



6/12/23

The following Q&A, updated Exhibit A, bid due date extension, and amended language will serve as Amendment #2 to NYSIF's Request for Proposals (RFP) for Investment Legal Services, bid number 2023-15-LEG. Material in this Amendment supersedes any contradictory material in the RFP.

RFP Section 1.8.3 is hereby replaced with the following language:

- "3. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile used in connection with performance under the Contract resulting from this RFP, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract resulting from this RFP, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this RFP on a form provided by NYSIF. If, however, during the term of the Contract resulting from this RFP, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract resulting from this RFP, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to NYSIF.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract resulting from this RFP, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract resulting from this RFP, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this RFP, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract resulting from this RFP, on a form provided by NYSIF. If, however, during the term of the Contract resulting from this RFP, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract resulting from this RFP, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to NYSIF."



RFP Section 1.9 is hereby replaced with the following language:

"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."

Please note that the due date for the submission of bids **has been extended**.

All bids are due 7/5/23, by 2:00 p.m. (Eastern).

Sincerely,

A handwritten signature in black ink, appearing to read "P. Cremmins", is written over a light blue horizontal line.

Patricia Cremmins
Contract Management Specialist 1

Investment Legal Services

RFP 2023-15-LEG

Amendment 2

Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
1	16	Section 2: Technical Specifications, 2.3.B Firm Background, Experience and Expertise (2.3.B.18.a)	Can we provide samples of the forms we've created in lieu of redlined documents received and reviewed from other parties?	Yes.
2	9	Section 1: General Information, 1.8 Insurance Requirements (1.8)	Would NYSIF consider comments and modifications to the insurance requirements in Section 1.8 of the RFP? For example, some of the coverages required in the CGL Insurance and Professional Liability Insurance provisions are nonstandard for law firms and some of the other requirements extend beyond the typical insurance commitments that the firm agrees to. Is there a place in our response we can include comments regarding our coverage?"	Please include any comments and limitations with regards to insurance you have in your proposal as outlined in RFP Section 4.2.6. Insurance will be collected should your firm receive an award.
3	11	Section 1: General Information, 1.9 Participation of NYS Business Enterprises (MWBE) (1.9)	This section states that "...the Contract does not offer sufficient opportunities to set specific goals for participation by MWBEs..." However, Appendix M, II. Contract Goals states "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." Could you please clarify whether or not there is a mandatory MWBE goal for this contract? If there is not a mandatory goal, is submitting Form 103 (Appendix M) optional if we will not be utilizing an MWBE?	Please see revised Section 1.9 included within this Amendment, the current Section 1.9 was included in error. There is a 30% MWBE goal on this procurement, should your firm be unable to meet this MWBE goal you should complete Appendix M, Form 104 (Request for Waiver form) and include it in your proposal along with Form 101 and Form 106 (or a copy of your firms EEO statement in lieu of Form 106).

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Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
4	12	Section 1: General Information, 1.10 Participation of Service-Disabled Veteran Owned Businesses (SDVOB) (1.10)	This section states that "...the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs..." (This is repeated in Appendix S.) Can you please confirm whether submitting Form S-100 (Appendix S) is optional if we will not be utilizing an SDVOB?	While there is no specific SDVOB utilization goal, NYSIF encourages the Bidder/Contractor to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. Should your firm choose to utilize SDVOB subcontractors, Appendix S should be completed.
5	13	Section 2: Technical Specifications, 2.1 Mandatory Requirements (2.1)	If at least one of the team leads is licensed (and in good standing to practice) in New York State, may we include one or more additional team leads who are licensed outside of New York? Please provide additional clarification.	In accordance with 2.1 (1), all team leaders must be licensed and in good standing to practice in New York.
6	22	Section 4: Bid/Proposal Format, 4.1 Bid Preparation (4.1)	We understand that separate documents for Administrative, Technical, and Cost proposals are required. Can you please provide detailed instructions for which components should be included in Administrative vs. Technical?	Administrative - NYSIF Appendices and NDA Technical - Your Technical response to the requirements outlined in the RFP
7	25	Section 4: Bid/Proposal Format, 4.2.7 Appendices (4.2.7)	If we have already completed the Vendor Responsibility Questionnaire online via the NYS VendRep System, should we also include a copy in our response?	Yes.
8	98 & 102	Appendix M: Participation By Minority and Women-Owned Business Enterprises, III.D Equal Employment Opportunity ("EEO") Form 102 - Workforce Utilization Preport (Appendix M.III.D)	We did not receive Form 102 (Attachment 1). Can you please confirm that this form does not need to be returned with our submission and is instead required on a quarterly basis during the term of the contract?	Form 102 is a separate excel attachment that can be found on NYSIF's Procurement website. This does not need to be returned with your submission and is required on a quarterly basis should your firm get an award.
9	N/A	General	Can you please confirm that no client/customer references are required in our response?	References are not required.

