



October 5, 2015

TO WHOM IT MAY CONCERN:

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

**The due date for submission of proposals is 11/16/15.**

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](mailto:contracts@nysif.com).

Sincerely,

A handwritten signature in black ink that reads "Alexandria Romano".

Alexandria Romano  
Contract Management Specialist

Attachments:

*No Bid* form  
RFP



**NO BID FORM**

**RFP # 2015-43-INV**

**DESCRIPTION:** Investment Advisor Services

**CONTRACT PERIOD:** 5 years

<b>PROPOSALS DUE:</b>		<b>SUBMIT BIDS TO:</b>
<b>DATE:</b>	<b>11/16/15</b>	NYSIF - Procurement Unit
<b>TIME:</b>	<b>2:00 p.m.</b>	Bid # 2015-43-INV
		15 Computer Drive West
		Albany, NY 12205-1690

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

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

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

Name of Firm: \_\_\_\_\_ FEIN: \_\_\_\_\_

Address: \_\_\_\_\_

Web Page: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_ Fax: \_\_\_\_\_

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

Typed Name & Title: \_\_\_\_\_



NEW YORK  
STATE INSURANCE FUND  
  
REQUEST FOR PROPOSALS

for

Investment Advisor Services

RFP # 2015-43-INV

October 5, 2015

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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## **RFP CALENDAR**

<b>DATE</b>	<b>EVENT</b>	<b>COMMENTS</b>
10/5/15	RFP Issued	
10/26/15	Final date for Bidder inquiries	<b><u>Written inquiries only</u></b> by 12:00 p.m. to: Email: <a href="mailto:contracts@nysif.com">contracts@nysif.com</a> Fax: 518-437-4209
11/6/15	Responses to Inquiries	Written responses will be posted on NYSIF's website at: <a href="http://www.nysif.com/procurement">www.nysif.com/procurement</a>
<b>11/16/15</b>	Final date for submission of bids	Deadline for response to this RFP. All sealed bids <b>MUST</b> be addressed to: Mail: NYSIF – Procurement Unit Bid # 2015-43-INV 15 Computer Drive West Albany, NY 12205-1690 and received by 2:00 p.m.
12/21/16*	Step Two: Semi-finalists Interviews	Anticipated start date
2/1/16*	Step Three: Finalist Interviews	Anticipated start date
TBD	Anticipated Start Date	Subject to the required approvals.

**\* These are estimated time lines. NYSIF reserves the right to change dates, at NYSIF's discretion.**

**BID/PROPOSAL FORMAT**

**SECTION 1 – GENERAL INFORMATION**

**A. 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 Workers' Compensation Law. Its mission is to guarantee the availability of workers' compensation insurance coverage at the lowest possible cost, while maintaining a solvent fund, as well as provide timely and appropriate indemnity and medical payments to injured workers. In 1950, NYSIF began providing disability benefits coverage for off-the-job illnesses and injuries including disabilities arising from pregnancy. Approximately 163,000 employers hold NYSIF workers' compensation policies, representing \$2.7 billion in written premium. Additionally, more than 61,000 employers have active disability benefits policies with the Fund. With 100 years in the workers' compensation industry, NYSIF's longevity distinguishes itself from all competitors. NYSIF is the largest workers' compensation carrier in the state, and the seventh largest in the nation. NYSIF is committed to a healthy and accident-free work environment for each of its policyholders and their employees.

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

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

Alexandria Romano Contract Management Specialist Phone: (518) 437- 1878 Fax: (518) 437-4209 E-Mail: <a href="mailto:contracts@nysif.com">contracts@nysif.com</a>	Heather Baumann Contract Management Specialist 2 Phone: (518) 437- 5285 Fax: (518) 437-4209 E-Mail: <a href="mailto:contracts@nysif.com">contracts@nysif.com</a>
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For inquires related specifically to Minority and Woman Owned Business Enterprises (MWBE) provisions of this procurement solicitation, the designated contract is:

Lucas McCullough  
MWBE Fiscal Business Specialist  
E-Mail: [contracts@nysif.com](mailto:contracts@nysif.com)

**All questions related to this RFP or the contract process must be submitted in writing to [contracts@nysif.com](mailto:contracts@nysif.com) by the date and time indicated in the RFP Calendar, citing the particular bid section and paragraph number. No telephone questions will be answered.**

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

Prospective Bidders should note that all clarifications and exceptions are to be resolved prior to the submission of a bid. Answers may be included in a bid addendum.

