



15 COMPUTER DRIVE WEST; ALBANY, NY 12205
518.437.4230|nysif.com

8/21/2023

TO WHOM IT MAY CONCERN:

Attached is the Request for Proposals (RFP) for Independent Medical Examinations (IME) Services for the New York State Insurance Fund (NYSIF).

The due date for submission of proposals is 10/20/2023.

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 be "J. Alber", written over a faint circular stamp.

Jessica Alber
Contract Management Specialist

Attachments:
No Bid form
RFP



'NO BID' FORM

RFP # 2023-08-INS

DESCRIPTION: INDEPENDENT MEDICAL EXAMINATION (IME) SERVICES

CONTRACT PERIOD: 5-years with (2) optional 1-year extensions

| | | |
|-----------------------|-------------------|---|
| PROPOSALS DUE: | | SUBMIT 'NO BIDS' TO: |
| DATE: | 10/20/2023 | Email: contracts@nysif.com Subject Line: No Bid Form – Bid #2023-08-INS |
| TIME: | 2:00 p.m. | OR *mailed via <u>UPS, FedEx, or DHL</u> to: NYSIF - Procurement Unit Bid # 2023-08-INS 15 Computer Drive West Albany, NY 12205 *Note, the use of the United States Postal Service (USPS) is <u>PROHIBITED</u> . See Section 4.3 for more information. |

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

- ☐ 1. We do not provide the requested services.
- ☐ 2. We are unable to bid at this time because:

- ☐ 3. Please remove our firm from your mailing list.

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: _____



NYSIF

REQUEST FOR PROPOSALS

for

**INDEPENDENT MEDICAL EXAMINATION (IME)
SERVICES**

RFP #2023-08-INS

8/21/2023

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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| | |
|---------------|---|
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Please Note: The following forms can be found on the NYS Workers Compensation Board website. These forms are subject to change.

- IME-3 Form
- IME-4 Form
- IME-4.3A Form
- IME-4.3B Form
- IME-5 Form
- IME-7 Form

RFP CALENDAR

| DATE | EVENT | COMMENTS |
|-----------------------------|--|--|
| 8/21/2023 | RFP Issued | |
| 9/12/2023 | 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 |
| 9/26/2023 | Responses to Inquiries | Written responses will be posted on NYSIF's website |
| 2:00 PM (EST) 10/20/2023 | 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 #2023-08-INS OR: Mail: NYSIF – Procurement Unit Bid # 2023-08-INS 15 Computer Drive West Albany, NY 12205 and received by 2:00 p.m. (EST) |
| TBD | Bidder Presentations/Interviews | Bidder presentations expected to begin |
| 8/1/2024 | 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 marketplace 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 139,000 policyholders, with more than \$1.48 billion in in-force premium and approximately \$19 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 56,000 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:

| | |
|--|--|
| Jessica Alber | 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](https://www.nysif.com), 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](#). 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 is seeking proposals from qualified Bidders for Independent Medical Examination Services including, but not limited to, medical examinations and psychological/psychiatric evaluations of claimants who have applied for either Disability or Workers' Compensation benefits as further described in this Request for Proposals (RFP).

Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein. Bidders are responsible for checking [NYSIF's website](#) for any RFP amendments, addenda, and/or updates.

1.5 BIDDERS' CONFERENCE / SITE VISIT

No Bidder's Conference will be held regarding this RFP. Prospective Bidders may submit questions in an acceptable format (section 1.2 above) by the date listed in the RFP Calendar.

1.6 DUE DATE

The due date for submission of proposals is 10/20/2023, 2:00 p.m. (Eastern).

1.7 METHOD OF AWARD / DISTRIBUTION OF WORK

Awards will be made on the basis of "best value", as determined by the evaluation process. The ability to perform the services will be deemed most important when evaluating bids. NYSIF anticipates multiple awards for the procurement; however, NYSIF reserves the right to award a single Contractor.

Contracts will be awarded by region. NYSIF anticipates awarding contracts to multiple Contractors in each region. A region is defined as the geographic area of responsibility (see

Attachment 4 Map of Regions). Bidders must specify which region(s) they are seeking a contract for work, Bidders may bid on and be awarded more than one region. Please refer to Section 1.7.1, "Engagement by Region", for information on the number of awards in each region.

Work will be distributed to contracted firms in a rotation for the initial 120 days of the contract. Performance will be evaluated every 120 days. If the vendor's performance falls below established standards, the vendor will be so advised and be provided the opportunity to improve their performance to an acceptable level. If there is no improvement by the following evaluation period, NYSIF reserves the right to remove the vendor from the rotation and terminate the contract.

The number of contracts per region will be influenced by the volume of exams in each region and the ability of the bidders to provide examining physicians. NYSIF reserves the right to increase or decrease the number of contractors in a region based on NYSIF's needs.

No amount of work is guaranteed.

1.7.1 ENGAGEMENT BY REGION

The NYSIF Case Manager will determine the appropriate region in which the claimant will be examined and assign the medical exam to the contractor for that region. The anticipated number of awards for each region, for the Panel, are as follows (see also Attachment 4 for a map of the regions):

| REGION | Maximum Number of Awards |
|-------------------------------|--------------------------|
| Region 1: Albany | 11 |
| Region 2: Binghamton | 8 |
| Region 3: Buffalo | 10 |
| Region 4: Long Island | 15 |
| Region 5: New York City (NYC) | 15 |
| Region 6: Rochester | 9 |
| Region 7: Syracuse | 12 |
| Region 8: White Plains | 14 |

1.8 TERM

NYSIF anticipates awarding a five (5) year contract with an option to renew for two additional one-year periods for 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.

1.9 INSURANCE REQUIREMENTS

Prior to the commencement of the work to be performed by the successful Bidder, the Bidder shall file with NYSIF Certificates of Insurance evidencing compliance with all requirements

contained in this RFP. Acceptance and/or approval by NYSIF does not and shall not be construed to relieve Bidder of any obligations, responsibilities or liabilities under the contract awarded by this RFP.

All insurance required by the RFP shall be obtained at the sole cost and expense of the Bidder, shall be maintained with insurance carriers licensed to do business in New York State and acceptable to NYSIF, shall be primary and non-contributing to any insurance or self-insurance maintained by NYSIF, shall be endorsed to provide written notice be given to NYSIF at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail, and shall be sent in accordance to the 'Notice' provision of the Agreement.

The Contractor shall cause to be included in each of the liability policies required below, here the Commercial General Liability, the Comprehensive Business Automobile Liability, coverage for on-going and completed operations naming as additional insured on a primary and non-contributory basis (via ISO coverage forms CG 20 10 11 85 or the combination of CG 20 10 04 13 or 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) NYSIF, its officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to NYSIF after renewal and/or upon request. 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 and Business Automobile Liability, in the same manner that the Contractor would have been required had the Contractor obtained such insurance 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.

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

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to 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. Visit the [Workers' Compensation Coverage website](#) and the [Disability Benefits Coverage website](#) for further information.
 - a. Proof of Compliance with Workers' Compensation Coverage Requirements:
 - i. 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](#);
 - ii. Form C-105.2 (9/17 or most current version), *Certificate of Workers' Compensation Insurance*, sent to NYSIF 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 NYSIF upon request from the Contractor; or
 - iii. 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.
 - b. Proof of Compliance with Disability Benefits Coverage Requirements:
 - i. 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](#);
 - ii. Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to NYSIF by the Contractor's insurance carrier upon request; or
 - iii. 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 \$2,000,000 each occurrence, with a limit of not less than \$2,000,000 aggregate. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
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.

4. Professional Liability Insurance, covering actual or alleged negligent acts, errors or omissions committed by the Contractor, its agents or employees, arising out of the work performed under this Agreement. The policy coverage shall extend to include bodily injury and property damage from negligent performance of professional services and personal injury liability coverage for claims arising out of performance of services. The policy shall have limits of liability of not less than \$2,000,000 each occurrence, with a limit not less than \$2,000,000 aggregate. The Contractor shall be responsible for payment of all claim expenses and loss payments with the deductible.

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

Awarded Bidder shall furnish evidence of all policies to NYSIF, before any work is started. Certificates of Insurance may be supplied as evidence of such aforementioned policies; however, if requested by the Agency, the Bidder shall deliver to NYSIF within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted it must: (1) be signed by an authorized representative of the insurance carrier or producer and notarized; (2) disclose any deductible, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (3) indicate the Additional 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.

1.10 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.

For purposes of this procurement, NYSIF conducted a comprehensive review of the services required under this procurement and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by MWBEs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of MWBEs on the Contract for the provision of services and materials. The directory can be viewed at the [New York State Certified MWBEs website](#).

Please see Appendix M for further information.

1.11 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 ("SDVOBs"), 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/Contractors are strongly encouraged and 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.

For purposes of this procurement, NYSIF conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory can be viewed at the [New York State Certified SDVOBs website](#).

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

1.12 USE OF NYSIF TRADEMARK AND LOGO

Bidders/Contractors may not use NYSIF, its name, trademarks, or logo in any marketing, advertising or similar material without prior written approval from NYSIF. NYSIF will need to approve any website content with NYSIF's name, trademarks or logo and should be notified of any website content change with the aforementioned criteria. 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](#).

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. Bidder must also complete and submit the Mandatory Requirement Certification (Attachment 9) in their proposal submission.

1. The IME Company must be registered with the New York State Workers' Compensation Board (WCB) to manage the performance of independent medical examinations.
2. The IME Company must be an independent medical examination management company, with a minimum of three years of New York State Workers' Compensation experience.
3. The IME Company must confirm that they are knowledgeable of and will follow all requirements outlined in the WCL, WCB Rules and Regulations, WCB Subjects, WCB forms, IME Vendor User Guide, NYSIF specific policies & protocols, and anything else regarding any legal aspects of IMEs. This includes any future changes to the afore mentioned.
4. The IME Company must provide physician coverage, utilizing physicians that will accept the region specialty fee you have proposed as part of this RFP, for all counties within the region on which they are bidding per Section 2.2 below.
5. All physicians provided by the IME Company must be authorized by the Workers' Compensation Board (WCB) to perform independent medical examinations.
6. The IME Company must have AT LEAST Orthopedic, Neurological or Neurosurgical, and Psychiatric or Psychological physicians on staff at all times who will be available for examinations in the covered region it bid on.
7. All IME physicians must be available to provide testimony at WCB hearings/depositions. An IME physician's availability for testimony at WC court hearings must be indicated on the physician's report. (Availability includes "Day of the Week" and "A.M. and/or P.M.") If availability differs depending on WCB hearing location, information for each location must be provided.
8. The IME Company shall provide to NYSIF the following:
 - a) The name or names under which it is registered with the Department of State;
 - b) the name or names under which it conducts business;
 - c) the address or addresses of its administrative office and each of the offices
 - d) where it conducts any business;
 - e) the telephone numbers of each business location;
 - f) the entity's tax identification number;

- g) the name, title job responsibilities, email address and telephone number of the contact person for the entity; The entity liaison will be the direct contact for NYSIF.
 - h) the names, addresses and telephone numbers of each of the entity organization's officers, owners or partners; and
 - i) a description of the services provided by the entity and its owners, officers, or partners and the independent medical examiners it employs or with whom it contracts to conduct independent medical examinations.
9. An officer of each IME Company shall affirm that the entity is organized under the laws of New York State or in the state in which it was incorporated in a corporate form that is recognized by the laws of the State of New York, is duly registered with the Department of State, and is in full compliance with the laws of the State of New York its state of incorporation outside of New York and the United States, including but not limited to any laws or regulations under the Public Health Law, the Education Law and the Workers' Compensation Law governing the practice of medicine, podiatry, chiropractic and psychology, treatment of injured or ill workers, solicitation and fee-splitting, and any laws or regulations under the jurisdiction of the State Insurance Department, the Federal Health Care Financing Administration centers for Medicare and Medicaid Services , the State Department of Taxation and Finance or the Federal Internal Revenue Service. The officer shall further affirm that he or she has read or is familiar with the fee-splitting and anti-solicitation provisions of the Workers' Compensation Law under sections 13-d, 13-i, 13-k, 13-l and 13-m, and that the entity is not in violation of any such section.
10. The IME Company certifies that prior to the physician's use, the physician, per the Board of Regents, has no proceedings against them nor has been found guilty previously of any infractions.
11. The IME Company certifies that they routinely check (at least every 6 months) to ensure the physicians on the IME panel are not under investigation for professional misconduct or physician discipline. The IME Company must describe the process in place to accomplish this review.
12. The IME Company certifies that if any significant information that would adversely affect the physician's professional standing and/or credibility as an expert witness, (including but not limited to any criminal or professional misconduct proceedings brought against them), NYSIF will be notified immediately.
13. The IME Company certifies that if any owner/partner/officer is convicted, pleads no contest, or enters into a consent agreement, etc. concerning misdemeanor/felony infractions, NYSIF will be notified immediately.
14. The IME Company is required to utilize NYSIF's electronic Med-Eval system and any related WCB programs for all reporting and bill submission.
15. All alerts made through the NYSIF's electronic Med-Eval system must be acknowledged within 2 business days.
16. All Time Sensitive assignments made through the NYSIF's electronic Med-Eval system must be advanced to "Accepted" status within 2 business days. If this cannot be accomplished on

an assignment, the NYSIF case manager on the assignment must be contacted and the problem discussed.