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Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
10	9-11 & 76	Section 1: General Information, 1.8 Insurance Requirements (1.8) & Exhibit C: Contract Provisions, 37 Insurance (Exhibit C.37)	<p>Question A. Would it be acceptable if a Contractor's auto insurance policies cover only hired/non-owned automobiles?</p> <p>Question B. Would it be acceptable if a final Contract omits NYSIF's right to approve the Contractor's insurance deductibles?</p> <p>Question C. Given the likelihood that no services under the Contract will occur at NYSIF's premises and that many law firms have E&O insurance covering the delivery of legal services only, would it be acceptable if a final Contract strikes the phrase "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"?</p>	<p>Regarding Question A - please see attached auto clarification included in this Amendment.</p> <p>Regarding Question B/C - Please include any comments and limitations with regards to insurance you have in your proposal as outlined in RFP Section 4.2.6. Insurance will be collected should your firm receive an award.</p>
11	13	Section 2: Technical Specifications, 2.1 Mandatory Requirements (2.1.1)	Is it acceptable for one of our team leaders who are members of the firm and licensed and in good standing in the State of New York to hold inactive status as a member of the New York bar? He lives in Virginia and has active status in Virginia.	In accordance with 2.1 (1), all team leaders must be licensed and in good standing to practice in New York.
12	37	Exhibit A: Standard Clauses, 15 No Arbitration (Exhibit A.15)	Would NYSIF consider arbitration as an alternative to litigation in court if a Bidder should request?	Per section 4.2.6. 'No comments, limitations or changes are permitted with respect to any of the terms and conditions contained in Exhibit A, Standard Clauses.'
13	48-50	Exhibit B: General Specifications, 22 Warranties (Exhibit B.22)	Would the services contemplated to be provided under this RFP be "Products" as this term is used in Exhibit B, paragraph 22 (Warranties)? These representations and warranties seem to address a physical product as opposed to legal services. Other sections of the General Specifications distinguish between Products and services, and we believe the distinction is implied here.	Exhibits B and C contain standard terms and conditions. Any negotiations regarding Exhibit B and C will be discussed with awarded firms. Should your firm have any changes, please include in your comments and limitations as requested in 4.2.6.