**BID/PROPOSAL FORMAT**

**C. PURPOSE OF THIS RFP**

NYSIF is seeking qualified firms to provide investment consulting services for its assets. Services will include but are not limited to advisement over the following areas: investment guidelines, policies, investment manager analysis, strategic and tactical investment issues, and opportunistic investments.

Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

**D. BIDDERS' CONFERENCE**

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

**E. DUE DATE**

The due date for submission of proposals is 11/16/15, 2:00 p.m. (Eastern).

**F. METHOD OF AWARD / DISTRIBUTION OF WORK**

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

**G. INSURANCE REQUIREMENTS**

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

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

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

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

## **BID/PROPOSAL FORMAT**

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

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

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

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

1. Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence, with a limit of not less than \$2,000,000 aggregate. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
2. Workers Compensation and NYS Disability Benefits, as required by New York State. Visit <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp> for further information.
3. 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 \$1,000,000 each occurrence, with a limit not less than \$5,000,000 aggregate. The Contractor shall be responsible for payment of all claim expenses and loss payments with the deductible.
4. Crime Insurance, including Fidelity Bond coverage in the amount not less than \$3,000,000 including employee dishonesty coverage on money, securities or property other than money and securities including contract and temporary, whether identified or not, acting alone or in collection with others.

## **BID/PROPOSAL FORMAT**

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

Awarded Bidder shall furnish evidence of all policies to NYSIF, before any work is started. Certificates of Insurance may be supplied as evidence of such aforementioned policies; however, if requested by the Agency, the Bidder shall deliver to NYSIF within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted it must: (1) be signed by an authorized representative of the insurance carrier or producer and notarized; (2) disclose any deductible, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (3) indicate the Additional Insurers and Named Insureds as required herein; (4) reference the Agreement by number on the face of the certificate; and (5) expressly reference the inclusion of all required endorsements.

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

### **H. PARTICIPATION OF NYS BUSINESS ENTERPRISES (MWBE)**

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

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

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

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

Proof of utilization and payment to MWBE subcontractors is required. Please see Appendix M for further information.

**BID/PROPOSAL FORMAT**

**I. PARTICIPATION OF SERVICE DISABLED VETERAN OWNED BUSINESSES (SDVOB)**

The Service-Disabled Veteran-Owned Business Act, signed into law by Governor Andrew M. Cuomo on May 12, 2014, allows eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB) in order to increase participation in New York State's contracting opportunities.

We encourage any firm that believes it meets the state requirements for certification to visit The Division of Service-Disabled Veterans' Business Development within the NYS Office of General Services (OGS) at [www.ogs.ny.gov](http://www.ogs.ny.gov).

For more general information on the program you can contact OGS via e-mail at [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov).

## BID/PROPOSAL FORMAT

### SECTION 2 – 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 submittals:

#### A. BID PREPARATION

- Prepare your proposal on the forms provided.
- Proposals and other forms must be signed by an official of your firm authorized to sign contracts and bind the firm.
- The *Fee Schedule Proposal* should be separately bound. No references to costs are to be included in the detailed proposal.
- Bidders must respond to each and every specification stated in this RFP. Moreover, Bidders must list and clearly explain any and all exceptions and/or alternatives and/or caveats to any item contained in this RFP in the *Comments and Limitations* section of their Proposal.

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

#### B. BID FORMAT

- Submission must include **one (1) hard copy** of the proposal, organized as outlined below. Submission must also include **one (1) exact electronic copy** (CD/DVD-rom or USB flash drive) of the proposal.
- Bids/Proposals are to be submitted with each numbered item listed below as a separate section. Each proposal must follow the provided format, or the bid may be deemed non-responsive.
- Appendix Z, the *Fee Schedule Proposal*, should be in a separate sealed envelope and included with the proposal.
- Use the following format as your Table of Contents.

## **BID/PROPOSAL FORMAT**

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

1. Title Page and Table of Contents

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

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

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

2. Bidder Certifications

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

3. Company Background and Technical Expertise

Include the following information for the Bidder:

- a) A copy of Bidder's certification to do business in New York State.
- b) The Bidder shall supply a current Dun & Bradstreet 'Business Information Report' as part of their bid.

If requested, Bidder must document its ability to service a contract with dollar sales volume similar to scope of this bid through submission of financial statements documenting past sales history. The Bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five (5) business days. NYSIF reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services. NYSIF reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this bid.

Consulting Firm Background

- a) Briefly describe your firm's background, history, and ownership structure, including any parent, affiliated or subsidiary company, and any business partners or joint ventures.