17. The IME Company agrees to be in compliance with NYS Workers Compensation Law at all times during the duration of this contract. This includes specifically, but is not limited to, Section 137.
18. The IME Company certifies, and must provide documentation of same upon NYSIF's request, that it provides ongoing education to its panel of physicians on the medical requirements of the WCL, including, but not limited to, application of the Medical Treatment Guidelines, Current NYS Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity and all future modifications.
19. WCB Subject No. 046-324, Update on Communications with Independent Medical Examiners, states that if upon receipt of an IME report a clerical or ministerial error is noticed by the IME entity, the carrier or its authorized IME entity can provide a cover letter indicating the error and submit it along with the report "as is" to the Board and all parties of interest as required by law. In addition, NYSIF requires the bidder to review each report, note clerical or ministerial errors and submit a clarification with an IME3 to the WCB. IME vendor can also provide a cover letter indicating the error and submit it along with the report as is to the WCB and all parties of interest. IME entities can arrange for blanket permission from NYSIF and can act on the NYSIF's behalf.

Please describe in detail the step-by-step review process in place to notice clerical or ministerial errors contained in an IME report.

20. Bidder affirms and agrees to immediately remove any of its employees and/or subcontractors from assignment with NYSIF, if requested.
21. Bidders must be willing to enter into a non-disclosure agreement (hereinafter "NDA") with NYSIF. NDA is attached as Attachment 3. The NDA will be required after an award has been issued to the Bidder.

2.2 COVERAGE

The Bidder must have a minimum number of providers within each office location outlined in the table below:

| Provider | Downstate – NYC, Long Island and White Plains | Upstate |
|-------------|---|---------|
| Orthopedic | 3 | 1 |
| Neurology | 2 | 1 |
| Psychiatric | 2 | 1 |

Bidders must be able to provide coverage for all the counties within the region they are bidding on, per the list below. A region is defined as the geographic area of responsibility for a given NYSIF office (see Attachment 4 Map of Regions). A county will be considered to have coverage within the specialty if:

- a) An IME physician within the specialty is available in the county within a reasonable distance from the claimant's location.

b) An IME physician within the specialty is available in a neighboring county within a reasonable distance from the claimant's location.

c) An IME physician within the specialty will travel into the county to perform the IME at a location within a reasonable distance from the claimant's location.

NYSIF will determine the reasonable distance on case-by-case basis.

| REGION | COUNTIES | TOTAL NUMBER OF COUNTIES |
|---------------------------|--|--------------------------|
| Region 1: Albany | Dutchess, Ulster, Greene, Columbia, Schoharie, Albany, Rensselaer, Montgomery, Saratoga, Schenectady, Washington, Fulton, Hamilton, Warren, Essex, Franklin, Clinton | 17 |
| Region 2: Binghamton | Sullivan, Delaware, Otsego, Broome, Chenango, Tioga, Tompkins, Cortland, Chemung, Schuyler | 10 |
| Region 3: Buffalo | Niagara, Erie, Chautauqua, Cattaraugus | 4 |
| Region 4: Long Island | Suffolk, Nassau | 2 |
| Region 5: NYC | Bronx, New York, Queens, Kings, Richmond | 5 |
| Region 6: Rochester | Orleans, Monroe, Wayne, Genesee, Livingston, Ontario, Seneca, Wyoming, Yates, Allegany, Steuben | 11 |
| Region 7: Syracuse | Cayuga, Onondaga, Madison, Oneida, Oswego, Lewis, Herkimer, Jefferson, St. Lawrence | 9 |
| Region 8: White Plains | Orange, Putnam, Westchester, Rockland | 4 |

2.3 PERSONNEL

2.3.1 QUALIFICATIONS

Qualifications of physicians/specialists are critical to the successful performance of this contract. All physicians to be assigned must be identified. For each physician/specialist proposed, Bidder's must provide the following in alphabetical order by specialty and physician name:

1. A letter of commitment from the IME physician stating that he/she agrees to provide the services as detailed in this RFP, and is committed to completing assignments in a professional, expeditious manner.
2. CV/resume for each IME physician proposed, to include education, training, licenses, one (1) business reference, and professional affiliations.
3. Proof of Board membership
4. WCB authorization number and specialty coding for each physician proposed

5. Number of IMEs that the IME physician has completed for your firm within the last two years. If the physician is a recent addition to your panel, please indicate so.

2.3.2 CURRENT STAFFING/PHYSICIANS

Bidders must complete Attachment 10 List of Contract Fee Physicians. For each region, on the row provided for medical specialty, list the name of the IME physician(s) who will be performing independent medical examinations on behalf of NYSIF and will accept the region specialty fee you have proposed as part of this RFP. (You may attach additional sheets if more room is needed in order to list a specialty.)

2.3.3 RECRUITMENT

In detail, describe your firm's recruitment efforts for staff & physicians. Discuss your firm's capability to retain staff, including physicians. In addition, the IME will submit quarterly recruitment updates during the term of the contract.

2.3.4 REMOVAL FROM NYSIF ASSIGNMENT

The IME Company must immediately remove any of its employees and/or subcontractors from assignment with NYSIF, if requested.

2.3.5 SUBSTITUTIONS OF KEY STAFF

Substitutions of Key Staff must be approved by NYSIF, including physicians.

2.3.6 CONTRACT LIAISON

The IME Company shall designate a specific individual to serve as the liaison with NYSIF in contract matters. Include the following information:

1. The name and qualifications of the individual designated as the contract liaison with NYSIF.
2. Describe the Internal Controls (physical, electronic and personnel) that the Bidder will utilize in maintaining confidentiality of information that the Bidder receives from NYSIF. Indicate that procedures are in place to prevent an unauthorized exchange of information from NYSIF to another organization doing business with the Bidder.
3. Escalation procedures NYSIF can use to report problems to higher levels of management within the Bidder's firm.

2.3.7 TRAINING

Briefly describe training your firm has conducted in the past with its panel of IME physicians, including any written material provided, regarding the Workers' Compensation Law (WCL) and the Workers' Compensation Board (WCB) Rules and Regulations in general, and for the specific topics of:

1. Application of Medical Treatment Guidelines
2. Current NYS Guidelines For Determining Permanent Impairment and Loss of Wage Earning Capacity

3. NYSIF forms: Estimated Physical Capabilities Form for New York State Employees (Attachment 7)
4. Workers' Compensation Board forms
5. Any other training

Submit copies of any training materials that were distributed in conjunction with training conducted.

2.4 OPTIONAL REQUIREMENTS, SPECIAL PROVISIONS, AND RESERVED RIGHTS

For all provisions under this section (2.4.1, 2.4.2 & 2.4.3), all rates including any necessary travel will be subject to negotiation at the time of case assignment. Additionally, the IME's & their Physicians, must meet all certifications and requirements of this RFP.

Please note, all travel will be paid in accordance with NYS Office of State Comptrollers travel policy as further set forth at: <http://www.osc.state.ny.us/agencies/travel/reimbrate.htm>.

2.4.1 NATIONAL AND INTERNATIONAL COVERAGE

Any Bidder that has the capacity to provide national and/or international IME services is encouraged to provide additional information, including but not limited to, names of states, city/zip code and countries, on its ability to service these areas. If NYSIF selects a Bidder for national and/or international assignments, these rates will be subject to negotiation at the time of case assignment.

NYSIF is under no obligation to approve any higher fee and/or no-show request.

All "Higher Fee" requests need to be addressed through our Med-Eval system for out-of-state IME's. In addition to the higher fee, the IME Company must indicate the IME physician's "No Show" fee, and "Deposition/Testimony" fee. The IME Company must provide the NYSIF two business days to review the "Higher Fee"/"No-show Fee" before reaching out to the Case Manager. Only if the IME Company has not received a response from NYSIF within two business days should the IME Company contact the Case Manager.

2.4.2 SPECIAL PROVISIONS

During the term of the contract NYSIF reserves the right to utilize an IME or Physician, in a region they are not contracted under, for special circumstances, in the best interest of NYSIF.

2.4.3 "HIGHER FEE'S" AND "NO-SHOW FEE'S"

The following provisions apply to "Higher Fee's" and "No-Show Fees" that are performed under this RFP. For National or International coverage, please refer to Section 2.4.1, however requests for National and International services must be submitted in accordance with the following process.

1. All "Higher Fee" requests need to be addressed through our Med-Eval system. In addition to the higher fee, the IME Company must indicate the IME physician's "No Show" fee, and "Deposition/Testimony" fee. The IME Company must provide the NYSIF two business days to review the "Higher Fee"/"No-show Fee" before reaching out to the Case

- Manager. Only if the IME Company has not received a response from NYSIF within two business days should the IME Company contact the Case Manager.
2. All requests submitted for NYSIF's review must include justification.
 3. The Med-Eval system is NYSIF's documentation of the Case Manager's reply to the IME Company as to whether the fee is either approved or denied.
 4. If the IME Company does not request a "Higher Fee" or a "No-Show" fee and has not followed the procedure outlined herein for NYSIF's approval before scheduling the exam or review, NYSIF will not be held liable. A bill for an exam or review in this situation will be paid as per the NYSIF IME fee schedule.
 5. The IME Company should never schedule an IME request prior to receiving the Case Manager's approval or denial for requested fees in excess of the contracted fee schedule.
 6. If a "Higher Fee" or "No-Show" fee is discussed over the phone when in the process of locating a Doctor, the formal request must be entered into the Med-Eval system for a final approval or denial.
 7. An approval of a "Higher Fee", "No-Show", or "Deposition" fee for an IME physician is only an approval for that specific assignment. Any future exam or review on that claim or any other claim by the same IME physician requires a new fee request.

2.4.4 ADDITIONAL RESERVED RIGHTS

1. NYSIF reserves the right to suspend a contract from a region if the company is not meeting the performance standards within this RFP.
2. NYSIF reserves the right to review fees on an annual basis, and re-negotiate rates in the best interests of NYSIF.
3. NYSIF reserves the right to terminate this contract should the Bidder no longer be licensed in the contracted region, if required by the location.
4. NYSIF reserves the right to remove specific IME Companies, employees and/or subcontractors from assignment with NYSIF.

2.5 NYSIF RESPONSIBILITIES

NYSIF will advise the Contractor of the type of Medical Examination (ME) to be provided, as well as provide the Contractor with eCase access in order for them to obtain all relevant correspondence including medical and hospital reports, etc. per NYSIF requirements.

2.6 CONTRACTOR RESPONSIBILITIES

The Contractor shall schedule the examination with the appropriately licensed/certified IME physician, from the IME physicians identified by the contractor in its bid proposal or approved by the NYSIF IME Point Person after the Contract has been awarded.

1. For examinations performed in New York State, physicians must be authorized by the Workers' Compensation Board (WCB) to perform IME examinations in the specialty requested by NYSIF. At the end of the physician's WCB authorization number there should be either the letter "I" or "B". (The WCB web site should be used to verify whether the physician is currently authorized by the WCB to perform IME examinations).
2. For examinations performed in a location other than New York State, physicians must have their American Specialty Boards in the specialty NYSIF is requesting.

3. When an IME company is given an assignment by NYSIF, the company should select the examining physician based upon:
 - a. If NYSIF has indicated a physician's name, use that physician. If the next available examination date for the indicated physician is more than four (4) weeks in the future, the NYSIF case manager should be contacted to determine whether another IME physician should be used instead.
 - b. If NYSIF has **NOT** indicated a physician's name, use the physician who has the next available appointment for the requested specialty in the required geographic area.

All examinations shall be performed in medical facilities suitable for such exam, with due regard and respect for the privacy and dignity of the injured worker/claimant. Examination facilities must be provided in a safe, convenient and accessible location within a reasonable distance from the claimant's residence. Examinations will be held during regular business hours, except when the claimant contacts the IME Company and requests an appointment outside of regular business hours, e.g. evening, weekends or Holiday.

All examinations shall be performed by a practitioner competent to evaluate or examine the injury or disease from which the claimant suffers. A practitioner is not eligible to perform an independent medical examination of a claimant if the practitioner has treated or examined the claimant for the condition for which the examination is being requested, or if another member of the preferred provider organization or managed care provider to which the practitioner belongs has treated or examined the claimant for the condition for which the examination is being requested.

For exams or reviews performed in NY state, the IME Company will use the Translator Company indicated by NYSIF, if one is specified, and arrange per NYSIF instructions for the interpreter's presence at the exam or by telephone. If NYSIF previously requested a translator for an IME exam and the request is not indicated for the next IME exam, the bidder must notify the CSR and arrange for a translator for the previously requested language. Information concerning translator service will be provided through the Med-Eval system. The Translator Company will bill NYSIF directly for the translator services. IME company may be asked to identify an alternative translator when NYSIF contracted translator is unavailable to perform needed services. Any non-contracted Translator fee must be preapproved by NYSIF and billed directly.

2.7 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.