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Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
14	43-44, 48-53	Exhibit B (General Specifications) (including paragraphs 6, 8, 20-24, 26-27, 29 and 33)	We could not find a definition of the word "Product" in the RFP materials. Did we miss it?	Exhibits B and C contain standard terms and conditions. Any negotiations regarding Exhibit B and C will be discussed with awarded firms. Should your firm have any changes, please include in your comments and limitations as requested in 4.2.6.
15	68	Exhibit C: Contract Provisions, B.1 Access to Disaster Recovery Plans (Exhibit C.7.B.1)	Would NYSIF accept a final Contract omitting the language in Section 7.B.1 of Exhibit C where the Contractor shall provide "reports and findings" or "results of tests" as described there if the Contractor's established policies do not permit it?	Exhibits B and C contain standard terms and conditions. Any negotiations regarding Exhibit B and C will be discussed with awarded firms. Should your firm have any changes, please include in your comments and limitations as requested in 4.2.6.
16	75	Exhibit C: Contract Provisions, 32 Indemnification & 33 Indemnification Relating to Third Party Rights	Given that law firms carry malpractice insurance, and law firms will typically agree to be responsible for and reimburse the client for its losses under the contract, but have rules or policies prohibiting or limiting indemnification, may the final Contract omit the term "indemnity" from Sections 32 and 33? Stated another way, is it possible to affirm a full duty to cover all losses without including an indemnity?	Exhibits B and C contain standard terms and conditions. Any negotiations regarding Exhibit B and C will be discussed with awarded firms. Should your firm have any changes, please include in your comments and limitations as requested in 4.2.6.
17	133	Attachment 3: Mutual Non-Disclosure Agreement, 2 Agency Confidential Information (Attachment 3.2.c)	Section 2(c) requires the Contractor to obtain a written confidentiality agreement from all personnel who work on NYSIF matters and to procure an NDA from each of them regarding internal discussions relating to NYSIF. Does this apply to lawyers since lawyers have a pre-existing ethical obligation to maintain the confidentiality of client information? Will this requirement be satisfied by law firm assurance that all personnel are already subject to a duty of confidentiality under the terms of their employment?	An NDA is not required as law firms do have the ethical obligation to maintain the confidentiality of the client information.

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Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
18	136	Attachment 3: Mutual Non-Disclosure Agreement, 8 The Agency Policies (Attachment 3.8)	Does NYSIF have policies responsive to Section 8 (The Agency Policies) and are they available publicly?	Some of our policies and procedures are contained within this RFP and outlined in our Exhibits A,B, and C. No, they are not publicly posted. This section can be discussed further with the awarded firms.
19	23	Section 4: Bid/Proposal Format, 4.2 Bid Format (4.2)	In reference to the three deliverables mentioned in the first bullet point of section 4.2 – BID FORMAT: a. Is the Cost Proposal the same deliverable as the Fee Schedule Proposal (Appendix Z) mentioned in the second bullet of section 4.2? b. Is the Technical Proposal comprised of sections 4.2.1 through 4.2.6? c. Is the Administrative Proposal comprised of the forms listed in section 4.2.7 – APPENDICES?	a. Yes, the cost proposal is the completion of Appendix Z. b. Yes and should include responses to RFP Sections 2.1-2.3. c. Yes.
20	24	Section 4: Bid/Proposal Format, 4.2.4 Technical Experience/Description Of Proposed Services (4.2.4a-d)	Under section 4.2.4 – TECHNICAL EXPERIENCE / DESCRIPTION OF PROPOSED SERVICES, where it mentions "Submit as described in Section 2, Technical Specification, of this RFP," a. do you prefer that we list each question from 2.3 – FIRM BACKGROUND (A, B and C) in order/individually under 4.2.4? b. Also, should our answers to 2.3 appear before or after 4.2.4(a)-4.2.4(d)?	Your firm may include these responses however you see fit as long as they are labeled and clearly identify which RFP Section you are responding to.
21	15	Section 2: Technical Specifications, 2.3.B Firm Background, Experience and Expertise (2.3.B.8)	How does NYSIF currently handle conflicts and is NYSIF willing to issue waivers for potential conflicts?	NYSIF will review the circumstances surrounding the conflict and review if executing a conflict waiver is possible.
22	24	Section 4: Bid/Proposal Format, 4.2.5 Statement of Competing Commitments (4.2.5)	On average, how many third-party investment managers does NYSIF anticipate negotiating with and/or investing in on an annual basis (so that we may appropriately plan and account for team members)?	To be discussed with the awarded firms.

