Manhattan and Bronx Surface Transit Operating Authority (MaBSTOA), Staten Island Rapid Transit Operating Authority (SIRTOA), Metropolitan Transportation Authority (MTA), its subsidiaries and affiliated companies, the City of New York and all other indemnified parties as Named Insured with limits of liability of \$2,000,000 each occurrence on a combined single limit basis the aggregate shall be at least \$4,000,000 for bodily injuries, including death and personal injuries to persons and for damage to property and physical damage to all property owned by, leased by or in the care, custody and control of the Transit Authority.
7. 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.
8. Crime Insurance, including Fidelity Bond coverage on a "loss sustained form" or "loss discovered form" providing coverage for third-party fidelity in an amount not less than \$3,000,000 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. Policy must allow for reporting of circumstances

or incidents that might give rise to future Claims. NYSIF must be included as "Loss Payees" as respects this specific amount as their interests may appear. Any warranties required by the insurer must be disclosed and complied with. Said Insurance shall extend coverage to include the principals of the Contractor and subcontractor as a result of the Contract.

At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the Contractor shall immediately cease Work on the Project. The Contractor shall not resume Work on the Project until authorized to do so by the Owner.

Any delay or time lost as a result of the Contractor not having proper insurance required by this Article shall not give rise to a delay claim or any other claim against the Owner. Further, the Contractor may be liable to other contractors for costs incurred by reason of the Contractor's failure to provide insurance.

Waiver of Subrogation. Bidder shall cause to be included in each of its policies, except for Professional liability, 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 Insureds 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.

1.8.1 BUILDER'S RISK

A. The Owner will provide Builder's Risk for all projects, except for those projects listed in paragraph B below.

1. The Owner shall, except as otherwise specified, at all times during the period of construction and until Substantial Completion, procure and maintain, at the cost and expense of the Owner "All Risk" Builder's Risk Insurance. The Contractor and Subcontractors will be covered for the Work of the Contract. Losses up to and including \$5,000 shall be borne by the Contractor. Reimbursement for loss, if any, is to be made payable to the Owner. The Owner shall, at the Owner's sole discretion, have power to adjust and to settle with the insurer any loss or claim under said insurance.

2. Coverage shall include sub-limits for property in transit and for property in storage on and off the job site. Specific higher limits for transit/storage are available as circumstances may require upon request by any Contractor or Subcontractor to the Owner.
- B. The Contractor shall provide Builder's Risk for all projects performed under this RFP.
 1. The Contractor shall maintain until the date of Substantial Completion, All Risk Builder's Risk completed Value Form, with coverage for the value of the Work of the Contract except for excavation work, planting and seeding, and Work buried in the ground other than wiring and walking tunnels. When applicable, the Contractor's Interest Completed Value form may be used. The extended coverage endorsement may include a loss deductible acceptable to the Owner. Losses up to and including the deductible provision shall be borne by the Contractor.
 2. Each Builder's Risk policy shall include the following endorsement:

"It is made a condition of this insurance that until the Owner issues the Notice of Substantial Completion to the Contractor, occupancy of the premises shall not require consent of the insurer, nor shall such occupancy be the basis for a rate adjustment."
 3. Builder's Risk policies shall be issued by insurance companies authorized to conduct such business under the laws of the State of New York, shall name the State of New York, NYSIF and the Contractor Loss Payees as their interests may appear and shall run until the date of Substantial Completion. Policies expiring on a fixed date before Substantial Completion shall be renewed not less than thirty (30) days before such expiration date. Such policy shall not be changed by endorsement without the knowledge and consent of the Owner and in particular, no notice of cancellation by the insurer shall be effective until sixty (60) days after such notice is received by the Owner.
 4. The Owner may withhold the Contractor's payment for Work which is required to be insured until original binder or policies for the Builder's Risk are provided to the Owner pursuant to this Section.

1.8.2 BONDS PROVIDED BY CONTRACTOR

- A. The Contractor shall provide a performance bond in an amount at least equal to 100% of the Contract sum as security for the faithful performance of the Contract. The Contractor shall also provide a payment bond in an amount at least equal to 100% of the Contract sum for the payment of all persons performing labor or providing materials in connection with the Work of the Contract. The Contractor shall execute bond forms included as part of the Contract Documents.
- B. If at any time the Owner shall become dissatisfied with any surety or sureties upon the performance bond or the payment bond, or if for any other reason said bonds shall cease to be adequate security to the Owner, the Contractor shall, within five (5) days after notice from the Owner to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The Contractor shall pay the premiums on said bond or bonds. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond or bonds to the Owner.

- C. The surety company, on all bonds, shall be authorized to do business in the State of New York and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to the Owner.

1.9 PARTICIPATION OF NYS BUSINESS ENTERPRISES (MWBE)

It is the policy of NYSIF to encourage the greatest possible participation by Minority and Women-Owned Business Enterprises (MWBE) as Bidders, subcontractors and suppliers on its procurement contracts, consistent with New York State laws. NYSIF has established a goal of 30% MWBE participation for its contracts.

Bidders are required to complete the forms contained within Appendix M and submit those with the bid proposal. Failure to properly complete and provide these documents may result in rejection of the bid.

The Awarded Contractor(s) will be required to demonstrate its ability to meet NYSIF's goals for MWBE participation by documenting all subcontracted work related to this contract for which MWBE participation will take place. If a waiver (or partial waiver) from meeting NYSIF's MWBE goals is being sought, the contractor **MUST complete the waiver form (Form 104 of Appendix M) and provide supporting documentation as listed on the form's instructions** detailing extensive efforts taken to seek and sub-contract MWBE vendors for this procurement.

The awarded contractor may be required to submit subcontractor and payment information in the New York State Contract System on a regular basis throughout the term of the contract. Subcontractors may also be required to verify such payments through this system.

Proof of utilization and payment to MWBE subcontractors is required.

Please see Appendix M for further information.

1.10 PARTICIPATION OF SERVICE DISABLED VETERAN OWNED BUSINESSES (SDVOB)

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. NYSIF recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of NYSIF contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

NYSIF hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the NYSIF Designated Contacts at contracts@nysif.com. Additionally, following Contract execution, Contractor is encouraged to contact the Office of

General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

Bidders are required to complete the forms contained within Appendix S and submit those with the bid proposal. Failure to properly complete and provide these documents may result in rejection of the bid.

The Awarded Contractor(s) will be required to demonstrate its ability to meet NYSIF's goals for SDVOB participation by documenting all subcontracted work related to this contract for which SDVOB participation will take place. If a waiver (or partial waiver) from meeting NYSIF's SDVOB goals is being sought, the contractor **MUST** complete the waiver form (Form S-200 of Appendix S) and provide supporting documentation as listed on the form's instructions detailing extensive efforts taken to seek and sub-contract SDVOB vendors for this procurement.

The awarded contractor may be required to submit subcontractor and payment information in the New York State Contract System on a regular basis throughout the term of the contract. Subcontractors may also be required to verify such payments through this system.

Proof of utilization and payment to SDVOB subcontractors is required.

Please see Appendix S for further information.

1.11 USE OF NYSIF TRADEMARK AND LOGO

Bidders/Contractors may not use NYSIF, its name, trademarks, or logo without prior written approval from NYSIF. NYSIF must approve any website content and should be notified of any website content change. NYSIF shall display the vendor contact information on the NYSIF website with approval from the vendor.

SECTION 2 – TECHNICAL SPECIFICATIONS

No oral statements of any person shall modify or otherwise affect 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).

2.1 MANDATORY REQUIREMENTS

Bidders proposals must demonstrate how each of the following mandatory requirements are met AND/OR attest to their ability to meet the mandatory requirement. Each proposal response should cite the particular RFP section and paragraph number being addressed.

2.1.1 QUALIFICATIONS AND CERTIFICATION REQUIREMENTS:

Firms responding to this RFP must meet the following:

1. Must demonstrate 10 years of verifiable successful competency managing construction projects of similar size and scope in the New York City market.
2. Must demonstrate a track record of successful projects managed within the established budget.
3. Must demonstrate a verifiable track record of successful projects managed which were completed on time.
4. Must demonstrate your firm's safety policies and procedures and how they are implemented throughout the course of a project. Provide last five (5) year Experience Modification Rate (EMR).
5. Have verifiable experience in managing projects as the administrator of a Project Labor Agreement (PLA) and provide examples.
 - Completed projects of similar size, scope and complexity;
 - recent experience providing Construction Manager-at-Risk services on projects of similar size, scope and complexity (experience working with occupied buildings, government owned facilities, and multi-phase project experience is preferred);
 - employing experienced staff with thorough knowledge of their area(s) of expertise; and
 - working knowledge of the United States Green Building Council (USGBC) LEED rating system, specifically, for projects which have received LEED certification.
6. Aspire to meet MWBE (30%) and SDVOB (6%) on all subcontracts. Wherever aspirational goals cannot be met, documentation demonstrating good faith efforts must be provided to support resetting participation goals.
7. PERMITS AND CODE COMPLIANCE; All construction permits are to be obtained by the CM from the New York State Office of General Services. The CM must also coordinate all Code compliance inspections, identify and coordinate all Special Inspections, coordinate required oversight on any asbestos abatement actions that are required. Owner is responsible for the cost of permits and inspections.

2.1.2 PROJECT MANAGEMENT SOFTWARE:

The awarded CM will be required to provide a sufficient automated management tool to plan, track, and record all project-related schedules, correspondence, submittals, transmittals, meeting minutes, requests for information, daily logs, project costs, change management, and reporting. In addition, Owner at their option will deploy these systems from available web-based and/or Application Service Provider (ASP) system(s). Firms responding to this RFP shall provide detailed specifications and description of their system, hereinafter referred to as “The Project Management System”, for all project deliverables.

2.2 DEFINITIONS

The following terms as used in the RFP shall be defined as follows:

Activity – A discrete part of the Contract that can be identified for planning, scheduling, monitoring, and controlling the Project. Activities included in a CPM schedule consume time and resources.

- a) Critical Activity: An activity on the critical path that has no total float.
- b) Predecessor Activity: An activity that precedes another activity in the network.
- c) Successor Activity: An activity that follows another activity in the network.

Addendum or Addenda – Additional provisions of the Contract Documents issued in writing prior to the receipt of bids.

As-built – A set of drawings, specifications and schedule prepared by the Contractor, which include any revisions in the drawings, specifications and schedule during construction, indicating how the Work was actually constructed.

Beneficial Occupancy – The stage in the performance of the Work when a designated portion of the Work is sufficiently complete in accordance with the Contract Documents and prior to Substantial Completion, so the Owner can occupy or utilize such portion of the Work for its intended use, evidenced by the Notice of Beneficial Occupancy executed by the Owner.

Bid Milestone Schedule – Interim milestones, included in the Contract Documents, which each Contractor utilizes to formulate the Baseline Schedule.

Baseline Schedule – Initial schedule, prepared by the CM, to complete the Work of the Contract in accordance with the Contract duration and starting point to which schedule updates are compared.

Change Order – Written notice, in a standard Owner’s form, to the Contractor, signed by the Contractor and executed by the Owner changing the Contract in accordance with Section 2.3.5 – Changes in the Work.

Claim - A demand by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, an extension of time or other relief with respect to the terms of the Contract. The term Claim also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

Client - The entity for whom NYSIF is performing services, including NYSIF, subsidiaries, agents, related corporations or fiduciaries of the entity.

Contract Closeout – Final completion and acceptance of the performance of the Work evidenced by the final payment to the Contractor by the Owner.

Contractor's Baseline Schedule - Initial schedule, prepared by each Contractor, to complete the Work of their Contract in accordance with the Contract duration and starting point to which schedule updates are compared.

Construction Manager at Risk – A person, persons, firm, partnership or corporation, regularly engaged in the management of construction projects, who has contracted with the OWNER to submit a Guaranteed Maximum Price (GMP) as defined in the Construction Phase Contract, for the construction of the Project and has assumed the risk that the actual cost of the construction may exceed the GMP. For purposes of this General Conditions Contract, the Construction Manager at Risk is herein referred to as “the Contractor”.

Consultant - A person, persons, firm, partnership or corporation providing Architectural, Engineering, or other professional services, and so designated by the Owner.

Contract - The agreement between the Owner and the Contractor consisting of the Contract Documents.

Contract Documents - Advertisement, RFP and Addenda, Contractor's Proposal, Agreement, Payment Bond, Performance Bond, Insurance, , Drawings, Specifications, Work Orders, Change Orders, and all provisions of law deemed to be included in the Contract.

Contract Management Program – A software program used by the Owner in managing the Work.

Contractor - A person, persons, firm, partnership or corporation with whom the Contract is entered into by the Owner to perform the Work. For purposes of this contract the Construction Manager at Risk is herein referred to as “the Contractor”.

CPM – Critical path method is a scheduling method used to plan and schedule construction projects where activities are arranged based on activity relationships creating a time scaled network diagram.

Critical Path – The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall Project duration and contains no total float.

Data Date - The date when the status of the Project schedule is determined, showing the calendar start date for the update period.

Design Professional - A person, persons, firm, partnership or corporation providing Architectural, Engineering, or other professional services, and so designated by the Owner.

Designated Representative – See Owner's Representative definition.

Extra Work - Any work in addition to the Work initially required to be performed by the Contractor pursuant to the Contract Documents.

False Claim – Any claim which is, either in whole or part, false or fraudulent.

False Representation – This action takes place when a person has knowledge of the value of the work and materials supplied, performed or proposed (the “Information”) constituting the Claim, Change Order or Application for Payment and either (i) acts in deliberate ignorance of the truth or falsity of the Information or (ii) acts in reckless disregard of the truth or falsity of the Information.

Float - The measure of leeway in starting and completing an activity.

- a) Float time is not for the exclusive use or benefit of the Owner, Construction Manager or any Contractor, but is a jointly owned, expiring Project resource available to all parties as needed to meet schedule milestones and Substantial Completion date.
- b) Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
- c) Total float is the measure of leeway in starting or completing an activity without adversely affecting the planned Substantial Completion date

Forced Change Order –Written notice, in a standard Owner’s form, to the Contractor, without the Contractor’s signature and executed by the Owner changing the Contract Documents in accordance with Section 2.3.5 – Changes in the Work.

Furnish - To deliver to the Site ready for installation.

Install - To unload at the delivery point at the Site and perform every operation necessary to establish secure mounting and correct operation at the proper location.

Letter of Intent - Written notice, signed by the Owner, to the Contractor, which accepts the Contractor’s bid and transmits the Agreement, bonds and other documents to the Contractor for signatures.

Means and Methods of Construction - Labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by the Contract Documents.

Notice of Substantial Completion - Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, accepting the Work of the Contract Documents as Substantial Completion and constitutes start of the guarantee period.

Notice to Proceed - Written notice, signed by the Owner, to the Contractor, that acknowledges receipt by the Owner of the signed Agreement and bonds from the Contractor and directs the Contractor to start performance of the Work; or

Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, directing the Contractor to proceed in accordance with Section 2.3.5 – Changes in the Work or Section 2.3.7 – Claims and Disputes.

NYSIF - The New York State Insurance Fund (NYSIF) was established by the laws of the state of New York with its principal office located at 199 Church Street, New York, NY 10007.

Owner - NYSIF.

Owner's Representative - A person, persons, firm, partnership or corporation so designated by the Owner to act on behalf of the Owner.

PDM – Precedence diagram method follows the standard CPM calculations and allows for special logic relationships creating an interdependent relationship throughout the network.

Project – Means:

1. All structures, buildings, site work, landscaping, or other improvement to real property of every kind and nature provided for or reasonable inferable from the Construction Documents published at the end of the Pre-Construction Phase of the project by the Project Designer.

2. Work at the Site carried out pursuant to one or more sets of Contract Documents.

Project Schedule - Contemporaneous schedules, prepared by the Construction Manager, which combines and coordinates activity of each Contractor's Baseline Schedule into one coordinated Project Schedule.

Provide - To Furnish and Install the Work complete in place and ready for its intended use.

Scope, Budget and Schedule Confirmation Form - A standard Owner's form, executed by the Owner, the Client, the Design Professional and/or the Construction Manager, agreeing in principal to the Project's scope, budget and schedule.

Shop Drawings - Diagrams, fabrication drawings, illustrations, schedules, test product data, performance charts, catalog cuts and product data that are submitted by the Contractor and illustrate any portion of the Work.

Site - The area within the Contract limit, as indicated by the Contract Documents.

Stop Work Order - Written notice, signed by the Owner, to the Contractor, to cease or hold Work of the Contract Documents; if not followed by an order to resume work, it amounts to termination of the Contract.

Subcontract - An agreement between the Contractor and Subcontractor for Work on the Site.

Subcontractor - A person, persons, firm, partnership or corporation under contract with the Trade Contractor, or under contract with any Subcontractor, to provide labor and material at the Site.

Substantial Completion - The stage in the performance of the Work when all Work is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use, evidenced by the Notice of Substantial Completion executed by the Owner.

Trade Contractor - means a firm employed directly by the CM to complete the construction of the project.

Work - All obligations imposed upon the Contractor by the Contract Documents.

2.3 GENERAL CONDITIONS FOR CONSTRUCTION

2.3.1 CONTRACT DOCUMENTS

2.3.1.1 ELECTRONIC DATA TRANSFER

- A. Electronic data includes, but is not limited to, files produced by Contract Manager, email, word processing, spread sheet, data base, payments, other software programs and all Contract Documents.
- B. Payment to the Contractor will be made in accordance with Exhibit C, Clause 21 "Contract Billings."
- C. Electronic data produced in connection with the Contract is proprietary information of the Owner and to be treated as confidential and not to be disclosed to, or shared with others outside the limits of the Contract without the express written consent of the Owner. The Owner makes no warranty, express or implied, as to the accuracy of the information transferred.

- D. The Contractor shall pay on behalf of the Owner any loss which the Owner becomes legally liable to pay as a result of a claim made against the Contractor by any person or entity, which results directly from an act, error or omission of the Contractor in the provision of electronic data in respect to the Contract.

2.3.1.2 OWNER

- A. The meaning and intent of the Contract Documents shall be as interpreted by the Owner. Any change to the Contract Documents must be provided in writing, by the Owner, in accordance with Section 2.3.5 – Changes in the Work.
- B. The Owner shall give all orders and directions contemplated under the Contract relative to the execution of the Work. The Owner shall determine the amount, quality, and acceptability of the Work and shall decide all questions that may arise in relation to said Work. The Owner's estimates and decisions shall be final except as otherwise expressly provided.
- C. The Owner may, at its sole discretion, waive certain provisions of the Contract Documents. Such waiver shall only be done in writing and the waiver of one provision shall not act as a waiver of any other provision of the Contract Documents, which shall remain in full force and effect.
- D. Any differences or conflicts concerning performance that may arise between the Contractor and other Contractors performing Work for the Owner shall be adjusted and determined by the Owner.
- E. The Owner may act through an Owner's Representative designated by the Owner.

2.3.1.3 NOTICE AND SERVICE THEREOF

Any notice to the Contractor from the Owner relative to any part of the Contract shall be in writing and service considered complete when said notice is sent or delivered in person to the Contractor or authorized representative, at the last address given by the Contractor.

2.3.1.4 NOMENCLATURE

Materials, equipment or other Work described in words that have a generally accepted technical or trade meaning shall be interpreted as having said meaning in connection with the Contract.

2.3.1.5 INVALID PROVISIONS

If any term or provision of the Contract Documents or the application thereof to any person, firm or corporation or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Contract Documents, or the application of such terms or provisions to persons, firms or corporations or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract Documents shall be valid and be enforced to the fullest extent permitted by law.

2.3.1.6 INTERPRETATION OF CONTRACT DOCUMENTS

- A. The parties agree that the various documents which comprise this Agreement shall prevail in accordance with precedence established below in the case of any inconsistencies contained in them:

1. Exhibit A, Standard Clauses (January 2014)
 2. The Agreement
 3. Exhibit C, Contract Provisions (December 2018)
 4. Request for Proposals (RFP), as amended.
 5. Exhibit B, General Specifications (April 2019)
 6. CONTRACTOR's Proposal
- B. Figured dimensions shall take precedence over scaled dimensions. Larger scale drawings shall take precedence over smaller scale drawings. Latest addenda shall take precedence over previous addenda and earlier dated drawings and specifications.
- C. Should a conflict occur in or between or among any parts of the Contract Documents that are entitled to equal preference, the better quality or greater quantity of material shall govern, unless the Owner directs otherwise.
- D. Drawings and specifications are complementary. Anything shown on the drawings and not mentioned in the specifications, or mentioned in the specifications and not shown on the drawings, shall have the same effect as if shown or mentioned in both.

2.3.2 SITE CONDITIONS

2.3.2.1 SUBSURFACE OR SITE CONDITIONS FOUND DIFFERENT

- A. The Contractor acknowledges that the Contract amount set forth in its bid includes such provisions which the Contractor deems sufficient for all subsurface or site conditions the Contractor could reasonably anticipate encountering as indicated in the Contract Documents, or borings, reports, rock cores, foundation investigation reports, topographical maps or other information available to the Contractor or from the Contractor's inspection and examination of the Site prior to submission of bids.
- B. The Owner assumes no responsibility for the correctness of any boring or other subsurface information and makes no representation whatsoever regarding subsurface conditions and test borings, reports, rock cores, foundation investigation and topographical maps which may be made available to the Contractor.

Should the Contractor encounter subsurface or site conditions at the Site materially differing from those shown on or described in or indicated in the Contract Documents, the Contractor shall immediately give notice to the Owner of such conditions and shall not disturb said conditions until authorized to do so by the Owner.

- C. Subsurface or site conditions found materially differing from those that could have been reasonably anticipated may be cause for change to the Contract amount and time of completion. This determination will be made at the sole discretion of the Owner.

2.3.2.2 VERIFYING DIMENSIONS AND CONDITIONS

- A. The Contractor shall take all measurements at the Site and shall verify all dimensions and conditions at the Site before proceeding with the Work. If said dimensions or conditions are found to be in conflict with the Contract Documents, the Contractor immediately shall refer said conflict to the Owner in writing. The Contractor shall comply with any revised Contract Documents.

- B. During the performance of the Work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions.
- C. The Contractor shall review all Contract Documents to determine exact location of all Work and verify spatial relationships of all the Work. Any question concerning said location or spatial relationships shall be submitted in a manner approved by the Owner.
- D. Special locations for equipment, pipelines, ductwork and other such items of the Work, where not dimensioned on plans, shall be coordinated with other affected Contractors.
- E. The Contractor shall be responsible for the proper fitting of the Work in place.

2.3.2.3 SURVEYS

Unless otherwise expressly provided in the Contract Documents, the Owner shall furnish the Contractor all available surveys of the property necessary for the Work, but the Contractor shall lay out the Work.

2.3.3 CONTRACTOR

2.3.3.1 REPRESENTATIONS OF CONTRACTOR

The Contractor represents and warrants:

- A. That it is financially solvent and is experienced in and competent to perform the Work, and has the staff, manpower, equipment, subcontractors, and suppliers available to complete the Work within the time specified for the Contract amount.
- B. That it is familiar with all federal, state, and local laws, ordinances, orders, rules and regulations which may affect the Work.
- C. That any temporary and permanent Work required by the Contract Documents can be satisfactorily constructed, and that said construction will not injure any person or damage any property.
- D. That it has carefully examined the Contract Documents and the Site, and from the Contractor's own investigations is satisfied as to the nature and materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or items which may affect the Work.
- E. That it is satisfied that the Work can be performed and completed as required in the Contract Documents, and warrants that it has not been influenced by any oral statement or promise of the Owner or the Design Professional.
- F. That it will comply with all applicable local, state, and federal rules and regulations and all applicable construction standards of accrediting agencies and organizations.

2.3.3.2 ERRORS OR DISCREPANCIES

The Contractor shall examine the Contract Documents thoroughly before commencing the Work and report any errors or discrepancies to the Owner, in writing, within five (5) days of discovery.

2.3.3.3 COORDINATED COMPOSITE DRAWINGS

The Contractor shall prepare coordinated composite drawings clearly showing how the Work of the Contractor is to be performed in relation to the work of other contractors or subcontractors, prepare scaled drawings and sections in the same digital software program, version and operating system as the original contract drawings or in an operating system approved by the Owner.

2.3.3.4 MEETINGS

The Contractor shall attend all meetings as directed by the Owner.

2.3.3.5 SUPERVISION BY CONTRACTOR

- A. The Contractor shall provide full-time competent supervision for the duration of the Contract. During the course of on-site work the Contractor shall provide a full-time on-site superintendent who shall have full authority to act for the Contractor at all times. The superintendent must be able to read, write and speak English fluently, as well as communicate with the workers.
- B. If at any time the supervisory staff is not satisfactory to the Owner, the Contractor shall, if directed by the Owner, immediately replace such supervisory staff with other staff satisfactory to the Owner at no additional cost to the Owner.
- C. The Contractor shall remove from the Work any employee of the Contractor or of any Subcontractor when so directed by the Owner.
- D. Substitutions of Key Staff must be approved by Owner.

2.3.3.6 PROJECT SCHEDULING

- A. The Contractor shall provide a project scheduler, experienced in critical path method (CPM) scheduling. The scheduler's experience and credentials shall be submitted to the Owner for review and acceptance prior to proceeding with scheduling of the Work.
- B. Using industry standard software, the Contractor shall prepare, maintain, and revise the CPM schedule to monitor the progress of all project operations, in accordance with the Contract Documents.
- C. Construction activities shall be interrelated on a single schedule that represents the entire Contract duration from Notice to Proceed to Substantial Completion to Contract Closeout. The Contractor shall utilize the CPM schedule of network calculation to generate the CPM schedule. The Contractor shall assure all logic constraints are identified between the Work of the Contract and the Work of other Contractors and Owner's Work prior to approval of the CPM schedule.
- D. Review comments made by the Owner on the CPM schedule shall not relieve the Contractor from compliance with requirements of the Contract Documents. The Contractor shall be responsible for scheduling, sequencing, and performing the Work to comply with the requirements of the Contract Documents. The Owner's review comments are offered as a courtesy and are not conditions of Owner acceptance, but are for the general conformance with scheduling requirements and industry scheduling concepts.

- E. All work is to be scheduled in a manner which minimizes an adverse effect on the occupants of the building. All disruptive work shall be planned and scheduled outside of normal business hours. NYSIF reserves the right to stop work causing a disruption to business during normal business hours.
- F. The Contractor expressly understands and agrees that no additional compensation shall be paid for any alterations to planned construction sequence to accommodate such revisions. Failure to include any element of work required for the performance of the Work shall not excuse the Contractor from completing all the Work required within the applicable completion date of each phase regardless of the Owner's approval of the precedence diagram.
- G. The Owner may withhold Applications for Payment if the Contractor fails to provide an acceptable project scheduler, network analysis, schedules or revisions thereto in accordance with requirements of project scheduling.

2.3.3.7 WORKER IDENTIFICATION AND SITE ACCESS CONTROL

- A. All employees of the Contractor and every Subcontractor must comply with all site access control and security procedures prescribed by the Owner which may include, but are not limited to, the wearing of Owner issued identification badges, ingress and egress through controlled entry and exit points, and use of card readers or other electronic identity verification devices.
- B. All employees of the Contractor and every Subcontractor, prior to entering the Site for the first time, must obtain an identification badge if issued by the Owner and produce to the Owner a valid form of government-issued photo identification and furnish other background information, including but not limited to the following:

- Full Name
 - Job Classification
 - Employer Name
 - Union Local Affiliation, if any

The Owner recognizes that certain information requested above may constitute personal information and will take all reasonable steps to ensure the security and confidentiality of this information as permitted by law.

- C. All employees of the Contractor and every Subcontractor must visibly display on their person, while entering and on the Site, an identification badge if issued by the Owner. In the event said identification badge has not been issued by the Owner, all employees of the Contractor and every Subcontractor must produce a valid form of government-issued photo identification promptly upon request of the Owner. Failure to display such identification or to display or produce such identification in the manner as prescribed by the Owner may result in the employee's non-admittance to or immediate removal from the Site. The Owner will send written confirmation to the Contractor confirming the action taken, if requested by the Contractor.

2.3.3.8 RELATED WORK

- A. The Contractor should examine the Contract Documents for Work of its Contract and any related work of other contracts, to ascertain the relationship of its Work to any related work of other contracts.
- B. The Owner may contract with a Design Professional, Construction Manager or other consultants to provide services to the Owner. The services enumerated in consultant contracts are for the benefit of the Owner who may choose to utilize any or all of said services. The Contractor has no privity of contract with the Design Professional, Construction Manager or any other consultant that contracts with the Owner and should not assume that all of the services enumerated in said contracts will be provided.

2.3.3.9 COORDINATION WITH SEPARATE CONTRACTS

- A. The Owner may award other contracts for work which may proceed simultaneously with the execution of the Work. The Contractor shall coordinate the Contractor's operations with those of other contractors as directed by the Owner. Cooperation shall be required in the arrangements for access, the storage of material, and in the detailed execution of the Work.
- B. The Contractor shall keep informed of the progress and workmanship of other contractors and any subcontractors and shall notify the Owner in writing immediately of lack of progress or defective workmanship on the part of other contractors or subcontractors, where said delay or defective workmanship may interfere with the Contractor's operations.
- C. Failure of a Contractor to keep so informed and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of said progress and workmanship as being satisfactory for proper coordination with the Work.
- D. Where the Contractor shall perform Work in close proximity to work of other contractors or subcontractors, or where there is evidence that Work of the Contractor may interfere with work of other contractors or subcontractors, the Contractor shall assist in arranging space conditions to make satisfactory adjustment for the performance of the Work. If the Contractor performs work in a manner that causes interference with the work of other contractors or subcontractors, the Contractor shall make changes necessary to correct the condition at no additional cost to the Owner.