2.7.1 ARRANGING AN EXAMINATION

The claimant shall receive notice of the scheduled independent medical examination at least seven business days prior to the date of such examination. The notice shall be printed on the form prescribed by the WCB Chair for such purpose, which shall include all information required thereon, as set forth under Workers' Compensation Law Section 137. A copy of such notice shall be sent to the Board on the same day it is sent to the claimant. Where the claimant asserts that

notice of the examination was not received at least seven business days prior to the date of the examination and upon request by the Board, the party scheduling such examination shall provide proof in the form of an affidavit, or a business record that meets requirements for admissibility under Civil Practice Law and Rules Rule 4518 that the notice was posted by United States mail at least twelve business days prior to the date of the examination or deposited into the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery at least eight business days prior to the date of the examination. In the event that an independent medical examination is required for the purpose of determining authorization for special services for specialist consultations, surgery, physical or occupational therapy, imaging studies or special diagnostic or laboratory tests in accordance with Workers' Compensation Law Section 13-a (5), and a delay in authorization for such special services would result in a worsening of the claimant's condition or irreparable harm, and the examination can be scheduled less than twelve business days from the date of the request for the examination, the claimant may, by written consent waive the requirement of seven business days' notice of the examination. However, in case of such a waiver by the claimant of seven business days' notice of the examination, for purposes of scheduling an examination for authorization of such special services, a notice of the examination must be sent to the claimant as soon as possible after the scheduling of the examination in the same manner as otherwise required for notices of examinations under Workers' Compensation Law Section 137 and this Part. A copy of such notice shall be sent to the Board on the same day it is sent to the claimant.

If a claimant requests that an examination be rescheduled, and the examination is rescheduled less than seven business days after the request, the notice required under Section 137 need not be received seven business days prior to the examination, but must be sent to the claimant as soon as possible in the same manner as required for the original notice under said section and this section. A copy of such notice shall be sent to the Board on the same day it is sent to the claimant.

Upon request by the Board, the party scheduling such examination shall provide proof in the form of an affidavit, or a business record that meets the requirements for admissibility under Civil Practice Law and Rules Rule 4518 that the notice was mailed as soon as possible. (Business days do not include Saturday, Sunday or holidays. Calendar days do include Saturday, Sunday and holidays.)

An IME request is to be scheduled within two business days of the request. If the IME Company will not be able to fill the request within the two business days, the IME Company will send an e-Mail to the Case Manager explaining the delay in scheduling.

The contractor shall immediately advise the NYSIF Case Manager of any problem in scheduling a medical examination (ME). If the available IME dates are 5 or more weeks into the future, the IME Company must e-Mail the Case Manager, as to what dates are available.

If an IME physician is not in NYSIF's Med-Eval System, the IME Company should not schedule an exam or send out notices for an IME to the Claimant or any other party of interest. The scheduling of the IME and sending the IME-5 form should take place only after the IME physician has been approved by NYSIF and has been entered into the Med-Eval system.

The contractor shall immediately advise the NYSIF Case Manager of the date of the ME as soon as the appointment is scheduled. The notification will be through the NYSIF Med-Eval system.

If the NYSIF business office has given the IME company access to view the claimant's file in eCase, the IME company is responsible for making the appropriate records available for the doctor's review.

Prior to the ME, the contractor shall provide the IME physician with the eCase correspondence. Contractor is required to review eCase for any newly scanned correspondence no later than 5 business days before the scheduled IME and provide IME examining physician all relevant correspondence including medical and hospital reports, etc.

Prior to conducting the ME, the contractor shall ensure that the IME physician conducting the ME has thoroughly reviewed the claimant's (patient) relevant medical, diagnostic films and/or hospital reports.

Any tests considered pertinent for the ME review must be pre-approved by the NYSIF Case Manager and the fee charged for any test pre-approved by the NYSIF Case Manager shall adhere to the NYS Workers' Compensation Medical Fee Schedule and be billed on a passthrough basis.

2.7.2 ARRANGING A REVIEW OR ADDENDUM

Where NYSIF requests a record review (no physical examination occurs) or an addendum, the record review or addendum must be completed within ten (10) business days from the date of NYSIF's request, or as specified in time sensitive, whichever is earlier. If this timeframe cannot be met, the contractor should contact the NYSIF case manager.

2.7.3 THE IME-5 FORM

The IME-5 form must be sent to the claimant and the Workers' Compensation Board, uploaded to NYSIF, and mailed to the New York State agency if an agency is listed on the IME request.

In the box titled "This Examination Was Requested By", the IME company should enter "NYSIF, [the case manager's name]". (The IME company can obtain the case manager's name from the NYSIF Med-Eval screen.)

In the box titled "The Practitioner Intends/Does not Intend to Record or Videotape This Examination", the IME company should mark "Does Not Intend". The exceptions to this are when:

- NYSIF has given specific instructions for a particular examination that NYSIF wants the examination recorded/videotaped
- The IME company knows that the claimant wants to record/videotape the examination and the IME company then wishes to do the same.

An independent medical examiner may not refuse to conduct an independent medical examination because the claimant intends to videotape or otherwise record such examination when the claimant has appeared for such examination as scheduled. The claimant and the independent medical examiner and their agents shall not alter or misrepresent the content of the recording and shall not distribute publicly the recording beyond its use in a hearing of the Board.

The claimant may be accompanied to the examination by an individual or individuals of his or her own choosing. However, neither the examiner nor the claimant may disrupt or interfere with the examination by such recording or as a result of the presence to such companion or companions.

2.7.4 THE IME-3 FORM

IME-3 form is sent only to the WCB, and is used:

1. If the physician is not examining the claimant and has received a request for information regarding the claimant: A copy of the request, including any correspondence not present in WCB eCase must be sent with the IME-3 form within ten days of receipt of the request.

If the physician responds within ten days of the receipt of the request, the physician may include the response along with the IME-3 form and request/correspondence. If the physician does not respond within ten business days, then a new IME-3 form and the response must be sent within ten days. (Please note that if the response is on the IME-4 form, the IME-3 form is unnecessary.)

2. If the physician is examining the claimant and the IME Company has received correspondence that is not present in WCB eCase: Any correspondence not present in WCB eCase, must be sent with the IME-3 form within ten days of receipt of the correspondence request if received after the IME or record review is arranged.
3. If additional correspondence is received after the IME-3 form is sent to the WCB, and some or all of this correspondence is not present in WCB eCase, a new IME-3 form and the new correspondence not in WCB eCase must be sent within ten days.

2.7.5 THE IME REPORT

1. The independent medical examiner shall prepare a complete and accurate report following an independent medical examination or review of records that at least shall contain:
 - a. a description of the examination, if conducted
 - b. a list of all of the information, such as documents, reports, records, and/or test results, received and reviewed in preparation for the independent medical examination the report of such exam or the review of records,
 - c. any test films or results, or other medical information provided by the claimant at the time of the independent medical examination that is related to the condition that is the subject of the independent medical examination,
 - d. the independent medical examiner's professional opinion, and a signed statement certifying:
 - that the report is a full and truthful representation of the independent medical examiner's professional opinion with respect to the claimant's condition in accordance with Workers' Compensation Law Sections 13-a (4)(e)(i), 13-k (3)(e)(i), 13-l(3)(e)(i) or 13-m (4)(e)(i), as appropriate; (2) that no person or entity has caused, directed or encouraged the independent medical examiner to submit a report that differs substantially from the professional opinion of the independent medical examiner; and (3) that the independent medical examiner has reviewed the report and attests to its accuracy.

2. A report that does not bear the signed certification required in subparagraph (2) of this paragraph shall not be sufficient to meet the requirements of Workers' Compensation Law Section 137 or this section and shall not be admissible as evidence in a workers' compensation proceeding. The signed certification shall contain an original signature of the independent medical examiner made by such examiner after reviewing the report and shall not be a stamp or other method of reproducing a signature. An electronic signature, as that term is defined in State Technology Law section 302 (3) and that is affixed remotely by the independent medical examiner, may be used if its use complies with State Technology Law section 304 and section 540.4 of Title 9.
3. The independent medical examiner shall provide copies of the report of an independent medical examination as required under Workers' Compensation Law Section 137 (1)(a) together with any questionnaires or intake sheets completed by the claimant at the request of the independent medical examiner by filing such report and questionnaire with the form prescribed by the Chair for such purpose with the Board and providing copies of such form to the insurance carrier, the claimant's attending physician(s) or other primary attending practitioner(s), the claimant's attorney or licensed representative, and the claimant. Only the form specifically prescribed by the Chair for the reports of independent medical examinations shall be filed. The form prescribed by the Chair pursuant to paragraph (5) of this subdivision to submit a request for information or a response to such a request shall not be used for the reports of independent medical examinations. When a claimant treats with more than one attending physician or practitioner, the independent medical examiner shall provide a copy of the report of the independent medical examination to any attending physician or practitioner who has treated the claimant in the past [6] six months for the condition that is the subject of the independent medical examination. If no provider has treated the claimant in the last [6] six months, the report should be sent to the provider who last treated the claimant. A provider who has examined the claimant solely for the purpose of consultation or diagnostic examination or test is not an attending physician or other attending practitioner within the meaning of this section and section 137 of the Workers' Compensation Law. All such reports shall be sent on the same day and in the same manner as required by Workers' Compensation Law section 137 (1)(a).
4. Written reports of medical experts, made on behalf of any party without physical examination of the claimant (a review of records as defined under NYCRR 12 CRR-NY 300.2(b)(12)), to be used for reference at a hearing, must be in compliance with all WCB guidelines, which are subject to change without notice. If the WCB revises, updates or amends these guidelines and/or regulations during the term of the contract the IME firm must revise their process to be in compliance with the newest guidelines and/or regulations. Additionally, these reports must be filed with the WCB and submitted to all other parties or their representatives, if any, at least three business days prior to the hearing.

NOTE: NYSIF requires that these reports be submitted under the same requirements as stated in paragraph (3) above.

- a. NYSIF also requires that the report shall include:
 - i. Complete identification of the claimant/claim, with claimant's age, gender, and home address, as well as NYSIF case number, WCB case number and date of injury.
 - ii. Name of Examining physician and his/her specialty.

- iii. History of the accident, or intervening history.
- iv. Medical history of the claimant, including prior injuries and conditions, and any prior claims.
- v. Scope of examination and findings, including laboratory tests and x-rays.
- vi. Findings must be detailed (e.g. for the shoulder: degree of anterior flexion, defects in internal and external rotation, etc.)
- vii. On SLU exams the usage of goniometers when evaluating range of motion is **required**. The examining physician should provide three measurements for range of motion, compare range of motion to contralateral extremity and provide specific notification of the applicable special consideration, if any.
- viii. Conclusion: must be justified based upon examination findings.
 - E.g. if a schedule loss is found, the conclusion must explain how the percentage was determined: "Using the (date) WCB Medical Guidelines, based upon the (findings), the claimant would be entitled to a 15% loss for the deficit in forward flexion, and 7.5% loss for the mild deficit in internal rotation, thus having a 22.5% schedule loss of use of the right arm.
 - E.g. if a non-schedule permanency is found, the conclusion must explain how the Impairment table and severity rating were determined: "Using the (date) WCB Medical Guidelines, based upon the (findings), the claimant would be entitled to an the Impairment table and severity rating of..."
 - E.g. If an exam/review includes non-schedule and schedule body parts, and there is MMI but no permanency in a non-schedulable body part, the report must indicate that for that body part there is MMI but no permanency.
 - E.g. If an exam/review finds the claimant is "suitable for work at the light duty level," the report must **directly reference the basis for** the opinion that the claimant's exertional ability falls within the light duty category or appropriate work restrictions.

A copy of each report of independent medical examination shall be submitted by the IME company or IME physician on the same day and in the same manner to the Workers' Compensation Board, the insurance carrier, the claimant's attending physician(s) or other attending practitioner(s), the claimant's representative, if any, and the claimant.

NYSIF does not want the paper report.¹ Instead, five (5) calendar days after the report has been same-day same mannered to the parties above, in accordance with Section 137 and the accompanying regulations, the IME report may be uploaded to NYSIF's Med-Eval system.

Reports should be uploaded in PDF format only, preferably with "searchable" and "selectable" text.

If the IME Company receives a call from NYSIF personnel requesting a copy of the report be sent to NYSIF prior to the above five (5) calendar days having elapsed, you are instructed to indicate that this cannot be done. (The WCB has indicated that there are no exceptions, not even that a WCB hearing is being held the next day and the report is needed for the hearing.)

However, if the WCB Law Judge, at a hearing in progress, has directed the NYSIF hearing representative to call and obtain the report, the report may be sent to that Law Judge.

The medical examination report (IME-4 form/report) must be received by the WCB within:

- In-State examination (i.e. examination held within New York State): within ten (10) business days, (or sooner if directed by the WCB).
- Out-of-State examination (i.e. examination NOT held within New York State): within twenty (20) business days, (or sooner if directed by the WCB).
- The appropriate WCB form (currently the IME-4 form) must be used when any type of report is created, such as examination, addendum, review, etc.
- The appropriate sections of the IME-4 form must be completed and the examination results typed on the IME-4 form. (If the report is not typed on the completed IME-4 form, then it must be attached to the completed IME-4 form. In this instance the IME-4 form, in the area for the results of examination, should indicate "See attached narrative report of Dr. (*physician's name*), Exam of (*date of exam*), of (*number of pages*) pages".

2.7.6 THE MEDICAL REPORT FORMAT

1. History:

- a. If initial exam by physician- history of accident, and any intervening history.
- b. If re-examination- intervening history
History of any prior conditions. This includes work injuries, off the job injuries, unrelated physical conditions, etc. (Potential use for apportionment, or identification of medical comorbidities/complicating factors).

Correspondence reviewed by examining IME physician (must indicate all correspondence reviewed by the physician for the examination, regardless as to whether it is, or is not, in WCB eCase).

2. Examination findings.

3. Conclusion. (This contains the answers to the issues being asked. Stay within specialty. Only respond to the issues asked.)