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Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
23	132-139	Attachment 3: Mutual Non-Disclosure Agreement	As your counsel, we would have an obligation under the applicable Rules of Professional Conduct not to reveal and to keep confidential information provided to us by you, so the purpose of the NDA under these circumstances is unclear. If an NDA is required, what is the process to submit comments to the NDA language?	An NDA is not required as law firms do have the ethical obligation to maintain the confidentiality of the client information.
24	22	Section 4: Bid/Proposal Format, 4.1 Bid Preparation (4.1)	NYSIF requests that bidders submit each of the Administrative, Technical, and Cost Proposals as separate electronic files. Could you please clarify which components constitute the Administrative proposal? Is this the "Quantitative Factor for Business Certification" (i.e., MWBE, SBE, and SDVOB certifications)?	Administrative - NYSIF Appendices and NDA Your firm will be evaluated on the quantitative factor as outlined in RFP Section 3.1.3. The quantitative factor is unrelated to the Administrative proposal.
25	87	Appendix E: NYS Vendor Responsibility Questionnaire For-Profit Business Entity, IX Associate Entities	The Vendor Responsibility Questionnaire asks if the Reporting Entity has Associated Entities. Would other partnerships in an LLP arrangement be considered Associated Entities?	Refer to link located at the bottom page 2 of Appendix E.
26	N/A	General	Can NYSIF confirm that engagement as a result of this bid is only with NYSIF and that our representation would not extend to the State of New York or any other state agencies or departments?	Engagement is with NYSIF only.
27	131	Appendix Z: Fee Schedule Proposal	Are proposed rates locked for the full 5-year term or are they subject to annual adjustments dependent on market conditions?	Per the RFP, NYSIF is seeking an all-inclusive rate for the length of the contract. NYSIF reserves the right to review fees on an annual basis and re-negotiate rates, in the best interests of NYSIF.
28	9	Section 1: General Information, 1.8 Insurance Requirements (1.8)	The RFP provides that insurance carriers must be rated at least A-, Class VII in Best's. Our professional liability carrier is not rated by Best's but is rated A by Fitch. Is that acceptable?	Please include any comments and limitations with regards to insurance you have in your proposal as outlined in RFP Section 4.2.6. Insurance will be collected should your firm receive an award.

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Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
29	9	Section 1: General Information, 1.8 Insurance Requirements (1.8)	The RFP provides that insurance must be primary and non-contributory. Our CGL and auto our primary and non-contributory but as is typical for professional liability policies, our professional liability policy does not apply on a primary and non-contributory basis. Would NYSIF confirm that the professional liability policy does not have to be primary and non-contributory?	Please include any comments and limitations with regards to insurance you have in your proposal as outlined in RFP Section 4.2.6. Insurance will be collected should your firm receive an award.
30	9	Section 1: General Information, 1.8 Insurance Requirements (1.8)	The RFP provides that insurance shall be endorsed to provide written notice to NYSIF at least 30 days prior to the cancelation, non-renewal, or material alteration of the policy. We have been advised by one carrier that it can give such notice if the carrier decides to cancel, renew or materially alter the policy but is unable to do so if the firm requests such action because the firm can do so with only 30 days' notice to the carrier. Thus, the carrier would not necessarily have sufficient time to give NYSIF 30 days' notice. Would it be sufficient for the carrier to give such notice if the carrier decides to cancel, non-renew or materially alter the terms of the policy, while the firm agrees to give such notice should it make the decision to do so?	Please include any comments and limitations with regards to insurance you have in your proposal as outlined in RFP Section 4.2.6. Insurance will be collected should your firm receive an award.
31	50	Exhibit B: General Specifications, Bid Submission, 24 Pricing (Exhibit B.24)	Is any of Exhibit B., No. 24. Pricing, applicable to this RFP?	Exhibits B and C contain standard terms and conditions. Any negotiations regarding Exhibit B and C will be discussed with awarded firms. Should your firm have any changes, please include in your comments and limitations as requested in 4.2.6.