2.3.3.10 COOPERATION WITH OTHER CONTRACTORS

- A. During the performance of the Work, other contractors may be engaged in performing work. The Contractor shall coordinate the Contractor's Work with the work of said other contractors in such a manner as the Owner may direct.
- B. If the Owner determines that the Contractor is failing to coordinate the Work with the work of other contractors as the Owner has directed:
 - 1. The Owner shall have the right to withhold any payments due under the Contract until the Contractor complies with the Owner's direction; and

2. The Contractor shall assume the defense and pay on behalf of the Owner any and all Claims or judgments or damages and from any costs or damages to which the Owner may be subjected or which the Owner may suffer or incur by reason of the Contractor's failure to promptly comply with the Owner's directions.
- C. If the Contractor notifies the Owner, in writing, that another contractor on the Site is failing to coordinate the work of said Contractor with the Work, the Owner shall investigate the charge. If the Owner finds it to be true, the Owner shall promptly issue such directions to the other contractor with respect thereto as the situation may require. The Owner shall not be liable for any damages suffered by the Contractor by reason of the other contractor's failure to promptly comply with the directions so issued by the Owner, or by reason of another contractor's default in performance.
- D. Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with the Owner or through any act or omission of any subcontractor of said other contractor, the Contractor shall have no Claim against the Owner for said damage.
- E. Should any other contractor having or which shall have a contract with the Owner sustain damage through any act or omission of the Contractor or through any act or omission of a Subcontractor, the Contractor shall reimburse said other contractor for all said damages and shall indemnify and hold the Owner harmless from all said Claims. The Owner's right to indemnification hereunder shall in no way be diminished, waived or discharged, by its recourse to assessment of liquidated damages as provided in the Contract Documents, or by the exercise of any other remedy provided by the Contract or law.
- F. The Owner cannot guarantee the responsibility, efficiency, unimpeded operations or performance of any contractor. The Contractor acknowledges these conditions and shall bear the risk of all delays including, but not limited to, delays caused by the presence or operations of other contractors and delays attendant upon any CPM schedule approved by the Owner and the Owner shall not incur any liability by reason of any delay.

2.3.4 MATERIALS AND LABOR

2.3.4.1 CONTRACTOR'S OBLIGATIONS

- A. The Contractor shall, comply with all the terms of the Contract Documents and complete all the Work in a good workmanlike manner, within the time specified in the Contract and to the satisfaction of the Owner.
- B. The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

- D. Any labor, materials or means whose employment, or utilization during the course of the Contract may tend to or in any way cause or result in strike, work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor, its Subcontractors or material suppliers, or by any of the trades working in or about the Site, or by other Contractors, their Subcontractors or material suppliers pursuant to other contracts shall not be allowed. Any violation by the Contractor of this requirement may in the sole judgment of the Owner be considered in default and for the Owner to take action against the Contractor as set forth in Exhibit C "Contract Provisions" and Section 2.3.8 below, or such other action as the Owner may deem proper.

2.3.4.2 MEANS AND METHODS OF CONSTRUCTION

Unless otherwise provided in the Contract Documents, the Means and Methods of Construction shall be such as the Contractor may choose subject to the Owner's right to reject the Means and Methods of Construction proposed by the Contractor, which in the opinion of the Owner:

Will constitute or create a hazard to the Work or to persons or property.

Will not produce finished Work in accordance with the terms of the Contract. Will be detrimental to the overall progress of the Project.

The Owner's approval of the Contractor's Means and Methods of Construction, or their failure to exercise their right to reject such means and methods, shall not relieve the Contractor of its obligation to complete the Work, nor shall the exercise of such right to reject or create a cause of action for damages.

2.3.4.3 CONTRACTOR'S TITLE TO MATERIALS

- A. No materials or supplies for the Work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by any other party. The Contractor warrants that the Contractor has full, good and clear title to all materials and supplies used by the Contractor in the Work, or resold to the Owner pursuant to the Contract Documents free from all liens, Claims or encumbrances.
- B. All materials, equipment and articles that become the property of the Owner shall be new unless specifically stated otherwise.

2.3.4.4 COMPARABLE PRODUCTS ("OR EQUAL" CLAUSE)

- A. Whenever a material, article or piece of equipment is identified on the drawings or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue number, or make, said identification is intended to establish a standard. Any material, article or equipment of other manufacturers and vendors which performs satisfactorily the duties imposed by the design intent may be considered equally acceptable provided that, in the opinion of the Design Professional, the material, article or equipment so proposed is of equal quality, substance and function and the Contractor shall not Provide, Furnish or Install any said proposed material, article or equipment without the prior written approval of the Design Professional. The burden of proof and all costs related thereto concerning the "or equal" nature of the substitute item, whether approved or disapproved, shall be borne by the Contractor.

- B. Any costs savings to an approved comparable product realized by the Contractor shall be shared equal between the Owner (50%) and Contractor (50%).
- C. Where the Design Professional, pursuant to the provisions of this Section, approves a product proposed by the Contractor and said proposed product requires a revision of the Work covered by this Contract, or the work covered by other contracts, all changes in the work of all contracts, revision or redesign, and all new drawings and details required therefore shall be provided by the Contractor at the cost of the Contractor and shall be subject to the approval of the Design Professional.
- D. No substitution will be permitted which may result in a delay to the Project.

2.3.4.5 QUALITY, QUANTITY AND LABELING

- A. The Contractor shall furnish materials and equipment of the quality and quantity required in the Drawings and Specifications.
- B. When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet said standards.
- C. The above requirements shall not restrict or affect the Owner's right to test materials as provided in the Contract.
- D. The Contractor shall develop and implement quality control plans to assure itself and the Owner that all Work performed by the Contractor and its Subcontractors complies fully with all contract requirements, and shall submit the plans to the Owner as required by the Contract. The Contractor's quality control plans shall be independent of any testing or inspection performed by or on behalf of the Owner.

2.3.4.6 TAX EXEMPTION

- A. The Owner is exempt from payment of federal, state, and local taxes; sales and compensating use taxes of the State of New York and of cities and counties on all materials and supplies incorporated into the completed Work. These taxes are not to be included in bids. This exception does not apply to tools, machinery, equipment or other property leased by or to the Contractor or a Subcontractor, or to supplies and materials which, even though they are consumed, are not incorporated into the completed Work, and the Contractor and Subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on said leased tools, machinery, equipment or other property and upon all said unincorporated supplies and materials.
- B. The Contractor and Subcontractors shall obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use said certificates or other documentation as required by law, rule or regulation.

2.3.5 CHANGES IN THE WORK

2.3.5.1 CHANGES

- A. Without invalidating the Contract, the Owner, in writing, may order changes in the Work by altering, adding or deducting from the Work of the Contract. For all approved changes in the Work, the Owner shall issue to the Contractor, a Notice to Proceed

followed by an executed Change Order form, processed through Contract Manager, which both forms shall include a change request number. No alteration to these forms shall be accepted and no payment shall be due the Contractor until said forms are issued and executed by the Owner. If the Substantial Completion date is affected by a change, an increase or decrease to the duration, in days shall be included on the Change Order form.

1. The Owner may process a Forced Change Order if the Contractor disagrees with the changes in the Work. The Contractor must comply with the changes in the Work, and continue with the Work pursuant to Section 2.3.7 - Claims and Disputes.
- B. The Contract sum may be increased or decreased by one or more of the following methods, as determined by the Owner:
1. By applying the applicable unit price or prices contained in the Contract Documents, or negotiated pursuant to the provisions of this Section. Unit prices are limited to the quantities specified in the Contract Documents or Change Order. Quantities greater than specified in the Contract Documents or Change Order are subject to negotiations by the Owner.
 2. By estimating the fair and reasonable cost of the changes in the Work or deleted Work. The Contractor must get an independent professional cost estimator to support the determination that the estimated price is "fair and reasonable".
 3. By determining the actual cost of the changes in the Work and considering the following:
 - a. Labor, including all wages, required wage supplements and insurance required by law, paid to employees below the rank of superintendent directly employed at the Site. Minimum wages are the prevailing rate of wages defined by the NYS Department of Labor or those determined by any Project Labor Agreement in force. Actual wages in excess, paid by the Contractor, may be considered by the Owner.
 - b. Premiums or taxes paid by the Contractor for worker's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law, net of actual and anticipated refunds and rebates.
 - c. Premiums for liability insurance associated with Change Order Work.
 - d. Materials associated with Change Order Work.
 - e. Equipment, excluding hand tools, which in the judgment of the Owner, would have been or will be employed in the Work. The Owner may employ the use of rental rates it deems most appropriate from the "Green Book", the "Blue Book", or from the Associated General Contractors of America. In no case will the equipment rental cost exceed the purchase price of the equipment. Self-owned equipment is defined to include equipment rented from Contractor-controlled or loosely affiliated companies. It is the duty of the Contractor to utilize either rented or self-owned equipment that is of a nature and size appropriate for the Work to be performed. The Owner reserves the right to determine reasonable and appropriate equipment sizing,

- and at the Owner's discretion, it may adjust the costs allowed to reflect a smaller or less elaborate piece of equipment more suitable for performance of the changes in the Work.
- f. To determine the daily and hourly rate of self-owned equipment, the monthly rate shall be divided by twenty-two (22) to establish a daily rate; or by one hundred and seventy-six (176) to establish the hourly rate. The operating cost listed in the "Blue Book" would be added to this rate to establish the billable rate.
- C. For each proposed changes in the Work, the Contractor shall submit to the Owner, within the time frame provided by the Owner, the following information:
1. A detailed proposal of labor, material and equipment costs for the proposed changes in the Work.
 2. The Contractor's and Subcontractor's proposals must provide a notarized statement as follows:

"I hereby certify that the value for the labor, material and equipment that comprise the proposals, represents the value of said work, material and equipment for the work performed or to be performed, pursuant to the Contract between the undersigned and NYSIF."
 3. Signed and notarized labor rate worksheet to determine hourly rates for each classification of worker associated with the proposed changes in the Work.
 4. Narrative and fragment schedule, which describes the impact on the CPM schedule in duration days associated with the proposed changes in the Work.
- D. Each Contractor's and Subcontractor's proposals shall be reviewed by the Owner consistent with the requirements of Section 2.3.5 – Changes in the Work. Upon the Owner's approval, and with appropriate approval authority, the Owner shall issue, to the Contractor, the Notice to Proceed and execute the Change Order form between the Contractor and the Owner.
- E. Any information representing the value of the Work performed, materials supplied and equipment utilized contained in the Contractor's and Subcontractor's proposals that constitutes False Representation may subject the undersigned party to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (False and Fraudulent Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the State Finance Law – the New York False Claims Act.
- F. The compensation specified in the executed Change Order includes full payment for the changes in the Work covered thereby, and the Contractor waives all rights to any other compensation for the changes in the Work, damage or expense.
- G. The Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner shall give the Owner access to all accounts and records relating thereto, including records of Subcontractors and material suppliers. This information shall not be used as a basis to reduce compensation for Change Order work items for which the Owner has accepted the Contractor's proposal consistent with

paragraph “C” of this section, providing the work was performed in a manner consistent with the accepted proposal.

- H. At Substantial Completion, the Owner may address increased bonding costs which may have resulted from changes in the Work. The Contractor must provide satisfactory proof and paid invoice of increased costs. The Owner will not pay overhead and profit on any increased costs for bonding.

2.3.5.2 OVERHEAD AND PROFIT (7.02)

Note: *This section may be supplemented by the CM’s own General Conditions to the extent the CM’s markup provisions differ, but in no event shall Trade Contractor or Sub-contractor markups exceed the amounts stated in this Section. Furthermore, only the trade contractors and their Sub-contractors are entitled to markups provided for in this section. The CM shall only receive their fee in accordance with the Contract.*

- A. See Example A for changes in the Work performed directly by the Contractor, whether a base cost is arrived at by estimated cost or actual cost method; add to base cost a sum equal to twenty percent. See Exception - Paragraph “D”.

Example A:

Contractor base cost	\$1,000
20% overhead and profit	<u>200</u>
Total	\$1,200

- B. See Example B for changes in the Work performed by a Subcontractor under contract with the Contractor, where estimated or actual cost is Ten Thousand Dollars (\$10,000.00) or less; add to the base cost a sum equal to twenty percent of cost, for the benefit of the Subcontractor. For the benefit of the Contractor; add an additional sum equal to ten percent of the Subcontractor’s base cost.

Example B:

Subcontractor base cost	\$1,000
20% Subcontractor overhead and profit	<u>200</u>
Subcontractor Total	\$1,200
10% Contractor overhead and profit on base cost	<u>100</u>
Total	\$1,300

- C. See Example C for changes in the Work performed by a Subcontractor, under contract with the Contractor, which exceeds a base cost of Ten Thousand Dollars (\$10,000) in estimated or actual cost; add to the base cost a sum equal to twenty percent of cost for the benefit of the Subcontractor. For the benefit of the Contractor; add an additional sum equal to ten percent of the first Ten Thousand Dollars (\$10,000) of the Subcontractor’s base cost, plus five percent of the next Ninety Thousand Dollars (\$90,000) of the Subcontractor’s base cost, plus three percent of any sum in excess of One Hundred Thousand Dollars (\$100,000) of the Subcontractor’s base cost.

Example C:

Subcontractor base cost	\$200,000
20% Subcontractor over head and profit	<u>40,000</u>
Subcontractor Total	\$240,000

10% Contractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Total	\$248,500

- D. See Example D for overhead and profit on major equipment such as: switchgear, transformers, air handling units, boilers, etc. For extra equipment purchases by the Contractor or Subcontractors which exceeds a base cost of Ten Thousand dollars (\$10,000) in estimated or actual cost; add to the base cost for the benefit of the Contractor a sum equal to ten percent of the first Ten Thousand dollars (\$10,000) of the vendor's base cost plus five percent of the next Ninety Thousand dollars (\$90,000) of the vendor's base cost, plus three percent of any sum in excess of One Hundred Thousand dollars (\$100,000) of the vendor's base cost. If the equipment is supplied by the Subcontractor, the Contractor is entitled to a maximum of ten (10) percent of the first Ten Thousand dollars (\$10,000) of the base cost.

Example D:

Vendor base cost	\$200,000
10% Contractor or Subcontractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Contractor or Subcontractor Total	\$208,500
10% Contractor overhead and profit on first \$10,000 base cost when equipment is supplied by the Subcontractor, no other mark-up allowed	<u>1,000</u>
Total	209,500

- E. See Example E for overhead and profit on a material only Change Order. For increased material purchases by the Contractor or Subcontractors which exceed a base cost of Ten Thousand dollars (\$10,000) in estimated or actual costs; add to the base cost for the benefit of the Contractor a sum equal to ten percent of the first Ten Thousand dollars (\$10,000) of the supplier's cost plus five percent of the next Ninety Thousand dollars (\$90,000) of the supplier's cost, plus three percent of any sum in excess of One Hundred Thousand dollars (\$100,000) of the supplier's cost. If the material is supplied by the Subcontractor, the Contractor is entitled to a maximum of ten (10) percent of the first Ten Thousand dollars (\$10,000) of the base cost.

Example E:

Material cost (net difference between original contract and revised)	\$200,000
10% Contractor or Subcontractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Contractor or Subcontractor Total	\$208,500

10% Contractor overhead and profit on first \$10,000 base cost when material is supplied by the Subcontractor, no other mark-up allowed	<u>1,000</u>
Total	\$209,500

- F. Other than the overhead and profit described in Section 2.3.5.2(A), no further overhead and profit will be allowed for changes to the Work performed by a Subcontractor under contract with the Contractor or for major equipment or material supplier determined to be an affiliate of the Contractor. An affiliate is considered any firm or entity in which the Contractor or any individual listed on the NYS Vendor Responsibility Questionnaire that either owns 5% or more of the shares of, or is one of the five largest shareholder, a director, officer, partner or proprietor of said Subcontractor, major equipment or material supplier.
1. The determination of an affiliate firm or entity will be made at the sole discretion of the Owner.
- G. No overhead and profit shall be made for changes in the Work performed by a Subcontractor not under direct contract with the Contractor. No overhead and profit shall be paid on the premium portion of overtime pay. Where the changes in the Work involve both, an increase and a reduction in similar or related Work, the overhead and profit allowance shall be applied only to the cost of the increase that exceeds the cost of the reduction.

2.3.5.3 DEDUCT CHANGE ORDER

The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a decrease in the Contract amount shall be as determined by the Owner.

2.3.6 TIME OF COMPLETION

2.3.6.1 TIME OF COMPLETION

- A. The Work shall commence at the time stated in the Notice to Proceed and shall be completed no later than the date of Substantial Completion specified in the Contract. Notwithstanding anything to the contrary, a schedule submitted by the Contractor showing Substantial Completion earlier than that specified in the Contract shall not entitle the Contractor to any additional cost in the event the earlier date is not realized.
- B. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that Substantial Completion of the Work, as specified in the Contract, is an essential condition of the Contract.
- C. The Contractor agrees that the Work shall be prosecuted regularly, diligently and cooperatively with other contractors at such rate of progress as shall insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for Substantial Completion of the Work described herein is reasonable.
- D. It is further agreed that time is of the essence for each and every portion of the Work. In any instance in which additional time is allowed for Substantial Completion of the Work, the new date of Substantial Completion established by said extension shall be of

the essence. The Contractor shall not be charged with liquidated damages or any excess cost if the Owner determines that the Contractor is without fault and that the delay in Substantial Completion of the Work is due:

1. To any preference, priority or allocation order duly issued by the Government of the United States or the State of New York.
 2. To an unforeseeable cause beyond the control and without the fault of, or negligence of the Contractor, and approved by the Owner, including, but not limited to, acts of God or of public enemy, acts of the Owner, fires, epidemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather.
 3. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in Subsections 1 and 2 of this paragraph the Contractor shall, within ten (10) days from the beginning of any such delay, notify the Owner in writing of the causes of the delay.
- E. The date of Substantial Completion may be extended by a Change Order or approval of the updated critical path method schedule, by the Owner.
- F. If the Contractor shall neglect, fail or refuse to obtain Substantial Completion within the date specified, or any proper extension thereof granted by the Owner, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day that the Contractor is in default. Default shall include abandonment of the Work by the Contractor.
- G. Said amount of liquidated damages is agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the Owner would sustain for loss of beneficial use of the Work of the Contract in the event of delay in Substantial Completion, and said amount is agreed to be the amount of damages sustained by the Owner and said amount may be retained from time to time by the Owner.
- H. The foregoing liquidated damages are intended to compensate the Owner only for the loss of beneficial use of the Work of the Contract. In addition, the Contractor shall be liable to the Owner, to the fullest extent permitted by law, for whatever actual damages (other than actual loss of beneficial use) the Owner may incur as a result of any actions or inactions of the Contractor or its Subcontractors including, without limitation, interest expense and carrying costs, liabilities to other Contractors working on the project or other third parties, job extension costs, and other losses incurred by the Owner. The provisions of this paragraph are for the exclusive use of the Owner, and shall not accrue to other contractors or third parties.

2.3.7 CLAIMS AND DISPUTES

2.3.7.1 NOTIFICATION OF CLAIM

- A. A written notice of Claim shall be delivered concurrently to the Owner's Project Manager by the Contractor within fifteen (15) working days after occurrence of the event giving rise to such Claim or within fifteen (15) working days after the Contractor

first recognizes the condition giving rise to the Claim, whichever is earlier. Burden of proving the Owner's receipt of Claim shall be the Contractor's responsibility.

- B. Within ninety (90) working days of the initial notice of Claim, the Contractor shall substantiate the Claim and document the nature of the Claim and provide supporting cost data, Contractor's original cost estimate, Project Management schedule demonstrating alleged impact and correlation to the Claim and a Contractor affidavit stating the following:

"I hereby certify that the value assigned the work, material and equipment that comprise the Claim, represents the actual value of said work, material and equipment pursuant to the Contract between the undersigned and NYSIF."

1. The Contractor shall provide, every thirty (30) days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.
 2. Failure of the Contractor to comply and submit the requirements stated in Section 2.3.7.1 may result in rejection of Claim.
- C. The Contractor shall provide the Owner's Project Manager one (1) paper copy of the documented Claim and mail two (2) paper copies of the documented Claim to:

NYSIF
Attn: Procurement Unit
15 Computer Drive West
Albany, NY 12205

- D. The value of any Claim, if allowed, shall be determined by the methods described in Section 2.3.5 – Changes in the Work.
- E. Any information representing the actual value of the Work and material contained in the Claim that constitutes False Representation, may subject the undersigned party to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (False and Fraudulent Statements) and/or Termination of the Contract for Cause and civil prosecution under Article XIII of the State Finance Law – the New York False Claims Act.

2.3.7.2 CLAIM FOR EXTRA WORK

- A. If the Contractor wishes to make Claim for an increase in the Work of the Contract, or that any action or omission of the Owner is contrary to the terms and provisions of the Contract, a Claim shall be filed in accordance with the procedure herein.
- B. No payment for Extra Work shall be allowed unless directed by a Notice to Proceed executed by the Owner.
- C. The Contractor's failure to comply with any or all parts of this Section shall be deemed to be:
1. A conclusive and binding determination on the part of the Contractor that a Notice to Proceed, Work, action or omission does not involve Extra Work.

2. A waiver by the Contractor of all claims for additional compensation or damages as a result of a Notice to Proceed, Work, action or omission.

2.3.7.3 DAMAGES FOR DELAY

Compensation by the Owner for any delay or hindrance from any cause whatsoever may be made by the Owner as provided by Section 2.3.6.1(E), by extending the date for Substantial Completion as specified in the Contract or by increasing the amount of the Contract. Denial of additional time may not entitle the Contractor to additional costs. No payment for increased cost, charge, expense or damage of any kind shall act as a waiver of the Owner's right to compensate the Contractor solely by extending the date for Substantial Completion. Failure of the Owner to respond in writing to a written request for additional time within thirty (30) days shall be deemed a denial of the request.

2.3.7.4 CLAIM FOR ADDITIONAL COST

If the Contractor wishes to make Claim for an increase in the Contract sum, a Claim shall be filed in accordance with the procedure herein. Denial of additional costs may not entitle the Contractor to additional time.

2.3.7.5 CONTINUANCE OF THE WORK

Unless otherwise agreed in writing, the Contractor shall proceed diligently with said Claim and with the performance of the Work. The Contractor agrees that no default, act or omission of the Owner shall constitute a material breach of Contract entitling the Contractor to cancel or rescind the same or to suspend or abandon the performance of the Work.

2.3.7.6 RESOLUTION OF CLAIM

- A. Any resolution or determination by the Owner of a Claim shall be final, binding and conclusive on the Contractor. Within ten (10) working days after receiving notice of the Owner's resolution, the Contractor may file a written statement with the Owner that the Contractor reserves the Contractor's rights under the Contract in connection with the matters covered by said resolution or determination.
- B. At its discretion, the Owner may resolve any Claim without waiving its rights under the Contract.

2.3.7.7 LIMITATION ON ACTIONS

- A. No action or proceeding shall lie in favor of or shall be maintained by the Contractor against the Owner unless such action shall be commenced within six (6) months after the earliest following event:
 1. The date the Notice of Substantial Completion is executed by the Owner.
 2. Receipt, by the Owner, of the Contractor's final Application for Payment, if no Notice of Substantial Completion is issued.
 3. The date of termination if the Contract is terminated by the Owner.
- B. Filing an action or initiating a proceeding prior to Substantial Completion may be grounds for Termination for Convenience.

- C. No action or proceeding shall be brought against the Owner in any location other than New York County unless the Owner specifically consents, in writing, to a change of venue.
- D. In the event that a judgment is obtained against the Owner, the Contractor agrees to accept no more than three percent (3%) interest, per annum on the judgment amount.

2.3.7.8 WAIVER OF CERTAIN CAUSES OF ACTION (10.08)

No action or proceeding shall lie or shall be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any claim arising out of or based upon the Contract, relating to the giving of notices or information.

2.3.8 TERMINATION OR SUSPENSION

The following sections supplement the provisions under Exhibit C, Contract Provisions.

2.3.8.1 TERMINATION FOR CAUSE

- A. In the event that any provision of the Contract is violated by the Contractor or by any Subcontractor, the Owner may serve written notice upon the Contractor and upon the Contractor's surety, if any, of the Owner's intention to terminate the Contract. Such notice shall contain the reasons for the intention to terminate the Contract upon a date specified by the Owner. The Contractor will be allowed an opportunity to show why its Contract should not be terminated for cause. If the violation or delay shall not cease or arrangements satisfactory to the Owner are not made, the Contract shall terminate upon the date so specified by the Owner.
- B. In the event of any such termination, Owner may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach. Owner shall have the right to award a new contract to a third party. The Owner may also take possession of such materials, appliances, and equipment on the Site which may be utilized as necessary or useful in completing the Work. The Contractor and Contractor's surety shall be liable to the Owner for all costs incurred by the Owner.
- C. In the event the termination for cause is determined to be improper, the termination shall be deemed a termination pursuant to Section 2.3.8.2 – Termination for Convenience of Owner.

2.3.8.2 TERMINATION FOR CONVENIENCE OF OWNER

- A. The Owner, at any time, may terminate the Contract in whole or in part. Any such termination shall be effected by delivering to the Contractor a notice of termination specifying the extent to which performance of Work under the Contract is terminated and the date upon which the termination becomes effective. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from the termination.
- B. The Owner shall pay the Contractor for Work of the Contract performed by the Contractor and accepted by the Owner for the period extending from the date of the last approved Application for Payment up to the effective date of the termination, including

retainage, pursuant to Section 2.3.5 – Changes in the Work. In no event shall the Contractor be entitled to compensation in excess of the total consideration of the Contract.

- C. In the event of such termination Owner may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach. Owner shall have the right to award a new contract to a third party. The Owner may also take possession of such materials, appliances, and equipment on the Site which may be utilized as necessary or useful in completing the Work.

2.3.8.3 OWNER'S RIGHT TO DO WORK

The Owner at any time may notify the Contractor, that the Owner will have the Work of the Contract or any part thereof, performed by others, without terminating the Contract or prejudice to any other right the Owner may have. The Owner may recover any and all costs related to such Work and deduct the value of such Work from the Contract amount.

2.3.8.4 SUSPENSION OF WORK

- A. The Owner may order the Contractor in writing to suspend, delay or interrupt performance of all or any part of the Work for a reasonable period of time as the Owner may determine. The order shall contain the reason or reasons for issuance which may include, but is not limited to, latent field conditions, substantial program revisions, acquisition of rights of way or real property, financial crisis, labor disputes, civil unrest, expired insurance, or acts of God.
- B. Upon receipt of a suspension order, the Contractor shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such work from loss or damage.
- C. The Contractor specifically agrees that such suspension, interruption or delay of the performance of the Work shall not increase the cost of performance of the Work. However, to the extent that the suspension of the Work is through no fault of the Contractor, the Owner may consider requests for compensation provided that the justification is submitted in accordance with Section 2.3.7 – Claims and Disputes.
- D. The date of Substantial Completion of the Work may be extended by change order to compensate the Contractor for the time lost by the suspension, interruption or delay.

2.3.8.5 STOP WORK

- A. Should the Contractor fail to comply with the terms of the Contract, the Owner, at any time, by written order to the Contractor, can require the Contractor to stop all, or any part, of the Work called for by the Contract. The order shall be specifically identified as a Stop Work Order. Upon receipt of the order, the Contractor shall immediately comply with its terms and take reasonable steps to protect the work covered by the order during the period of work stoppage. The Owner, at its option shall either:
 - 1. Cancel the Stop Work Order after the Contractor has successfully remedied the cause of the Stop Work Order.
 - 2. Invoke any other provision of Section 2.3.8 – Termination or Suspension or Exhibit C, Contract Provisions.

- B. The Contractor shall not be entitled to an increase in time or costs as a result of the Stop Work Order.

2.3.8.6 COST ESTIMATING

The Owner reserves the right to have cost evaluated by a third party prior to approval.

2.3.9 BENEFICIAL OCCUPANCY

2.3.9.1 OCCUPANCY PRIOR TO SUBSTANTIAL COMPLETION

- A. If, before Substantial Completion, the Owner desires Beneficial Occupancy of any part of the Work, the Owner shall have the right to do so, and the Contractor shall in no way interfere with or object to Beneficial Occupancy. Payment for operational costs of project systems at time of Beneficial Occupancy shall be borne by the Owner, unless otherwise specified by the Contract.
- B. Said Beneficial Occupancy (1) shall not constitute acceptance of space, systems, materials or elements of the Work and (2) shall not affect the obligations of the Contractor for Work which is not in accordance with the requirements of the Contract or other obligations of the Contractor under the Contract.
- C. Should the Contractor request Owner acceptance of any project system related to the protection of life or property, prior to Beneficial Occupancy or Substantial Completion, the Owner may accept such system, however, the cost of maintaining such system in operating condition, and labor costs to operate the system including costs for remote public safety personnel, shall be borne by the Contractor. The guarantee period will begin from the date of Beneficial Occupancy.
- D. The Contractor shall continue the performance of the Work in a manner that shall not unreasonably interfere with said use, occupancy and operation by the Owner.