4. Signed statement certification: The signed certification shall contain an original signature of the independent medical examiner made by such examiner after reviewing the report and shall not be a stamp or other method of reproducing a signature. An electronic signature, as that term is defined in State Technology Law section 302 (3) and that is affixed remotely by the independent medical examiner, may be used if its use complies with State Technology Law section 304 and section 540.4 of Title 9.

The signed certification must be signed by the physician, at the end of the report as well as on the IME-4 form.

5. Testimony availability: must be indicated.

cc: on both IME-4 form and the IME physician's report.

- a. Claimant
- b. WCB

- c. Name(s) of attending physician(s) and attending practitioner(s)
 - d. Attorney/claimant's representative
 - e. State agency (if provided by NYSIF on Appt Info Screen)
6. Photo I.D.: NYSIF requests, whenever possible, that a photocopy of a photo I.D. card (e.g. driver's license), or a digital photo must be attached to the report as the last page. (Note that since it is part of the IME-4 form/report, it is received by the appropriate parties: Workers' Compensation Board, the insurance carrier, the claimant's attending physician(s) or other attending practitioner(s), the claimant's representative, if any, and the claimant).

Whether the claimant is willing or declines to provide his picture, the examination should still take place. Neither the WCL nor NYSIF requires a picture be provided as a condition of performing the exam. The picture is used to determine that the person being examined is the same person as the claimant appearing at hearings.

When photocopying a picture I.D. card, the claimant's features must be viewable. Dark backgrounds tend to mask the claimant's face, and the settings on the photocopier may need to be made lighter.

7. No confidential reports.
8. Addendum report: Must be on or attached to the appropriate WCB form. It should mention only the issue(s) being addressed. It must be sent on the same day and in the same manner to the appropriate parties (Workers' Compensation Board, the insurance carrier, the claimant's attending physician(s) or other attending practitioner(s), the claimant's representative, if any, and the claimant).

2.7.7 NYSIF ELECTRONIC MED-EVAL SYSTEM

The IME company must complete all sections of the Med-Eval system as specified by includes but is but not limited to:

- Exam acceptance, scheduling declines, cancelations, results, and alert acknowledgement.
- Higher fee requests for exams, completing various fields.
- Input the results of the exam/review: Based upon the conclusions stated in the IME report, complete dropdown boxes.
- Upload the IME report and any other document submitted in connection to the exam, e.g. IME-5 form.
- Complete billing fields (all IME billing is electronic).
- Complete fields concerning assignments involving Translators.
- Complete fields concerning adding IME physicians to the NYSIF IME physician panel for the IME company.
- Daily check and act upon electronic alerts to changes involving IME assignments given to the IME company.

Not until five (5) calendar days after the report has been same-day same mannered to the parties above, in accordance with Section 137 of the WCL and Section 300.2 of 12 NYCRR, may the IME Company electronically update the Results screen of NYSIF's IME system, and upload the IME report and bill.

If the IME Company selects the incorrect assignment status on NYSIF's IME website (e.g. "Exam Performed" when it is really a "No Show"), contact NYSIF and the status will be placed back to "Accepted", at which time you may select the correct status for the assignment.

If the IME Company uploads the incorrect report (e.g. John Jones instead of Tom Jones), contact NYSIF and the report will be deleted, thus allowing you to upload the correct report.

If the IME Company has uploaded an IME-5 form, and now has an amended IME-5 form to submit, the prior IME-5 form should be deleted by the IME Company, and the amended form then uploaded.

If the IME Company uploads the wrong billing amount, contact NYSIF and the billing will be terminated, thus allowing him upload the correct billing. However, if payment on the incorrect billing has already been issued (bill status 50) one of the following actions is to be executed:

- a. If the IME Company returns the draft, and the bill status is "60", then NYSIF needs to terminate the bills listed on the draft and have the IME Company upload new billing on all IME assignments covered by that draft.)
- b. If the IME Company received payment and cashed the draft, then the billing cannot be terminated.
 - i. If the payment was an underpayment, then NYSIF must create a new assignment/appointment, **Type** is "Review", **Issue** is Other Info- "additional payment", **Consultant Report** is an explanation of why the underpayment occurred, **Billing** is the additional amount owed.
 - ii. If the amount was an overpayment, return the overpayment.

If there are instructions from NYSIF that the IME or the physician feels violate Section 137 of the WCL, then they must always follow Section 137 of the WCL. However, they must also:

- a) Contact the Workers' Compensation Board to determine if NYSIF is incorrect, and
- b) If NYSIF is incorrect, contact the NYSIF District Claims Manager immediately, to discuss the problem.

2.7.8 TIME SENSITIVE

On an exam assignment which has a Time Sensitive "due date", the report must be sent overnight mail and received by all parties- by the "due date" or within ten business days of the exam, whichever is earlier.

On a review assignment which has a Time Sensitive "due date", the report must be sent overnight mail, and received by all parties by the "due date". If the IME company cannot meet this requirement, the case manager should be immediately contacted, and the problem discussed. If they are not available, contact the business office's IME liaison.

If a higher fee is being requested, the fee request should be entered into the Med-Eval system and the case manager then contacted by phone, for quick resolution of the fee request.

If the IME request is being declined by the IME company, the case manager must be contacted immediately by phone.

Time Sensitive assignments include but are not limited to:

- Expedited Hearing (e.g. Rocket Docket)
- Variances (e.g. MG-2)
- Medical Authorization (e.g. PAR)
- MMI/Permanency
- Date Certain (WCB assigned due date)
- Other

2.7.9 BILLING

All billing for IME services, except for testimony and translator services, are through the electronic Med-Eval system. NYSIF will not accept paper billing except for testimony and translator services. At present, NYSIF accepts a combination of electronic and paper billing for testimony and translator services. NYSIF reserves the right to modify and/or update the submittal process if it is determined to be the best interest of NYSIF. NYSIF will provide contracted firms 90-days to transition and comply with the modifications and updates the submittal process. At the time this system is presented, additional guidance would be provided by NYSIF on the process. NYSIF reserves the right to accept either paper billing and electronic billings at NYSIF's discretion.

2.7.10 TESTIMONY (A.K.A. DEPOSITION)

IME physicians must make themselves available for depositions within a reasonable time frame in order that the deposition be completed by the due date. If a deposition is needed from an IME Company's IME physician, the following procedure must be followed:

- a. The IME Company will have assigned a contact person for depositions. NYSIF will contact the IME Company's designated person with the Deposition information and will advise the contact person as to what date the deposition needs to take place by.
- b. The IME Company's contact person will contact the IME physician and obtain availability dates.
- c. Once the dates have been obtained the IME Company's contact person office will contact NYSIF by email with available dates. NYSIF will select the date.
- d. Once NYSIF has selected the date and time, NYSIF will send out a confirmation e-mail to the IME Company.
- e. If an IME physician is subpoenaed, the IME physician must inform the IME company about the subpoena and confirm his/her attendance. Failure to respond to or appear for a deposition by subpoena may result in physician being removed from NYSIF panel of IME physicians.
- f. Prior to the deposition taking place it will be the IME Company's responsibility to make sure that the IME physician that is being deposed has his/her IME report(s), as well as the records reviewed for his/her findings at the time of the original IME.
- g. The IME Company will handle all testimonies and deposition arrangement. The IME company will not contact NYSIF directly. All testimony and deposition bill must be submitted to NYSIF by uploading invoices with the proper documentation into the Med-Eval system. The IME company will be paid by NYSIF and the Physician will be paid by the perceptive IME company. NYSIF will not pay the Physician directly.

- The IME Company will pay the IME physician, and then bill NYSIF directly for the proper deposition fee.
 - The IME physician will bill NYSIF directly for the proper deposition fee.
- h. Deposition bills will be sent to NYSIF using HCFA 1500 form. The blank and marked up 1500 form will be available. The bills will be mailed to the NYSIF PO Box or electronically submitted through a NYSIF eBilling vendor.

2.7.11 CANCELLATIONS

If the claimant cancels an appointment, the IME Company should ascertain why, and upload a note into NYSIF's Med-Eval system. If the Physician or IME company cancels an appointment, the IME company should ascertain when and why by uploading a detailed letter outlining the reasoning for the cancellation in the NYSIF Med-Eval system.

2.7.12 ADDENDUMS

- a. If the Addendum is to be of no additional cost, the IME Company should enter \$0.00 in the fee column of the results screen
- b. Addendums must be uploaded into the Med-Eval system.
- c. If an addendum is requested solely to correct an omission from the original report, there shall be no additional cost to NYSIF.

2.7.13 PRECLUSIONS, TIMELINESS OF REPORT

If an IME report is precluded for violation of Section 137 by the IME Company, there will be no payment made for the IME. If payment has already been made, the IME Company must reimburse NYSIF.

If an IME request is made subject to a time sensitive need-by date, and the report is received by the appropriate required parties after said need-by date, there will be no payment made for the IME. If payment has already been made, the IME Company must reimburse NYSIF.

2.7.14 COMPLIANCE WITH LAWS

As in all other requirements listed, New York State (NYS) laws, rules and regulations are subject to change. It is the responsibility of the IME Company to be in full compliance with all NYS laws, rules and regulations, as well as NYSIF's internal policies, at all times. The IME Company, and any Subcontractor(s), must be in compliance with all applicable Federal, state and local laws, ordinances and regulations at the time of its Proposal submission and, upon becoming a Contractor, may not violate any Federal, state or local laws, ordinances or regulations established by the United States, State of New York or any other state or locality in which collection is attempted throughout the Contract period.

2.7.15 TRANSLATION SERVICES

Governor Cuomo's Executive Order 26, Statewide Language Access Policy, requires State Agencies to provide interpreting services to individuals with limited English proficiency (LEP). While performing independent medical examination services under this contract, the IME Company must provide interpretation and/or translation services when warranted by the assignment or requested by NYSIF.

2.8 TYPES OF MEDICAL EXAMS TO BE PROVIDED

The contractor must provide the following types of medical exams:

2.8.1 PSYCHOLOGICAL/PSYCHIATRIC MEDICAL EXAM

The contractor shall assign an appropriately licensed/certified doctor to perform a psychological/psychiatric medical exam on claimants referred to the contractor for this type of exam. The same examination shall be performed regardless of whether the claimant is suffering an off-the-job disability or an occupational disability. The contractor will be paid at the same rate for the medical exam regardless of whether the claimant is examined for an initial medical exam or for a re-evaluation medical exam. The NYSIF Case Manager shall determine the need for a re-evaluation. The contractor shall be capable of performing all examinations that are referred to the contractor as needed.

2.8.2 PHYSICAL MEDICAL EXAM

The contractor shall assign an appropriately licensed/certified doctor to perform a physical medical exam on claimants referred to the contractor for this type of exam. The same examination shall be performed regardless of whether the claimant is suffering an off-the-job disability or an occupational disability. The contractor will be paid at the same rate for the medical exam regardless of whether the claimant is examined for an initial medical exam or for a re-evaluation medical exam. The NYSIF Case Manager shall determine the need for a re-evaluation. The contractor shall be capable of performing all examinations that are referred to the contractor as needed.

2.9 CORRESPONDENCE & BILLING

All correspondence, billing, and the like, shall only come from the company (a) submitting the proposal, and (b) that is awarded the contract.

2.10 COST/INVOICING

The bidder must complete a price sheet in its entirety for each region. Bid prices shall be "all inclusive." All prices shall include all direct and indirect costs, including, but not limited to, travel, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, system maintenance, system troubleshooting and modifications, all documents, reports, forms, reproduction, and any other costs. Prices bid for a claimant's IME, if requested by the NYSIF Case Manager, shall include all doctor services noted in the scope of work with the exception of testimony before a Workers' Compensation Board or at a deposition or administrative hearing and the exception of Laboratory Analysis. The price for an exam or review is per exam or review and is not based upon the number of body parts, or which body parts are examined.

Prices set forth shall be the total amount that the State shall be obligated to pay the bidder, should they be awarded a contract. For out-of-state and international assignments, these rates will be subject to negotiation at the time of case assignment.

Payment for all services will be rendered to the Prime Contract vendor. It is the responsibility of the Prime Contractor to pay subcontractors for any services performed. NYSIF will not make any payments directly to subcontractors.

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](https://www3.nysif.com/FooterPages/Column1/AboutNYSIF/Procurement).
<https://www3.nysif.com/FooterPages/Column1/AboutNYSIF/Procurement>

Costs to be factored into the Fee Schedule (Appendix Z), include but are not limited to the following:

- a. NYSIF does not pay for in-state "No-Shows" (a.k.a. missed appointments), or cancelled appointments.
- b. Any testimony cancelled prior to 48 hours from time of testimony receives no testimony fee.
- c. If NYSIF asks an issue (e.g. treatment), and the IME physician does not respond to it in the report, then the supplemental report is free.
- d. The fee to complete a Physical Capability form is \$35.
- e. The fee to complete IME-4.3A form is \$75.
- f. The fee to complete IME-4.3B form is \$100.
- g. Testimony fee is \$450.
- h. Deposition fee is \$450.
- i. NYSIF pays a flat rate for x-rays consistent with WCB Medical Fee Schedule.
- j. NYSIF does not pay a fee for arrangement of interpreter by IME company.

The IME firm must assist in arranging testimony and depositions. If testimony or deposition billing/payment issues arise, the IME Company must assist NYSIF in resolving any billing/payment problems.

If a contractor is not a Professional Corporation, per the Department of Public Health, it must separate the billing fee to delineate the amount the physician will receive and the amount the company will receive.

2.10.1 ESCALATION

The fees shall not be increased during the first three years of the contract.