**BID/PROPOSAL FORMAT**

- b) Describe the services your firm provides. Specify and detail any and all lines of business in which your firm participates.
- c) Provide an organizational chart of your firm and describe the relationship between each component and your consulting group.
- d) Within the past three years, have there been any significant developments in your organization such as changes in ownership, restructuring, personnel reorganizations, acquisitions, mergers, terminations, or investigations? Do you anticipate future significant changes in your organization?
- e) List the address of your main corporate office and indicate which office(s) will service NYSIF.
- f) Describe any services of your organization that may not be offered by other consultants.
- g) Describe the total staff of the firm and designate the support staff, analysts and professionals.
- h) Provide a listing of current and former clients over the last five years. Include the size of the client organization, the type of organization (e.g., public pension plan, Taft-Hartley plan, corporate pension plan, etc.) and the number of years services were provided by your firm to each. Include information regarding the public sector percentage of your current client base.

**Consultant Background**

- a) How many investment consultants does your firm have?
- b) Discuss the ways you manage growth, including any limits to the client/consultant ratio.
- c) Please provide your firm's retention rates for your investment consultant professionals.

**Standards of Conduct**

- a) Does your firm have a written code of conduct or a set of standards for professional behavior? If so, how are they monitored and enforced?
- b) Has your firm adopted the CFA Institute's Code of Ethics and Standards of Professional Conduct? If so, how is employee compliance monitored?

**BID/PROPOSAL FORMAT**

- c) How are consultants' recommendations to clients reviewed and monitored by your organization? Does your firm adhere to a level of consistency in consultant recommendations?
- d) Within the last five years, has your organization or an officer or principal been involved in actual or threatened litigation, administrative or regulatory, or similar investigation proceedings relating to your investment consulting assignments? If so, provide an explanation and indicate the current status or disposition. Under disposition, include any censures, penalties, fines, or reprimands received from regulatory bodies.
- e) Has your firm ever been required to pay damages or penalties or trade or relinquish something of value under any of its existing or past contracts as it relates to services similar to those contemplated by this RFP? If so, describe the situation.

Conflicts of Interest

- a) Based on the list of investment managers currently managing assets for NYSIF, disclose any business your firm, affiliates, or parent company does with any of NYSIF's investment managers.
- b) Are there any potential conflict of interest issues your firm has or may have in servicing NYSIF? If so, describe them.
- c) How does your firm identify and manage conflicts of interest?
- d) Are there any circumstances under which your firm, or any individual in your firm, receives compensation, finder's fees, or any other benefit from investment managers or third parties? Are there any circumstances under which your firm, or any individual in your firm, pays compensation, fees, or any other benefit to investment managers or third parties? If yes, please describe in detail.

Consulting Team

- a) Provide contact information for each consultant or other professional that will be assigned to NYSIF in a grid similar to this:

Name and Title  
Address  
Business  
Phone Email  
Address

- b) Describe the role of each consultant or professional for this assignment. How many clients would the lead consultant be assigned to?

**BID/PROPOSAL FORMAT**

- c) Describe your team's experience with similar work performed for other public systems, corporate funds, or similar institutional investors. Please also provide complete curriculum vitae for each consultant or other professional that would be assigned to NYSIF.
- d) State whether the individuals assigned to the work have any responsibilities other than providing consulting services, and if so, specify such responsibilities.
- e) Describe your firm's backup procedures in the event that key personnel in this assignment should leave the firm or be unable to service the NYSIF relationship.

**Asset Allocation**

- a) Is your firm capable of performing asset/liability studies? If so, please describe your experience performing asset/liability studies.
- b) Discuss the theory and methodology of the asset allocation models your firm employs. What are the advantages and disadvantages of your model? Has your model been revised in the last five years? If so, what was changed? How do you develop asset class assumptions? How frequently do you revise/update your asset class assumptions?
- c) What changes, if any, would you recommend the Board consider to NYSIF's target asset allocation?
- d) Describe your firm's capabilities and experience in advising, assisting, and evaluating internal investment managers and staff.
- e) Describe how your firm manages its advisory role to the Board with its supportive role with staff.
- f) Explain your firm's position/approach on the use of active versus passive management in the major asset classes.
- g) Describe your firm's capabilities and experience in illiquid or less liquid investments such as real estate, private equity, and opportunistic investments. List the factors you would consider in recommending these investments. Describe your approach to benchmarking these investments and what benchmarks you find useful. Describe the elements of a due diligence process for assessing the risk control and performance characteristics of such investments.
- h) Describe your firm's capabilities, experience, and approach in advising and assisting clients during periods of extreme market volatility.

### **BID/PROPOSAL FORMAT**

- i) Describe your firm's methodology for identifying and evaluating new investment opportunities. How do you inform clients regarding new opportunities and changes to previous recommendations?
- j) What distinguishes your firm in the investment consultant industry?
- k) Please note any significant contributions your firm has made in developing and defining "best practices" in the investment consulting field.