2.3.10 INSPECTION AND ACCEPTANCE

2.3.10.1 ACCESS TO THE WORK

The Owner shall at all times have access to the Work and the Contractor shall provide proper facilities for access.

2.3.10.2 NOTICE FOR TESTING AND INSPECTION

If the Contract Documents, the Owner's instructions, laws, rules, ordinances, or regulations require that any Work be inspected or tested, the Contractor shall give the Owner a minimum of three (3) work days, unless otherwise specified, written notice of readiness of the Work for inspection or testing and the date fixed for said inspection or testing. The contractor shall provide the owner with all testing and inspection requirements for each project and coordinate with the testing or inspection entity all projected needs. All third party inspections or testing will be at the expense of the owner.

2.3.10.3 REEXAMINATION OF WORK

Reexamination of any part of the Work may be ordered by the Owner, and if so ordered the Work must be uncovered by the Contractor. If said Work is found to be in accordance with the Contract, the Owner shall pay the cost of reexamination. If said Work is not found to be

in accordance with the Contract, the Contractor shall pay the cost of reexamination and replacement.

2.3.10.4 INSPECTION OF WORK

All Work, all materials whether or not incorporated in the Work, all processes of manufacture, and all methods of construction shall be, at all times and places, subject to the inspection of the Owner, and the Owner shall be the final judge of the quality and suitability of the Work, materials, processes of manufacture, and methods of construction for the purposes for which said Work, materials, processes of manufacture, and methods of construction are used. Any Work not approved by the Owner shall be reconstructed, made good, replaced or corrected immediately by the Contractor including all work of other Contractors destroyed or damaged by said removal or replacement. Rejected material shall be removed immediately from the Site. Acceptance of material and workmanship by the Owner shall not relieve the Contractor from the Contractor's obligation to replace all Work that is not in full compliance with the Contract.

2.3.10.5 DEFECTIVE OR DAMAGED WORK

If, in the opinion of the Owner, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work damaged or not performed in accordance with the Contract Documents, the Contract amount shall be reduced, which in the judgment of the Owner, shall be deemed equitable.

2.3.10.6 TESTING OF WORK

All materials and equipment used in the Work shall be subject to testing in accordance with accepted standards to establish conformance with the Contract Documents and suitability for intended use or as directed by the Owner. Any Work covered or concealed without the approval or consent of the Owner, shall be uncovered for examination. No testing by the Owner or by a testing laboratory on behalf of the Owner relieves the Contractor of the responsibility to maintain quality control of materials, equipment and installation to conform to the requirements of the Contract Documents. The Owner may order additional testing for any test results below specified minimums. Additional cost for testing, professional services and any other expenses related to the additional testing shall be at the Contractor's expense. The Owner may deduct such costs from moneys due the Contractor.

2.3.10.7 FINAL COMPLETION

No previous inspection shall relieve the Contractor of the obligation in the performance of the Work in accordance with the Contract. No payment, either partial or full, by the Owner to the Contractor shall excuse any failure by the Contractor to comply fully with the Contract Documents. The Contractor shall remedy all defects and deficiencies, paying the cost of any damage to other Work. Final payment to the Contractor constitutes final completion and acceptance of all the Work of the Contract Documents and constitutes Contract Closeout.

2.3.10.8 GUARANTEE

The Contractor shall, in all respects, guarantee the Work to the Owner and be responsible for all material, equipment and workmanship of the Work. The Contractor shall forthwith repair, replace or remedy in a manner approved by the Owner, any material, equipment,

workmanship, or other part of the Work found by the Owner to be defective or otherwise faulty and not in compliance with the Contract Documents, which defect or fault appears during the minimum period of one (1) year, or such longer period as may be prescribed by the Contract, from the date of Substantial Completion or any part thereof, by the Owner. The Contractor shall also pay for any damage to the Work resulting from said defect or fault or damage to other work.

2.3.11 PROTECTION OF PERSONS AND PROPERTY

2.3.11.1 SITE SAFETY AND PROTECTION

- A. The Contractor and each subcontractor shall comply with all applicable rules, regulations, codes and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended.
- B. The Contractor shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work. The Contractor shall designate a responsible person at the Site whose duties shall include maintaining site safety pursuant to OSHA and any other applicable requirement, conducting weekly tool box meetings with its workers, and providing the Owner with a copy of meeting minutes.
- C. The Contractor will employ a site safety supervisor who will distribute safety rules and guidelines to all of their workers and to all the workers of their subcontractors prior to the commencement of their work. The Contractor shall maintain documentation that each worker received a copy of the Owner's safety guidelines prior to starting their work.
- D. The Contractor shall, at all times: (1) guard the Owner's property from damage or loss in connection with the Work (2) guard and protect the Contractor's Work and adjacent property (3) replace or make good any said loss or damage unless said loss or damage is caused directly by the Owner.
- E. The Contractor shall protect all adjoining property and shall repair or replace any said property damaged or destroyed during the progress of the Work.

2.3.11.2 PROTECTION OF WORK

- A. The Contractor shall be responsible for the safety, efficiency and adequacy of the Contractor's Work, plant, appliances and methods, and for any damage which may result from the failure or the improper construction, maintenance, or operation of such Work, plant, appliances and methods.
- B. The Contractor shall have full responsibility to protect and maintain all materials and supplies on and off site in proper condition and forthwith repair, replace and make good any damage thereto until final acceptance and completion. The Contractor shall maintain an inventory of all materials and supplies for the Project that are delivered to the Site or approved for off-site storage facilities.
- C. The Contractor shall immediately report any loss, theft, burglary, vandalism or damage of materials or installed work to the Owner by phone and facsimile as soon as it is

discovered. If vandalism, theft, or burglary is suspected as the cause of the loss, the Contractor shall notify Site security personnel and the municipal police, protect the place of the loss until released from protection by the Owner, and insure that no potential evidence relating to the loss is removed from the place of the loss.

- D. Any insurance claim alleging damage to the Work and delay or acceleration costs shall be submitted pursuant to Section 2.3.7 – Claims and Disputes.
- E. A claim for damage to the Work shall also include the following:
 - 1. A copy of a police report (if applicable).
 - 2. A complete inventory of damaged or lost items including:
 - a. Description of each item.
 - b. Purchase date and proof of delivery of each item.
 - c. Supplier from whom purchased.
 - d. Serial number (if applicable).
 - e. Price of each item.
 - 3. The name, address and telephone number of the person who controlled the lost or damaged items immediately before the loss or damage.
 - 4. The name, address and telephone number of the person who discovered the loss or damage.
 - 5. A written description of how the loss or damage occurred.
- F. The Owner may refuse any claim from the Contractor under this section unless all of the items required in this section are provided to the Owner and are to the satisfaction of the Owner.

2.3.11.3 PROTECTION OF LIVES AND HEALTH

- A. The Contractor shall notify the Owner immediately of any incident, accident, illness or injury that occurred on the Project Site. The Contractor shall follow-up and provide the Owner with a copy of Form C-2F, Employers Report of Injury/Illness within twenty-four (24) hours of any incident, accident, illness or injury and a copy of the recorded OSHA Log.
- B. The Contractor shall maintain a record of all cases of death, illness or injury requiring medical attention, hospitalization or causing loss of time from work, arising out of and in the course of employment of Work of the Contract.
- C. The Contractor shall preserve and safeguard the area of any incident, accident, illness or injury where the person required emergency medical treatment. The Contractor shall secure the area and not allow any material object or property to be altered, changed, moved or removed from the area and post a person at the area to protect it. Safeguarding and protecting the area shall only be abandoned by the Contractor upon release by the Owner. The Contractor shall provide the Owner a list of witnesses that includes the full name, home address, occupation and telephone number of each person.
- D. If, in the performance of the Work, a harmful hazard is created for which appliances or methods of elimination have been approved by regulatory authorities, the Contractor shall install, maintain and operate said appliances or methods.

- E. Failure of the Contractor to comply with provisions of this Section shall be deemed a breach of Contract and the Owner may impose a payment penalty on the Contractor for any act of non-compliance. The payment penalty shall not exceed one twentieth (1/20) of the contract price or a maximum of One Thousand Dollars (\$1,000) for each time the Contractor fails to perform or to provide the information, reports, forms, etc. required in this section. This payment penalty is not exclusive, the Owner may avail itself of any other contractual remedy available.

2.3.11.4 RISKS ASSUMED BY THE CONTRACTOR

- A. To the fullest extent permitted by law, the Contractor solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, of the Owner, of the Client, of any Subcontractor, of third persons or from any other cause, including difficulties which may be encountered in the performance of the Work, whether said risks are within or beyond the control of the Contractor and whether said risks involve any legal duty, primary or otherwise, imposed upon the Owner, excepting only risks which arise from faulty designs as shown by the drawings and specifications, unforeseen obstacles or from the negligence of the Owner or the Owner's members, officers, representatives or employees that caused the loss, damage or injuries hereinafter set forth:
1. The risk of loss or damage, includes direct or indirect damage or loss, of whatever nature to the Work or to any plant, equipment, tools, materials or property furnished, used, installed or received by the Owner, the Construction Manager, the Contractor or any Subcontractor, material men or workmen performing services or furnishing materials for the Work. The Contractor shall bear said risk of loss or damage until Substantial Completion or until completion or removal of said plant, equipment, tools, materials or property from the Site and the vicinity thereof, whichever event occurs last. In the event of said loss or damage, the Contractor immediately shall repair, replace or make good any said loss or damage.
 2. The risk of claims, just or unjust, by third persons against the Contractor or the Owner, the Client, and the Construction Manager on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising or alleged to arise out of or as a result of or in connection with the performance of the Work, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Contractor's operations or presence at or in the vicinity of the Site. The Contractor shall bear the risk for all deaths, injuries, damage or losses sustained or alleged to have been sustained prior to Substantial Completion of the Work. The Contractor shall bear the risk for all deaths, injuries, damages or losses sustained or alleged to have been sustained resulting from the Contractor's negligence or alleged negligence which is discovered, appears, or is manifested after acceptance by the Owner.
 3. The Contractor assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting there from, to all persons, whether employees of the Contractor or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the

performance of the Work. If any person shall make said claim for any damage or injury, including death resulting there from, or any alleged breach of any statutory duty or obligation on the part of the Owner, the Client, the Owner's Representative, Construction Manager, servants and employees, the Contractor shall assume the defense and pay on behalf of the Owner, the Client, the Owner's Representative, the Construction Manager, servants and employees, any and all loss, expense, damage or injury that the Owner, the Client, the Owner's Representative, Construction Manager, servants and employees, may sustain as the result of any claim, provided however, the Contractor shall not be obligated to indemnify the Owner, the Client, the Owner's Representative, Construction Manager, servants and employees for their own negligence, if any.

4. The Contractor agrees to assume, and pay on behalf of the Owner, the Client, and the Owner's Representative, Construction Manager, servants and employees, the defense of any action at law or equity which may be brought against the Owner, the Client and the Owner's Representative, Construction Manager, servants and employees. The assumption of defense and liability by the Contractor includes, but is not limited to, the amount of any legal fees associated with defending, all costs of investigation, expert evaluation and any other costs including any judgment or interest or penalty that may be entered against the Owner, the Client, and the Owner's Representative, Construction Manager, servants and employees, in any said action.
 5. The Contractor is advised that the Work of the Contract may impose certain obligations and requirements mandated by the U.S. Department of Labor Occupational Safety and Health Administration regulations, Title 29 CFR Part 1926.62 Lead Exposure in Construction, relative to the potential exposure to lead by its employees. The Contractor assumes entire responsibility and liability for complying fully in all respects with these regulations.
- B. The Contractor's obligations under this Section shall not be deemed waived, limited or discharged by the enumeration or procurement of any insurance for liability for damages. The Contractor shall notify its insurance carrier within twenty four (24) hours after receiving a notice of loss or damage or claim from the Owner or Owner's Client. The Contractor shall make a claim on its insurer specifically under the provisions of the contractual liability coverage and any other coverage afforded the Owner or the Client including those of being an additional insured where applicable.
- C. Neither final acceptance of the Work nor making any payment shall release the Contractor from the Contractor's obligations under this Section. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which the Contractor is responsible shall not be deemed to limit the effect of the provisions of this Section or to imply that the Contractor assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this Section nor the enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which the Contractor is responsible shall be deemed to limit the risks which the Contractor would assume or the claims for which the Contractor would be responsible in the absence of said enumerations.

- D. Upon the conclusion of any action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates responsibility to the Owner, the Client, or the Owner's members, officers, employees, or representatives, the Owner agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any uninsured money judgment for which the Owner is responsible, and the Owner agrees to pay the Contractor the percentage of uninsured defense costs which the Contractor incurred based upon an apportionment of the Owner's allocated responsibility.

2.3.12 GENERAL PROVISIONS OF THE CONTRACT

2.3.12.1 GENERAL LAW PROVISIONS

- A. The laws of the State of New York shall govern the Contract.
- B. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall read and shall be enforced as though so included therein.
- C. The Contractor shall comply fully with all applicable laws, rules and regulations, and as applicable, Building Code of New York State or Building Code of the City of New York.

2.3.12.2 DIESEL EMISSIONS REDUCTION

- A. The Contractor shall certify that all heavy duty vehicles, as defined in the NYS Environmental Conservation Law (ECL) section 19-0323 and Title 6 of the New York Codes Rules and Regulations, Part 248 (6NYCRR 248), will comply with the rules, regulations and provisions pursuant to ECL section 19-0323, and 6 NYCRR 248, which requires the use of Best Available Retrofit Technology and Ultra Low Sulfur Diesel unless specifically waived by the NYS Department of Environmental Conservation (DEC). Qualification for a waiver will be the responsibility of the Contractor.
- B. Annually, as required by DEC, but no later than March 1st, the Contractor shall complete and submit directly to the Owner, via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and the Contractors Annual Report Form, found on the DEC website <http://www.dec.state.ny.gov> for vehicles used on the Project for the preceding calendar year.
- C. The Contractor shall certify to the Owner, and submit with each application for payment, the Contractor and Subcontractor Certifications form, which states that the Contractor agrees to comply with the provisions of Section 2.3.12.2.

2.3.12.3 STATE AND FEDERAL LABOR LAW PROVISIONS

- A. It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in the performance of the Work.
- B. The Contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:
 - 1. No worker, in the employ of the Contractor, all Subcontractors or other person doing or contracting to do the whole or any part of the Work contemplated by the

- Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day and more than five (5) days in any one week, except in the extraordinary emergencies set forth in the Labor Law.
2. The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
 3. The minimum hourly rate of wage to be paid and supplement provided should be not less than that stated in the Contract and as shall be designated by the Commissioner of Labor of the State of New York.
 4. The Contractor and all Subcontractors shall post in a prominent and accessible place on the Site, a legible notice of all minimum wage rates and supplements to be paid or provided for the various classes of workers engaged in the performance of the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by any worker so engaged.
 5. The Contractor and all Subcontractors shall provide a notice to all workers of the prevailing wage rate for all worker's particular job classification on each pay stub and to post a notice at commencement of the Work that includes the telephone number and address for the Department of Labor and a notice informing all workers of their right to contact the Department of Labor if a worker is not receiving the proper prevailing rate of wages and/or supplements for a worker's particular job classification.
 6. The Contractor shall be responsible for obtaining prevailing wage rate updates directly from the New York State Department of Labor, either by accessing its website <http://www.labor.state.ny.us> or a written request to the Bureau of Public Works.
- C. The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade which such persons are learning under the direct supervision of journeyman mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the Contractor or any Subcontractor shall not exceed the number permitted by the applicable standards of the New York State Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employers' association of the respective trades or occupations.
- D. All workers of the Contractor and all Subcontractors shall be paid in accordance with the provisions of the Labor Law. The Contractor and all Subcontractors shall submit original copies of the Contractor and Subcontractor Certifications form and Certified Payroll forms in accordance with payment procedures and otherwise upon request.
- E. The Contractor agrees that, in case of underpayment of wages to any worker engaged in the Work by the Contractor or any Subcontractor, the Owner shall withhold from the Contractor out of payments due an amount sufficient to pay such worker the difference between the wages required to be paid under the Contract and the wages actually paid such worker for the total number of hours worked, and that the Owner may disburse such amount so withheld by the Owner for and on account of the Contractor to the worker to whom such amount is due. The Contractor further agrees that the amount to

be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the Owner pursuant to other provisions of the Contract.

- F. Pursuant to subdivision 3 of section 220 and section 220-d of the Labor Law the Contract shall be forfeited and no sum paid for any Work done there under upon a Contractor's or Subcontractor's second conviction for willfully paying or providing less than:
 - 1. The stipulated wage scale or supplement as established by the fiscal officer.
 - 2. The stipulated minimum hourly wage scale as designated by the Commissioner of Labor of the State of New York.
- G. The Contractor specifically agrees that all workers engaged on the Site, whether employees of the Contractor, Subcontractor, or other person performing or contracting to do any part of the Work, shall be certified as having successfully completed the OSHA 10 hour construction safety and health course.

2.3.12.4 DOMESTIC STEEL

NYSIF is required to comply with all provisions of §146 of State Finance Law and in accordance therewith, the Owner requires that structural steel, reinforcing steel or other major steel items to be incorporated into the Work of the Contract in excess of \$100,000 be produced or made in whole or substantial part in the United States, its territories or possessions.

2.3.12.5 GENERAL CONTRACT PROVISIONS

- A. The relationship created by the Contract between the Owner and the Contractor is one of an independent contractor and it is no way to be construed as creating an agency relationship between the Owner and the Contractor nor is it to be construed as, in any way or under any circumstances, creating or appointing the Contractor as an agent of the Owner for any purpose whatsoever.
- B. It is understood that the Client is an intended third party beneficiary of the Contract for the purposes of recovering any damages caused by the Contractor.
- C. The Contractor shall not assign the Contract in whole or in part without prior written consent of the Owner. If the Contractor assigns all or part of any moneys due or to become due under the Contract, the instrument of assignment shall contain a clause substantially to the effect that the Contractor and assignee agree that the assignee's right in and to any moneys due or to become due to the Contractor shall be subject to all prior claims for services rendered or materials supplied in connection with the performance of the Work. The Owner reserves the right to assign this Contract in whole or in part without the consent of the Contractor.
- D. Nothing in the Contract shall create or shall give to third parties any claim or right of action against the Owner, the State of New York, the Client, and the Construction Manager, or any institution at which the Work is being carried out beyond such as may legally exist irrespective of the Contract.

2.3.12.6 FAILURE TO COMPLY WITH SECTION 2.3.12

- A. The Owner will not be responsible for any Claim arising from compliance with this Section.
- B. The Contract shall be void and of no effect unless the Contractor complies with this Section.

2.3.13 AUDITS/INVESTIGATIONS/ETHICS

2.3.13.1 OWNER'S RIGHT TO AUDIT

The Contractor shall maintain and keep, for a period of at least six (6) years after the date of final Application for Payment, all records and other data relating to the Work, including records of Subcontractors and material suppliers. The Owner shall have the right to inspect and audit all records and other data of the Contractor, Subcontractors and material suppliers relating to the Work. The costs of an audit, bourn by the Owner, may be deducted from the Contract amount.

2.3.13.2 FALSE STATEMENTS/INFORMATION/DISCLOSURE

Failure to comply with Section 2.3.13.1, providing False Representations, false statements or inaccurate information submitted with Contract Documents, including but not limited to, an Application for Payment, a Claim or a Change Order, or False Representations, false statements, or inaccurate information submitted to the Owner, or a determination that the Contractor participated in the kick-back of wages may result in one or more of the following actions:

- 1. Termination of the Contract for cause, pursuant to Exhibit C, Contract Provisions and Section 2.3.8.1.
- 2. Rejection of future bids or disapproval of a contract and subcontract.
- 3. Withholding of payments.
- 4. Criminal prosecution.
- 5. Civil prosecution under Article XIII of the State Finance Law – the New York False Claims Act.
- 6. Rejection of a Claim or Change Order.

2.3.13.3 OWNER'S RIGHT TO CONDUCT INVESTIGATIONS

- A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Owner.
- B. The Contractor shall grant the Owner the right to examine all books, records, files, accounts, computer records, documents and correspondence, including electronically-stored information, in the possession or control of the Contractor, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the Contractor, relating to the Contract. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/amendment estimate files; detailed worksheets; Subcontractor, consultant and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned;

insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records.

- C. At the Owner's request, said materials shall be provided in a computer readable format, where available. At the request of the Owner, the Contractor shall execute such documents, if any, as are necessary to give the Owner access to Contract-related books, documents or records, which are, in whole or part, under control of the Contractor but not currently in the Contractor's physical possession. The Contractor shall not enter into any agreement with a Subcontractor, consultant or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the Owner. The Contractor shall assist the Owner in obtaining access to past and present Subcontractor, consultant and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, consultants and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.
- D. The Contractor shall assist the Owner in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by the Contractor, for purposes of the Contract.
- E. The Contractor shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractors, consultants and suppliers, in connection with the Contract, a right-to-audit clause in favor of the Owner conferring rights and powers of the type outlined in this section. The Contractor shall not enter into any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision. The Contractor shall not make any payments to a Subcontractor, consultant or supplier from whom the Contractor has failed to obtain and supply to the Owner complete, accurate and truthful information in compliance with a request from the Owner to the Contractor.
- F. Any violation of the provisions of this Section shall justify termination of this Contract and may result in the Owner's rejection of the Contractor's bids or proposals for future contracts.

2.3.13.4 DISCLOSURE OF CRIMINAL INVESTIGATION

- A. The Contractor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Contractor, or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire, are subpoenaed or questioned in connection with any business-related criminal investigation, whether or not the owner, partner, director, officer or employee is, or is believed to be, the subject or target of such investigation, or is notified or otherwise learns that any owner, partner, director, officer or employee of the Contractor or its affiliated companies is under investigation for an alleged business-related violation of criminal law, or in the event that any premises or records of the Contractor are searched pursuant to a search warrant seeking evidence of a crime or crimes, unless otherwise precluded by law enforcement authorities.
- B. The Contractor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Contractor or its affiliated companies as identified in

the NYS Vendor Responsibility Questionnaire, the firm itself, or one of its affiliated companies is indicted or charged in an accusatory instrument for any business-related violation of local, state or federal criminal law, unless otherwise precluded by law enforcement authorities.

- C. In the event that any owner, partner, director, officer or employee of the Contractor is indicted or charged in an accusatory instrument for any business-related violation of local, state or federal criminal law relating to this or any other NYSIF Contract, the Owner may require the Contractor to remove said owner, partner, director, officer or employee from any direct involvement in the affairs of the Contractor as it relates to this Contract and all other NYSIF contracts until the criminal matter is resolved. In the event that any owner, partner, director, officer or employee of the Contractor is convicted of a business-related violation of local, state or federal criminal law, the Owner may require the Contractor to permanently remove said individual from any direct involvement in the affairs of this and all other NYSIF contracts.
- D. In the event that the Contractor or any owner, partner, director, officer or employee of the Contractor is convicted of a business-related violation of local, state or federal criminal law, the Owner may schedule a hearing with the Contractor to determine the Contractor's responsibility to continue work under this Agreement and other NYSIF contracts. Following this hearing, the Owner may, at its sole discretion, take one or more of the following actions:
 - 1. Terminate the Agreement.
 - 2. Require the Contractor, at its own expense, to hire an independent private-sector inspector general to monitor its activities, institute procedures and conduct internal inquiries, in a manner prescribed by the Owner.
 - 3. Increase retainage in an amount not to exceed ten percent (10%).
 - 4. Take any other remedial action deemed appropriate.

2.3.13.5 ANTI-RIOT PROVISIONS

- A. The Contractor agrees that no part of the Agreement funds shall be used to make payments, give assistance, or supply services, in any form, to any individual convicted in any federal, state, or local court of competent jurisdiction for inciting, promoting, or carrying on a riot, or engaging in any group activity resulting in material damage to property or injury to persons found to be in violation of federal, state or local laws designed to protect persons or property.
- B. The Contractor and each Subcontractor shall notify their employees of all rules and regulations adopted pursuant to Article 129-A of the Education Law of the State of New York. The Contractor at the Site shall post notices containing the text of the aforementioned rules and regulations.

2.3.13.6 ETHICAL CONDUCT

- A. Officers and employees of the Owner are bound by Sections 73, 73-a and 74 of the New York State Public Officers Law. In addition, no officer, employee, architect, attorney, engineer, inspector or consultant of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative, supervisory or other similar

functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.

- B. Section 73(5) of the Public Officers Law expressly prohibits the Contractor, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the Owner under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties or was intended as a reward for the employee's official action.
- C. To promote a working relationship with the Owner based on ethical business practices, the Contractor is expected to:
 - 1. Furnish all goods, materials and services to the Owner as contractually required and specified.
 - 2. Submit complete and accurate reports to the Owner and its representatives as required.
 - 3. Not seek, solicit, demand or accept any information, verbal or written, from the Owner or its representatives that provides an unfair advantage over a competitor.
 - 4. Not engage in any activity or course of conduct that restricts open and fair competition on Owner- related projects and transactions.
 - 5. Not engage in any course of conduct with Owner employees or its representatives that constitutes a conflict of interest, in fact or in appearance.
 - 6. Not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- D. The Owner encourages the Contractor to advance and support ethical business conduct and practices among its directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.
- E. Although the Contractor may employ relatives of Owner employees, the Owner must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The Owner reserves the right to request that the Contractor modify the work assignment of a relative of an Owner employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- F. The Contractor may hire former employees of the Owner. However, as a general rule, former employees of the Owner may neither appear nor practice before the Owner, nor receive compensation for services rendered on a matter before the Owner, for a period of two years following their separation from service with the Owner. In addition, former employees of the Owner are subject to a "lifetime bar" from appearing before the Owner or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the Owner.
- G. The Contractor agrees to notify the Owner of any activity by an employee of the Owner that is inconsistent with the contents of this Section.
- H. Any violation of this section shall justify termination of this Agreement and may result in Owner's rejection of the Contractor's bids or proposals for future agreements.

- I. Contractor shall at all times during the Contract term remain responsible. Contractor agrees, if requested by the Executive Director of Owner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- J. The Executive Director of Owner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Executive Director of Owner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- K. Notwithstanding any other provision of this Contract, upon written notice to Contractor, and a reasonable opportunity to be heard with the appropriate Owner officials or staff, the Contract may be terminated by the Executive Director of Owner or his or her designee at Contractor's expense where Contractor is determined by the Executive Director of Owner or his or her designee to be non-responsible. In such event, the Executive Director of Owner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
- L. By entering into this Contract, Contractor certifies, under the penalties of perjury, that Contractor is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law. Contractor further certifies that Contractor will not utilize on this Contract any Subcontractor that is identified on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.
- M. During this Contract, should Owner receive information that a person (as defined in New York State Finance Law §165-a) is in violation of the above-referenced certifications, Owner will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then Owner shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

2.3.14 2005 PROCUREMENT LOBBYING LAW

2.3.14.1 LAWS OF 2005

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, require bidders to affirm their understanding of and agree to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k (5), disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

2.3.14.2 CONTRACTOR'S CERTIFICATIONS

For any contract \$15,000 or more each Contractor shall submit, with its bid, on the form provided herewith, *2005 Procurement Lobbying Law – Certification*, pursuant to State Finance Law § 139-j and § 139-k. The information contained in *2005 Procurement Lobbying Law – Certification*, pursuant to State Finance Law § 139-j and § 139-k will serve as an informational resource to aid the Owner in making an award determination.

2.3.14.3 TERMINATION PROVISIONS

The Owner reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, the Owner may exercise its right pursuant to Exhibit C, Contract provisions or Section 2.3.8.1 – Termination for Cause above.

2.3.15 EXECUTIVE ORDER NO 125

2.3.15.1 DETERMINATION OF CONTRACTOR RESPONSIBILITY

In order to assist the Owner in determining the responsibility and reliability of the lowest bidder for the Contract and to effectuate the directives of Executive Order No. 125, the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among Contracting Agencies.

2.3.15.2 VENDOR RESPONSIBILITY QUESTIONNAIRE

- A. For any Contract valued at \$10,000 or more, the NYS Vendor Responsibility Questionnaire shall be submitted as requested by the Owner.
- B. The information contained in the NYS Vendor Responsibility Questionnaire will serve as an informational resource to aid the Owner in making an award determination.

2.4 SERVICES TO BE PROVIDED

Bidders proposals must demonstrate how each of the following services to be provided are met AND/OR attest to their ability to meet the requirement. Each proposal response should cite the particular RFP section and paragraph number being addressed.

2.4.1 PRE-CONSTRUCTION PHASE SERVICES

The Construction Manager at Risk (CM) services shall consist of providing Pre-Construction Phase services as required, including the submission of a Guaranteed Maximum Price (GMP) as defined herein, acceptable to the OWNER.

2.4.1.1 PROJECT REVIEW

- A. The CM shall meet with the OWNER, the Project Designers and any other design team members to fully understand the Program, the design documents, the Project scope and all other pertinent aspects of the Project.
- B. The CM shall become an integral part of the Project Team that will coordinate the development and progress of the design and construction processes. During the design phase of the project the CM shall work closely with the Owner, the Project Designers and

any other design team members to produce a design that meets the Owner's program, budget and schedule requirements and minimizes changes during construction.

The CM will administrate the Project Management Agreement (PLA) as signatory and collect and maintain all letters of assent, schedule and attend labor management meetings and all other matters related to the PLA.