For years four and six, the Contractor may request an increase in bid rates not to exceed 5% or CPI – whichever is less – effective on the renewal start date. The rates for years five and seven will remain fixed at the year four and six rates respectively. The Contractor must submit their escalation request(s), in writing, at least 60 days prior to the contract anniversary date.

CPI means the annual rate of increase in the US City Average Index for all urban consumers (CPI-U) for the category of all items before seasonal adjustments, as reported by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/>). CPI increase will be determined by using the most recently released index as of 60 days prior to the contract anniversary date, compared to the same month's index from the prior year, as written in the "Consumer Price Index Summary. For example, a contract has an anniversary date of 6/1/2023. NYSIF would use the index available on 4/1/2023, which would be the March 2023 index, and compare it to the March 2022 index.

2.11 SUBCONTRACTING

Bidders intending to subcontract portions of services under this procurement must complete and submit Appendix Y, "Subcontractor Utilization" with their bid. Prior to the commencement

of the work to be performed by the successful Bidder, the Bidder must agree to the following provisions:

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 Bidder may arrange for a portion/s of its responsibilities under a Contract to be subcontracted to qualified, responsible subcontractors, subject to approval of NYSIF. If the Bidder determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Contract must be fully explained by the Bidder to NYSIF. As part of this explanation, the subcontractor must submit to NYSIF a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form- Appendix V, as required by the Bidder prior to execution of a Contract.

The Bidder retains ultimate responsibility for all services performed under a Contract.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the Contract. Unless waived in writing by NYSIF, all subcontracts between the Bidder and subcontractors shall expressly name NYS, through NYSIF, as the sole intended third party beneficiary of such subcontract. NYSIF 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.

The Bidder 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 Bidder's duties under the Contract. Any subcontract shall not relieve the Bidder in any way of any responsibility, duty and/or obligation of the Contract.

If at any time during performance under the Contract total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

If an entity which does not have an IME contract with NYSIF:

1. Is utilized to provide an IME physician:
 - The provided physician must be vetted by the contracted IME Company to whom NYSIF gave the IME assignment. All requirements that are mentioned in this RFP concerning the obligations of the IME Company in relation to IME physicians, are the responsibility of the contracted IME Company to whom NYSIF gave the IME assignment as applies to the provided physician.
 - The entity providing the physician is not allowed to perform any function except arranging an appointment time, or testimony/deposition time for the physician.
 - The responsibility to provide the physician with correspondence, prior reports, etc. for examinations, reviews or testimony/depositions is the responsibility of the contracted IME Company to whom NYSIF gave the IME assignment.

2. Is utilized to provide any service not mentioned in the above paragraph 1:

- No other service may be performed by the entity without the prior written approval of both NYSIF's Contracts Division, and NYSIF Business Manager of Claims Administration.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the Contract. Unless waived in writing by NYSIF, all subcontracts between the Bidder and subcontractors shall expressly name NYS, through NYSIF, as the sole intended third party beneficiary of such subcontract. NYSIF 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.

2.12 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: 75%
2. Financial Proposal: 20%
 - a. Mandatory Specialties: 15%
 - b. Other Specialties: 5%
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. (75% 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. Additional information regarding Appendix T, Vendor Security Survey, is included below in Section 3.3.

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. (20% 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, or certified Minority or Women-owned Business Enterprises (MWBEs), as defined in NYS Executive Law subdivisions 310(7), 310(15) and 310(20) or Service Disabled Veteran Owned Businesses (SDVOBs) as defined in Section 40 of NYS Veterans' Services 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 Veterans' Services Law Section 40

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 ensuring 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 reserves the right to hold interviews for select Regions depending upon NYSIF's needs. The number of interviews per Region will be equal to two more than the total number of awards anticipated for the Region as established in Section 1.7.1 of the RFP, plus any vendors within 10% of the first-place Bidder. 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-person in New York City or Albany, or conducted virtually. 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.

3.3 APPENDIX T, VENDOR SECURITY SURVEY

NYSIF will review and evaluate the bidder's response to Appendix T, NYSIF Vendor Security Survey as a Prequalification Criteria on a pass/fail basis. The minimum required implementation levels are defined in Appendix T, NYSIF Vendor Security Survey. Bidders who do not meet the minimum required implementation levels will be disqualified.

- a. **Pass:** Meets or exceeds minimum implementation levels
- b. **Fail:** Does not meet minimum implementation levels

NYSIF reserves the right to seek non-material clarifications to the bidder's IT Data Security procedures if determined to be in NYSIF's best interest.

3.4 CONTRACT APPROVAL

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

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

- 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.
- NYSIF can accept proposals in either of the following submission formats. Note, see Section 4.2 for details on the Bid Format.
 - Via email to the address included under Section 4.3 with digital files attached. **The maximum file size NYSIF can receive via email is 35 mb.** Note, it is acceptable to NYSIF for Bidders to send in proposals through multiple emails if the proposal file size is prohibitively large; however, it is the responsibility of the Bidder to ensure the proposal broken up into clearly labeled and well-organized parts, and the is sent & received prior to the due date & time. Note, NYSIF is unable to open ".Zip" files.
 - A hard copy proposal can be mailed to the address found under Section 4.3. Should a Bidder choose to submit a hard copy proposal, the submission must also include one (1) exact electronic copy on a USB flash drive of both the proposal and fee schedule.
- Bidders must submit each of the complete Administrative, Technical, and Cost Proposals **as separate electronic files** on a single USB flash drive or within the email submission. One example of an acceptable format for the files is unlocked Adobe PDF. NYSIF prefers that such files be searchable. The files must be representative of the original documents, **including signatures/notaries**. Electronic signatures will be accepted in lieu of original signature on the electronic version.
- The Fee Schedule Proposal must be **a separate electronic file** on the USB flash drive or within the email submission. An Electronic copy of Appendix Z fee schedule must be submitted in both Excel and PDF format. **No references to costs are to be included in the Administrative and Technical proposal files.**
- 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

- Bidders must submit each of the complete Administrative, Technical, and Cost Proposals **as separate electronic files** on a single USB flash drive *OR* within the email submission. One example of an acceptable format for the files is unlocked Adobe PDF. NYSIF prefers that such files be searchable. The files must be representative copies of the original documents, **including signatures/notaries**. Electronic signatures will be accepted in lieu of original signature on the electronic version. 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 T, the *Vendor Security Survey*, and any substantiating documents, even if included or referenced elsewhere in a bidder's response, should be submitted as one file and labeled separately in the electronic copy.
- The Fee Schedule Proposal must be **a separate electronic file** on the USB flash drive *OR* within the email submission. **No references to costs are to be included in the Administrative and Technical proposal files**. An Electronic copy of Appendix Z fee schedule must be submitted in both Excel and PDF format.
- 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. Name and address of Bidder's firm, other affiliates, and other locations.
- b. Length of time providing IME services in New York State for workers' compensation insurance companies or funds, or in meeting the additional requirements of this RFP, and for whom the services were performed.
- c. Other city, state or federal government agencies previously under contract with the Bidder within the past five years.
- d. Other city, state or federal government agencies currently under contract with the Bidder.
- e. A copy of the Bidder's and subcontractor's certification to do business in New York State.
- f. The IME Company must provide a copy of the Bidder's IME-7 Form, "Statement of Registration" issued by the Workers' Compensation Board, authorizing management of independent medical services.
- g. If a NYS certified MWBE, provide a copy of your firm's certification.
- h. Provide a copy of the bidder's registration issued by the Workers' Compensation Board, authorizing management of independent medical services.
- i. Identify the medical examination facilities proposed for performance of the exams.
- j. If subcontracting some portion of this RFP to another company, a letter of agreement must be included from each subcontractor indicating that the subcontractor has received and read the RFP, agrees to subcontract with the Bidder if the contract is awarded to the Bidder and agrees to RFP requirements.
- k. Please identify the number of bilingual/multilingual doctors; identify the language(s).
- l. Please identify the number of bilingual/multilingual staff; identify the language(s).
- m. A list of all staff being proposed by Bidder, include all certifications and licenses.

Failure to include this information may result in rejection of the bid.

4.2.4 TECHNICAL EXPERIENCE / DESCRIPTION OF PROPOSED SERVICES

Submit as described in Section 2 Technical Specification 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 escalation procedures NYSIF can use for reporting problems to higher levels of management within the Bidder's organization.
- c. A Quality Assurance Plan.
- d. Explain your organization's structure including a description of the reporting relationships of everyone involved in the contract and the home office of each staff member.
- e. Provide a description of the procedure(s) used to limit the number of nonappearances (a.k.a. "No Show") at IME exams.

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

4.2.5 SIMILAR ENGAGEMENTS

The bidder shall provide a minimum of three (3) Similar Engagements of similar scope which best represents their abilities to satisfy the requirements of this RFP (Appendix I). Similar Engagements from current clients (those with which the bidder has an existing contractual relationship) are preferred. A minimum of three (3) Similar Engagements shall also be provided for any subcontractors listed as part of the bidder's proposal. Please note, NYSIF cannot be used as a Similar Engagement. The Clients 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, telephone number and email 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) Similar Engagements to ensure a minimum of three (3) Similar Engagements 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 Similar Engagements. It is the firm's responsibility to ensure that contacts will be available and willing to provide a Similar Engagements.

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, Appendix E:*

NYSIF recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [Office of the State Comptroller's \(OSC\) website](#) or to enroll, go directly to the [VendRep System online](#).

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. Visit the [OSC Help Desk webpage](#) for direct contact information. Proposers opting to complete the paper questionnaire are directed to the Appendix E Vendor Responsibility Questionnaire included within this RFP.

- ***NYS Certification, Appendix F***
- ***Encouraging Use of NYS Businesses in Contract Performance, Appendix G***
- ***Disclosure of Prior Non-Responsibility Determinations, Appendix H***
- ***Similar Engagements, Appendix I***
- ***EO 16 Certification: Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia, Appendix J***
- ***MWBE/EEO Requirements and Procedures, Appendix M*** requires Bidders to submit (i) form 101; and (ii) form 106 or a copy of bidders EEO policy
- ***Contractor Consultant Law, Appendix O*** requires Bidders to submit Form A.
- ***Vendor Security Survey, Appendix T***
- ***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 Proposal must be a separate electronic file on the USB flash drive OR within the email submission. An electronic copy of Appendix Z fee schedule must be submitted in both Excel and PDF format.
- ***Mandatory Requirements Certifications, Attachment 9***
- ***List of Contract Fee Physicians (Excel), Attachment 10***

Exhibits 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 SUBMISSION & 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.

- **Emailed Bids**

An email to contracts@nysif.com containing the bid must clearly outline the following information:

Email Subject line: Formal Proposal – Bid # 2023-08-RE

OR

- Hand Deliveries / Parcel 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 # 2023-08-RE
15 Computer Drive West
Albany, NY 12205

Bidders assume all risks for timely, properly submitted deliveries.

Hand Deliveries, Parcel Service, Courier, and/or Emailed bids must be received by 2:00 PM on 10/20/2023. Bids received after the due date & time will be considered late and handled in accordance with Exhibit B, Clause 9.

Please be advised, the use of the United States Postal Service (USPS) for delivery of a proposal is PROHIBITED, as the bid will not be properly delivered to the Procurement Unit. Acceptable Parcel Services would include but are not limited to United Parcel Service (UPS), FedEx, and DHL. Hand Deliveries and the use of other Courier services are acceptable.

4.4 BID OPENING

All bids received by the due date and time established on the RFP calendar will be opened and recorded in accordance with NYSIF's procurement procedures. The results of the bid will be posted on the [NYSIF procurement page](#).

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.*
- _____ 9. The Bidder is in compliance with all laws, statutes, rules and regulations or any federal, state or local governmental authority in the United States of America applicable to Bidder and all beneficial owners of Bidder, including, without limitation, the requirements contained in the rules and regulations of the Office of Foreign Asset Control of the Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders in respect thereof.

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.

Sexual Harassment Prevention:

- _____1.* By submission of this bid, pursuant to NY State Finance Law § 139-L, each bidder and each person signing on behalf of any bidder certifies, and in the

BIDDER CERTIFICATIONS

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 of Officer

Sworn to before me this

Typed/Printed Name

____ Day of _____, 20____

Title

Notary Public

Company Name

Registration No:
State:

Date Signed



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.



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 §§ 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. The Bid Opening procedure will be outlined and handled in accordance with the Bid Specifications. 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 in accordance with 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. For the purposes of Bid Submission, "sealed bids" shall include bids submitted in an electronic format only if electronic format is listed as an acceptable means of bid submittal in the Bid Specifications. The timely submission of an electronic bid or offer must be in compliance with instructions provided within the Bid Specifications and shall be the sole responsibility of each Bidder.

In the event that a Bidder fails to provide such information on the electronic bid, 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 or electronic signatures; however, where necessary documents must be notarized. 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. EXTRANEEOUS 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, counteroffer, 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.

For additional information please see NYSIF's Freedom of Information Law [website](#). Freedom of Information Law requests must be submitted in accordance with the procedure established on the aforementioned website.