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Amendment 2

Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
32	57	Exhibit B: General Specifications, Administrative 39 Bidder Certification Requirements (Exhibit B.39.n)	Will NYSIF entertain revisions to the hold harmless obligation set forth in Exhibit B?	Exhibits B and C are standard terms and conditions. Any negotiations regarding Exhibit B and C will be discussed with awarded firms. Should your firm have any changes, please include in your comments and limitations as requested in 4.2.6.
33	71	Exhibit C: Contract Provisions, 19 Policy Compliance (Exhibit C.19)	Would NYSIF please provide any policies and procedures that the firm would need to comply with so that the firm can review and confirm that it is able to do so?	Some of the policies and procedures are contained within this RFP. Any negotiations regarding Exhibit B and C will be discussed with awarded firms. Should your firm have any changes, please include in your comments and limitations as requested in 4.2.6.
34	75	Exhibit C: Contract Provisions, 32 Indemnification & 33 Indemnification Relating to Third Party Rights	Will NYSIF entertain revisions to the indemnification provisions set forth at Exh. C, Nos. 32 and 33?	Any negotiations regarding Exhibit B and C will be discussed with awarded firms. Should your firm have any changes, please include in your comments and limitations as requested in 4.2.6.
35	132	Attachment 3: Mutual Nondisclosure Agreement	The firm's records retention policy requires that client files be maintained for a period of years following the conclusion of a matter. The Mutual Nondisclosure Agreement (NDA) requires that we return or destroy NYSIF's confidential information any time upon request and within five days of the termination of the agreement. Moreover, we are required to return the NDA with our response, prior to be awarded the contract. May we revise the NDA to address our concerns, with the understanding that should NYSIF wish to retain the firm, the terms of the NDA would be subject to further discussion?	Negotiations regarding the NDA will be discussed with awarded firms. Should your firm have any changes, please include in your comments and limitations as requested in 4.2.6.

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Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
36	13	Section 2 - Technical Specifications, 2.2 Services to be Provided	Please describe the number and nature of investments you have made over each of the past three years.	To be discussed with the awarded firms.
37	13	Section 2 - Technical Specifications, 2.2 Services to be Provided	Please describe the number of investments you intend to pursue during the contract period.	To be discussed with the awarded firms.
38	13	Section 2 - Technical Specifications, 2.2 Services to be Provided	Do you expect your investments to require the use of lawyers outside of the U.S.? If so, what jurisdictions do you expect?	No.
39	12	Section 2: Technical Specifications, 2.1 Mandatory Requirements (2.1)	Must the main leader(s) of each practice category described in the RFP be licensed and in good standing in NY?	Yes.
40	13	Section 2 - Technical Specifications, 2.2 Services to be Provided	Do each of the main leader(s) need to meet the 10 years direct experience requirement representing institutional investors with the investment and investment related matters described in the Services to be Provided (2.2)?	No, one main leader with the requisite experience is sufficient.
41	12	Section 2: Technical Specifications, 2.1 Mandatory Requirements (2.1.3)	Please define member. Specifically, could a non-partner (i.e., non- equity lawyer, of counsel, etc.) lawyer be a main leader?	Yes provided they have the required experience.

RFP CALENDAR

DATE	EVENT	COMMENTS
4/26/23	RFP Issued	
5/17/23	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 12:00 p.m. (EST) to: Email: contracts@nysif.com Fax: 518-437-4209
6/14/23	Responses to Inquiries	Written responses will be posted on NYSIF's website
7/5/23	Final date for submission of bids	Deadline for response to this RFP. All sealed bids MUST be addressed to: Email: contracts@nysif.com Subject Line: Formal Proposal – Bid #2023-15-LEG OR: Mail: NYSIF – Procurement Unit Bid # 2023-15-LEG 15 Computer Drive West Albany, NY 12205 and received by 2:00 p.m. (EST)
TBD	Bidder Presentations/Interviews	Bidder presentations expected to begin
TBD	Anticipated Start Date	Subject to the required approvals.



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, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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 (2 NYCRR § 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 Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

- (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- (b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union

or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

- (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
Telephone: 646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

21. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139- k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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: <https://ogs.ny.gov/iran-divestment-act-2012>

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

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

The state agency 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.

26. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.

Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.