The CM shall maintain all sub-contractor required document submittals including but not limited to insurance certificates, workforce utilization reports, certified payrolls, incident and accident reports, daily labor reports, and written contracts.

- C. The CM shall develop a Construction Management Plan for the Project. In preparing the Construction Management Plan, the CM shall consider the Owner's schedule, budget, and design requirements. The CM shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The plan shall address how the CM will implement procedural and administrative aspects of the project during the design, bidding, construction and close-out phases. The Plan shall be presented to the Owner for review at the conclusion of the Pre-Schematic phase. Items to be addressed in the Plan shall include but are not limited to; processes for design review, value engineering, constructability review, cost estimating, approach to General Conditions work, trade contractor pre-qualification, receipt and opening of trade contractor bids, schedule preparation, schedule and budget management, shop drawings, submittals, RFIs, QA/QC during design and construction phases, turnover documentation, LEED requirements, building commissioning and training on building systems.
- D. The CM shall conduct a Construction Market Survey to provide current information regarding the availability of local trade contractors, labor, materials and equipment, bidding climate, M/WBE and SDVOB availability and other economic factors related to the Project. A report of the Construction Market Survey shall be provided to the Owner at the conclusion of the Pre-Schematic phase. Periodic updates to the survey shall be provided if requested by the Owner.

2.4.1.2 CONSULTATION DURING PROJECT DEVELOPMENT

The CM work together with the Design Professional to leverage the CM's knowledge and expertise from the beginning of the design process. Meetings shall occur at the earliest stage of design to review the proposed design concept(s) with the goal of producing a design that maximizes the number of beds and building efficiencies, meets the program requirements and is cost effective.

The CM shall attend regularly scheduled meetings with the Project Designers and consultants during the Design Phases established by the contract between the OWNER and the Project Designer, to advise them on matters relating to safety, site use, value engineering, selection of materials, building methods, construction details, building systems and equipment, phasing, coordination, sequencing, scheduling, cost and constructability.

2.4.1.3 VALUE ANALYSIS

- A. The CM shall, after a complete review of the Project Program, evaluate the designs available at the time of the CM's commencement of Pre-Construction services, and

obtain an understanding of the intent of the OWNER and the Project Designer, provide value analysis services and offer cost savings suggestions and best value recommendations to the OWNER. All recommendations shall be in writing and must be fully reviewed with the Project Designer and OWNER, and approved by the OWNER prior to implementation. It is anticipated that the value analysis will occur at the Pre-Schematic, Schematic and 60% design development submission phases.

- B. Value analysis efforts shall result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. The value analysis deliverable from the CM shall include life cycle cost analyses as may be required to assist the Project Designer to achieve an appropriate balance between costs, aesthetics and function for the building systems and materials being contemplated in the design.
- C. Value analysis efforts shall also take into consideration applicable constructability issues.
- D. The CM shall promptly notify the OWNER and Project Designers in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.
- E. All value analysis studies must be provided on a timely basis within the design schedule.

2.4.1.4 PROJECT SCHEDULING

- A. The CM shall be responsible for the preparation, monitoring and managing of the schedule during the pre-construction, bidding, construction and close-out phases of the project. The Design Professional will provide schedule input related to design phase activities to the CM throughout the design phase.

The CM shall report schedule deviations and work with the responsible party(ies) to bring their activity back in line with the schedule objectives.

- B. Definitions – Please refer to Section 2.2.
- C. Quality Assurance

Project Scheduler Qualifications: Provide an experienced person in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within timeframes requested by the Owner. The project scheduler shall have or be able to obtain certification as a Planning and Scheduling Professional (PSP) or have a minimum of five years of demonstrated experience scheduling large capital projects.

Computer Scheduling Software: prepare CPM schedules using current version of a program that has been developed specifically to manage CPM schedules and providing NYSIF and OGS access.

Evaluate Scheduling Requirements: Evaluate the Construction Phase Schedule for conformance with industry standards, reasonableness of overall proposed schedule duration and methodology. Provide recommendations and possible alternative solutions, which at minimum addresses:

- a) Available labor resources.
- b) Construction sequence, logical progression of the Work.

- c) Phasing, long lead items.
- d) Critical path.
- e) Contract milestones, division of Work.

D. Scheduling Requirements

Scope, Budget and Schedule Confirmation Form: Execute the initial Form at the completion of the Pre-Schematic Phase of Design. Subsequently, the form shall be updated and executed at each planned design phase, (schematic, design development, construction documents phases), the final Form shall be updated and executed with the Bid Document phase submission.

Construction Phase Schedule: Prepare a preliminary schedule for the Construction Phase of the Project using a time-scaled PDM network diagram representing major milestone activities unique to each proposed Trade Contract.

Include skeleton diagram, which outlines significant construction milestone activities of each proposed Trade Contract, which will formulate the Bid Milestone Schedule. Indicate activities such as:

- a) Notice to Proceed.
- b) Major milestone activities unique to each Trade Contract.
- c) Phasing.
- d) Critical Path.
- e) Substantial Completion.
- f) Contracts Closeout.

Bid Milestone Schedule Preparation: Formulate the Bid Milestone Schedule from the Construction Phase Schedule requirements as indicated above. Attach a copy of the Bid Milestone Schedule and Construction Progress Documentation in the Project Manual. The Bid Milestone Schedule shall form the basis for each Contractor to prepare their Baseline Schedule.

2.4.1.5 CONSTRUCTABILITY REVIEWS

- A. The CM shall review the design throughout the pre-construction phase as to constructability, including without limitation all issues identified in the CM's Proposal. With respect to each such issue, the CM shall submit a written report to both the OWNER and the Project Designers. At a minimum, each such written report shall contain: (1) A description of the constructability issue with background information; (2) a summary of the CM's in-depth study/research; and, (3) written recommendations for addressing the issue. These reviews shall ensure that good building practices are incorporated into the design documents and identify whether the project sequencing is viable and design elements can be built in a manner that is safe, expeditious and cost effective. These reviews shall be conducted at Pre-Schematic, Schematic, 60% DD and 100% CD document phases.

2.4.1.6 CONSTRUCTION COST MODEL / ESTIMATES

- A. The CM shall develop a project cost estimate (independent from any similar cost estimate required of the Project Designers) that shall be updated as needed, but at a minimum at the time of each submission within the design phase during which the CM is performing

Pre-Construction Services. Cost estimates to be done by the CM at Pre-Schematic, Schematic, 60% DD and 100% CD design submissions. The CM shall coordinate its format with that of the Project Designers to facilitate ease of comparison of the two estimates. Cost estimates from the CM shall be submitted to the OWNER no later than ten (10) working days after receipt of the design submission from the Project Designers.

- B. Each CM cost estimate shall include the total estimated cost of the trade contracts as well as the CM's General Conditions. The General Conditions shall be kept separate from the Trade Contracts. As part of the completion of the 100% Cost Estimate the CM shall establish a preliminary Trade Contract Breakdown that will ultimately become the GMP Trade Contract Breakdown when finalized. The CM shall assign estimated costs to each line item in the Trade Contract Breakdown.
- C. Each CM cost estimate, along with each Designer's cost estimate, will be reviewed by the OWNER for reasonableness and compatibility with the Approved Construction Budget. Meetings and negotiations between OWNER, Project Designers and the CM will be held to resolve questions and differences that may occur between the Designer's and CM's estimates. The CM shall work with the OWNER and Project Designer to reach a mutually acceptable reconciled estimate.
- D. In the event that the reconciled estimate exceeds the Approved Construction Budget, the OWNER may direct the CM, (without additional compensation to the CM), to work in conjunction with the Project Designers to redesign the facility as necessary to maintain the Project Program within the Approved Construction Budget.
- E. The Approved Construction Budget for the Project is to fall within the following range: (Note: The Approved Construction (the estimated value of all Trade Contracts, General Conditions expenses, design contingency, escalation and the CM GMP Contingency).

2.4.1.7 REVIEW AND COORDINATION OF CONTRACT DOCUMENTS

- A. The CM shall review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect costs, construction feasibility or schedules. The CM shall notify the Project Designers and the OWNER in writing upon observing any features in the plans or specifications which appear to be ambiguous, confusing, conflicting or erroneous. The reviews shall also identify missing scope items in relation to the trade packages that the CM intends to procure. These reviews shall be conducted at Pre-Schematic, Schematic, 60% and 100% document phases.
- B. The CM shall provide a thorough interdisciplinary coordination review of the Construction Drawings and Specifications before the Trade Contracts are put out to bid. The review shall be performed utilizing a structured and industry-accepted process including the use of "clash detection" software. The CM shall review the final documents to see that all comments have been incorporated prior to bidding, including design review comments submitted by the OWNER.
- C. By virtue of the final review by the CM referenced in Section 2.4.1.7 (B) above, all ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM or OWNER during the review process shall be deemed to be corrected, and any associated costs shall be included in the CM's GMP.

- D. Following approval of the 60% design submission and cost estimate the CM shall provide to the Owner the scoping document that sets forth the scope of work for each trade contract package. This shall be submitted to the Owner for review at least 30 days prior to the 100% design submission.

2.4.1.8 CONSTRUCTION GUARANTEED MAXIMUM PRICE (GMP)

- A. Within ten (10) working days after OWNER approval of the 100% reconciled cost estimate, or at a time mutually agreed upon between the OWNER and the CM, the CM will provide to the OWNER a proposed GMP which will include all trade contract values, and all other project costs including without limitation the CM construction phase fee, the CM-GMP contingency pursuant to Section 2.4.1.10(B), and the General Conditions allowance. The GMP shall set out each anticipated trade contract amount, the CM's fixed fee, the General Conditions reimbursable cost items including on-site field staff, and all project related costs including but not limited to labor and material and performance bonds and personnel payroll benefits, and the CM GMP contingency. The GMP will not include the CM's pre-construction costs.
- B. The GMP document shall identify the construction documents dates for each trade value on which the GMP is based. Included with its GMP proposal, the CM shall provide two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications, and other information or documents that fully describe the Project as developed at the time of the GMP and that are relevant to the establishment of the GMP.
- C. In developing the GMP Proposal, the CM shall coordinate efforts with the Project Designer to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to the establishment of the GMP. The CM shall review the development of the GMP with the OWNER on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule assumptions, exclusions and other matters relevant to the establishment of the GMP. The use of general allowances in subcontracts is prohibited. The use of specific allowances may be permitted. Any specific allowances must be submitted by the CM to the Owner for approval, on a case by case basis.
- D. The GMP shall include the CM's lump sum fee for the management of the trade work and the general conditions. The lump sum fee includes all CM home office costs, including officers as well as home office and local office support staff, together with all CM overhead costs and profit. The fee shall also include all required services of a home office Project Executive, by whatever name called and includes the management of the General Conditions work. No additional overhead or profit on direct labor for the construction phase will be paid beyond the construction phase fee.
- E. In the event that the proposed GMP exceeds the Approved Construction Budget the CM shall work with the Project Designers, (without additional compensation to the CM), to redesign the Facility as necessary to maintain the Project Program and meet the Approved Construction Budget as follows:

- a) After consultation with the OWNER, the CM shall coordinate and cooperate with the Project Team to alter and redraft Construction Documents as necessary to accomplish the required reduction in cost.
- b) The CM shall analyze the Project Designer's modified Construction Documents, and make recommendations to the OWNER as to ways and methods to reduce the costs of constructing the project to a sum which does not exceed the Approved Construction Budget.
- c) The CM shall develop and provide to the OWNER a GMP in connection with the redrafted and altered Construction Documents to accomplish the necessary reductions in cost.

Notwithstanding anything in the contract to the contrary, the CM shall perform the work set forth in this Section without additional compensation.

The OWNER has the right to reject any proposed GMP as originally submitted, or as adjusted. In that event, the Contract will be terminated according to its terms. In addition, the OWNER has the right to withhold, in its sole discretion, approval of the amendment of the Contract to reflect any GMP, in which event the Contract will terminate according to its terms.

- F. The CM's detailed construction cost estimates and GMP will be reviewed by the OWNER for reasonableness and compatibility with the Approved Construction Budget. Meetings and negotiations between OWNER, Project Designers and the CM will be held to resolve questions and differences that may occur between the Approved Construction Budget, the CM's cost estimate and corresponding GMP. If indicated by the Approved Construction budget limitations or other circumstances, the CM shall work with the OWNER and Project Designers to reach a mutually acceptable GMP.
- G. Upon acceptance by the OWNER of a GMP, the OWNER shall prepare and the CM shall execute a contract to reflect the GMP and the CM's GMP as approved shall become a part of the OWNER-Construction Manager Construction Phase Contract. Within 10 days after the execution of the construction contract the CM shall provide the OWNER with a Performance Bond and a Labor and Material Payment Bond each for 100% of the GMP per industry standard forms.
- H. Following the OWNER acceptance of the proposed GMP the CM shall continue to monitor the development of the Construction Documents so that when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP proposal.

2.4.1.9 EARLY BID PACKAGES

- A. The OWNER may elect to authorize the CM to bid and award early packages following the process in Section 2.4.2. The CM will recommend to the OWNER an award for each trade for these early packages and an estimate of General Condition's costs. The estimated value agreed to with the OWNER for each early package will be the value utilized when establishing the GMP. The CM's cost associated with these early packages will be reimbursed by the OWNER under this contract along with any General Conditions costs associated with the performance of this work. The CM shall not incur

any subcontractor costs for construction of the Work without the prior written authorization of the OWNER. Should the OWNER accept the early bid packages and reject the final GMP, the provisions of Section 2.4.1.11 of this Preconstruction phase will be followed.

- B. All Trade Contracts awarded with the approval of the OWNER prior to the rejection of the Final GMP may be assigned to the OWNER. The OWNER shall pay to the CM, any reasonable costs incurred by the CM as a result of this assignment.

2.4.1.10 CM-GMP CONTINGENCY

- A. The GMP shall include a CM construction contingency (CM-GMP Contingency) in an amount approved by the OWNER, to help reduce the risks assumed by the CM in providing the GMP for the Project. The OWNER and the CM acknowledge that the contingency is included to make adjustment for eventualities which have not been taken into precise account in the establishment of the GMP, including but not limited to: (1) contract default by trade contractors; (2) unanticipated market conditions; (3) those circumstances where the actual cost of an item exceeds the amount allocated to such item in the schedule of values, assuming all remedies pursuant to section 2.3.2.4(C) of the Construction Phase section have been exhausted; (4) corrections in the work provided the CM has exhausted all reasonable means to obtain correction of same from the responsible Trade Contractor; (5) interfacing, coordination or scope omissions between and from the various work categories and (6) claims from sub-contractors. Funds available within the GMP resulting from differences between the estimated value of a trade contract and the actual bid value of that contract (bid savings) shall also be available as part of the CM-GMP contingency subject to the same terms.
- B. The CM-GMP Contingency is not allocated to any particular item of the Cost of the Work, and is established for the CM's use as may be required for increases in costs as noted above. It is understood that the amount of the CM-GMP contingency is the maximum sum available to the CM to cover costs incurred as a result of such unanticipated causes or details, and that cost overruns in excess of the amount of the CM-GMP contingency will be borne by the CM.
- C. The CM will notify the OWNER and Project Designer in writing of the CM's intent to apply any part of the CM-GMP contingency to any item within the Cost of the Work prior to any such application. The CM shall not implement the use of this contingency without the written approval of the OWNER. The CM shall fully document the change on its copy of the construction documents.
- D. The amount of the CM-GMP contingency is to be reviewed by the OWNER as part of its review of the GMP. No set amount or percentage for the CM-GMP contingency will be agreed to prior to the submittal of the GMP. The OWNER retains the right to specifically request revisions to the amount of the CM-GMP contingency prior to the OWNER's acceptance and approval of the GMP.

2.4.1.11 NON-ACCEPTANCE OF THE GMP AND TERMINATION OF OWNER/CONSTRUCTION MANAGER CONTRACT.

- A. The OWNER, at its sole discretion, may decline to accept the CM's GMP for the project and thereupon without penalty, the Contract shall be terminated according to its terms.

- B. In any event, such termination shall likewise terminate all further services and obligations of the CM. The CM shall accept the amount negotiated for Pre-Construction services as full and complete reimbursement of all costs and services performed by the CM for Pre-Construction Services and shall not be entitled to any further amount for services set forth under or related to the contract. Thereafter, the OWNER shall have the right to continue its activities to place the project under construction with no obligation or restriction regarding the CM and with full Ownership and use of any data and information developed during Pre-Construction activities. Should the OWNER continue to place the project under construction, the CM is precluded from bidding on any part of the work as a Trade Contractor.
- C. Termination under this Section is in addition to the termination provisions set forth elsewhere in the Contract including, but not limited to, NYSIF Exhibit C and Section 2.2 General Conditions for Construction.

2.4.1.12 OWNERSHIP OF DOCUMENTS

All data, information, material and matter of any nature and all copies thereof in any and all forms whatsoever developed by the CM or in the CM's possession or control relating to the Project are the property of the OWNER and shall be turned over to the OWNER within ten (10) days after the OWNER's request.

2.4.1.13 PRE-CONSTRUCTION DELIVERABLES

The following summarizes the written deliverables required as part of the Pre-Construction Services (see Scope of Services text for complete details): Pre-Schematic Phase;

- a) Value Analysis
- b) Cost Estimate
- c) Design Review and Coordination Comments
- d) Constructability Comments
- e) Construction Management Plan
- f) Market Study

2.4.2 CONSTRUCTION PHASE SERVICES

The Construction Phase services shall consist of those required to effect the complete construction of the Project and to maintain the established Guaranteed Maximum Price (GMP) of the Project.

2.4.2.1 CONSULTATION DURING CONTINUING PROJECT DEVELOPMENT

Upon acceptance of the GMP, the Construction Manager at Risk (CM) shall continue to advise and assist the OWNER and Project Designers during any continuing Design Activities as described in the Pre-construction Phase specifications.

2.4.2.2 PROJECT CONSTRUCTION COSTS

- A. 2.1 The CM recognizes that the OWNER will have a limit on the project construction costs. That limit is represented by the GMP. The GMP is inclusive of all trade contracts, a General Conditions allowance, CM Fees and the CM-GMP contingency, but excludes the OWNER's Construction Contingency and the CM's preconstruction costs. The GMP

will not exceed the amount referred to in Section 2.4.1.6(E) of the pre-construction phase specifications as the Approved Construction Budget.

- B. 2.2 Upon completion of the Work, any and all non-expended funds remaining in the GMP, including the CM-GMP Contingency will be retained by the OWNER.

2.4.2.3 PROJECT SCHEDULE

A. Responsibility

The Construction Manager shall provide the following service:

GENERAL

Summary:

1. The Construction Manager shall provide administrative and procedural requirements to plan, schedule and document the progress of construction during the performance of the Work on multi Contracts, including the following:
 - a) Project schedule and reports.
 - b) Contractor's Baseline Schedule
 - c) Material location reports.
 - d) Field condition reports.
 - e) Special reports.
2. Related Work Items:
 - a) Contractor's Submission Schedule.
 - b) Schedule of Tests and Inspections.

Definitions – Please refer to Section 2.2.

Informational Submittals:

1. Format for Submittals: Submit required submittals in both electronic (PDF) file format and as electronic backup file in native software format.
2. Project Schedule: Schedule, of size required to display entire schedule for entire construction period for all Contracts.
 - a) Submit a working electronic copy of the Project schedule, using software indicated, and labeled to comply with requirements for submittals.
3. Reports: Concurrent with the Project schedule, submit each of the following reports. Format for each activity in reports shall contain; activity ID number, activity description, original duration, remaining duration, actual duration, early and late start and finish dates and total float in calendar days.
 - a) Activity Report: List of all activities sorted by early or actual start date in each phase, area and level following the physical divisions of the Work.
 - b) Short Term Activity Report: Lists all activities occurring from the update data date in a two month forward and one month back window.
 - c) Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by early or actual start date. Include activity ID number and float path(s).

- d) Total Float Report: Provide a cumulative list of total float from each update period with comments associated to any and all variances.
- e) Procurement Report: List all procurement activities sorted in order of the item being procured.
- f) Narrative Report: The project scheduler shall provide a narrative with each schedule update which shall include the following information.
 - i. Introduction: An executive summary of the schedule narrative.
 - ii. Project Description: A brief description of the Project.
 - iii. Discussion of changes and variances by each Contract and specific recommendations.
 - iv. Anticipated award dates, actual award dates, contractors selected and any recommendations for changes to the bid strategy going forward.
 - v. Base Line Acceptance: Actual and anticipated acceptance dates of the Baseline Schedules for each Contract and any associated issues.
 - vi. Major Milestones Summary.
 - vii. A graphical presentation of Contract milestones progress - columns to include:

Activity ID	Activity Description	Current Update Completion Date	Last Update Completion Date	Baseline Completion Date	Variance from Prior Update (Days)	Cumulative Variation from Baseline (Days)
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- viii. Issues: Major issues encountered during the current update with recommended solutions and status of prior issues.
- ix. Summary of Progress/Current Status of Project: Progress since prior update and any issues encountered.
- x. Changes to Network Logic: Explanation of any changes to the network logic.
- xi. Critical Path: Description of current critical path to completion, variance from baseline critical path and variance from the critical path associated with the prior update.
- xii. Delay Analysis and Responsibility: Discussion of delays that have been experienced since the prior update with recommended solutions and assessment of responsibility for each delay. This section should also include a matrix presenting the delay associated with each schedule update and the cumulative Project delay.
- xiii. Planned Activities: Activities and progress planned for the next update period.
- xiv. Potential Recovery Measures and Associated Cost Impacts: Provide recommendations for recovery of lost time through re-sequencing strategies, crashing or other compression techniques. Associated cost impacts estimates presented on an order of magnitude basis.
- g) Material Location Reports: Submit at monthly intervals.
- h) Field Condition Reports: Submit at time of discovery of differing conditions.
- i) Special Reports: Submit at time of unusual event.

- j) Qualification Data: For project scheduler.

Quality Assurance

1. Project Scheduler Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within timeframes requested by the Owner. The project scheduler shall have or be able to obtain certification as a Planning and Scheduling Professional (PSP) or have a minimum of five years of demonstrated experience scheduling large capital projects.
2. Prescheduling Conference: The Construction Manager shall conduct conference at the Project site to review methods and procedures related to each Contractor's Baseline Schedule and the Project schedule, including, but not limited to, the following:
 - a) Review software limitations and content.
 - b) Verify availability of qualified personnel needed to develop and update schedule.
 - c) Discuss coordination, including phasing, work stages, area separations, interim milestones and Beneficial Occupancy.
 - d) Review delivery dates for Owner-furnished products.
 - e) Review schedule for work of Owner's separate contracts.
 - f) Review time required for review of submittals and resubmittals.
 - g) Review requirements for tests and inspections by independent testing and inspecting agencies.
 - h) Review time required for completion and startup procedures.
 - i) Review and finalize list of construction activities to be included in schedule.
 - j) Review submittal requirements and procedures.
 - k) Review procedures for updating schedule.

Cooperation

1. Coordinate preparation and processing of the Project Schedule and reports with the performance of the Work and with Baseline Schedules of separate Contractors.
 - a) Coordinate new Contractor's Baseline Schedules and the Project Schedule updates with separate Contractors when additional Contracts are executed during the entire duration of the Project.
2. Coordinate the Project Schedule with each Contractor's Submission Schedule, progress reports, and other required schedules and reports.
 - a) Secure time commitments for performing critical elements of the Work from all parties.
 - b) Coordinate each construction activity in the network with other activities and schedule them in proper sequence.

Critical Path Method Schedule, General

1. Bid Milestone Schedule: The Owner shall provide a Bid Milestone Schedule as a template for the Contractor's Baseline Schedule. Nothing in the Bid Milestone

- Schedule, Contractor's Baseline Schedule or Project Schedule shall preclude the Construction Manager or any Contractor from advancing the Work of any Contract.
- a) Each Contractor shall include milestones indicated in the Contract Documents in their Baseline Schedule, including, but not limited to, the Notice to Proceed, interim milestones, Substantial Completion, and Contract close-out.
 - b) Substantial Completion date shall not be changed by submission of a schedule that shows an early completion date, unless approved by the Owner.
 - c) No time for weather will be apportioned for foreseeable occurrences in a specific regional area. Each Contractor shall be responsible to determine reasonable averages and make allowances in the performance of the Work.
2. Activities: Treat each numbered activity as a consumable resource for each principal element of the Work. Comply with the following:
- a) Activity Duration: Define activities so no activity is longer than 15 days, unless specifically allowed by the Owner.
 - b) Procurement Activities: Include procurement process activities for long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery.
 - c) Submittal Review Time: Include review and resubmittal times indicated in Submittal Procedures in schedule. Coordinate submittal review times in the Project Schedule with dates entered in the Contractor's Submission Schedule.
 - d) Startup and Testing Time: Include not less than 15 days for startup and testing.
 - e) Substantial Completion: Indicate completion on the date established for Substantial Completion, and allow time for the Owner's administrative procedures necessary to execute the Notice of Substantial Completion (NOSC).
 - f) Incomplete Work items and Contract Closeout: Include not more than 30 days for incomplete Work items and Contract Closeout Requirements for each Contract.
3. Constraints: Include constraints and work restrictions indicated in the Contract Documents, or approved by the Owner prior to use and show how date constraints affect the sequence of the Work.
- a) Construction Areas: Identify each major area of construction for each major portion of the Work. Indicate where each construction activity within a major area must be sequenced or integrated with other construction activities.
4. Upcoming Work Summary: Prepare summary report indicating activities scheduled to occur or commence prior to submittal of next schedule update. Summarize the following issues:
- a) Unresolved issues.
 - b) Unanswered RFIs.
 - c) Rejected or unreturned submittals.
 - d) Notations on returned submittals.
5. Recovery Project Schedule: When periodic update indicates the Work of any Contract is 15 or more calendar days behind the current approved Project Schedule,

submit a separate recovery Project Schedule indicating means by which the effected Contractor intends to regain compliance with the Project Schedule. Indicate changes to working hours, working days, crew sizes, and equipment required achieving compliance, and dating by which recovery will be accomplished, subject to Owner's approval.

6. Computer Scheduling Software: Prepare Project Schedules using current version of a program that has been developed specifically to manage CPM schedules of the Bid Milestone Schedule.
 - a) Utilize a Project Planner operating system.

PRODUCTS

Critical Path Method Schedule (CPM Schedule)

1. Contractor's Baseline Schedule: Each Contractor shall prepare schedule using a time-scaled PDM network diagram representing the Work of their Contract. Total float time shall be equal to or greater than zero in the Baseline Schedule.
 - a) Coordinate with each Contractor to submit their Baseline Schedule within 15 days of the date established for the Notice to Proceed. Outline significant construction activities for the first 90 days of construction. Include skeleton diagram for the remainder of the Work based on indicated activities.
 - b) Coordinate with each Contractor for the Construction Manager to develop network diagram in sufficient time to submit Baseline Schedule so it can be accepted for use no later than 30 days after date established for the Notice to Proceed.
 - i. Failure to include any work item required for the performance of the Work shall not excuse the Construction Manager or any Contractor from completing the Work of any Contract within applicable completion dates, regardless of the Owner's approval of the schedule.
2. Project Schedule: Prepare contemporaneous schedules using a time-scaled PDM network for sequencing the Work and showing the progress of the Work for all Contracts.
 - a) Establish procedures for monitoring and updating the Project Schedule and for reporting progress. Coordinate procedures with the progress meeting and payment request date.
 - b) Coordinate the Work occurring concurrently through the integration of other Contractor's Baseline Schedules into the Project Schedule.
 - i. Include the current total float status of the Project as the starting point for the integration of each Contractor's Baseline Schedule into the Project Schedule.
 - ii. Each Contractor's Baseline Schedule will maintain its original overall duration when integrating into the Project Schedule.
 - c) Conduct educational workshops to train and inform the Contractor's key Project personnel, including subcontractors' personnel, in proper methods of providing data and using Project Schedule information.

- d) Use "one workday" as the unit of time for individual activities. Indicate nonworking days and holidays incorporated into the schedule in order to correlate with all Contract durations.
- 3. Project Schedule Preparation: Prepare a list of all activities required to complete the Work of all Contracts. At minimum, each individual specification sections, including General Requirement sections, as indicated in the Project Manual, shall be listed as an activity.
 - a) Activities ID: Provide a unique identifier to each activity. No activity ID shall be recycled or reused.
 - b) Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:
 - i. Preparation and processing of submittals.
 - ii. Mobilization and demobilization.
 - iii. Purchase of materials.
 - iv. Delivery.
 - v. Fabrication.
 - vi. Utility interruptions.
 - vii. Installation.
 - viii. Work by Owner that may affect or be affected by the Contractor's activities.
 - ix. Testing and commissioning.
 - x. Incomplete Work items and Contract closeout.
 - c) Actual Activity Dates: Once an activity has been assigned an actual date of occurrence, the status of that activity shall not change. Any change to actual dates must be accompanied with supporting data and approved by the Owner. No actual start date shall occur ahead of the data date.
 - d) Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with the Bid Milestone Schedule dates.
 - e) Processing: Process data to produce output data status on a computer-drawn, PDM network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the Project Schedule within the limitations of each Contract duration.
 - f) Calculations: The schedule network shall be calculated allowing activities to retain their original logic. Progress override shall not be used when calculating the network status.
 - g) Logic: Leads and lags will not be used when the creation of an activity will perform the same function. Lag durations contained in the schedule shall not have negative value. Lead and lag durations shall not exceed the durations of the activity they are assigned.
 - i. There shall be only two open ended activities; (1) Notice to Proceed, with no predecessor logic, and (2) Final Payment, with no successor logic. All intermediate activity logic shall be connected.