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

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

- a. PREVAILING WAGE RATE APPLICABLE TO BIDS** A copy of the applicable prevailing wage rate schedule is incorporated into the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (e.g., 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 rates 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.
- b. 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 for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.
- c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS** 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 the 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 Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.
- iv. **Day's Labor** 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.
- d. **ARTICLE 9 BUILDING SERVICES CONTRACTS** In compliance with Article 9, Section 230 of the New York State Labor Law:
 - i. **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. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work Site while work is being performed.
 - ii. **Overtime** Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

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 § 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 § 163(9)(e) of the State Finance Law and § 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.** 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.** 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 §§ 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.
 - Contractor agrees to comply with Executive Law § 170-f, *Website accessibility; contractors and vendors*. Each contractor, subcontractor, vendor, consultant, or other person providing services pursuant to a state contract shall be required to conform any website provided by such contractor, subcontractor, vendor, consultant, or person in relation to and for the purpose of the provision of such services to the most current version of the Web Content Accessibility Guidelines adopted by the World Wide Web Consortium for accessibility, or any successor standards.
- 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 §§ 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 § 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-L, 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 N.Y. State Labor Law § 201-g.

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-L, 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 § 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 must 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 email, 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:

Email: contracts@nysif.com

Subject Line: Attn Vendor Protest – NYSIF Bid # ____ – [Bid Title]

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 email, 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:

Email: contracts@nysif.com

Subject Line: Director of Administration Attn Vendor Protest – NYSIF Bid # ____ – [Bid Title]

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 email 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:

Email: contracts@nysif.com

Subject Line: General Attorney Attn Vendor Protest – NYSIF Bid # ____ – [*Bid Title*]

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.

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:** For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract may be terminated by NYSIF at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, NYSIF may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach. NYSIF shall have the right to award a new contract to a third party. In the event of termination for cause, NYSIF shall seek recovery damage incurred by NYSIF and the reasonable re-procurement costs associated in reassigning the contract.
- b. **For Convenience:** This Contract may be terminated at any time by NYSIF for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, NYSIF shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.
- c. **For 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. The Contractor is required to utilize NYSIF's electronic billing system and any related programs for all reporting and bill payment.

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

Contractor shall provide, upon request of NYSIF, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by NYSIF and in a media commercially available from the Contractor. NYSIF may direct the Contractor to provide the information to the State Comptroller (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 in any other applicable statute, 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 access to or unauthorized acquisition of, or access to or acquisition without valid authorization of computerized data that compromises the security, confidentiality, or integrity of Personal Information or Private Information maintained by a business. "Personal Information" shall mean any NYSIF supplied information concerning a person which, because of name, number, mark or other identifier, can be used to identify such person. "Private Information" shall mean any NYSIF provided information that is either (a) personal information in combination with any one or more of the following data elements, when either the data element or the combination of personal information plus the data element is not encrypted or encrypted with an encryption key that has also been accessed or 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; (iv) account number, credit or debit card number, if circumstances exist wherein such number could be used to access an individual's financial account without additional identifying information, security code, access code, or password; or (v) biometric information, meaning data generated by electronic measurements of an individual's unique physical characteristics, such as a fingerprint, voice print, retina or iris image, or other unique physical representation or digital representation of biometric data which are used to authenticate or ascertain the individual's identity; or (b) a user name or e-mail address in combination with a password or security question and answer that would permit access to an online account. Notwithstanding the foregoing, Private Information does not include publicly available information which is lawfully made available to the general public from federal, state, or local government records. Additionally, Contractor 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 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 consultant contracts are defined as "contracts entered into by a state agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*". The amendments require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), the Division of the Budget (DOB) and the Department of Civil Service (CS).

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

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. UPS (United Parcel Service), FedEx, or DHL
- b. e-mail
- c. facsimile transmission
- d. personal delivery
- e. expedited delivery service
- f. United States Postal Service (USPS)*

**Use of United States Postal Service (USPS) is not recommended as the notice will not be directly delivered to NYSIF's Procurement Unit. If USPS is used, it must be sent via certified or registered United States mail with return receipt requested.*

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

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

You have selected the For-Profit Non-Construction questionnaire 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 owner's official representative authorized to legally bind the Reporting Entity must certify the truth of the questionnaire answers.

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 IT Service Desk at ITServiceDesk@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 <https://www.osc.state.ny.us/files/vendors/2017-11/vendor-questionnaire-definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor must 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 fully. Each response must provide **all** relevant information to appropriately explain the answer. If you have concerns as to the legal requirements behind your answers, please seek clarification from your counsel. 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 to be identified. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity, or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity. Please refer to the Definitions List for the complete definition.

STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

| I. LEGAL BUSINESS ENTITY INFORMATION | | | |
|---|------|--|--|
| <u>Legal Business Entity 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 |
| Email | | Website | |
| Additional <u>Legal 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 and the status (active or inactive). | | | |
| Type | Name | EIN | Status |
| | | | |
| | | | |
| 1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information: | | | |
| <input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>) | | Date of Incorporation | |
| <input type="checkbox"/> <u>Limited Liability Company</u> (<u>LLC</u> or <u>PLLC</u>) | | Date of Organization | |
| <input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u>) | | Date of Registration or Establishment | |
| <input type="checkbox"/> <u>Sole Proprietor</u> | | How many years in business? | |
| <input type="checkbox"/> Other | | Date Established | |
| If Other, explain: | | | |
| 1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State? | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If 'No,' indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available. | | | |
| <input type="checkbox"/> United States State _____ | | | |
| <input type="checkbox"/> Other Country _____ | | | |
| Explain, if not available: | | | |
| 1.2 Is the <u>Legal Business Entity</u> publicly traded? | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes," provide <u>CIK Code</u> or Ticker Symbol | | | |
| 1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number? | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If "Yes," Enter <u>DUNS</u> Number | | | |

*All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," which can be found at <https://www.osc.state.ny.us/files/vendors/2017-11/vendor-questionnaire-definitions.pdf>

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

I. LEGAL BUSINESS ENTITY INFORMATION

1.4 If the Legal Business Entity's Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State?
(Select "N/A," if Principal Place of Business is in New York State.)

☐ Yes ☐ No
☐ N/A

If "Yes," provide the address and telephone number for one office located in New York State.

1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), Service-Disabled Veteran-Owned Business (SDVOB), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)?

☐ Yes ☐ No

If "Yes," check all that apply:

- ☐ New York State certified Minority-Owned Business Enterprise (MBE)
☐ New York State certified Women-Owned Business Enterprise (WBE)
☐ New York State certified Service-Disabled Veteran-Owned Business (SDVOB)
☐ New York State Small Business (SB)
☐ Federally certified Disadvantaged Business Enterprise (DBE)

1.6 Identify Officials and Principal Owners of the Reporting Entity, if applicable. For each person, include name, title, date of birth, and percentage of ownership. For each Business Entity that is a Principal Owner, include name, address, EIN, and percentage ownership. Identify all Business Entities owning 25% or more of the Reporting Entity and include name, address, EIN and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional. Each Business Entity identified as a Principal Owner must also submit a vendor responsibility questionnaire.

If there is no person or Business Entity that owns 25% or more of the Reporting Entity (or 10% or more if the Reporting Entity is publicly traded), check here. ☐

| Name of Officials and Principal Owners (for each person, please include a middle initial) | Title | Date of Birth | Percentage Ownership (Enter 0% if not applicable) |
|---|---------|---------------|--|
| | | | |
| | | | |
| | | | |
| | | | |
| Name of each Business Entity owning 25% or more of Reporting Entity | Address | EIN | Percentage Ownership |
| | | | |
| | | | |
| | | | |
| | | | |

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

☐ Legal Business Entity

Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)

☐ Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF “REPORTING ENTITY” AND “ORGANIZATIONAL UNIT” FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)

IDENTIFYING INFORMATION

a) Reporting Entity Name

Address of the Primary Place of Business (street, city, state, zip code)

Telephone

ext.

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

☐ Yes

☐ No

If “Yes,” enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity.

For each person, include name and title. Attach additional pages if necessary.

| Name | Title |
|------|-------|
| | |
| | |

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

INSTRUCTIONS FOR SECTIONS III THROUGH VII

For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

III. LEADERSHIP INTEGRITY

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

| | |
|--|---|
| 3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other |
| 3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other |
| 3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other |
| 3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other |

For each “Yes” or “Other” provide an explanation for the response and attach additional sheets with numbered responses if necessary:

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the reporting entity:

| | |
|--|--|
| 4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4.1 Been subject to a denial or revocation of a government prequalification? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4.3 Had a bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise, Service-Disabled Veteran-Owned Business or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation for the response and attach additional sheets with numbered responses if necessary:

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the reporting entity:

- | | |
|---|--|
| 5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation for the response and attach additional sheets with numbered responses if necessary:

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the reporting entity:

- | | |
|--|--|
| 6.0 Had a revocation, <u>suspension</u> or <u>disbarment</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> , <u>Service-Disabled Veteran-Owned Business</u> or 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 for the response and attach additional sheets with numbered responses if necessary:

VII. LEGAL PROCEEDINGS

Within the past five (5) years, has the reporting entity:

- | | |
|--|--|
| 7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious or 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 or any other willful violation of New York State Labor Law? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.5 Other than previously disclosed: a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation for the response and attach additional sheets with numbered response if necessary:

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

8.0 Within the past five (5) years, has the Reporting Entity received any formal unsatisfactory performance assessment(s) from any government entity on any contract? ☐ Yes ☐ No

If "Yes," provide an explanation of the issue(s), relevant dates, the government entity involved, 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.

8.1 Within the past five (5) years, has the Reporting Entity had any liquidated damages assessed over \$25,000 for any reason, including failure to meet Minority-Owned Business Enterprise, Women-Owned Business Enterprise, Service-Disabled Veteran-Owned Business, or Disadvantaged Business Enterprise goals? ☐ Yes ☐ No

If "Yes," provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.2 Within the past five (5) years, have any liens, claims or judgments (not including UCC filings) over \$25,000 been filed against the Reporting Entity which remain undischarged? ☐ Yes ☐ No

If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s), the current status of the issue(s), and the balance of the lien or judgment not yet paid. Provide answer below or attach additional sheets with numbered responses.

8.3 In the last seven (7) years, has the Reporting Entity initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending? ☐ Yes ☐ No

If "Yes," provide 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.

8.4 During the past three (3) years, has the Reporting Entity failed to file or pay any tax returns required by federal, state or local tax laws? ☐ Yes ☐ No

If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the Reporting Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.

8.5 During the past three (3) years, has the Reporting Entity failed to file or pay any New York State unemployment insurance returns? ☐ Yes ☐ No

If "Yes," provide the years the Reporting Entity failed to file/pay the insurance, explain the situation and 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.

8.6 During the past three (3) years, has the Reporting Entity had any government audit(s) completed? ☐ Yes ☐ No

a) If "Yes," did any audit of the Reporting Entity identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any material disallowance? ☐ Yes ☐ No

If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the government entity involved, 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.

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

IX. ASSOCIATED ENTITIES

This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.

(See definition of “associated entity” for additional information to complete this section.)

9.0 Does the Reporting Entity have any Associated Entities?

☐ Yes ☐ No

Note: All questions in this section must be answered if the Reporting Entity is either:

- An Organizational Unit; or
- The entire Legal Business Entity which controls, or is controlled by, any other entity(ies).

If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.

If “Yes,” provide the name, address and EIN of each Associated Entity and its relationship to the Reporting Entity.

9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:

☐ Yes ☐ No

- a) Any business-related activity; or
- b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?

If “Yes,” provide an explanation of the issue(s), the individual involved, their title and role in the Associated Entity, identify the Associated Entity’s name(s), EIN(s), primary business activity, the individual’s relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).

9.2 Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over \$50,000?

☐ Yes ☐ No

If “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant’s name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

9.3 Within the past five (5) years, has any Associated Entity:

a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?

☐ Yes ☐ No

b) Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity?

☐ Yes ☐ No

c) Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract?

☐ Yes ☐ No

d) Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of \$500,000?

☐ Yes ☐ No

e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?

☐ Yes ☐ No

f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity?

☐ Yes ☐ No

g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?

☐ Yes ☐ No

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

IX. ASSOCIATED ENTITIES

This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.

(See definition of “associated entity” for additional information to complete this section.)

For each “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, 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.

X. FREEDOM OF INFORMATION LAW (FOIL)

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).

☐ Yes ☐ No

Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.

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

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

| | | |
|-------|-------------------|-----|
| Name | Telephone ext. | Fax |
| Title | Email | |

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

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.

It being acknowledged and agreed that all responses included in this questionnaire are to the knowledge, information and belief of the Business Entity, the undersigned certifies under penalties of perjury that they:

The undersigned certifies that he/she:

- are knowledgeable about the submitting Business Entity's business and operations;
- have legal authority to bind the Business Entity;
- have read and understand all of the questions contained in the questionnaire, including all definitions;
- have not altered the content of the questionnaire in any manner;
- have reviewed and/or supplied full and complete responses to each question;
- have provided true, accurate and complete responses, including all attachments, if applicable;
- understand 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
- are 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 _____



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 Veterans' Services Law Article 3?