- ii. Out of sequence activities that have progressed before all preceding logic will be allowed only on a case by case basis, as approved by the Owner. The Construction Manager shall propose logic corrections to eliminate all out of sequence progress and correct out of sequence progress that continues for more than two update cycles by logic revisions, as approved by the Owner.
 - h) Float: The Owner shall reject the schedule and schedule updates for the use of float suppression techniques; such as preferential sequencing, special lead lags logic constraints, zero total or zero free float constraints, extended activity times, or imposing constraint dates other than what is required by each Contract.
 - i. The use of resource leveling used for the purpose of artificially adjusting activity durations to consume float and influence the critical path is prohibited.
 - ii. A schedule showing work completing in less time than any Contract duration and accepted by the Owner, will be considered to have float.
 - iii. Any float generated during the performance of the Work, due to efficiencies of the Owner, Construction Manager or any Contractor is not for sole use of the party generating the float.
 - iv. Negative float will not be a basis for requesting time extensions or not to be construed as a means of acceleration or schedule extensions.
 - i) Format: Follow the applicable individual specification sections of the Work for each Contract as the bases for the content of the Project Schedule. Organize the Project Schedule to provide the necessary detail for each area, level, quadrant and section as needed in the performance of the Work of each Contract.
 - j) Activity Codes: Assign Owner defined activity codes to all activities in the schedule. Owner defined activity code are provided in the schedule template and include multiple values for CSI, Discipline, Phase, Area and Level.
4. Changes in the Work: For each proposed change and concurrent with its submission, prepare a time-impact analysis using a network fragment to demonstrate the effect of the proposed change on the overall Project Schedule.
5. Schedule Updating: Concurrent with making revisions to schedule, prepare tabulated reports showing the following:
- a) Identification of activities that have changed, including the reason each adjustment was necessary.
 - b) Changes in early and late finish dates.
 - c) Changes in activity durations in workdays.
 - d) Changes in the critical path.
 - e) Changes in total float or slack time.
 - f) Changes in the duration for Substantial Completion.

Reports

1. Material Location Reports: At monthly intervals, prepare and submit a comprehensive list of materials delivered to and stored at Project site. List shall be cumulative, showing materials previously reported plus items recently delivered.

Include with list a statement of progress on and delivery dates for materials or items of equipment fabricated or stored away from Project site.

2. Field Condition Reports: Immediately on discovery of a difference between field conditions and the Contract Documents, prepare and submit a detailed report. Submit with a Request for Information. Include a detailed description of the differing conditions, together with recommendations for changing the Contract Documents.

Special Reports

1. General: Submit special reports directly to Owner within one day of an occurrence. Distribute copies of report to parties affected by the occurrence.
2. Reporting Unusual Events: When an event of an unusual and significant nature occurs at Project site, whether or not related directly to the Work, prepare and submit a special report. List chain of events, persons participating, and response by Contractor's personnel, evaluation of results or effects, and similar pertinent information. Advise the Owner in advance when these events are known or predictable.

EXECUTION

CPM Schedule

1. Project Scheduler: Engage a consultant or person skilled in construction planning and scheduling to provide planning, scheduling, evaluation, and reporting services using CPM scheduling.
 - a) In-House Option: The Owner may waive the requirement to retain a consultant if Construction Manager employs skilled personnel with experience in CPM scheduling and reporting techniques. Submit qualifications.
 - b) Meetings: Project scheduler shall attend all meetings related to the Project progress, alleged delays, and time impact.
2. Project Schedule and Reports Updating: Prior to each scheduled progress meeting, update schedule to reflect actual construction progress and activities. Issue schedule and reports one week before each regularly scheduled progress meeting.
 - a) Revise schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated schedule concurrently with the reports of each such meeting. As a minimum, schedule update submissions shall occur monthly and within 30 days of the schedule Data Date.
 - b) Include reports with updated schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
 - c) As the Work progresses, indicate final remaining duration for each activity.
3. Distribution: Submit one electronic copy, in format specified, to the Owner and distribute copies of approved schedule and reports to the Owner, Design Professional, separate contractors, testing and inspecting agencies, and other parties identified by the Owner with a need-to-know schedule responsibility.
 - a) Post copies in Project meeting rooms and temporary field offices.

- b) When revisions are made, distribute updated schedules and reports to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

2.4.2.4 TRADE CONTRACTS PREQUALIFICATION, BID AND AWARD

A. For any of the Work on this Project, the following procedures will be followed by the CM.

- a. Formal Advertising - For the purpose of obtaining expressions of interest from responsible bidders, formal advertising entails:
 - (1) Preparation of a listing of specific bid packages on which competitive pricing will be solicited; and
 - (2) Publicizing the invitation for expressions of interest in bidding through distribution to prospective bidders, posting in public places, publication in newspapers and construction trade journals, and such other means as may be appropriate, including minority trade organizations, in sufficient time to enable prospective bidders to prepare and submit their expressions of interest and qualifications and submit their bids before the time estimated for receipt of bids.
- b. Pre-qualification of Bidders - Bidders will be required to meet specified qualifications before being invited to submit a bid on a separate bid package. The OWNER reserves the right to review and approve the qualification criteria prior to advertising by the CM.

To facilitate the pre-qualification of bidders, each bid package included in the consolidated announcement per paragraphs a. 1. and 2. above shall be described in sufficient detail to inform prospective bidders of the nature and scope of the work and shall contain instructions to interested bidders for submitting qualifications. Prospective bidders must identify the bid package(s) for work they intend to perform. They must also submit their years of experience in performing said work on contracts of similar size and complexity. **The CM may establish its own pre-qualification process, but such process must include: (1) determining whether any prospective bidder has been subject within the past five years to a debarment by the New York State Department of Labor or by the New York State Workers Compensation Board; (2) determining the status of the bidder's registration with the New York State Department of State; (3) identifying any serious Occupational Safety and Health Administration (OSHA) violations by the bidder; and (4) requiring each bidder to disclose whether, within the past five years, it has been debarred by, found not responsible by, or lost its prequalification status from, any public agency and confirm they were not listed on the New York State Office of General Services' debarment and non-responsible lists available on their website. (Note: information regarding these items is publicly available at no charge through the respective agencies websites.)**

- c. If the low bid for any bid package or the aggregate of all packages exceeds the CM's GMP budget line item price for such package, or if less than three bids are

received in response to the invitation to submit a bid on any bid package, one of the following procedures shall be followed:

- (1) The CM shall negotiate with the lowest bidders to reduce the price of the bid package to a cost which will not exceed the budget line item price; or
- (2) The CM shall reject all bids and issue a revised invitation to bid approved by the OWNER; or
- (3) The CM shall award to the low bidder for a price above the budget line item; or
- (4) The CM shall perform the Work itself for the amount of the budget line item price if c. (1) cannot be accomplished, and if the OWNER approves of same.

In addition, the CM and the OWNER may agree to the need for negotiation of bid prices where same are within budget line item cost estimate.

Whichever of the foregoing procedures is followed, there shall be no reduction of the scope or quality of the project for any bid package in order to accomplish the Work of the Project.

- d. If the low bid for any bid package appears to be too low, and it appears that the bidder would be unable to complete the contract at the price bid, the CM shall so notify the OWNER. The OWNER, in concert with the CM, will review the bid price breakdown, and the history of the bidding contractor, in accordance with Executive Order 170.1, Uniform Guidelines for Responsibility Determinations. Assuming the OWNER agrees with the CM that the bid price is too low, or that the history of the bidding contractor raises serious concerns about the contractor's ability to perform the Work in a timely and satisfactory manner, and such agreement shall not be unreasonably withheld, the CM will proceed to review the next low bidder, in like manner if necessary.

e. Trade Contractor Bids

The CM shall notify the Owner of the date, time and location for receipt of Trade Contractor bids so that the Owner may attend bid openings. The CM shall record the bids and provide a bid tabulation to the Owner.

f. Contract Awards

The CM shall be responsible for making all sub-contract awards, after following the process outlined in Section a, b, c and d above. CM shall supply the OWNER with its bid evaluations, descoping analysis, rationale, recommendation for award and copies of all executed subcontracts. The OWNER reserves the right to reject an intended award, in any instance where the OWNER's review of the prequalified bidder would result in withdrawal of said pre-qualification.

One or more Principal Trade Contract packages shall be prepared for each of the General Construction, Electrical, Mechanical, Fire Protection, and Plumbing divisions of the work of the Project. The CM may prepare Principal Trade Contract packages for other divisions or subdivisions of the work. Each Principal Trade Contractor may be required by the CM to provide such bonds and insurance as the CM may require in the contract package.

- g. The CM shall provide a report that compares the bid results to the trade contract line items from the GMP. If the total of the bid results is less than the total of the trade contract line items from the GMP, the difference is considered "bid savings". The bid savings will remain in the GMP until substantial completion or until an earlier time mutually agreed upon by the CM and the Owner. Any bid savings remaining at either time indicated above will be retained by the Owner in accordance with Section 2.3.2.2(B).
- B. The CM may at any time prior to the prequalification of bidders, identify and define other Specialty Contract packages which the CM determines may be helpful in the timely, cost-effective construction of the Project.
- C. The CM shall include the OWNER's General Conditions and General Requirements in each Trade Contract Bid Package. The General Requirements may be edited as appropriate in order to adapt them to the specific Bid Package.
- D. All contract documents between the CM and the Trade Contractors shall be made available for review by the OWNER.
- E. The use of general allowances in subcontracts is prohibited. The use of specific allowances may be permitted. Any specific allowances must be submitted by the CM to the Owner for approval, on a case by case basis.

2.4.2.5 PROJECT CONTROL

A. Project Staffing

- a. The CM's on-site representatives shall manage the work of the Trade Contractors and coordinate the work with the activities and responsibilities of the OWNER and Project Designers to complete the Project in accordance with the OWNER's objectives of cost, time and quality.
- b. The CM shall maintain a competent and adequate full-time staff approved by the OWNER at the Project site to coordinate and provide adequate direction of the work, and to monitor progress of the Trade Contractors on the Project at all times.
- c. It is understood that the designated and approved on-site CM representatives will remain on the job and in responsible charge as long as those persons remain employed by the CM, unless the OWNER has reason to agree otherwise during the course of the project and a contract amendment is issued accordingly by the OWNER.

B. On-site Coordination / Management

- a. The CM shall establish an on-site organization and lines of authority in order to carry out the overall plans of the Project Team. The CM shall coordinate all on-site activities with those of an ongoing project within the same general site area.
- b. The CM Shall submit resumes for the proposed key representatives:
 - Firm Principal/Client Executive, include statement identifying the projects the proposed Firm Principal/Client Executive has managed in the last five (5)

years. Include the percentage of time this individual will dedicate to this program.

- Other Project Staff – the staffing proposed should optimize the firm’s strengths to provide timely, cost effective and high quality services and support.

Individual resumes must be limited to two pages each and include the following:

Proposed individual.

Years of experience in CM and years with firm.

List of engagements and references from the three most recent assignments.

Existing assignment(s).

Key responsibilities for this assignment.

Present office affiliation.

Education or special training.

Relevant experience with assignment descriptions, size and cost.

Current assignment status

- c. The CM shall conduct orientation sessions for its on-site field staff and Trade Contractor's staff, as applicable, as to the Project Procedures developed during the Pre-Construction Phase. OWNER representatives may attend such sessions.
- d. The CM will provide for all coordination with the on-site Trade Contractors as well as the necessary on-site services for the construction activities and on-site requirements of the OWNER and Project Designer.
- e. The CM shall require all Trade Contractors to submit a Trade Contractor's Daily Report that is to include, but not be limited to, a summary of the construction activities of the day along with manpower and equipment usage including that of their subcontractors and safety incidents. Such documents shall be available for review by the OWNER’s on-site representative. The CM shall provide a cover summary daily report. A copy of the report shall be provided to the OWNER.
- f. The CM shall accept delivery and arrange for storage, protection and security for any OWNER purchased materials, systems and equipment that are a part of the Work until such items are turned over to the respective Trade Contractors.
- g. The CM shall coordinate with appropriate parties the delivery and installation of OWNER purchased furnishings and equipment.

C. Meetings

- a. The CM shall schedule and conduct regular progress meetings as conditions on the Project require but at least weekly, and the CM shall conduct bi-weekly OWNER’s meetings and other meetings as may be directed by the OWNER, at which Trade Contractors, OWNER, Project Designer, other designated representatives and the CM can discuss jointly such matters as progress, scheduling, and construction-related issues.
- b. The CM shall take and distribute complete minutes of meetings to all attendees and others as directed by the OWNER within three (3) days of such meetings.

Representatives of the OWNER may attend meetings and shall in any case receive all notices and minutes of meetings.

2.4.2.6 REQUESTS FOR INFORMATION (RFI)

- A. The CM will be responsible for developing and implementing an RFI form for use on the project utilizing a Contract Manager software.
- B. The CM will be responsible for logging and reviewing all RFIs prior to submission to the OWNER and the Project Designer. The CM is to insure that the RFIs submitted are appropriate and not frivolous.
- C. The CM shall be responsible for tracking and monitoring all RFIs throughout the Construction Phase in a timely manner until they are processed by the Project Designer and/or the OWNER.
- D. The CM shall include RFIs as an agenda topic at all OWNER meetings and advise the OWNER immediately of any delays in their process. All responses to the RFIs that have an added cost impact shall also be discussed with the OWNER.

2.4.2.7 SUBSTITUTION REQUESTS

- A. The CM will be responsible for logging all substitution requests.
- B. The CM will be responsible for reviewing all substitution requests to insure that they are complete; and, if not, returning them to the Trade Contractor for proper submission.
- C. The CM will be responsible to review all substitution or “or equal” requests prior to submission to the Project Designer and the OWNER.

It is to be noted that the OWNER discourages substitutions and the OWNER's approval will be granted only upon the most persuasive arguments as to quality, function and financial merit regarding a substitution.

- D. The CM shall be responsible for tracking and monitoring all substitution requests throughout the Construction Phase until the Project Designer and/or the OWNER process all substitution requests. The CM shall be responsible to see that all substitution requests are submitted in a timely manner per the General Conditions.
- E. The CM shall include substitution requests, if any, as an agenda topic at the OWNER's meetings and advise the OWNER immediately of any delays in the substitution request process.

2.4.2.8 PROJECT PHOTOGRAPHS

Project photographs shall be taken as necessary to document the Trade Contractor's completed work, as required by the construction documents.

2.4.2.9 COST CONTROL/CHANGE REQUESTS

- A. The CM shall develop and maintain an effective system of Project cost control. The CM shall refine and update the approved GMP, incorporate OWNER approved changes as they occur, and develop reports and forecasts as needed, or as directed by the OWNER. The CM shall identify variances between actual and estimated costs and advise the OWNER whenever projected cost exceeds allowances or estimates. The CM shall

furnish a monthly cost report to the OWNER that documents status of GMP and actual costs.

- B. The CM shall review scope, cost and schedule impact of recommended disposition of additional cost and/or schedule expansion requests, all requests for changes from its trade contractors and perform an analysis of the contract documents to determine if the request has validity. If the CM determines that the request is valid, the CM shall submit its findings to the Owner and Project Designer for review. If the Owner and Project Designer determine that the change is valid then the Owner will issue a Notice to Proceed to the CM and the CM will be authorized by the Owner to prepare a change order package in accordance with the contract documents. The Owner will place strong emphasis on the involvement of the CM during the design phase when determining if a change has validity. The Owner will make the final determination regarding the validity of any change request.
- C. The CM shall check and supervise all material deliveries, equipment and labor entering the work site. The CM shall maintain cost accounting records on authorized work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records, and afford the OWNER access to these records and preserve them for a period of six (6) years after final payment. The OWNER reserves the right to audit these records during that period.

2.4.2.10 QUALITY CONTROL / INSPECTION

- A. The CM shall submit to the Owner a quality control/quality assurance (QC/QA) plan that outlines the CM's approach to QC/QA. It shall address the following items at a minimum: use of approved submittals and shop drawings in the field, pre-installation meetings prior to commencement of major or specialized portions of the work and designated QA/QC staff for the CM. The QC/QA plan shall also include a matrix indicating a comprehensive list of inspections by the CM, the A/E, the Owner's independent testing firm and/or the commissioning agent and Owner. The QC/QA plan shall also include a deficiency log and the CM's approach to resolving deficiencies.
- B. The CM shall perform daily quality control inspections on the work of the Trade Contractors to guard the OWNER against defects and deficiencies in the work and shall coordinate this activity with the on-site duties of the Project Designers. The CM shall advise the OWNER and Project Designers of any apparent variation and deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations from the intent of the Contract Documents. The CM shall provide daily inspection reports to the Owner no later than the morning of the following business day. If deficient work is discovered by the Owner, Project Designer or the CM, the CM shall direct the pertinent Trade Contractor(s) to correct the work.
- C. The OWNER reserves the right to independently contract for Quality Assurance inspection and testing. The CM shall coordinate the activities of the OWNER's independent QA Consultant with those of the trade contractors.
- D. The OWNER and Project Designer will conduct regular inspections of the work in progress. The CM shall track deficiencies submitted by the OWNER and the Project Designers and coordinate corrective work required.

- E. In the latter stages of the project the CM shall:
- a. Perform its own “pre-punchlist” inspections in order to minimize the punchlist items discovered during the joint inspections described below.
 - b. Inspect the Project jointly with the OWNER and the Project Designers prior to the time the OWNER is to use, occupy, or operate any part or all of the Project, and prepare a list of observed variances and deficiencies in the Work. Distribute the list to the appropriate Trade Contractor(s) for necessary corrective work.
 - c. Prepare jointly with Project Designers a "Final Punch List" for each Trade Contract. Distribute to the appropriate Contractor(s) for necessary corrective action.
 - d. At the time of substantial completion, prepare a list of any remaining items of work to be completed or corrected. Distribute to the appropriate Trade Contractor(s) for necessary work. Establish a value for each item of work remaining to be completed or corrected.
 - e. Make final inspection of the Project with OWNER and Project Designers, using Contract Documents as a base to determine if the Contract requirements have been fulfilled. List any variances between Contract requirements and Work installed. Coordinate items that may appear on independent final lists prepared by the OWNER/Project Designers. Distribute to the appropriate Trade Contractor(s) for necessary corrective action.
 - f. Follow up on all notices of corrective work to Trade Contractor(s) to assure satisfactory and timely completion of the Work.
 - g. Coordinate with the OWNER and necessary Trade Contractors to perform all necessary testing and acceptances of building systems prior to final acceptance and turnover of the building. The CM shall gain familiarity with the Owner’s requirements for issuing a Temporary Approval for Occupancy and coordinate and implement requirements with the Trade Contractors in a timely manner.

2.4.2.11 SITE SECURITY

The CM shall abide by all site security protocols. The CM shall be responsible for the security in all Work areas, which may include, but not be limited to:

- a. Generating photographic or other approved identifications.
- b. Assigning identification cards to contractor staff and other site personnel.
- c. Ensuring contractor staff and other site personnel comply with security procedures.
- d. Maintaining Work areas against unauthorized access.
- e. Managing other data entry and generation of reports as requested by the OWNER.

2.4.2.12 PROJECT SAFETY

- A. The CM shall develop and implement a site specific project safety program in accordance with the General Conditions For Construction and applicable regulations and provide a copy to the OWNER.

- B. The CM shall provide a Health and Safety Program (HASP) to include managing and monitoring safety processes including the review and coordination of all work undertaken by subcontractors to ensure the creation of a clean and safe work environment based upon regulatory and industry codes and standards and best practices as well as the professional experience of the CM. The implementation of clear communication, clean construction methods, implementing fire safety plans, Pre-Construction Risk Assessments, Site Specific HASP.
- C. The CM shall report, to the OWNER, as part of each monthly report, any safety violations and actions taken to protect the safety of persons and property engaged in the work.
- D. The CM shall coordinate with the Owner's independent safety inspection program by facilitating inspections and providing information to the independent safety inspectors as requested.

2.4.2.13 CHANGES IN THE GMP

- A. The OWNER may unilaterally, at any time, make changes within the general scope of the work to be performed under the Contract. Said changes shall be by written order, via a notice to proceed and change order.
 - a. Changes in the scope of work to be performed during the Construction Phase shall be governed by the General Conditions For Construction, as supplemented by the provisions of this Section. Notwithstanding anything in the General Conditions For Construction, the provisions thereof shall apply only to work to be performed in the Construction Phase.
 - b. The CM shall notify the OWNER in writing with detailed cost supportive data if an apparent change in scope or design will require a change in the GMP.
 - c. The OWNER will review the CM's analysis and cost data and advise the CM of its findings. The OWNER and CM shall reach agreement on the nature of the subject change, and upon the OWNER's direction either eliminate the circumstances of the change or negotiate a mutually agreed cost change to the GMP. The CM shall notify the OWNER of such changes before trade bids for the work associated are requested.
 - d. Changes to the GMP will only be made as a result of documented and OWNER-approved decisions with the issuance of a change order approved by the OWNER.
- B. Change order proposals and documentation shall be submitted in accordance with Section 2.3.5 (Changes in the Work) of the OWNER's General Conditions For Construction as may be supplemented by the CM's General Conditions. Markups for change orders under Section 2.3.5 (Changes in the Work) shall only be paid to Trade Contractors and their subcontractors. The CM will not be entitled to any markup; however the CM shall be paid a fee of 3% on Owner initiated program changes.
- C. All costs associated with scope reductions shall revert to the OWNER in full.
- D. In addition to Owner initiated program changes, the following items shall be the responsibility of the OWNER and may constitute an increase to the GMP:

- a. costs which arise from design errors for work that is required to be performed by the CM that results from improperly installed work resulting from design defects as shown by the plans and specifications.
- b. costs which arise from design omissions for work that is required to be performed by the CM resulting from defects in the design as shown by the plans and specifications that are discovered prior to the CM incurring any costs for the improperly described work.
- c. Unknown field condition changes;
- d. costs which arise from the negligence of the OWNER, the Client, or the OWNER's members, officers, employees, or representatives.

2.4.2.14 CHANGES WITHIN THE GMP

- A. It is understood and agreed that refinement and detailing may be accomplished from time to time with respect to the drawings and specifications. No adjustment in the Guaranteed Maximum Price or the scheduled completion date shall be made unless such refinement or detailing results in changes in the scope and/or design of the Project, as determined by the OWNER. Nothing herein shall be construed to preclude the OWNER from ordering minor changes in the Work not involving increases in cost, consistent with the intent of the Contract Documents.
- B. The GMP shall include a CM construction contingency (CM-GMP Contingency) in an amount approved by the OWNER, to help reduce the risks assumed by the CM in providing the GMP for the Project. The OWNER and the CM acknowledge that the contingency is included to make adjustment for eventualities which have not been taken into precise account in the establishment of the GMP, including but not limited to: (1) contract default by trade contractors; (2) unanticipated market conditions; (3) those circumstances where the actual cost of an item exceeds the amount allocated to such item in the schedule of values, assuming all remedies pursuant to section 2.3.2.4(A) of the Construction Phase contract have been exhausted; (4) corrections in the work provided the CM has exhausted all reasonable means to obtain correction of same from the responsible Trade Contractor; (5) interfacing, coordination or scoping omissions between and from the various work categories and (6) subcontractor claims. Funds available within the GMP resulting from differences between the estimated value of a trade contract and the actual bid value of that contract (bid savings) shall also be available as part of the CM-GMP contingency subject to the same terms.
- C. The CM-GMP Contingency is not allocated to any particular item of the cost of the work, and is established for the CM's use as may be required for increases in costs as noted above. It is understood that the amount of the CM-GMP contingency is the maximum sum available to the CM to cover costs incurred as a result of such unanticipated causes or details, and that cost overruns in excess of the amount of the CM-GMP contingency will be borne by the CM.
- D. The CM will notify the OWNER and Project Designer in writing of the CM's intent to apply any part of the CM-GMP contingency to any item within the Cost of the Work prior to any such application. The CM shall not implement the use of this contingency without the written approval of the OWNER. The CM shall fully document the change

on its copy of the construction documents. Documentation to substantiate the use of the CM-GMP contingency as it relates to change order work shall be prepared in accordance with Section 2.3.5 (Changes in the Work) of the OWNER's General Conditions. Allowable mark-ups on change orders for Trade Contractors and their subcontractors shall also be in accordance with Section 2.3.5 (Changes in the Work) as may be supplemented by the CM's own General Conditions. The CM shall not be entitled to receive any markup or fee on these changes. The CM will notify the OWNER in writing of the CM's intent to apply any part of the CM-GMP contingency to any item within the Cost of the Work prior to any such application. The CM shall not implement the use of this contingency through reallocation or other means without the written approval of the OWNER. The CM shall fully document the change on its copy of the construction documents.

2.4.2.15 SHOP DRAWING REVIEW / PROCESSING

- A. The CM will be responsible for logging all shop drawings / submittals prior to submission to the Project Designer and/or OWNER. The CM is to insure that shop drawings and submittal packages are submitted in a complete and appropriate manner and, if not, return them to the Trade Contractor for proper submission.
- B. The CM shall develop and implement a system for review, acceptance or rejection, and processing of all shop drawings / submittals, including noting critical projected lead-times on the CPM schedule. He shall review this system with the OWNER and the Project Designer, and obtain the OWNER's approval prior to implementation.
- C. The CM shall be responsible for tracking and monitoring all shop drawings / submittals throughout the Construction Phase until all shop drawings / submittals have been approved by the Project Designer and/or the OWNER.
- D. The CM shall include shop drawings as an agenda item on all OWNER meetings and advise the OWNER immediately of any delays in the shop drawing / submittal process.

2.4.2.16 PROJECT SITE DOCUMENTS

The CM shall devise, implement and maintain at the Project site, on a current basis, a structured document control system which includes and tracks records of all necessary contracts, RFI's, shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and any other documents and revisions thereto which arise out of the Contract or the Work. These documents shall be readily available to the OWNER any time during the performance of this contract.

2.4.2.17 REPORTS

- A. General
 - a. The CM shall keep accurate and detailed written records of project progress during all stages of construction.
 - b. The CM shall submit the required reports to the OWNER on the status of construction, including updated copies of all logs maintained at the site for change orders, claims, submittals, etc.
- B. Daily Diary

- a. The CM shall maintain a detailed daily diary of all events which occur at the jobsite or elsewhere, and which affect, or may be expected to affect, project progress. The diary shall record general weather data, including minimum and maximum temperatures, precipitation type and amount, sky conditions, and wind velocities if relevant to the Work that day. The diary shall also record all visitors, and include a detailed list of all material deliveries to the site. The diary shall be available to the OWNER at all times and shall be turned over to the OWNER upon completion of the contract.

C. Daily Reports

- a. The CM shall compile a summary daily report consisting of the following for submittal to the OWNER:
 - (1) The CM's Daily Diary.
 - (2) The Trade Contractors' daily report describing the construction activities of the day along with manpower and equipment usage, including that of their subcontractors and safety incidents.
- D. The CM shall provide to the OWNER on a monthly basis (every 30 days beginning 30 days from the issuance of the Notice to Proceed for a Construction Phase), or at the OWNER's request, a written report inclusive of the items noted below.
- E. Within ten (10) days of issuance of the Construction Phase Notice to Proceed, the CM is to submit to the OWNER the report formats for each of these reports and prior to implementation the CM must obtain the OWNER's approval of these formats.
- F. The monthly report by the CM is to include the items noted below.
 - a. Project Status: Overall summary of the project status to date for the Project inclusive of information on the Trade Contractors' Work and the percentage of completion for the Project.
 - b. Schedule: Revised project schedules with a summary statement as to the status of construction for the Project, and major milestones (achieved and slipped), including a discussion of each slippage and proposed recovery plan.
 - c. Cost Status: Overall summary of the financial status of the project with the cost control report.
 - d. Change Order: A summary statement as to the status of change orders for the Project inclusive of potential change orders, approved change order and rejected / voided change orders as well as change orders which require the OWNER's immediate attention.
 - e. Shop Drawings / Submittal and RFIs: A summary statement as to the status of shop drawings / submittal and RFIs for the Project inclusive of items requiring the OWNER and/or the Project Designer's immediate attention.
 - f. Quality Control / Inspections: A summary statement as to the status of quality control / inspections for the Project including, but not limited to, number and type of inspections made, overall project quality to date, and recommendations.

- g. Current construction and cost issues with proposed solutions for resolution.
- h. A copy of monthly photographs highlighting the current progress, as necessary
- i. A 30 and 60 day look ahead schedule.
- j. An accident report.

2.4.2.18 CONTRACT CLOSE-OUT

- A. The CM is responsible for compliance with all Contract Close-Out items per the Contract Documents. He shall obtain data from Trade Contractors and maintain a current set of record drawings, specifications and operating manuals.
- B. With mechanical and electrical equipment, the CM shall obtain the Operating and Maintenance (O&M) manuals at least four (4) months prior to the demonstration for such equipment. These O&M manuals are to be sent to the OWNER's Project Manager who is to forward one (1) set to the OWNER's department responsible for maintaining the facility for review prior to the equipment demonstration. Each O&M is to be reviewed and approved by the OWNER.
- C. The CM shall work closely with the OWNER as to the procedures and schedule for Contract Close-Out and the contractual obligations therein.
- D. At the completion of the Project and before final payment, the CM shall deliver all such records to the OWNER along with a complete set of as-built drawings for use by the Project Designer in preparing Record Drawings. Additionally the CM shall:
 - a. Establish that the following has been received from the Contractor(s) and forwarded expeditiously to the appropriate party:
 - (1) all necessary guarantees;
 - (2) as-built drawings;
 - (3) operating and maintenance manuals;
 - (4) certificates of compliance, etc.;
 - (5) all turnover items required by Contract; and
 - (6) other items required by the Contract.
 - b. Maintain a log of receipts, turnovers and transmittals.
 - c. Establish and document that all operating instructions have been given to the OWNER's personnel consistent with Contract requirements. Perform all necessary coordination.

2.4.2.19 SEPARATE CONTRACTS

Without invalidating the relationships with the CM, the OWNER reserves the right to let other contracts in connection with the Project, the work under which shall proceed simultaneously with the execution of the CM's work. The CM shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and the CM shall take all reasonable action to coordinate his work with theirs. If the work performed by the separate contractor is defective or so performed as

to prevent the CM from carrying out his work according to the plans and specifications, the CM shall immediately notify the OWNER upon discovering such conditions.

2.5 TERM

NYSIF anticipates awarding a five (5) year contract covering the services detailed in this RFP.

Note: 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.

2.6 COST, INVOICING, & PAYMENT

NYSIF uses electronic funds transfer for payments to contractors and vendors, consistent with the NYS Taxpayer Accountability Office initiative to reduce payment processing costs. NYSIF's EFT policy and Vendor Authorization form are located on NYSIF's website at:

www.nysif.com/procurement

2.6.1 PAYMENT

2.6.1.1 PROVISION FOR PAYMENT

- A. The Contractor shall complete and submit to the Owner for review, the detailed Schedule of Values (*The CM shall use the AIA form of application for payment, or equivalent*) including a certification by the Contractor for payment. It is understood and the Contractor acknowledges that the Schedule of Values is included as an administrative tool for the purpose of illustrating a format and minimum level of detail required, and shall not be considered as delineating the Contractor's scope of Work. The Owner may require the Contractor to revise its Schedule of Values. Further, the Owner reserves the right to accept only those cost distributions which, in the Owner's opinion, are reasonable, equitably balanced and correspond to the estimated quantities in the Contract Documents.
- B. The Owner shall not approve any billing request until the Owner approves the Schedule of Values.
- C. The Owner may make a partial payment to the Contractor on the basis of an approved Contractor's pencil copy (*AIA format, or equivalent*) billing request of the Work performed during each preceding business month. The Owner shall retain five percent (5%) of the amount of each said billing request.
- D. Any partial payment made shall not be construed as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.
- E. In preparing the Contractor's pencil copy billing request, material delivered to the Site and properly stored and secured at the Site and material approved to be stored off-site

under such conditions as the Owner shall prescribe, may be taken into consideration. All costs related to the storage of materials are the sole responsibility of the Contractor.

- F. The Contractor will provide an agreement for materials stored off-site and specific forms that the Owner shall approve and the Contractor must then complete and submit with any billing request for such material. Required information includes, but is not limited to: a general description of the material; a detailed list of the materials; a pre-approved storage area; segregation and identification of the material; insurance covering full value against all risks of loss or damage, with non-cancellation provision; immediate replacement agreement in event of loss or damage; agreement to pay the expense of all inspections of the material; ownership provisions; delivery guarantee; project completion statement; bill of sale, releases, and inventory.
- G. All monthly billing requests submitted by the Contractor shall be in the form and manner approved by the Owner. The Contractor shall furnish such affidavits, vouchers and receipts as to delivery and payment for materials as required by the Owner to substantiate each and every billing request.
- H. Timely payment by the Owner to the Contractor is governed by by Section 139-f of the State Finance Law and Article 11-A of State Finance Law.

2.6.1.2 SUBSTANTIAL COMPLETION AND REDUCTION OF RETAINAGE

- A. After the Owner has determined Substantial Completion of the Work, as evidence by the executed Notice of Substantial Completion, the Contractor shall submit to the Owner, for Owner's approval, a detailed estimate of the value of the known remaining items of Work as set forth by the Owner and a schedule of completion for said items of Work. The Owner shall review that estimate and make the final determination.
- B. The Owner, when all the Work is at Substantial Completion, shall pay to the Contractor the balance due the Contractor pursuant to the Contract less:
 - 1. Two (2) times the value of any remaining items of Work to be completed or corrected.
 - 2. An amount necessary to satisfy any and all Claims, liens or judgments against the Contractor.
- C. As the remaining items of Work are completed and accepted by the Owner, the Owner shall pay the appropriate amount pursuant to the duly completed and submitted monthly billing request.
- D. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until final Contract Closeout by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to this Section.
- E. The Contractor may request from the Owner a reduction of retainage upon Substantial Completion of the Work or when a phase of the Work is accepted by the Owner.
- F. The acceptance by the Contractor of the first payment of reduction of retainage shall be and shall operate as a release to the Owner of all Claims by and all liability to the Contractor for all items in connection with the Work and for every act and neglect of the Owner and others relating to or arising out of the Work. This provision may be waived

only by the Owner's General Attorney or by the designee of the General Attorney. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations under this Contract or the performance or payment bonds.

2.6.1.3 RELEASE AND CONSENT OF SURETY

Notwithstanding any other provision of the Contract Documents to the contrary, reduction of retainage and/or the final Application for Payment pursuant to Section 2.3.13.2 shall not become due until the Contractor submits to the Owner a General Release and Consent of Surety to said payment and completes all Work and provides all documents as evidenced by the executed Notice of Substantial Completion as required by the Contract in form and content acceptable to the Owner. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations under this Contract or the performance or payment bonds.

2.6.1.4 LIENS

Upon the Owner's receipt of a lien, a sum which shall be one and one-half (1.5) times the amount stated to be due in the notice of lien shall be deducted from the current payment due the Contractor. This sum shall be withheld until the lien is discharged.

2.6.1.5 WITHHOLDING OF PAYMENTS

- A. The Owner may withhold from the Contractor any part of any payment as may, in the judgment of the Owner, be necessary:
1. To assure payment of just claims of any entity supplying labor, materials or equipment for the Work.
 2. To protect the Owner from loss due to defective Work not remedied.
 3. To protect the Owner, Client, Construction Manager or Consultant from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of other Contractors, Subcontractors or others caused by the act or neglect of the Contractor or Subcontractors.
 4. To assure payment of fines and penalties, this may be imposed on the Contractor pursuant to the provisions of the contract.
 5. To assure payment of fines and penalties that may be imposed on the Contractor pursuant to Section 1.9, Participation of NYS Business Enterprises (MWBE), of the RFP and Appendix M. The estimated amount of said fines and penalties shall be the difference between the planned dollar amount of M/WBE sub-contract awards and the actual dollar amount of such awards.
 6. To protect and make whole the Owner from a contractor's non-compliance to the requirements set forth in Section 1.8, Insurance Requirements, of the RFP.
 7. Damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work of the Contract in strict accordance with the Contract Documents.
- B. The Owner shall have the right to apply any such amounts so withheld in such a manner as the Owner may deem proper to satisfy said claims, fines and penalties, or to secure

said protection. Said application of the money shall be deemed payments for the account of the Contractor.

2.6.1.6 LATE PAYMENT

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

2.6.1.7 OWNER LIABILITY

- A. The provisions of Section 2.5.1 are solely for the benefit of the Owner, and any action or non-action here under by the Owner shall not give rise to any liability on the part of the Owner.
- B. The Contractor shall comply with the requirements of Section 2.2.8.7 – Limitations on Actions.

2.7 SUBCONTRACTING

The Bidder agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of NYSIF. Approval shall not be unreasonably withheld upon written receipt of written request to subcontract. The use of Subcontractors is subject to the following:

- A. Bidders intending to subcontract portions of services under this procurement must complete and submit with their bid Appendix Y, “Subcontractor Utilization”, clearly identifying the nature and extent of their and its involvement in and/or proposed performance under the Contract.
- B. In selecting a Subcontractor and prior to execution of a Sub-Contract, the Contractor shall consider whether the Subcontractor is qualified and responsible. The Contractor shall also consider whether the Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration. The Contractor shall not Subcontract with any Subcontractor on the List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract, published by the NYS Department of Labor Bureau of Public Work. The Contractor shall not Subcontract with any Subcontractor on the debarment list published by the NYS Workers’ Compensation Board pursuant to Section 141-b of the NYS Workers’ Compensation Law. The contractor shall also require each of their subcontractors to submit to NYSIF a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form- Appendix V. A failure to comply with this requirement may result in the Subcontractor(s) being removed from the Project Site.
- C. The Owner reserves the right to disapprove any proposed Subcontractor and such disapproval shall not result in additional cost to the Owner. If requested by the Owner, the Contractor shall provide copies of any and all Subcontract and purchase order agreements related to the Work.
- D. The Contractor retains ultimate responsibility for all services performed under the Contract. The Contractor's use of Subcontractors shall not diminish the Contractor's obligation to

complete the Work. The Contractor shall control and coordinate the Work of Subcontractors and be fully responsible for the acts and omissions of Subcontractors, and of persons either directly or indirectly employed by Subcontractors. The Contractor shall be responsible for all guarantees and warranties provided by Subcontractors.

- E. All subcontracts shall be in writing. The Contractor shall be responsible for requiring each Subcontractor, to extent of the Work to be performed by such Subcontractor, to be bound to the Contractor by all the terms, conditions and requirements of the Contract Documents, and to assume towards the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. Unless waived in writing by the Owner, all subcontracts between the Bidder and subcontractors shall expressly name New York State, through NYSIF, as the sole intended third party beneficiary of such subcontract.
- F. Nothing contained in the Contract or any subcontract shall create any contractual relationship between Subcontractors and the Owner. Owner reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make NYSIF or NYS a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against NYSIF. NYSIF reserves the right, at any time during the term of the Contract, to verify that the written subcontract between the Bidder and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in the Contract.
- G. If at any time during performance under the Contract, total compensation to a subcontractor exceeds or is expected to exceed \$100,000, the Contractor shall require that subcontractor submit and certify to NYSIF a Vendor Responsibility Questionnaire.
- H. Payment by the Owner to the Contractor is governed by Article 11-A of the State Finance Law. Timely payment (7 days) by the Contractor to the Subcontractor is governed by Section 139-f of the State Finance Law.
- I. The Contractor shall give NYSIF immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor's duties under the Contract. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Contract.

2.8 LOCATION AND TRAVEL

The rates provided in the Fee Schedule (Appendix Z) will be inclusive of all costs, including any and all travel expenses. For purposes of any contract resulting from this RFP, NYSIF will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor. It is understood that travel expenses are not allowed, and will not be billed to NYSIF.

SECTION 3 – 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 section 3.1 below. However, NYSIF may request, at its sole discretion, that evaluators interview the Bidder's staff, as stated in section 3.2 below.

Bidder 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.

3.1 EVALUATION CRITERIA

The evaluation criteria will consist of three (3) separate parts: (1) a Technical Proposal, (2) a Financial Proposal, and (3) a Quantitative Factor for Business Certification as described below. Each component will be evaluated separately and independently in accordance with the RFP as further described below. The relative weights of each part of the Proposal are as follows:

1. Technical Proposal: 65%
2. Financial Proposal: 30%
3. Minority and Woman-Owned Business Enterprises (MWBE) Certification, Small Business Enterprise (SBE) status, Service Disabled Veteran Owned Business (SDVOB) Certification (per section 3.1.3): 5%

3.1.1 TECHNICAL

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 services of a similar scope. Includes references for Bidder and Bidder's liaison to NYSIF. (65% of the overall score). This process consists of the following steps:

1. Pass / Fail Evaluation: the technical evaluation team will inspect each Technical Proposal to determine if it contains responses to all of the mandatory requirements as described in section 2.1 of the RFP.

Please Note: Should a Bidder fail to meet any of the mandatory requirements (section 2.1), the Bidder will be disqualified, and no further evaluation or

scoring will be completed.

2. Qualifications and Technical Evaluation: This phase of the Technical evaluation reviews the Bidders capability to meet NYSIF's needs as described in this RFP.

3.1.2 FINANCIAL EVALUATION

The Financial evaluation will be based upon a review of the Grand Total Cost of the Bidders Fee Schedule Proposal (Appendix Z), which details the total cost to provide all services listed within this RFP. (30% of the overall score)

3.1.3 QUANTITATIVE FACTOR FOR NYS CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES, SMALL BUSINESSES, AND SERVICE DISABLED VETERAN OWNED BUSINESSES AS DEFINED IN NYS EXECUTIVE LAW

State Finance Law section 163(1)(j) allows, when making a Best Value determination, for the inclusion of a quantitative factor for Bidders that are Small Businesses, certified Minority or Women-owned Business Enterprises (MWBs), or Service Disabled Veteran Owned Businesses (SDVOBs) as defined in subdivisions 310(7), 310(15), 310(20), and 369-H of NYS Executive Law.

In accordance with such authority, five percent (5%) of the overall evaluation scale (referred to herein as the "quantitative factor") will be awarded to any responsive Bidder who meets one of the following criteria (NOTE: Although a Bidder may meet more than one of the criteria, credit is to be awarded for only one category, not multiple categories):

- a. The bidder is a New York State Certified Minority- Owned Business Enterprise (MBE) as defined in Executive Law 310(7) *or*
- b. The bidder is a New York State Certified Woman- Owned Business Enterprise (WBE) as defined in Executive Law 310(15) *or*
- c. The bidder is a Small Business Enterprise as defined in Executive Law Section 310(20) *or*
- d. The bidder is a Service Disabled Veteran Owned Business Enterprise (SDVOB as defined in Executive Law Section 369-H

3.1.4 EVALUATION PREROGATIVES

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

For the purpose of insuring the completeness and comparability of offers, NYSIF reserves the right to analyze submissions and make adjustments or normalize submissions in the bid proposal, including the Bidder's technical assumptions, and underlying calculations and assumptions used to support the Bidder's computation of costs, or to apply such other methods, as it deems necessary to make level comparisons across bids.

3.2 PRESENTATION/INTERVIEW

NYSIF, at its own discretion, may require Bidders to attend an interview. NYSIF may select the top three (3) Bidders plus any vendors within 10% of the first-place Bidder, to attend an interview. The top Bidders will be determined by total score as outlined in section 3.1. NYSIF evaluators may use the information gathered during this process to revise the scores from the technical evaluation, based on the merits and clarifications 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.

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 at least one week prior to the scheduled presentation/interview date.

3.4 CONTRACT APPROVAL

The contract between NYSIF and the successful Bidder will not be binding until it has been approved by the NYSIF Board of Commissioners and the NYS Department of Financial Services.

SECTION 4 – BID/PROPOSAL FORMAT

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

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 submissions:

4.1 BID PREPARATION

Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein. Bidders are responsible for checking NYSIF's website at www.nysif.com/procurement for any RFP amendments, addenda, and/or updates.

- 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 must be bound and placed in a sealed envelope separately and enclosed with the Bid. An Electronic copy of Appendix Z fee schedule must be submitted in PDF format. **No references to costs are to be included in the detailed 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 could be subject to rejection.

4.2 BID FORMAT

- Submission must include **one (1) hard copy** of the proposal, organized as outlined below. Submission must also include **one (1) exact electronic copy** (CD/DVD-rom or USB flash drive) of the proposal. The **exact electronic copy** must include a copy of the Bidders Fee Schedule in a separate file from the Bidders proposal. The electronic copy of your proposal & fee schedule may not be password protected.
- 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*, must be bound and placed in a sealed envelope separately and enclosed with the Bid. An Electronic copy of Appendix Z fee schedule must be submitted in PDF format. **No references to costs are to be included in the detailed proposal.**
- Use the following format as your Table of Contents.

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

4.2.1 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.

4.2.2 BIDDER CERTIFICATIONS

Each Bidder is required to submit the Bidder Certifications form, found after Section 4 of the RFP.

4.2.3 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:

- a. Other city, state or federal government agencies *previously* under contract with the Bidder's firm within the last five (5) years.
- b. Other city, state or federal government agencies *currently* under contract with the Bidder's firm.
- c. A list of all staff being proposed by Bidder.
- d. A copy of Bidder's certification to do business in New York State.

4.2.4 TECHNICAL EXPERIENCE / DESCRIPTION OF PROPOSED SERVICES

Submit as described in *Section 2, Technical Specifications*, of this RFP.

Also include the following:

- a. 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.
- b. Provide Health and Safety Plan.
- c. Provide escalation procedures NYSIF can use for reporting problems to higher levels of management within the Bidder's organization.
- d. A Quality Assurance Plan.
- e. Provide an organizational chart and 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.

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

4.2.5 REFERENCES

The bidder shall provide a minimum of three (3) references of similar scope which best represents their abilities to satisfy the requirements of this RFP (Appendix I). References from current clients (those with which the bidder has an existing contractual relationship) are preferred. A minimum of three (3) references shall also be provided for any subcontractors listed as part of the bidder's proposal. Please note, NYSIF cannot be used as a reference. References will be used for verification purposes only. References must verify:

- a. The bidder's ability to manage a project of similar size and scope;
- b. The following information:
 1. Name of the client;
 2. Name, title and telephone number for the contact at the client;
 3. Value, type and duration of contract with the client; and
 4. Services provided, including geographic area involved; a description of how the bidder satisfied the client's requirements and improvements made to the client's systems as a result of the bidder's efforts.

Bidders may provide more than three (3) references to ensure a minimum of three (3) references can be verified. NYSIF will make three (3) attempts between the hours of 9:00 and 5:00, on three (3) different days across a one (1) week period to contact references. It is the firm's responsibility to ensure that contacts will be available and willing to provide a reference.

4.2.6 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.

4.2.7 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 Exhibit A, *Standard Clauses*.

4.2.8 APPENDICES

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

- ***MacBride Questionnaire, Appendix D***
- ***Vendor Responsibility Questionnaire (CCA-2), Appendix E***
- ***NYS Certification, Appendix F***
- ***Encouraging Use of NYS Businesses in Contract Performance, Appendix G***
- ***Disclosure of Prior Non-Responsibility Determinations, Appendix H***
- ***Bidder References, Appendix I***
- ***MWBE/EEO Requirements and Procedures, Appendix M*** requires Bidders to submit (i) form 101; (ii) form 103 or a copy of bidders current NYSDER MWBE certification; and (iii) form 106 or a copy of bidders EEO policy
- ***Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance, Appendix S*** requires Bidders to submit form S-100, Utilization Plan and/or a copy of bidders current SDVOB certification.
- ***Vendor Assurance of No Conflict of Interest or Detrimental Effect, Appendix V***
- ***EO 177 Certification: Prohibiting State Contracts With Entities That Support Discrimination, Appendix X***
- ***Subcontractor Utilization, Appendix Y (if applicable)***
- ***Fee Schedule, Appendix Z*** The Fee Schedule must be bound and placed in a sealed envelope separately and enclosed with the Bid. An electronic copy of Appendix Z fee schedule must be submitted in PDF format.

Exhibit A, B and C should be retained by the Bidder for future reference. Do not return to NYSIF as part of the bid submission.

Any other appendices referenced in this RFP but not indicated above as being required at time of submission are included for informational purposes only. The awarded contractor(s) will be required to complete these forms prior to contract execution.

4.3 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. E-mail and faxed bid submissions are NOT acceptable. LATE BIDS will be handled in accordance with Exhibit B, clause 9.

- **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 # 2019-47-RE
15 Computer Drive West
Albany, NY 12205**

Bidders assume all risks for timely, properly submitted deliveries.

BIDDER CERTIFICATIONS

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

Certifications:

- _____ 1. The person or persons signing below is (are) duly authorized to sign the proposal and the contract, and is (are) identified on the *Title Page*.
- _____ 2. 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.*
- _____ 3. The Bidder agrees to comply with all terms of Exhibit A, Standard Clauses.
- _____ 4. The Bidder is in compliance with or meets all Bidder Certification Requirements (Exhibit B, clause 39).
- _____ 5. The fee(s) quoted in the Fee Proposal Schedule is a firm and irrevocable offer for 180 days.
- _____ 6. The Bidder meets or exceeds all Mandatory Bidder Qualifications and has provided evidence of such in its bid/proposal.
- _____ 7. The Bidder understands the work to be done, and is committed to performing the work as expeditiously as possible.
- _____ 8. The Bidder assures that NYSIF's information or data is NOT transmitted outside of or accessed from outside the United States. *Any exceptions to these terms and conditions must be explicitly stated in a separate section of the proposal. NYSIF reserves the right to seek non-material clarifications to this provision if determined to be in NYSIF's best interest. Bidders who do not meet the minimum required data security levels will be disqualified.*

Freedom of Information Law (FOIL):

Please indicate whether you believe that any of the information supplied herein constitutes a trade secret or that disclosure of the information would cause substantial injury to the Bidder's competitive position and should be exempt from disclosure under the Freedom of Information Law (see Exhibit B, clause 15 for additional information):

☐ No☐ Yes

BIDDER CERTIFICATIONS

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.
- _____ 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.

BIDDER CERTIFICATIONS

Conflicts of Interest:

- _____1. Bidder has provided “Appendix V – Vendor Assurance of No Conflict of Interest or Detrimental Effect”, signed by an authorized executive or legal representative attesting that the Bidder’s performance of the services does not and will not create a conflict of interest with, nor position Bidder to breach any other contract currently in force with, the State of New York, and that Bidder will not act in any manner that is detrimental to any State of New York project on which Bidder is rendering services.
- _____2. Bidder hereby reaffirms the attestations made in its proposal and covenants, and represents that there is and shall be no actual or potential conflict of interest that could prevent Bidder’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of the RFP or subsequent Contract. Bidder shall have a duty to notify NYSIF immediately of any actual or potential conflicts.
- _____3. In conjunction with any subcontract under this RFP or subsequent Contract, the Bidder shall obtain and deliver to NYSIF, prior to entering into a subcontract, an “Appendix V- Vendor Assurance of No Conflict of Interest or Detrimental Effect”, signed by an authorized executive or legal representative of the subcontractor. Bidder shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to NYSIF a signed and completed Appendix V for each of its subcontractors prior to entering into a subcontract.
- _____4. NYSIF and Bidder recognize that conflicts may occur in the future because the Bidder may have existing, or may establish new relationships. The NYSIF will review the nature of any relationships and reserves the right to terminate any contract for any reason, or for cause, if, in the judgement of NYSIF, a real or potential conflict of interest cannot be cured.
- _____5. Bidder must disclose any existing or contemplated relationship with any other person or entity, including relationships with any of its members, shareholders of 5% or more, parents, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the NYSIF, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your firm would eliminate or prevent it. Indicate in the bid what procedures will be followed to detect, notify the NYSIF of, and resolve such conflicts.
- _____6. Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, “Commission”) and, if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

BIDDER CERTIFICATIONS

Public Officers Law:

- _____ 1. As a general rule and in accordance with New York Public Officers law, former employees of NYSIF may neither appear nor practice before NYSIF, nor receive compensation for services rendered on a matter before NYSIF, for a period of two years following their separation from NYSIF. In addition, former NYSIF are subject to a “lifetime bar” from appearing before NYSIF receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with NYSIF.
- _____ 2. Bidder and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law; other laws applicable to the service of State employees; and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). Bidder certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this RFP or subsequent contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by Bidder or is Subcontractors and who is disqualified from providing services under the RFP or subsequent contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from a Contract. Bidder shall identify and provide the State with notice of those employees of Bidder and its Subcontractors who are former employees of the State that will be assigned to perform services under this RFP or subsequent Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that Bidder provide it with whatever information that State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be conflict with any of the Ethics Requirements. The State shall have the right to terminate the Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

Subcontracting:

- _____ 1. Bidder agrees not to subcontract any of its services, unless, as indicated in its proposal, without the prior written approval of NYSIF.

BIDDER CERTIFICATIONS

Sexual Harassment Prevention:

_____ 1.* By submission of this bid, pursuant to NY State Finance Law § 139-I, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid and/or subcontracting each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the NYS Labor Law.

**Further information is set forth in NYSIF's Exhibit B, General Specifications, Clause 39.aa.*

Signature

Typed Name

Company Position_____
Company Name

Date Signed

Sworn to before me this

_____ Day of _____, 20____

Notary Public

NYSIF EXHIBIT A

STANDARD CLAUSES

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

4. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

5. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. 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.

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

7. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the

Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

11. 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.

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

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

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

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

16. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of 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.

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

21. 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).

22. 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.

23. 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.

24. 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.

25. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

NYSIF EXHIBIT 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 NYSIF Exhibit 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. NYSIF Exhibit A Standard Clauses
- b. Contract and other writing(s) setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. Clarifications must be specifically noted in writing as to 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 Exhibit A).
- d. NYSIF Exhibit B (General Specifications).
- e. Contractor's Bid or Proposal.

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

NYSIF is responsible for providing addenda or responding to questions from prospective Bidders. If it is necessary to revise the Bid Documents before the due date for bids, amendments will be posted on NYSIF's website: www.nysif.com/procurement.

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 and time.

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

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

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

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 by NYSIF relative to Bid timeliness shall be final.

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, will 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 prior to the final filing date for submission of a bid, a Bidder fails 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 must be specifically enumerated in the "Comments and Limitations" section of the proposer's bid response; and
- b. The Bidder 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, deletion, 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

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 at the time of bid submission, 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.

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 contracts@nysif.com.

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 proprietary information, a written request to NYSIF to not disclose such information must accompany the Bid. 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 proprietary information. Where a Freedom of Information request is made for a trade secret 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.

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 NYSIF 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 NYSIF, 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 bylaw.

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 NYSIF. 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 NYSIF under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the NYSIF 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 disability benefits (form C-105.2 and form DB-120.1, respectively), 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 herein, 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 NYSIF. 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 NYSIF and pass through the manufacturer’s standard commercial warranty to NYSIF 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, 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 NYSIF shall in no event be liable or responsible for such costs.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to NYSIF 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/Services. 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 from Bidders on the contents of the bid/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. 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 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-responsible.

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 Bidder 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 a Bidder's proposal and/or to determine a Bidder'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 obtaining 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.** ff. 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, including NYSIF, and to disqualify based on unsatisfactory reports and/or 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 a 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.** 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 NYSIF'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 interests of NYSIF in the event that NYSIF 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 Financial Services, 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 NYSIF and/or the State;
- vv.** Have any service completed via separate competitive bid or other means, as determined to be in the best interest of NYSIF;

- ww. 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 costs.

38. 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 its standard payment practices.
- 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.

The bidder agrees not to subcontract any of its services, unless as indicated in its proposal, without prior written approval of NYSIF. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

- 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 Bidder certifies that 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 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. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your Staffing Firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.
- k. The Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, “Commission”), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

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.

- l. The Bidder will conform to all provisions of NYSIF Exhibit A, *Standard Clauses*.
- m. 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.
- n. 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.
- o. 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.
- p. 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. Furthermore:
 - Contractor agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.
 - Contractor agrees to cooperate with NYSIF’s periodic risk assessment of Contractor and the continued adequacy of its cybersecurity practices, in accordance with 23 NYCRR 500.11(a)(4) of the *Cybersecurity Requirements for Financial Services Companies*, as promulgated by the Department of Financial Services.
- q. 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.
- r. As a general rule and in accordance with New York Public Officers law, former employees of NYSIF may neither appear nor practice before NYSIF, nor receive compensation for services rendered on a matter before NYSIF, for a period of two years following their separation from NYSIF. In addition, former NYSIF are subject to a “lifetime bar” from appearing before NYSIF receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with NYSIF.
- s. Bidder and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law; other laws applicable to the service of State employees; and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). Bidder certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under

this RFP or subsequent contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by Bidder or is Subcontractors and who is disqualified from providing services under the RFP or subsequent contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from a Contract. Bidder shall identify and provide the State with notice of those employees of Bidder and its Subcontractors who are former employees of the State that will be assigned to perform services under this RFP or subsequent Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that Bidder provide it with whatever information that State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be conflict with any of the Ethics Requirements. The State shall have the right to terminate the Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

- t. Bidder hereby reaffirms the attestations made in its proposal and covenants, and represents that there is and shall be no actual or potential conflict of interest that could prevent Bidder's satisfactory or ethical performance of duties required to be performed pursuant to the terms of the RFP or subsequent Contract. Bidder shall have a duty to notify NYSIF immediately of any actual or potential conflicts.
- u. If NYSIF impedes or causes any delay in the completion of the Contractor's work, then NYSIF should be notified immediately in writing of the delay and the reason(s) for such delay.
- v. Tax Law 5-a is in effect for 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.
- w. Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between NYSIF and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of a solicitation release through final award and approval of the Procurement Contract by NYSIF and, if applicable, Office of the State Comptroller or Department of Financial Services ("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 Section 139-j (3)(a). Designated staff, as of the date hereof, is identified in the solicitation document (see INQUIRIES/ISSUING OFFICE/DESIGNATED CONTACT). 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.
- x. Bidder has provided "Appendix V – Vendor Assurance of No Conflict of Interest or Detrimental Effect", signed by an authorized executive or legal representative attesting that the Bidder's performance of the services does not and will not create a conflict of interest with, nor position Bidder to breach any other contract currently in force with, the State of New York, and that Bidder will not act in any manner that is detrimental to any State of New York project on which Bidder is rendering services.
- y. In conjunction with any subcontract under this RFP or subsequent Contract, the Bidder shall obtain and deliver to NYSIF, prior to entering into a subcontract, an "Appendix V- Vendor Assurance of No Conflict of Interest or Detrimental Effect", signed by an authorized executive or legal representative of the subcontractor. Bidder shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to NYSIF a signed and completed Appendix V for each of its subcontractors prior to entering into a subcontract.
- z. NYSIF and Bidder recognize that conflicts may occur in the future because the Bidder may have existing, or may establish new relationships. The NYSIF will review the nature of any relationships and reserves the right to terminate any contract for any reason, or for cause, if, in the judgement of NYSIF, a real or potential conflict of interest cannot be cured.
- aa. By submission of this bid, pursuant to NY State Finance Law § 139-I, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid and/or subcontracting each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the NYS Labor Law.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in

consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL:
<https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, NYSIF may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on NYSIF's Bidder Certification Form, which Bidder must submit with its bid.