☐ Yes ☐ No

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

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



APPENDIX G

ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

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.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

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.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

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

If yes, identify New York State businesses that will be used and enter identifying information below. Include the name, FEIN, and estimated expenditures.

| <u>Business Name</u> | <u>FEIN</u> | <u>Dollar Value</u> | <u>Description of Work</u> |
|-----------------------------|--------------------|----------------------------|-----------------------------------|
| <hr/> | <hr/> | <hr/> | <hr/> |
| <hr/> | <hr/> | <hr/> | <hr/> |
| <hr/> | <hr/> | <hr/> | <hr/> |
| <hr/> | <hr/> | <hr/> | <hr/> |
| <hr/> | <hr/> | <hr/> | <hr/> |
| <hr/> | <hr/> | <hr/> | <hr/> |

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

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
SIMILAR ENGAGEMENTS

INDEPENDENT MEDICAL EXAMINATIONS (IME) SERVICES
BID #2023-08-INS

Bidder

REFERENCE #1

Company/Client Name _____

Address _____

Contact Name _____

Contact Title _____

Phone Number _____

Email Address _____

Value, Type & Duration of Contract _____

Date Services Provided _____

Provide a narrative on the services rendered to the Client above, including geographic area involved; a description of how the bidder satisfied the client's requirements and improvements made to the client's operations as a result of the bidder's efforts:

Bidder

REFERENCE #2

Company/Client Name _____

Address _____

Contact Name _____

Contact Title _____

Phone Number _____

Email Address _____

Value, Type & Duration of Contract _____

Date Services Provided _____

Provide a narrative on the services rendered to the Client above, including geographic area involved; a description of how the bidder satisfied the client's requirements and improvements made to the client's operations as a result of the bidder's efforts:

Bidder

REFERENCE #3

Company/Client Name _____

Address _____

Contact Name _____

Contact Title _____

Phone Number _____

Email Address _____

Value, Type & Duration of Contract _____

Date Services Provided _____

Provide a narrative on the services rendered to the Client above, including geographic area involved; a description of how the bidder satisfied the client's requirements and improvements made to the client's operations as a result of the bidder's efforts:

APPENDIX J

**Certification Under Executive Order No. 16
Prohibiting State Agencies and Authorities from Contracting with
Businesses Conducting Business in Russia**

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](#).

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: _____
(legal entity)

By: _____
(signature)

Name: _____

Title: _____

Date: _____



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 IV 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 conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBE's as subcontractors, service providers and suppliers to Contractor. Contractor is however, encouraged to make every good faith effort to promote and assist the participation of MWBE's on this Contract for the provision of service and materials. The directory of New York State Certified MWBE's can be viewed at: <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.
- B. 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]

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.
 - 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.
 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. 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.

General Instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form 101) and submit it as part of the bid or proposal package. 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. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the MWBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may 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 survey 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** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & 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 INDIAN (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.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male, Female, or X

Submit with Bid or Proposal – Instructions on page 4

| | | |
|---------------------------|--------------------------|--|
| Solicitation No.: | Reporting Entity: | Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force |
| Offeror's Name: | | <input type="checkbox"/> Offeror |
| Offeror's Address: | | <input type="checkbox"/> Subcontractor Subcontractor's name _____ |

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

| EEO - Job Category | Total Work force | Work force by Gender | | | Work force by Race/Ethnic Identification | | | | | | | | | | | | | | | | | | | | |
|--------------------------|------------------|----------------------|---------------|----------|--|-----|-----|-------|-----|-----|----------|-----|-----|-------|-----|-----|-----------------|-----|-----|----------|-----|-----|---------|-----|-----|
| | | Total | Total | Total | White | | | Black | | | Hispanic | | | Asian | | | Native American | | | Disabled | | | Veteran | | |
| | | Male (M) | Female (F) | X (X) | (M) | (F) | (X) | (M) | (F) | (X) | (M) | (F) | (X) | (M) | (F) | (X) | (M) | (F) | (X) | (M) | (F) | (X) | (M) | (F) | (X) |
| Officials/Administrators | | | | | | | | | | | | | | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | | | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | | | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | | | | | | | | | | | | | | |
| Office/Clerical | | | | | | | | | | | | | | | | | | | | | | | | | |
| Craft Workers | | | | | | | | | | | | | | | | | | | | | | | | | |
| Laborers | | | | | | | | | | | | | | | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | | | | | | | | | | | | | | | |
| Temporary/Apprentices | | | | | | | | | | | | | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | |
|--|-----------------------|---|
| PREPARED BY (Signature): | TELEPHONE NO.: | DATE: |
| | EMAIL ADDRESS: | |
| NAME AND TITLE OF PREPARER (Print or Type): | | Submit completed with bid or proposal Form 101 (Rev 01/2023) |

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 mwbe_sdvo@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. PROJECT NAME/NUMBER OR 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. See below for additional guidance on Race/Ethnic Identification.
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.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may 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 survey 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** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & 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 INDIAN (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.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who: - has a physical or mental impairment that substantially limits one or more major life activity(ies)
- has a record of such an impairment; or
- is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male, Female, or X

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 mwbe_sdvob@nysif.com or contact Carrell Clarke-Europe at (212) 312-0089.

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: _____

_____ 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.

| A Relationship to contractor | B Name | C Address | D Federal ID number | E Sales tax ID number | F Registration in progress |
|---------------------------------------|-----------|--------------|------------------------|--------------------------|----------------------------------|
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- 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 O
CONTRACTOR CONSULTANT LAW
Form A

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

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

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

<http://www.onetonline.org/>

OSC Use Only:

Reporting Code:

Category Code:

Date Contract Approved:

FORM A

| | |
|--|----------------------|
| State Consultant Services - Contractor's Planned Employment From Contract Start Date Through The End Of The Contract Term | |
| State Agency Name: NYS Insurance Fund | Agency Code: 7010204 |

Contractor Name: _____ Contract Number: _____

Contract Start Date: _____ Contract End Date: _____

| Employment Category | Number of Employees | Number of hours to be worked | Amount Payable Under the Contract |
|---------------------|---------------------|------------------------------|-----------------------------------|
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Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared:

(Use additional pages, if necessary)

Page ____ of ____

Contractor Consultant Law

Form B

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

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

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

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](#).

To determine employment categories, you may access the U.S. Department of Labor Employment and Training Administration's O*NET database - www.onetonline.org and select "Find Occupations".

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

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

| NYSIF | Department of Civil Service | OSC-Bureau of Contracts |
|---------------------|------------------------------------|--------------------------------------|
| contracts@nysif.com | Alfred E. Smith Office Building | 110 State St, 11 th Floor |
| | Albany, NY 12239 | Albany, New York 12236 |
| | Attn: Executive Office | Attn: Consultant Reporting |

email: SubmitFormB@cs.ny.gov

email: CDMOST@osc.ny.gov

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

Should you have any questions, please contact the NYSIF Procurement Unit at 518-437-4230 (phone), 518-437-4209 (fax), or contracts@nysif.com (email).

APPENDIX O

FORM B**OSC Use Only:**

Reporting Code:

Category Code:

**State Consultant Services
Contractor's Annual Employment Report**

Report Period: April 1, to March 31,

Contracting State Agency Name: NYSIF

Agency Code: 7010204

Contract Number:

Contract Term: to

Contractor Name:

Contractor Address:

Description of Services Being Provided:

Scope of Contract (Choose one that best fits):

Analysis ☐ Evaluation ☐ Research ☐ Training ☐

Data Processing ☐ Computer Programming ☐ Other IT consulting ☐

Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐

Health Services ☐ Mental Health Services ☐

Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☐

| Employment Category | Number of Employees | Number of Hours Worked | Amount Payable Under the Contract |
|---------------------|---------------------|------------------------|-----------------------------------|
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| Grand Total | | | |

Name of person who prepared this report:

Preparer's Signature: _____

Title: _____ Phone #: _____

Date Prepared:



APPENDIX S

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

Article 3 of the New York State Veterans' Services 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.

CONTRACT GOALS

For purposes of this procurement, NYSIF conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>.

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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.

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 T

NYSIF VENDOR SECURITY SURVEY & VENDOR PROFILE

REQUIREMENTS

The Vendor Security Survey & Vendor Profile (Appendix T) is to be submitted as part of the bid or proposal package. Bidders are required to answer all of the questions in order to be considered for an award of a contract with the New York State Insurance Fund (NYSIF).

The completed Vendor Security Survey section of Appendix T will be reviewed and evaluated by NYSIF personnel on a pass/fail basis. The minimum required implementation levels are included in the survey and defined below. Bidders who do not meet the minimum required implementation levels will be disqualified.

INSTRUCTIONS FOR COMPLETION

For purposes of this Appendix T and notwithstanding any other definition in the Agreement to which this Appendix T is attached and incorporated, the following terms have special meanings:

"NYSIF's Information or Data" shall have the same meaning as the term "Nonpublic Information," as defined in the New York State Department of Financial Services Cybersecurity Regulation at 23 N.Y.C.R.R. § 500.1, and shall include NYSIF information for which disclosure is prohibited or restricted pursuant to Workers' Compensation Law §§ 98 or 110-a. This term is used in Questions A and B.

Personal Information means "record" information, including "Individually Identifiable Information," as the terms are defined in the Worker's Compensation Law § 110-a, non-public "Individually Identifiable Health Information," as such term is defined in 42 U.S.C. § 1320d, and individual financial information that would be confidential pursuant to 12 U.S.C. § 3403 if held by a financial institution.

Within the "**RESPONSE**" column all questions must be answered by selecting the appropriate answer from the drop-down list, providing an explanation of the controls, and providing substantiating document(s). The drop-down list is defined as follows:

1. **Fully** (Implemented) = The control is in place, functioning effectively, and is optimized.
2. **Partially** (Implemented) = The control is in place, effectiveness may not be rated, and the control is not optimized.
3. **Non-Existent** = The control is not in place.

*Note: Section 1, Data Privacy, Questions A, B, C and D have a different drop down of 'Yes' or 'No', with a request to further explain in the "Explanation of Controls" Section.

Within the "**EXPLANATION OF CONTROLS**" column, comments must be provided to support a bidder's selected "**RESPONSE**". Comments must clarify the controls implemented, describe mitigating factors, such as alternative controls or exposure limits, and specify the date when the control will be operational.

Within the "**SUBSTANTIATING DOCUMENT(S)**" column, supporting documentation is optional. Documentation should support a bidder's response, such as written policy, audits, screenshots, etc.

All questions related to this Vendor Security Survey & Vendor Profile must be submitted in writing to contracts@nysif.com by the date and time indicated in the solicitation calendar, citing the question and bid number.

APPENDIX T
NYSIF VENDOR SECURITY SURVEY & VENDOR PROFILE

| | | | |
|---|--|---|----------------|
| VENDOR COMPANY INFORMATION | | VENDOR RESOURCE COMPLETING QUESTIONNAIRE | |
| NAME | | | |
| ADDRESS | | | |
| CITY/STATE/ZIP | | | |
| <p>General Instructions: The following questions are divided by Critical Security Control topic. Details entered within the "Explanation of Controls" should clarify and explain the response to the data request as well as explain exposure limits that may apply. Provide references to any supporting documentation included along with the survey within "Substantiating Document(s)". For example, "See attached documentation - <filename1.pdf>, <filename2.docx>."</p> <p>Bidder Affirmation: Bidder affirms understanding and agreeing to the mandatory technical requirements described in the Bid Documents and inquired about in this Appendix T, and provides its responses to the inquiries in this Appendix T and signature of its authorized representative who completed this Appendix T certifying that Contractor meets such mandatory technical requirements. Bidder further affirms and agrees that if Bidder is awarded the contract for which this Appendix T is submitted that the responses to this Appendix T, as well as any and all responses to Data Requests from NYSIF for supplemental information completed and submitted by Bidder, will be incorporated in and attached to the Agreement between NYSIF and Bidder.</p> | | | |
| INSTRUCTIONS FOR "EXPLANATION OF CONTROLS" | | INSTRUCTIONS FOR "SUBSTANTIATING DOCUMENT(S)" | |
| Within the "EXPLANATION OF CONTROLS" column, comments MUST be provided to support a bidder's' selected "RESPONSE". Comments must clarify the controls implemented, describe mitigating factors, such as alternative controls or exposure limits, and specify the date when the control will be operational. | | Within the "SUBSTANTIATING DOCUMENT(S)" column, supporting documentation is not required if the "EXPLANATION OF CONTROLS" provides sufficient detail. | |
| Appendix T WILL NOT be accepted if "EXPLANATION OF CONTROLS" is left blank for ANY of the questions below. | | | |
| The MINIMUM Required Level for Controls 1-20 is PARTIALLY. | | | |
| DATA PRIVACY | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING |
| A | Bidder asserts NYSIF's Information or Data is NOT transmitted outside of or accessed from outside of the United States. Please explain how this is accomplished in the Explanation of Controls box. | | |
| B | Do you use one or more cloud service providers to store NYSIF's Information or Data? Please describe how you secure it in the Explanation of Controls box. | | |
| C | Do you use Multi-Factor Authentication (MFA) for users to connect to your internal network? Please describe the MFA used (FIDO/WebAuthn, Authenticator App, etc.) | | |
| D | Do you have a Cybersecurity Vendor Risk Management program or process in place for your third party vendors? Please describe in the Explanation of Controls box. | | |

APPENDIX T
NYSIF VENDOR SECURITY SURVEY & VENDOR PROFILE

| | INVENTORY OF AUTHORIZED AND UNAUTHORIZED DEVICES | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
|---|---|----------|-------------------------|----------------------------|
| 1 | Actively manage (inventory, track, and correct) all hardware devices on the network so that only authorized devices are given access, and unauthorized and unmanaged devices are found and prevented from gaining access. | | | |
| | INVENTORY OF AUTHORIZED AND UNAUTHORIZED SOFTWARE | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 2 | Actively manage (inventory, track, and correct) all software on the network so that only authorized software is installed and can execute, and that unauthorized and unmanaged software is found and prevented from installation or execution. | | | |
| | SECURE CONFIGURATIONS FOR HARDWARE AND SOFTWARE | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 3 | <p>Establish, implement, and actively manage (track, report on, correct) the security configuration of laptops, servers, and workstations using a rigorous configuration management and change control process in order to prevent attackers from exploiting vulnerable services and settings.</p> <p>Additional Information for Vendors: Since many systems don't come out-of-the-box secured, the purpose of this control is to maintain documented, standard security configuration standards for all authorized operating systems and software. Your organization should among others 1) create security baselines for every system using established resource; 2) use a rigorous configuration management and change control process; 3) use a compliant configuration monitoring system to verify all security configuration elements, catalog approved exceptions, and alert when unauthorized changes occur.</p> | | | |
| | CONTINUOUS VULNERABILITY ASSESSMENT AND REMEDIATION | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 4 | <p>Continuously acquire, assess, and take action on new information in order to identify vulnerabilities, remediate, and minimize the window of opportunity for attackers.</p> <p>Additional Information for Vendors: Organizations that do not scan for vulnerabilities and proactively address discovered flaws face a significant likelihood of having their computer systems compromised. To achieve compliance with this control, you will need to show your organization has 1) implemented automated vulnerability scanning tools (not to be confused with Anti-Virus scanning tools or a Penetration test) against all systems on a weekly or more frequent basis, 2) deployed automated patch management & software update tools 3) routinely monitor event logs.</p> | | | |

APPENDIX T
NYSIF VENDOR SECURITY SURVEY & VENDOR PROFILE

| | CONTROLLED USE OF ADMINISTRATIVE PRIVILEGES | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
|---|---|----------|-------------------------|----------------------------|
| 5 | <p>The processes and tools used to track/control/prevent/correct the use, assignment, and configuration of administrative privileges on computers, networks, and applications.</p> <p>Additional Information for Vendors: The misuse of administrative privileges is a primary method for attackers to spread inside a target enterprise. Controls should be implemented by job role and follow the principles of least privilege to accomplish the job, change default passwords, use dedicated accounts with multi-factor authentication for elevated access and activities, logging and monitoring such access etc.</p> | | | |
| | MAINTENANCE, MONITORING, AND ANALYSIS OF AUDIT LOGS | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 6 | <p>Collect, manage, and analyze audit logs of events that could help detect, understand, or recover from an attack.</p> | | | |
| | EMAIL AND WEB BROWSER PROTECTIONS | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 7 | <p>Minimize the attack surface and the opportunities for attackers to manipulate human behavior through their interaction with web browsers and email systems.</p> <p>Additional Information for Vendors: Web browsers and email are easy entry points for attackers. Please: 1) demonstrate that only fully supported web browsers and email clients are allowed to execute in the organization; 2) implement Domain-based Message Authentication, Reporting and Conformance (DMARC) policy and verification, starting by implementing the Sender Policy Framework (SPF) and the Domain Keys Identified Mail (DKIM) standards for email security.</p> | | | |
| | MALWARE DEFENSES | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 8 | <p>Control the installation, spread, and execution of malicious code at multiple points in the enterprise, while optimizing the use of automation to enable rapid updating of defense, data gathering, and corrective action.</p> | | | |

APPENDIX T
NYSIF VENDOR SECURITY SURVEY & VENDOR PROFILE

| | LIMITATION AND CONTROL OF NETWORK PORTS | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
|-----------|--|-----------------|--------------------------------|-----------------------------------|
| 9 | Manage (track/control/correct) the ongoing operational use of ports, protocols, and services on networked devices in order to minimize windows of vulnerability available to attackers. | | | |
| | DATA RECOVERY CAPABILITY | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 10 | <p>The processes and tools used to properly back up critical information with a proven methodology for timely recovery of it.</p> <p>Additional Information for Vendors: When systems get compromised, it can be extremely difficult for organizations without a trustworthy data recovery capability to remove all aspects of the attacker's presence on the machine. Please show 1) that all system data is automatically backed up on regular basis; 2) that each of the organization's key systems are backed up as a complete system, through processes such as imaging, to enable the quick recovery of an entire system.</p> | | | |
| | SECURE CONFIGURATIONS FOR NETWORK DEVICES | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 11 | <p>Establish, implement, and actively manage (track, report on, correct) the security configuration of network infrastructure devices using a rigorous configuration management and change control process in order to prevent attackers from exploiting vulnerable services and settings.</p> <p>Additional Information for Vendors: By default network infrastructure devices are not secured adequately. They are generally delivered with default configurations, open services and ports, default accounts or passwords, support for vulnerable protocols. Detail how you: 1) Compare all network device configuration against approved security configurations defined for each network device in use and alert when any deviations are discovered; 2) Manage all network devices using multi-factor authentication and encrypted sessions.</p> | | | |
| | BOUNDARY DEFENSE | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 12 | <p>Detect/prevent/correct the flow of information transferring networks of different trust levels with a focus on security-damaging data.</p> <p>Additional Information for Vendors: Traffic through network borders should be controlled and monitored for attacks and evidence of compromised machines. Boundary defenses should be multi-layered, relying on firewalls, proxies, Demilitarized Zone (DMZ) perimeter networks, and network-based intrusion detection and prevention systems. It is critical to filter both inbound and outbound traffic and require all remote login access to the organization's network to encrypt data and use multi-factor authentication.</p> | | | |

APPENDIX T
NYSIF VENDOR SECURITY SURVEY & VENDOR PROFILE

| | DATA PROTECTION | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
|----|--|----------|-------------------------|----------------------------|
| 13 | <p>The processes and tools used to prevent data exfiltration, mitigate the effects of exfiltrated data, and ensure the privacy and integrity of sensitive information, including Personal Information received from NYSIF.</p> <p>Additional Information for Vendors: Ensuring that data is protected and not compromised can be achieved through data encryption, integrity protection and data loss prevention. Encrypt hard drives and if there is no business need, disable removable media such as USB, CD, DVDs etc... If removable media is required, all data stored on such devices must be encrypted while at rest.</p> | | | |
| | CONTROLLED ACCESS BASED ON THE NEED TO KNOW | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 14 | <p>The processes and tools used to track/control/prevent/correct secure access to critical assets (e.g., information, resources, systems) according to the formal determination of which persons, computers, and applications have a need and right to access these critical assets based on an approved classification.</p> | | | |
| | WIRELESS ACCESS CONTROL | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 15 | <p>The processes and tools used to track/control/prevent/correct the security use of wireless local area networks (LANS), access points, and wireless client systems.</p> | | | |
| | ACCOUNT MONITORING AND CONTROL | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 16 | <p>Actively manage the life cycle of system and application accounts -their creation, use, dormancy, deletion - in order to minimize opportunities for attackers to leverage them.</p> | | | |

APPENDIX T
NYSIF VENDOR SECURITY SURVEY & VENDOR PROFILE

| | SECURITY SKILLS ASSESSMENT AND TRAINING | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
|----|---|----------|-------------------------|----------------------------|
| 17 | For all functional roles in the organization (prioritizing those mission-critical to the business and its security), identify the specific knowledge, skills, and abilities needed to support defense of the enterprise; develop and execute an integrated plan to assess, identify gaps, and remediate through policy, organizational planning, training, and awareness programs. | | | |
| | APPLICATION SOFTWARE SECURITY | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 18 | <p>Manage the security life cycle of all in-house developed and acquired software in order to prevent, detect, and correct security weaknesses.</p> <p>Additional Information for Vendors: Please include information on controls around your acquired or purchased software also (including commercial off the shelf software, for example, Microsoft Office, Adobe etc...) such as using supported or latest versions, installing patches and applying security recommendations.</p> | | | |
| | INCIDENT RESPONSE AND MANAGEMENT | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
| 19 | <p>Protect the organization's information, as well as its reputation, by developing and implementing an incident response infrastructure (e.g., plans, defined roles, training, communications, management oversight) for quickly discovering an attack and then effectively containing the damage, eradicating the attacker's presence, and restoring the integrity of the network and systems.</p> <p>Additional Information for Vendors: Without an incident response plan, an organization may not discover an attack in the first place, or, if the attack is detected, the organization may not follow good procedures to contain damage, eradicate the attacker's presence, and recover in a secure fashion. An effective incident response plan is a written document that defines roles of personnel as well as phases of incident handling/management. It also assembles and maintains information on third-party contact information to be used to report a security incident, such as Law Enforcement, relevant government departments, vendors etc. Provide details about your organization's Incident Response Plan.</p> | | | |

APPENDIX T
NYSIF VENDOR SECURITY SURVEY & VENDOR PROFILE

| | PENETRATION TESTS | RESPONSE | EXPLANATION OF CONTROLS | SUBSTANTIATING DOCUMENT(S) |
|----|--|----------|-------------------------|----------------------------|
| 20 | <p>Test the overall strength of an organization's defenses (the technology, the processes, and the people) by simulating the objectives and actions of an attacker.</p> <p>NOTE: An annual Penetration Test is a requirement for doing business with NYSIF. (A Statement of Work may be used to continue through the contract execution process.) Upon award Firm(s) will be required to provide Penetration Test documentation of test performed within the last 12-months. No work will be provided under the contract until this requirement has been satisfied.</p> <p>Additional Information for Vendors:</p> <p>1. What is a Penetration Test – A penetration test is an authorized security attack where certified skilled cyber security experts attempt to find and exploit vulnerabilities in your organization's computer systems or network. The test identifies any loopholes or weaknesses you may have. This should not be confused with vulnerability assessments which may be part of a penetration test but not a substitute for it.</p> <p>2. The Importance of a Penetration Test - The test is a simulated attack to identify any weaknesses in a system's defenses that attackers could take advantage of. This is so any information, especially sensitive information is not stolen by a hacker. Penetration testing leverages many of the previous controls and provides feedback to help remediate vulnerabilities discovered during the test.</p> <p>3. Why NYSIF requires the test - NYSIF requires a penetration test as it helps vendors uncover any hidden vulnerabilities which help identify and validate any security loopholes in their systems.</p> <p>4. What is acceptable Penetration Test Documentation VS. Not acceptable - A penetration test is done by a certified skilled professional. Documentation should provide evidence of a completed penetration test such as: A report with findings and remediations, or an Executive Summary, or an Attestation letter from the testing company. The primary components of a Penetration Test are: a) Network Testing. b) Cloud, Web and Mobile Application Testing (Where Applicable). c) Vulnerability Scanning. d) Exploitation. e) Remediation Plan.</p> <p>5. Additional information: a) The length of the penetration testing engagement depends on the type of testing and can take an average of 1 - 4 weeks not including the planning stages which could extend out to months depending on the activities the pen tester needs to perform. b) Getting a comprehensive risk picture of your company gives you an opportunity to map the identified vulnerabilities and exploits and give a summary of those risks that would have any threats materialize. c) Effectively finding and fixing any security issues should include collaboration and communication with product, security, and development teams to leverage the vulnerabilities found on the external assets.</p> | | | |

APPENDIX T
NYSIF VENDOR SECURITY SURVEY & VENDOR PROFILE

| VENDOR PROFILE | |
|--|---|
| Instructions: <i>Please answer the questions making entries in the Response area.</i> | |
| | VENDOR SERVICE STATUS |
| | RESPONSE |
| 1 | <div>Is your organization currently providing services to NY State Insurance Fund (NYSIF), either actively or on an intermittent (ad-hoc) basis? Is your organization currently providing services to NY State Insurance Fund (NYSIF), either actively or on an intermittent (ad-hoc) basis?</div> <div>Note: If no longer providing services in any capacity, please provide details of service termination, dates, etc. for review and consideration.</div> |
| | |
| | SERVICE OVERVIEW |
| | RESPONSE |
| 2 | Is there an executed contract between NYSIF and your organization? |
| 3 | What is the current business relationship? (I.e. What services does your organization currently provide to NYSIF? (*Please be detailed*)) |
| 4 | Will the business relationship between NYSIF and your organization change within the next year? If so, please describe the changes. |
| 5 | From what physical location(s) does your organization provide services to NYSIF? (Please include all locations providing services.) |
| | |
| | DATA EXCHANGE |
| | RESPONSE |
| 6 | Does your organization receive data from NYSIF? |
| 6-a | If yes, by what means is NYSIF data exchanged and in what direction; from NYSIF to your organization or both directions? |
| 7 | Are any of the following types of data transmitted, stored, and/or processed by your organization during the course of providing services to NYSIF? |
| 7-a | Protected Health Information ("PHI") or Individually Identifiable Health Information, as 42 U.S.C. § 1320d? |
| 7-b | Payment Card Information ("PCI")? |
| 7-c | Individually Identifiable Information as defined in Worker's Compensation Law § 110-a ? |
| 7-d | Social Security Number ("SSN") |
| 7-e | Financial information, or information that could be covered under SOX? |
| 7-f | Other type of personally identifiable information, not listed above? |
| 8 | On average, what is the volume of NYSIF data transmitted, processed, received, etc. per month by your organization? |
| 9 | On average, what is the volume of NYSIF data stored by your organization? |
| 10 | In the past 12 months has your organization, or any of your sub-contractors, experienced a material breach or unauthorized disclosure of any data? If yes, please describe situation, data exposed and timing in detail. |

Signature of affirming authorized representative of Bidder

Bidder's Name: _____

Authorized Representative Signature: _____

Printed or Typed Name: _____

Title of Signatory: _____

Date: _____



APPENDIX V

Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Firm offering to provide services pursuant to this Independent Medical Examination (IME) Services RFP (2023-08-INS), 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, 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.

Signature

Typed Name

Company Position

Company Name

Date Signed

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)