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 Bidders, 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 EEO programs 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.
 - ii. The contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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. ONLY FOR CONTRACTS WITH A TOTAL EXPENDITURE IN EXCESS OF \$250,000: 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.
 - iv. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
 - v. The Contractor will include the provisions of Subdivisions (i) through (iv) of this Subsection c, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will

be binding upon each Subcontractor as to work in connection with the Contract.

- vi. 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

Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by NYSIF that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to contracts@nysif.com to a designated contact identified in the Solicitation.

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.

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 or designee, 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 or designee, 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 or Bid Tab Certification or; 2) NYSIF's

issuance of a letter to the Bidder 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 or designee 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 all legal and/or factual grounds for disagreement with a specification or a procurement determination;
- A statement as to the form of relief requested; and
- Copies of all applicable supporting documentation.

b. Protest Determination

NYSIF's Director of Administration or designee 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 or designee'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 <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/17.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.

NYSIF EXHIBIT 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 NYS Attorney General (AG), Office of the State Comptroller (OSC) or the Department of Financial Services (DFS). 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 DFS 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:** See section 2.3.8.1 of the RFP.
- b. For Convenience:** See section 2.3.8.2 of the RFP.
- c. For Non-Responsibility:** Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSIF officials or staff, the contract may be terminated by NYSIF at the Contractor's expense where the Contractor is determined by NYSIF to be non-responsible. 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.
- d. 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.
- e. 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.
- f. Conflicts of Interest:** NYSIF reserves the right to review the nature of relationships and reserves the right to terminate the contract for any reason, or for cause, if, in the judgement of NYSIF, a real or potential conflict of interest cannot be cured.

4. SUSPENSION OF WORK

- a. For Convenience:** 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.

- b. For Non-Responsibility:** NYSIF, in its sole discretion, reserves the right to suspend any or all activities under this contract, at any time, when NYSIF discovers information that calls into questions the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as NYSIF issues a written notice authorizing a resumption of performance under the contract.

5. VENDOR RESPONSIBILITY

The contractor shall at all times during the contract term remain responsible. The Contractor agrees, if requested by NYSIF, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

6. SAVINGS/FORCE MAJEURE

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

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

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

- a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to 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.

7. DISASTER RECOVERY PLAN**A. Disaster Recovery Plan**

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

B. Access to Disaster Recovery Plans

1. Contractor shall make available to NYSIF any reports or findings of any regulatory agency dealing with Contractor's disaster recovery capabilities to provide services hereunder, unless it is prohibited from making such disclosure by law or by any such agency, together with any reports of its independent auditors relating to such plans. Contractor shall also make available to NYSIF results of any tests of Contractor's disaster recovery facilities conducted by Contractor or any third party with respect to the services provided under the Agreement. Contractor shall provide an annual briefing to NYSIF related to its disaster recovery strategy.
2. NYSIF acknowledges that Contractor's Master Disaster Recovery Plan providing disaster recovery for these services contains highly sensitive and confidential business information. It is understood and agreed that NYSIF

may examine and approve the Master Disaster Recovery Plan; however, such examination shall be limited to that portion of the plan(s) which relates to the providing of services under this Agreement. Contractor may in its discretion limit NYSIF's review of its Master Disaster Recovery Plan(s) to a review of a copy maintained at Contractor's Capital Region office and not permit any copies to be made.

C. Disaster Event Notification

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

8. PRODUCT DELIVERY

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

9. WEEKEND AND HOLIDAY DELIVERY

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

10. SHIPPING / RECEIPT OF PRODUCT

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

11. PRODUCT SUBSTITUTION

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

12. REJECTED PRODUCT

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

13. INSPECTION AND ACCEPTANCE OF THE WORK

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

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

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

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

14. TITLE AND RISK OF LOSS

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

15. EMERGENCY CONTRACTS

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or NYSIF determines pursuant to its 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 it will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this paragraph. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

16. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of NYSIF. Failure to obtain consent to assignment from NYSIF shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with 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. The assignment agreement may be subject to the approval of AG and OSC or DFS. NYSIF reserves the right to reject any proposed assignee at its discretion.

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

17. ASSIGNMENT OF CLAIM

Contractor hereby assigns to the State any and all 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.

18. RIGHT TO AUDIT

Contractor 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, Contractor agrees that any cost items claimed but not supported by such records shall be disallowed, or if payment has already been made, Contractor shall, upon written demand of NYSIF, refund to NYSIF the amount disallowed.

SSAE 18 Reports:

If Contractor utilizes a Statement on Standards for Attestation Engagements (SSAE) No. 16, or Statement on Standards for Attestation Engagements (SSAE) No. 18, as developed by the American Institute of Certified Public Accountants (AICPA), within the past twenty-four months prior to the Agreement, Contractor shall provide NYSIF with a copy of Contractor's 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 Contractor SSAE 16 or 18 Report(s), or SOC Reports shall not take the place of NYSIF's right under the Agreement to independently audit Contractor.

19. 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.

20. 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.

21. 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:

NYSIFAPVNDRINV@nysif.com

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 (OSC).

22. 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 to Contractor.

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

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

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

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

- e. **Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by NYSIF from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to NYSIF the amount of such claim or portion of the claim still outstanding, on demand. NYSIF reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

23. 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.

24. PRODUCT ACCEPTANCE – HARDWARE AND SOFTWARE

Unless otherwise provided by mutual agreement, NYSIF shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Unless otherwise provided by mutual agreement, NYSIF shall have the option to run testing on the Product prior to acceptance. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions by NYSIF's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by NYSIF as of the expiration of that period.

25. TOXIC SUBSTANCES

Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide NYSIF with not less than two copies of a material safety data sheet, which 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 NYSIF's agency representative.

26. 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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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

35. 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.

36. 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 consulting 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.

For more information on this requirement, please see the NYS Office of the State Comptroller's [Guide to Financial Operations Section XI.18.C Consultant Disclosure Legislation](#).

37. 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.

38. 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.

39. 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.

For Public Works Agreements, Contractor must provide notice to NYSIF within 15 calendar days of the date that the contractor knew or should have known of the facts that form the basis of the claim, unless a different time frame is provided elsewhere in this Agreement. Notice should be as factually complete as possible. Further, Contractor has a continuing duty to promptly provide NYSIF with information about the condition and the claim. NYSIF shall provide Contractor with written acknowledgement of its receipt of notice, but NYSIF's failure to provide written acknowledgement shall not be a breach of contract or in any way alter the Contractor's obligation to provide timely notice.

40. 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 Financial Services.

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 NYSIF and 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 Financial Services

41. 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.

42. 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.

43. 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.

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

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

You have selected the For-Profit Construction questionnaire, commonly known as the "CCA-2," which may be printed and completed in this format or, **for your convenience, may be completed online using the [New York State VendRep System](#).**

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or official must certify the questionnaire and the signature must be notarized.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the OSC Help Desk at ciohelpdesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

BUSINESS ENTITY INFORMATION

<u>Legal Business Name</u>		<u>EIN</u> _____		
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>		
		Telephone ext.	Fax	
		Website		
Authorized Contact for this Questionnaire				
Name		Telephone ext.	Fax	
Title		Email		
Additional <u>Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years, the state or county where filed and the status (active or inactive).				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS

1.0 <u>Business Entity Type</u> – Check appropriate box and provide additional information:			
a) <input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)	Date of Incorporation		
b) <input type="checkbox"/> <u>Limited Liability Company</u> (<u>LLC</u> or <u>PLLC</u>)	Date Organized		
c) <input type="checkbox"/> <u>Limited Liability Partnership</u>	Date of Registration		
d) <input type="checkbox"/> <u>Limited Partnership</u>	Date Established		
e) <input type="checkbox"/> <u>General Partnership</u>	Date Established	County (if formed in NYS)	
f) <input type="checkbox"/> <u>Sole Proprietor</u>	How many years in business?		
g) <input type="checkbox"/> Other	Date Established		
If Other, explain:			
1.1 Was the <u>Business Entity</u> formed in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No," indicate jurisdiction where the <u>Business Entity</u> was formed:			
<input type="checkbox"/> United States	State		
<input type="checkbox"/> Other	Country		

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

I. BUSINESS CHARACTERISTICS			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the <u>CIK code</u> or Ticker Symbol:			
1.3 Is the <u>Business Entity</u> currently <u>registered to do business in New York State</u> ?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>Note: Select "Not Required" if the Business Entity is a Sole Proprietor or General Partnership</i>			<input type="checkbox"/> Not Required
If "No," explain why the <u>Business Entity</u> is not required to be <u>registered to do business in New York State</u> :			
1.4 Is the responding <u>Business Entity</u> a <u>Joint Venture</u> ? Note: If the submitting <u>Business Entity</u> is a <u>Joint Venture</u> , also submit a separate questionnaire for each <u>Business Entity</u> comprising the <u>Joint Venture</u> .			<input type="checkbox"/> Yes <input type="checkbox"/> No
1.5 If the <u>Business Entity's Principal Place of Business</u> is not in New York State, does the <u>Business Entity</u> maintain an office in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>(Select "N/A" if <u>Principal Place of Business</u> is in New York State.)</i>			<input type="checkbox"/> N/A
If "Yes," provide the address and telephone number for one office located in New York State.			
1.6 Is the Business Entity a New York State certified <u>Minority-Owned Business Enterprise</u> , or <u>Women-Owned Business Enterprise</u> , or <u>New York State Small Business</u> , or federally certified <u>Disadvantaged Business Enterprise</u> ?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," check all that apply: <input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE) <input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE) <input type="checkbox"/> <u>New York State Small Business</u> <input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)			
1.7 Identify each person or business entity that is, or has been within the past five (5) years, <u>Principal Owner</u> of 5.0% or more of the firm's shares; a Business Entity Official; or one of the five largest shareholders, if applicable. <i>(Attach additional pages if necessary.)</i> <u>Joint Ventures</u> : Provide information for all firms involved.			
Name <i>(For each person, include middle initial)</i>	Title	Percentage of ownership (Enter 0%, if not applicable)	Employment status with the firm
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS		
2.0 Are there any other <u>construction</u> -related firms in which, now or in the past five years, the submitting <u>Business Entity</u> or any of the individuals or business entities listed in question 1.7 either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner or proprietor of said other firm? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Firm/Company Name	Firm/Company EIN (If available)	Firm/Company's Primary Business Activity
Firm/Company Address		
Explain relationship with the firm and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with this firm?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.1 Does the <u>Business Entity</u> have any <u>construction</u> -related <u>affiliates</u> not identified in the response to question 2.0 above? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN (If available)	Affiliate's Primary Business Activity
Affiliate Address		
Explain relationship with the affiliate and indicate percent of ownership, if applicable <i>(enter N/A, if not applicable)</i> :		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting Business Entity has in common with this affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.2 Has the <u>Business Entity</u> participated in any <u>construction-related Joint Ventures</u> within the past three (3) years? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name	Joint Venture EIN (If available)	Identify parties to the Joint Venture

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

III. CONTRACT HISTORY

3.0 Has the Business Entity completed any construction contracts? ☐ Yes ☐ No

If "Yes," list the ten most recent construction contracts the Business Entity has completed using Attachment A – Completed Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc.

If less than ten, include most recent subcontracts on projects up to that number.

3.1 Does the Business Entity currently have uncompleted construction contracts? ☐ Yes ☐ No

If "Yes," list all current uncompleted construction contracts by using Attachment B – Uncompleted Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc.

Note: Ongoing projects must be included.

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement? ☐ Yes ☐ No

4.1 Been subject to a denial or revocation of a government prequalification? ☐ Yes ☐ No

4.2 Had any bid rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid? ☐ Yes ☐ No

4.3 Had a proposed subcontract rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid? ☐ Yes ☐ No

4.4 Had a low bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract? ☐ Yes ☐ No

4.5 Agreed to a voluntary exclusion from bidding/contracting with a government entity? ☐ Yes ☐ No

4.6 Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? ☐ Yes ☐ No

For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, project(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

5.0 Defaulted on or been suspended, cancelled or terminated for cause on any contract? ☐ Yes ☐ No

5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution (except any disputed work proceeding) in connection with any government contract? ☐ Yes ☐ No

5.2 Entered into a formal monitoring agreement, consent decree or stipulation settlement as specified by, or agreed to with, any government entity? ☐ Yes ☐ No

5.3 Had its surety called upon to complete any contract whether government or private sector? ☐ Yes ☐ No

5.4 Forfeited all or part of a standby letter of credit in connection with any government contract? ☐ Yes ☐ No

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity/owners involved, project(s), contract number(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

6.0	Had a revocation or <u>suspension</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1	Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or a federal certification of <u>Disadvantaged Business Enterprise</u> status, for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

7.0	Been the subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1	Been the subject of: (i.) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or (ii.) Any criminal <u>investigation</u> , felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , or a <u>Disadvantaged Business Enterprise</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
7.2	Received any <u>OSHA</u> citation, which resulted in a final determination classified as <u>serious</u> or <u>willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3	Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4	Had a New York State Labor Law violation deemed willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5	Entered into a consent order with the New York State Department of Environmental Conservation, or a <u>federal</u> , state or local government enforcement determination involving a violation of <u>federal</u> , state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

<p>7.6 Other than previously disclosed, been the subject of any <u>citations</u>, notices or violation orders; a pending administrative hearing, proceeding or determination of a violation of:</p> <ul style="list-style-type: none"> • <u>Federal</u>, state or local health laws, rules or regulations; • <u>Federal</u>, state or local environmental laws, rules or regulations; • Unemployment insurance or workers compensation coverage or <u>claim</u> requirements; • Any labor law or regulation, which was deemed willful; • Employee Retirement Income Security Act (ERISA); • <u>Federal</u>, state or local human rights laws; • <u>Federal</u>, state or local security laws? 	<input type="checkbox"/> Yes <input type="checkbox"/> No
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For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

Note: Information regarding a determination or finding made in error, which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required.

VIII. LEADERSHIP INTEGRITY

If the Business Entity is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section.

Within the past five (5) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the Business Entity with any government entity been:

<p>8.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>8.1 <u>Suspended</u>, <u>debarred</u> or <u>disqualified</u> from any <u>government contracting process</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>8.2 The subject of a criminal <u>investigation</u>, whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>8.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:</p> <p style="padding-left: 20px;">(i.) Any business-related activity, including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or</p> <p style="padding-left: 20px;">(ii.) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY			
9.0 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>			
9.1 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liquidated damages</u> assessed over \$25,000?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>			
9.2 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liens, claims or judgments</u> over \$25,000 filed against the <u>Business Entity</u> which remain undischarged or were unsatisfied for more than 90 days? (Note: Including but not limited to tax warrants or liens. Do not include UCC filings.)			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the Lien holder or Claimants' name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>			
9.3 In the last seven (7) years, has the <u>Business Entity</u> or any <u>affiliate</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.</i>			
9.4 What is the <u>Business Entity's</u> Bonding Capacity?			
a. Single Project		b. Aggregate (All Projects)	
9.5 List <u>Business Entity's</u> Gross Sales for the previous three (3) Fiscal Years:			
1st Year (Indicate year) Gross Sales	2nd Year (Indicate year) Gross Sales	3rd Year (Indicate year) Gross Sales	
9.6 List <u>Business Entity's</u> Average Backlog for the previous three (3) fiscal years: (Estimated total value of uncompleted work on outstanding contracts)			
1st Year (Indicate year) Amount	2nd Year (Indicate year) Amount	3rd Year (Indicate year) Amount	
9.7 Attach <u>Business Entity's</u> most recent annual <u>financial statement</u> and accompanying notes or complete Attachment C – Financial Information, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls . (This information must be attached.)			

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)****X. FREEDOM OF INFORMATION LAW (FOIL)**

10.0 Indicate whether any information provided herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).
Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. Attach additional pages if necessary.

☐ Yes ☐ No

If "Yes," indicate the question number(s) and explain the basis for the claim.

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20____;

_____ Notary Public

APPENDIX E**NEW YORK STATE****VENDOR RESPONSIBILITY QUESTIONNAIRE****ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS****Vendor Name:****NYS Vendor ID:**

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:

1.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
2.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
3.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
4.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
5.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable

APPENDIX E**NEW YORK STATE****VENDOR RESPONSIBILITY QUESTIONNAIRE****ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS****Vendor Name:****NYS Vendor ID:**

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:							
6.	Agency/Owner				Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
7.	Agency/Owner				Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
8.	Agency/Owner				Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
9.	Agency/Owner				Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
10.	Agency/Owner				Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	

APPENDIX E

NEW YORK STATE

VENDOR RESPONSIBILITY QUESTIONNAIRE

ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS

Vendor Name:**NYS Vendor ID:****Question 3.1: List all current uncompleted construction contracts:**

1.	Agency/Owner				Award Date		Completion Date	
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer				
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
			Total Contract Amount		Amount Sublet to others		Uncompleted Amount	
2.	Agency/Owner				Award Date		Completion Date	
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer				
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
			Total Contract Amount		Amount Sublet to others		Uncompleted Amount	
3.	Agency/Owner				Award Date		Completion Date	
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer				
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
			Total Contract Amount		Amount Sublet to others		Uncompleted Amount	
4.	Agency/Owner				Award Date		Completion Date	
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer				
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
			Total Contract Amount		Amount Sublet to others		Uncompleted Amount	

APPENDIX E**NEW YORK STATE****VENDOR RESPONSIBILITY QUESTIONNAIRE****ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS****Vendor Name:****NYS Vendor ID:****Question 3.1: List all current uncompleted construction contracts:**

5.	Agency/Owner					Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
			Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
6.	Agency/Owner					Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
			Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
7.	Agency/Owner					Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
			Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
8.	Agency/Owner					Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
			Total Contract Amount	Amount Sublet to others		Uncompleted Amount	

APPENDIX E**NEW YORK STATE****VENDOR RESPONSIBILITY QUESTIONNAIRE****ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS****Vendor Name:****NYS Vendor ID:****Question 3.1: List all current uncompleted construction contracts:**

9.	Agency/Owner					Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
			Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
10.	Agency/Owner					Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
			Total Contract Amount	Amount Sublet to others		Uncompleted Amount	

Grand Total All Uncompleted Contracts**\$0.00**

APPENDIX E

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE ATTACHMENT C - FINANCIAL INFORMATION

NYS Vendor ID: _____

As of Date: _____

ASSETS

Current Assets

1. Cash		\$	_____	-
2. Accounts receivable - less allowance for doubtful accounts	\$	_____	-	
Retainers included in accounts receivable	\$	_____	-	
Claims included in accounts receivable not yet approved or in litigation	\$	_____	-	
Total Accounts Receivable		\$	_____	-
3. Notes receivable - due within one year		\$	_____	-
4. Inventory - materials		\$	_____	-
5. Contract costs in excess of billings on uncompleted contracts		\$	_____	-
6. Accrued income receivable				
Interest	\$	_____	-	
Other (list) _____	\$	_____	-	
_____	\$	_____	-	
Total Accrued Income Receivable		\$	_____	-
7. Deposits				
Bid and Plan _____	\$	_____	-	
Other (list) _____	\$	_____	-	
_____	\$	_____	-	
Total Deposits		\$	_____	-
8. Prepaid Expenses				
Income Taxes	\$	_____	-	
Insurance	\$	_____	-	
Other (list) _____	\$	_____	-	
_____	\$	_____	-	
Total Prepaid Expenses		\$	_____	-
9. Other Current Assets				
Other (list) _____	\$	_____	-	
_____	\$	_____	-	
Total Other Current Assets		\$	_____	-
10. Total Current Assets				\$

APPENDIX E

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE ATTACHMENT C - FINANCIAL INFORMATION

NYS Vendor ID: _____

11. Investments

Listed securities-present market value	\$	-	
Unlisted securities-present value	\$	-	
Total Investments			\$ -

12. Fixed Assets

Land	\$	-	
Building and improvements	\$	-	
Leasehold improvements	\$	-	
Machinery and equipment	\$	-	
Automotive equipment	\$	-	
Office furniture and fixtures	\$	-	
Other (list) _____	\$	-	
	\$	-	
Total			\$ -
Less: Accumulated depreciation			\$ -
Total Fixed Assets - Net			\$ -

13. Other Assets

Loans receivable			
Officers	\$	-	
Employees	\$	-	
Shareholders	\$	-	
Cash surrender value of officers' life insurance	\$	-	
Organization expense – net of amortization	\$	-	
Notes receivable - due after one year	\$	-	
Other (list) _____	\$	-	
	\$	-	
Total Other Assets			\$ -

14. TOTAL ASSETS

\$ -
\$ -

APPENDIX E

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE ATTACHMENT C - FINANCIAL INFORMATION

NYS Vendor ID: _____

LIABILITIES

Current Liabilities

15. Accounts payable	\$	-
16 a. Loans from shareholders - due within one year	\$	-
16 b. Other Loans - due within one year	\$	-
17. Notes payable - due within one year	\$	-
18. Mortgage payable - due within one year	\$	-
19. Other payables - due within one year		
Other (list) _____	\$	-
_____	\$	-
Total Other Payables - due within one year	\$	-
20. Billings in excess of costs and estimated earnings	\$	-
21. Accrued expenses payable		
Salaries and wages	\$	-
Payroll taxes	\$	-
Employees' benefits	\$	-
Insurance	\$	-
Other	\$	-
Total Accrued Expenses Payable	\$	-
22. Dividends payable	\$	-
23. Income taxes payable		
State	\$	-
Federal	\$	-
Other	\$	-
Total Income Taxes Payable	\$	-
24. Total current liabilities	\$	-
25. Deferred income taxes payable		
State	\$	-
Federal	\$	-
Other	\$	-
Total Deferred Income Taxes	\$	-

APPENDIX E

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE ATTACHMENT C - FINANCIAL INFORMATION

NYS Vendor ID: _____

26. Long Term Liabilities

Loans from shareholders - due after one year

\$ -

Other Loans - due within one year

Principle

\$ -

Interest

\$ -

Notes payable - due after one year

\$ -

Mortgage - due after one year

\$ -

Other payables - due after one year

\$ -

Other (list) _____

\$ -

\$ -

Total Long Term Liabilities

\$ -

27. Other Liabilities

Other (list) _____

\$ -

\$ -

Total Other Liabilities

\$ -

28. TOTAL LIABILITIES

\$ -

NET WORTH

29. Net Worth (if proprietorship or partnership)

\$ -

30. Stockholders' Equity

Common stock issued and outstanding

\$ -

Preferred stock issued and outstanding

\$ -

Retained earnings

\$ -

Total

\$ -

Less: Treasury stock

\$ -

31. TOTAL STOCKHOLDERS' EQUITY

\$ -

32. TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY

\$ -

APPENDIX F
NYS CERTIFICATIONS

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 NYSESD certified MINORITY ENTERPRISE as defined in Executive Law Article 15-A?

☐ Yes

☐ No

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

Is your firm a NYSESD certified WOMEN-OWNED ENTERPRISE as defined in Executive Law Article 15-A?

☐ 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

Is your firm a NYSOGS certified SERVICE DISABLED VETERAN OWNED BUSINESS as defined in Executive Law Article 17-B?

☐ Yes

☐ No

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

APPENDIX F
NYS CERTIFICATIONS

Is your firm a SMALL BUSINESS as defined in Executive Law Section Article 15-A?

“Small Business” shall be defined as a business which:

- A. Has a significant business presence in New York demonstrated through one of the following;
 - 1. Pays taxes in New York State
 - 2. Purchases New York State products or materials, or
 - 3. Has any payroll in New York State
- B. Is independently owned and operated;
- C. Not dominant in its field; and,
- D. Employs less than three hundred persons

In accordance with New York State Finance Law, Section 165, the contractor certifies that it:

- ☐ IS a Small Business as defined in New York State Executive Law Section 310(20).
- ☐ IS NOT a Small Business as defined in New York State Executive Law Section 310(20).

Signature: _____

Typed Name: _____

Company Position: _____

Company Name: _____

Date Signed: _____

ACKNOWLEDGEMENT

STATE OF _____)
) ss.:
COUNTY OF _____)

On this _____ day of _____, 201____, before me personally came _____, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____ and that he/she executed the foregoing instrument in the firm name of _____, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

Notary Public

ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

Bidders/proposers need to be aware that all authorized users of the contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Will New York State businesses be used in the performance of this contract?
Yes No

Business Name	FEIN	Dollar Value	Description of Work
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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

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The NYS Insurance Fund (NYSIF) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSIF, to fully comply and cooperate with NYSIF in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to NYSIF pursuant to the Contract and applicable law.

II. Contract Goals

- A. For purposes of this Contract, NYSIF hereby establishes an overall goal of 30% for MWBE participation, 18% for New York State-certified minority-owned business enterprise (“MBE”) participation and 12% for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

APPENDIX M

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract]
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
 2. Any responses by MWBEs to the Contractor’s outreach;
 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by NYSIF with MWBEs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs 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, EEO 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.
 2. The Contractor shall submit an EEO policy statement to NYSIF within seventy-two (72) hours after the date of the notice by NYSIF to award the Contract to the Contractor.

APPENDIX M

3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, NYSIF may require the Contractor or subcontractor to adopt a model statement (see Form 106 – Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
 - a. 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 EEO programs 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.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
 - c. ONLY FOR CONTRACTS WITH A TOTAL EXPENDITURE IN EXCESS OF \$250,000: 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. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form 101 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by NYSIF.

D. Form 102 - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by NYSIF on a Quarterly basis during the term of the Contract, with the exception of Construction Contracts. For Construction Contracts, the Contractor is required to submit a Workforce Utilization Report on a Monthly basis.
2. Separate forms shall be completed by the Contractor and any subcontractors.

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3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by NYSIF, to the designated contacts at mwbeinfo@nysif.com, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to NYSIF, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, NYSIF shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver to contracts@nysif.com, or a non-electronic method provided by NYSIF. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NYSIF shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If NYSIF, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regard to such non-compliance, NYSIF may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency

APPENDIX M

within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report to mwbeinfo@nysif.com, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to NYSIF by the 10th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where NYSIF determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to NYSIF liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSIF, the Contractor shall pay such liquidated damages to NYSIF within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

APPENDIX M

Form 101 - Instructions

General Instructions: All Offerors and each subcontractor identified in the bid or proposal must complete a Staffing Plan (Form 101) and submit it as part of the bid or proposal. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

Instructions for completing:

1. Check off the appropriate box to indicate if the entity completing the Report is the Offeror or Subcontractor.
2. Check off the appropriate box to indicate work force to be utilized in the performance of the contract or the Offerors' total work force.
3. Enter the name and address of the Offeror and the solicitation number that this report applies to.
4. Verify that job titles are provided under the column titled "SOC Job Title" for each employee whose anticipated work will be reflected on the Report. If a necessary job title is not included, please add the corresponding job category, title and corresponding job code to the "EEO 1 Job Categories" "SOC Job Title" and "SOC Job Code" columns from the list of job categories, SOC titles, and SOC codes reflected in the EEO-1 Job Classification Guide, 2014. A copy of this guide can be found on NYSIF's website at: www.nysif.com/procurement
5. In the first group of boxes, identify the anticipated number of hours worked by persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
6. In the second group of boxes, identify the anticipated number of persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
7. Enter the name and the title for the person completing the form, enter the date upon which the Report was completed, and sign the form.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission and do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:

- **WHITE:** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN:** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO:** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN/NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER:** a person having origins in any of the original peoples of the Far East, Southeast Asia, the the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN/ALASKAN NATIVE:** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Form 101
STAFFING PLAN
Submit with Bid or Proposal-Instructions in Appendix M

Reporting Entity

☐

Contractor

☐

Subcontractor

Report includes Contractor's/Subcontractor's

☐

Workforce Utilized in Performance of Contract

☐

Contractor/Subcontractor's Total Workforce

Offeror's Name

Offeror's Address

Solicitation Number

EEO 1 Job Categories	SOC Job Title	SOC Job Code	Hours worked by Race/Ethnic Identification During Reporting Period									
			White		Black/African American		Hispanic/Latino		Asian/Native Hawaiian or Other Pacific Islander		Native American/Alaskan Native	
			Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Professionals	Lawyers	(23-1011)										
Administrative Support Workers	Paralegals and Legal Assistants	(23-2011)										
Administrative Support Workers	Miscellaneous Legal Support Workers	(23-2090)										
Administrative Support Workers	Secretaries and Administrative Assistants	(43-6010)										
	Other -											
	Other -											
	Other -											
TOTAL ANTICIPATED HOURS WORKED												

EEO 1 Job Categories	SOC Job Title	SOC Job Code	Number of Employees by Race/Ethnic Identification During Reporting Period									
			White		Black/African American		Hispanic/Latino		Asian/Native Hawaiian or Other Pacific Islander		Native American/Alaskan Native	
			Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Professionals	Lawyers	(23-1011)										
Administrative Support Workers	Paralegals and Legal Assistants	(23-2011)										
Administrative Support Workers	Miscellaneous Legal Support Workers	(23-2090)										
Administrative Support Workers	Secretaries and Administrative Assistants	(43-6010)										
	Other -											
	Other -											
	Other -											
TOTAL ANTICIPATED EMPLOYEES												

Preparer's Name:

Preparer's Title:

Date:

Preparer's Signature:

APPENDIX M

Form 102 - Instructions for Submitting the Workforce Utilization Report

The Workforce Utilization Report (“Report”) is to be submitted on a monthly basis for construction contracts¹, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor’s and/or subcontractor’s total workforce, information on the contractor’s and/or subcontractor’s total workforce may be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to mwbeinfo@nysif.com within ten (10) days following the end of each month or quarter, whichever is applicable.

Instructions for Completing the Workforce Utilization Report

1. **REPORTING ENTITY:** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **FEDERAL EMPLOYER IDENTIFICATION NUMBER:** Enter the Federal Employer Identification Number (FEIN) assigned by the IRS. Contractors utilizing their social security number in lieu of an FEIN should leave this field blank.
3. **CONTRACTOR NAME and CONTRACTOR ADDRESS:** Enter the primary business address for the entity completing the Report.
4. **CONTRACT NUMBER:** Enter the number of the contract to which the Report applies.
5. **REPORTING PERIOD:** Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report. Only select one box.
6. **WORKFORCE IDENTIFIED IN REPORT:** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
7. **OCCUPATION CLASSIFICATIONS and SOC JOB TITLE:** Select the occupation classification and job title that best describes each group of employees performing work on the state contract under columns A and B.
8. **EEO JOB TITLE and SOC CODE:** These fields will populate automatically based upon the Occupation Classifications and SOC Job Titles selected. Do not modify the results generated in these fields.
9. **NUMBER OF EMPLOYEES and NUMBER OF HOURS:** Enter the number of employees and total number of hours worked by such employees for each job title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
10. **TOTAL GROSS WAGES: [TO BE REPORTED QUARTERLY]** Enter the total gross wages paid to all employees for each job code, and each gender and racial/ethnic group, identified in the Report. Contractors and subcontractors should report only gross wages for work on the contract paid to employees during the period covered by the Report. “Gross wages” are those reported by employers to employees on their wage statements. Gross wages are defined more specifically by 20 NYCRR §2380.4 and typically include every form of compensation for employment paid by an employer to his, her or its employees, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, tips and the reasonable value of board, rent, housing, lodging or similar advantage received.
11. **PREPARER’S INFORMATION:** Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

¹ The Gross Wages column is only required to be completed on a quarterly basis commencing 1/1/2018.

APPENDIX M

Race/Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group with which he or she most closely identifies. No person may be counted in more than one race/ethnic group. In determining an employee's race or ethnicity, a contractor may rely upon an employee's self-identification, employment records, or, in cases where an employee refuses to identify his or her race or identity, observer identification. The race/ethnic categories for this Report are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact MWBEinfo@nysif.com or contact Mary Rumberg at (212) 312-7178 or Carrell Clarke-Europe at (212) 312-0089.

Form 103
M/WBE UTILIZATION PLAN

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name:		Federal Identification No.:	
Address:		Solicitation No.:	
City, State, Zip Code:		Project No.:	
Telephone No.:		M/WBE Goals in the Contract:	MBE _____ % WBE _____ %
Region/Location of Work:			

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/Supplies/Services and intended performance dates of each component of the contract.
A.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).

<p>PREPARED BY (Signature): _____</p> <p style="text-align: right;">DATE: _____</p> <p>NAME AND TITLE OF PREPARER (Print or Type): _____</p> <p style="font-size: small;">SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">TELEPHONE NO.:</td> <td style="width: 50%;">EMAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 5px;">FOR M/WBE USE ONLY</td> </tr> <tr> <td style="width: 70%;">REVIEWED BY:</td> <td style="width: 30%;">DATE:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO DATE:</p> <p>Contract No.:</p> <p>Project No. (if applicable):</p> <p>Contract Award Date:</p> <p>Estimated Date of Completion:</p> <p>Amount Obligated Under the Contract:</p> <p>Description of Work</p> <p>NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO DATE:</p> <p>NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO DATE:</p> </td> </tr> </table>	TELEPHONE NO.:	EMAIL ADDRESS:	FOR M/WBE USE ONLY		REVIEWED BY:	DATE:	<p>UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO DATE:</p> <p>Contract No.:</p> <p>Project No. (if applicable):</p> <p>Contract Award Date:</p> <p>Estimated Date of Completion:</p> <p>Amount Obligated Under the Contract:</p> <p>Description of Work</p> <p>NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO DATE:</p> <p>NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO DATE:</p>	
TELEPHONE NO.:	EMAIL ADDRESS:								
FOR M/WBE USE ONLY									
REVIEWED BY:	DATE:								
<p>UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO DATE:</p> <p>Contract No.:</p> <p>Project No. (if applicable):</p> <p>Contract Award Date:</p> <p>Estimated Date of Completion:</p> <p>Amount Obligated Under the Contract:</p> <p>Description of Work</p> <p>NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO DATE:</p> <p>NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO DATE:</p>									

APPENDIX M

Form 104 - Instructions

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note: Unless a Total Waiver has been granted, the Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by NYSIF, to determine M/WBE compliance.

Form 104
REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE APPENDIX M FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.	
Offeror/Contractor Name:	Federal Identification No.:
Address:	Solicitation/Contract No.:
City, State, Zip Code:	M/WBE Goals:
	<div style="display: flex; justify-content: space-around;"> MBE % WBE % </div>
By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.	
Contractor is requesting a: <div style="display: flex; justify-content: space-between;"> <div> 1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. 2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. 3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development). </div> <div> Date of such filing with Empire State Development: </div> </div>	
PREPARED BY (Signature): <div style="border: 1px solid black; height: 30px; width: 100%;"></div>	Date:
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.	
Name and Title of Preparer (Printed or Typed):	Telephone Number: Email Address:
Submit with the bid or proposal or if submitting after award submit to: New York State Insurance Fund Attn: Procurement Unit 15 Computer Dr. W. Albany, NY 12205 Email: contracts@nysif.com	
*****FOR M/WBE USE ONLY *****	
<div style="display: flex; justify-content: space-between;"> <div> REVIEWED BY: </div> <div> DATE: </div> </div>	
<div style="display: flex; justify-content: space-between;"> <div> Waiver Granted: <input type="checkbox"/> Yes <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued </div> <div style="border-top: 1px solid black; width: 150px;"></div> </div>	
*Comments: 	

APPENDIX M

Form 105 - Instructions

PRODUCT KEY CODE

A	=	Agriculture/ Landscaping (e.g., all forms of landscaping services)
B	=	Mining (e.g., geological investigations)
C	=	Construction
C15	=	Building Construction – General Contractors
C16	=	Heavy Construction (e.g., highway, pipe laying)
C17	=	Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)
D	=	Manufacturing
E	=	Transportation, Communication and Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	=	Wholesale/Retail Goods (e.g. hospital supplies and equipment, food stores, computer stores, office supplies)
G52	=	Construction Materials (e.g., lumber, paint, law supplies)
H	=	Financial, Insurance and Real Estate Services
I	=	Services
I73	=	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)
I81	=	Legal Services
I82	=	Education Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	=	Social Services (Counselors, vocational training, child care)
I87	=	Engineering, architectural, accounting, research, management and related services

Form 105

M/WBE Quarterly Report of

NYS AGENCY Contract No. _____

Project No. _____

Is this the final report? Check one:	
Yes: <input type="checkbox"/>	No: <input type="checkbox"/>

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project. The payments as shown made are in compliance with contract documents for the above referenced project.

Contractors Name and Address		Federal ID#	Goals/\$ Amt.		Contract Type:							
			MBE	% =			Paid to Contractor This Quarter:					
			WBE	% =			Total Paid to Contractor To Date:					
					-							
			Project Completion Date		Work Location		Reporting Period (Check One):					
				<input type="checkbox"/> 1st Quarter (4/1-6/30) <input type="checkbox"/> 3rd Quarter (10/1-12/31) <input type="checkbox"/> 2nd Quarter (7/1-9/30) <input type="checkbox"/> 4th Quarter (1/1-3/31)								
M/WBE Subcontractor/Vendor		Product Code*	Work Status This Report		Total Subcontractor Contract Amount		Payments this Quarter		Previous Payments		Total Payment Made to Date	
					MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
Name: FED ID#			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete									
Name: FED ID#			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete									
Name: FED ID#			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete									
Name: FED ID#			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete									
Total												

*See BELOW for Product Codes

Date: _____

Name: _____

Title: _____

Signature: _____

APPENDIX M

Form 106

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization 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 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.

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2 _____

By _____

Print: _____ Title: _____

APPENDIX M

Form 106 (continued)

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____ % Minority and Women's Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % Women's Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____

**Contractor Certification to Covered Agency**

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

ST-220-CA

(12/11)

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		
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 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. 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.

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:

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- 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 Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



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, call the information center.

**Contractor Certification**(Pursuant to Tax Law Section 5-a, as amended,
effective April 26, 2006)**ST-220-TD**

(4/15)

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)

City

State

ZIP code

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

Covered agency telephone number

()

Covered agency address

City

State

ZIP code

Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?

Yes ☐No ☐Unknown at this time ☐**General information**

Tax Law section 5-a, 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 Form ST-220-CA, *Contractor Certification to Covered Agency*, 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 Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

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 12227-0826**

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

**Telephone assistance****Sales Tax** Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

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, call the information center.

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 Tax Law sections 1134 and 1253, 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 Tax Law sections 1134 and 1253. 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 Tax Law sections 1134 and 1253. 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)

Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

[illegible]

Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.

Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E – Sales tax ID number - Enter only if different from federal EIN in column D.

Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

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. _____

APPENDIX P
SITE VISIT ATTENDANCE NOTIFICATION

BID#: _____

NAME OF FIRM: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

WWW: _____ FEIN: _____

E-MAIL ADDRESS: _____

SIGNATURE OF AUTHORIZED PERSON: _____

TYPED NAME: _____

TITLE: _____

NAME AND TITLE OF ATTENDEES (PLEASE TYPE):

1. _____

2. _____

Email to:
contracts@nysif.com

Fax to:
(518) 437-4209

Or mail to:
New York State Insurance Fund
Procurement Unit
15 Computer Drive West
Albany, New York 12205

APPENDIX S

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE DISABLED VETERAN OWNED BUSINESSES (SDVOB)

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. NYSIF recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of NYSIF contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. CONTRACT GOALS

- A. NYSIF hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the NYSIF Designated Contacts at contracts@nysif.com. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB UTILIZATION PLAN

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form S-100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract

APPENDIX S

award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to NYSIF.

- C. NYSIF will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of NYSIF acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to NYSIF a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by NYSIF to be inadequate, NYSIF shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by NYSIF, a request for a partial or total waiver of SDVOB participation goals on S-200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. NYSIF may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - 1. If a Bidder fails to submit an SDVOB Utilization Plan;
 - 2. If a Bidder fails to submit a written remedy to a notice of deficiency;
 - 3. If a Bidder fails to submit a request for waiver; or
 - 4. If NYSIF determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, NYSIF shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. REQUEST FOR WAIVER

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at NYSIF for guidance.**
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form S-200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by NYSIF at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, NYSIF shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to NYSIF, but must be

APPENDIX S

made no later than prior to the submission of a request for final payment on the Contract.

- D. If NYSIF, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (Form S-101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, NYSIF may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the NYSIF designated contacts at contracts@nysif.com.

IV. REQUIRED GOOD FAITH EFFORTS

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- 1) Copies of solicitations to SDVOBs and any responses thereto.
- 2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- 3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by NYSIF with certified SDVOBs whom NYSIF determined were capable of fulfilling the SDVOB goals set in the Contract.
- 4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- 5) Other information deemed relevant to the waiver request.

V. MONTHLY SDVOB CONTRACTOR COMPLIANCE REPORT

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to NYSIF during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using Form S-101 available on the NYSIF website and should be completed by the Contractor and submitted to NYSIF, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: SDVOBinfo@nysif.com.

VI. BREACH OF CONTRACT AND DAMAGES

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

APPENDIX S
FORM S-100: SDVOB UTILIZATION PLAN

SDVOB UTILIZATION PLAN

☐ Initial Plan ☐ Revised plan Contract/Solicitation # _____

INSTRUCTIONS: This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS **Certified** Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION

SDVOB Goals In Contract

Bidder/Contractor Name:	Federal Identification No.:	%
Bidder/Contractor Address (Street, City, State and Zip Code):		

Bidder/Contractor Telephone Number:	Contract Work Location/Region:
-------------------------------------	--------------------------------

Contract Description/Title:

CONTRACTOR INFORMATION

Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:
--------------------------	-----------------------------	-------------------	-------

Email Address:

If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form (S-200).

SDVOB Subcontractor/Supplier Name:

Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
---	-----------------------------	----------------

Address:	Email Address:
----------	----------------

Detailed description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%

SDVOB Subcontractor/Supplier Name:

Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
---	-----------------------------	----------------

Address:	Email Address:
----------	----------------

Detailed Description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%

FOR NYSIF USE ONLY

NYSIF Authorized Signature:	<input type="checkbox"/> Accepted	<input type="checkbox"/> Accepted as Noted	<input type="checkbox"/> Notice of Deficiency
-----------------------------	-----------------------------------	--	---

NAME (Please Print):	SDVOB %/\$	Date Received:	Date Processed:
----------------------	------------	----------------	-----------------

Comments:

NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION: The directory of New York State Certified SDVOBs can be viewed at: https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf

Note: All listed Subcontractors/Suppliers will be contacted and verified by NYSIF.

APPENDIX S
FORM S-100: SDVOB UTILIZATION PLAN

ADDITIONAL SHEET

Bidder/Contractor Name:	Contract/Solicitation #
--------------------------------	--------------------------------

SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %		
SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %		
SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %		
SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform)): \$ _____ or _____ %		

APPENDIX S
INSTRUCTION FOR COMPLETING THE MONTHLY
SDVOB COMPLIANCE REPORT – FORM S-101

Instructions for Completing the
Monthly SDVOB Compliance Report – Form S-101

The SDVOB Monthly Reporting Form is to be completed by the Contractor/Vendor, and submitted by the 10th day of *each* month for the duration of the Contract. This form should include **all** (e.g. SDVOB and non SDVOB) Subcontractors and/or Suppliers assigned by the Contractor/Vendor to perform work during the contract. This reporting should also include payments made by your Subcontractors and/or Suppliers to SDVOB firms.

Complete the form as specified below.

Contract No.	Indicate the NYSIF Contract No.
Contractor/Vendor Name and Address	Provide your firm's name and address.
Federal ID No.	Enter your firm's Federal ID No.
Goals	Indicate SDVOB participation goals.
Reporting Period	Fill in the month and year of reporting period. One copy must be submitted with final payment application.
Description of Project	Briefly describe the work you are providing under the terms of this contract.
Firm Name and Address	Provide the name, address and phone number of all Subcontractors/Suppliers assigned by the Contractor/Vendor on this contract or purchase agreement(s).
Federal ID No.	Enter the Subcontractor's/Supplier's Federal ID No. If no Federal ID No. has been assigned, provide only the owner's last four (4) digits of his or her Social Security No.
Payment This Month	Indicate the amount paid <i>this month</i> to each Subcontractor/Supplier. If there was no income activity for a Subcontractor/Supplier, please check the box indicating "No Payment This Month."
Contract Amount	Enter the total contract amount or purchase agreement(s) amount for each Subcontractor/Supplier.
Description of Work/Supplies	Briefly describe the work performed or supplies provided by each Subcontractor/Supplier.

Submit to:

New York State Insurance Fund
Attn: Procurement Unit
15 Computer Drive West
Albany, NY 12205
Email: SDVOBinfo@nysif.com

APPENDIX S

FORM S-101: CONTRACTOR'S MONTHLY SDVOB COMPLIANCE REPORT

CONTRACTOR'S MONTHLY SDVOB COMPLIANCE REPORT (DUE ON THE 10TH DAY OF EACH MONTH FOR THE PRECEDING MONTH'S ACTIVITY AS EVIDENCE TOWARDS ACHIEVEMENT OF THE SDVOB GOALS ON THE CONTRACT)

Contract No.: _____

Contractor/Vendor Name, Address and Phone No.:	Contractor/Vendor Federal ID No.:	SDVOB Goals	Reporting Period	
	Description of Project:	%	Month	Year

Firm Name, Address and Phone Number (List All Firms)	Description of Work or Supplies Provided	Designation	Payment This Month	Contract Amount
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract	<input type="checkbox"/> No Payment This Month	
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract	<input type="checkbox"/> No Payment This Month	
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract	<input type="checkbox"/> No Payment This Month	
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract	<input type="checkbox"/> No Payment This Month	

_____ Signature	_____ Print Name and Title	_____ Date
--------------------	-------------------------------	---------------

Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.

For NYSIF Use Only	
Reviewed By:	Date:

APPENDIX S
FORM S-200: APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL

APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL

(must be submitted before requesting final payment on the Contract)

Section 1: Basic Information

Contractor's Name:	Federal Identification Number:
Street Address:	E-Mail Address:
City, State, Zip Code:	Telephone:
Contract Number:	SDVOB CONTRACT GOALS
	%

Section 2: Type of SDVOB Waiver Requested

<input type="checkbox"/> Total	<input type="checkbox"/> Partial	If partial waiver, please enter the revised SDVOB percentage:	%
Please explain the reason for the waiver request:			

Section 3: Supporting Documentation

Provide the following documentation as evidence of your good faith efforts to meet the SDVOB goals set forth in the contract and in support of your waiver application:

- ☐ **Attachment A.** Copies of solicitations to SDVOBs and any responses thereto.
- ☐ **Attachment B.** Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- ☐ **Attachment C.** Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by NYSIF with certified SDVOBs whom NYSIF determined were capable of fulfilling the SDVOB goals set forth in the contract.
- ☐ **Attachment D.** Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- ☐ **Attachment E.** Other information deemed relevant to the request.

Section 4: Signature and Contact Information

By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote SDVOB participation pursuant to the SDVOB requirements set forth under the solicitation or Contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.

Prepared By: (Signature)	Date:
Name and Title of Preparer (Print or Type)	

Submit with the bid or proposal or if submitting after award submit to:

New York State Insurance Fund
Attn: Procurement Unit
15 Computer Drive West
Albany, NY 12205
Email: contracts@nysif.com

APPENDIX S
FORM S-200: APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL

For NYSIF Use Only	
Reviewed By:	Date:
<div>Decision:</div> <div style="margin-left: 20px;"><input type="checkbox"/> Full SDVOB waiver granted <input type="checkbox"/> Partial SDVOB waiver granted; revised SDVOB goal: _____ % <input type="checkbox"/> SDVOB waiver denied</div>	
Approved By:	Date:
Date Notice of Determination Sent:	
Comments	

APPENDIX V

Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Firm offering to provide services pursuant to this Construction Manager at Risk (CM) NYC, RFP #2019-47-RE, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this Contract does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this Contract;
5. During the negotiation this Contract, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this Contract, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment,

APPENDIX V

hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms engaged under this RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title:

Signature:

Date:

This form must be signed by an authorized executive or legal representative.

APPENDIX X

EO 177 CERTIFICATION

PROHIBITING STATE CONTRACTS WITH ENTITIES THAT SUPPORT DISCRIMINATION

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Contractor: _____

By: _____

Name: _____

Title: _____

Date: _____, 20____

APPENDIX Y
LISTING OF PROPOSED SUBCONTRACTORS

Legal Business Name: _____

D/B/A — Doing Business As (if applicable): _____

Federal ID No.: _____

Address: _____

Contact Name: _____

Contact Title: _____

Email Address: _____

Phone Number: _____

Detailed description of work to be provided by subcontractor: _____

Dollar Value: _____

Certification (if applicable): MBE WBE SDVOB

Attachments: Appendix V – Vendor Assurance of No Conflict of Interest or Detrimental Effect
 Appendix E – Vendor Responsibility Questionnaire (if value exceeds \$100,000)

Legal Business Name: _____

D/B/A — Doing Business As (if applicable): _____

Federal ID No.: _____

Address: _____

Contact Name: _____

Contact Title: _____

Email Address: _____

Phone Number: _____

Detailed description of work to be provided by subcontractor: _____

Dollar Value: _____

Certification (if applicable): MBE WBE SDVOB

Attachments: Appendix V – Vendor Assurance of No Conflict of Interest or Detrimental Effect
 Appendix E – Vendor Responsibility Questionnaire (if value exceeds \$100,000)

Attach additional sheets if necessary

**APPENDIX Z
FEE SCHEDULE PROPOSAL**

**CONSTRUCTION MANAGER AT RISK
BID # 2019-47-RE**

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

Bidders are not to change, delete, or make any additions to this form, and are to supply only the bid information that is required. If any changes, deletions, or additions are made by the bidder, or if all of the required bid information is not provided, then at NYSIF's discretion, the bid may be disqualified.

Content of Cost Proposal

Information to be provided by Proposers:

The following is a list of required information that must be provided by the proposer. Provide your response per the format outlined in Section 4, *Bid/Proposal Format*, of the RFP. Your cost proposal must contain sufficient information to assure NYSIF of its accuracy.

Projected Scenario (for evaluation purposes only)

The **basis** for estimated values is base building (White Box including FA system) preparation of three floors above grade, each consisting of approximately 17,500 square feet of space.

Assume. a project duration of 1 year; 3 months for design and 9 months for construction.

Assume a total construction budget of \$6,000,000 to include \$50,000 in asbestos abatement.

Construction phase % will include overhead, profit, security and safety.

1. Include a **cover letter** with the following items:
 - a. The name, title, telephone number, fax number and email address of the individual within your firm who will be NYSIF's primary contact concerning this RFP.
 - b. A statement to the effect that the price quoted is an irrevocable offer good for 120 days.
 - c. The cover letter must be signed by the individual(s) authorized to bind your firm contractually. Indicate the title or position that the signer holds within your firm. NYSIF reserves the right to reject a cost proposal that contains an unsigned cover letter.
2. Provide estimated manpower requirements and costs associated with performing the identified Scopes of Service for Pre-Construction Phase and Construction Phase with General Conditions Work Phase as follows:
 - a. Pre-Construction Phase: Direct Salary Costs (hours and rates).

APPENDIX Z
FEE SCHEDULE PROPOSAL

CONSTRUCTION MANAGER AT RISK
BID # 2019-47-RE

- b. Pre-Construction Phase: Fringe Benefits including a detailed breakdown of the components of your fringe benefit rate. Fringe Benefits are the cost to the CM of Fringe Benefits applicable to Actual Direct Salary costs. Allowable Fringe Benefit items as provided for herein shall be limited to the following specific items:
 - 1. F.I.C.A.;
 - 2. Federal Unemployment Insurance;
 - 3. State Unemployment Insurance;
 - 4. NYS Workers Compensation;
 - 5. Life Insurance;
 - 6. Accidental Death and Dismemberment;
 - 7. NYS Disability Insurance;
 - 8. Group Hospitalization;
 - 9. Pension Plan; and
 - 10. Group Travel Accident Insurance.
 - 11. Vacation, holiday and sick leave time in accordance with the CM's approved leave policy.
 - c. Pre-Construction Phase: Overhead and Profit,
 - d. Construction Phase: Field Staff Direct Salary Costs (hours and rates),
 - e. Construction Phase: Field Staff Fringe Benefits including breakdown,
 - f. Construction Phase: Fee Percentage.
- 3. Provide documentation indicating your firm's Overhead and Profit Multiplier for the Pre-Construction Phase. The calculation should include all direct labor expenses, indirect and operating expenses and proposed profit. The Construction Phase Fee includes all CM home office costs, including officers as well as home office and local office support staff, together with all CM overhead costs and profit. This Fee shall also include all required services of a home office Project Executive, by whatever name called and includes the management of the General Conditions work. No additional overhead or profit on direct labor for the construction phase will be paid beyond the Construction Phase Fee.
 - 4. Provide a Construction Phase Fee Percentage for the management of the Construction Phase and General Conditions Work Phase. The Fee Percentage shall be applied to the value of the Trade Contracts after bid, as approved by the owner, exclusive of General Conditions items, to arrive at the CM's management fee for this project. The Fee Percentage includes all CM home office costs, including officers as well as home office and local office support staff, together with all CM overhead costs and profit. This Fee Percentage shall also include all required services of a home office Project Executive, by whatever name called. As stated above, the fee includes the management of the General Conditions Work Phase. No additional overhead or profit on direct labor for the construction phase will be paid beyond the construction phase fee.
 - 5. Provide a statement indicating your firm is able to obtain the required insurance coverage as listed.
 - 6. Provide an estimated cost for General Liability Insurance coverage for the project.

**APPENDIX Z
FEE SCHEDULE PROPOSAL**

**CONSTRUCTION MANAGER AT RISK
BID # 2019-47-RE**

GENERAL CONDITIONS WORK PHASE

1. During the General Conditions Work Phase of this Contract, the CONSTRUCTION MANAGER shall:
 - a. Provide and coordinate the following work, services, and facilities during the construction of the Project in a manner or pursuant to a Contract or Contracts approved in advance by the OWNER.
 - b. Where practical, solicit competitive bids for the General Conditions work items listed below and award to the lowest responsive and responsible bidder.

NOTE: Items identified below represent a sample listing of General Conditions Work Items. A final approved schedule, representing specific Project needs, including estimated values, shall be incorporated into this Contract at the start of the Construction Phase.

2. During the General Conditions Work Phase of this Contract, the OWNER shall have the right to approve all staffing of the Work.

GENERAL CONDITIONS ITEMS

ESTIMATED COST

1) Field Offices	\$ _____
2) Utility Connection	\$ _____
3) Field Office Furniture & Equipment	\$ _____
4) Reproduction Equipment	\$ _____
5) Reproduction Supplies	\$ _____
6) Field Office Supplies	\$ _____
7) Field Office Telephone	\$ _____
8) Postage, Messenger, and Printing	\$ _____
9) Survey	\$ _____
10) Permits and Fees	\$ _____
11) Project Cleanup	\$ _____
12) Rubbish Removal	\$ _____
13) Safety and Protection	\$ _____
14) Site Security	\$ _____
15) Project Sign	\$ _____
16) Progress Photo	\$ _____
17) Fencing	\$ _____
18) Hoisting	\$ _____
19) Blueprints	\$ _____
20) Master Mechanic	\$ _____

**TOTAL GENERAL CONDITIONS ITEMS
ESTIMATED COST**

\$ _____

**APPENDIX Z
FEE SCHEDULE PROPOSAL**

**CONSTRUCTION MANAGER AT RISK
BID # 2019-47-RE**

**SCHEDULE OF APPROVED PERSONNEL CLASSIFICATIONS
AND MAXIMUM DIRECT SALARY RATES**

<u>CLASSIFICATIONS</u>	<u>APPROVED MAXIMUM DIRECT HOURLY RATES (*)</u>
Project Manager	\$ _____
Project Engineer	\$ _____
General Superintendent	\$ _____
Assistant Superintendent	\$ _____
Assistant Superintendent	\$ _____
Mechanical Engineer	\$ _____
Project Accountant	\$ _____
Office Engineer/Trainee	\$ _____
Plan Clerk	\$ _____
Administrative Assistant	\$ _____

Initial listed classifications are typical. Actual Project staffing will depend on the specific needs for each individual project and be reflected in the final Contract.

Assignment and time durations of all Construction Management personnel assigned to the Project by the CM shall be subject to the approval of the OWNER. The OWNER may request the CM to remove from the Project any employee the OWNER deems incompetent, careless, or otherwise objectionable and replace said employee with more suitable personnel. The OWNER may also approve additional personnel classifications if deemed necessary.

All payment requisitions must account for the time of all personnel by name, title, and approved hourly rate.

(*) Approved Maximum Hourly Rates are those maximum rates in effect through _____. The above rates may be adjusted at the beginning of each salary year. Any adjustment is subject to the review and approval of the OWNER's Director, Procurement.

The Consumer Price Index for New York City area shall be used as a guide for any rate adjustment negotiation.

**APPENDIX Z
FEE SCHEDULE PROPOSAL**

**CONSTRUCTION MANAGER AT RISK
BID # 2019-47-RE**

The fees set forth below are to be based upon the Projected Scenario outlined above and will be used for the Financial Evaluation of this RFP. Bidders must provide all backup as outlined above.

Please Note:

- The unit pricing provided in the back up documentation and outlined above will be applied for actual contractual billing.
- The percentage values for items 2 and 4 below are not to exceed for the duration of the contract.
- During the term of the contract, for each assignment, the Contractor must provide their pricing in the format outlined below with all required backup documentation, as outlined under Appendix Z.

1. Pre-construction phase \$ _____ / month
Proposed team based on the projected scenario. Provide breakdown separately.

2. Construction phase _____ % of Awarded subcontracts competitively bid to complete the work. Including labor costs of self-performed work based on the projected scenario.

3. General Conditions/Project Management \$ _____ / month
Based on proposed team based on the projected scenario, as of notice to proceed.

4. Insurance and Bonds _____ % of the sum each project construction costs.

Signature: _____ Title: _____

Print Name: _____ Date: _____

EXHIBIT 1