#### **Investment Policies**

- a) Describe your approach to the analysis of applicable legal parameters/ restrictions under which NYSIF must operate.
- b) Describe your approach to the development of an investment policy statement.
- c) Detail your process for the development of asset class structures, investment objectives, and risk control policies (including derivatives, securities lending, etc.).
- d) Describe your process for maintaining a continuous review of investment policies.

#### **Investment Manager Database**

- a) Does your firm maintain an in-house database of investment managers? If not, from what vendor do you purchase the database? Do you utilize both? How many managers/products are included in the database(s) that you use?
- b) For firms that utilize a vendor database, describe key characteristics of the database.
- c) Does your firm maintain or subscribe to a separate emerging manager database?

#### **Investment Manager Searches**

- a) Describe your firm's process for evaluation and selection of investment managers.
- b) Describe your experience in selecting investment managers.
- c) Describe how your firm's process for the evaluation and selection of an investment manager adds value beyond the mere provision of raw data.

#### **Securities Lending Agent Searches**

- a) What are your criteria for selecting a securities lending agent?
- b) Describe your experience in conducting analyses of securities lending agents.

**BID/PROPOSAL FORMAT**

- c) Describe how your firm's process for the evaluation and selection of a securities lending agent adds value beyond the mere provision of raw data.
- d) How many securities lending agents has your firm assisted in selecting in the past three years?
- e) Does your firm, or any individual in your firm, receive compensation, finder's fees, or any other benefit from securities lending agents?

**Performance and Risk Evaluation**

- a) Do you have the capability of using rates of return calculated by NYSIF's custodian bank in your performance evaluation reports?
- b) Can your firm provide custom benchmarks, including investment style benchmarks and universe rankings? Are the returns in your universe rankings actual client returns or composite returns as reported by managers? Provide information on the composition of the overall fund universe that you utilize.
- c) What amount of input does the client have in the content and format of an investment performance evaluation report?
- d) Discuss the portfolio analytics your firm is capable of providing. Do you have international analytics capabilities?
- e) Describe your capabilities in the production/interpretation of trading process and cost studies, including equity and fixed income trading.
- f) Describe your capabilities in the production/interpretation of securities lending reporting.
- g) Describe your capabilities in the development of risk/return characteristics of the asset mix as a whole and of each asset category and manager style.
- h) What asset classes are tracked in your performance measuring system? How many managers are included within each asset category? How many years of performance data are in the system for each asset class?
- i) What factors do you consider to be critical in reporting performance?
- j) Do you have the ability to customize reports for your clients?
- k) How are performance benchmarks for the total fund and asset classes chosen and constructed?

### **BID/PROPOSAL FORMAT**

- l) Do you use investment style benchmarks in your performance measurement process? What are the sources of the underlying data and how are these benchmarks calculated and maintained?
- m) Describe your firm's performance attribution process and reports.

#### **Reporting and Research**

- a) What period of time is required to prepare reports after the end of each month, quarter, year?
- b) Describe the internal structure and organization of your analytic department. If no separate department exists, describe how this function is performed at your firm.

#### **Board and Staff Education**

- a) Does your firm offer training of plan fiduciaries and staff as it relates to their investment responsibilities? If so, describe the type of training available and the qualifications of the individuals assigned to conduct the training.

#### **Previous Clients**

- a) List public sector clients who have terminated your consulting relationship during the past three years and their reasons for doing so. Include the names, titles, and telephone numbers of the primary contact persons.

#### 4. **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.

#### 5. **Comments and Limitations**

All exceptions and caveats to non-mandatory specifications in this RFP must be listed by section and paragraph number and submitted during the Question and Answer period (see Section I.B). At NYSIF's sole discretion, comments, limitations or any reservations with regard to the RFP that are not disclosed prior to and resolved during the Question and Answer period may result in a determination that a proposal is non-responsive.

Note well: No comments, limitations or changes are permitted with respect to any of the terms and conditions contained in Appendix A, Standard Clauses for New York State Contracts."

## **BID/PROPOSAL FORMAT**

### 6. Appendices

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

- **MacBride Questionnaire, Appendix D**
- **Vendor Responsibility Questionnaire, Appendix E**
- **Bidder Questionnaire, Appendix F**
- **Encouraging Use of NYS Businesses in Contract Performance, Appendix G**
- **Procurement Lobbying Legislation, Appendix H**
- **Appendix M requires Bidders to submit (i) form 101; (ii) form 103 or a copy of bidders current NYSDED MWBE certification; and (iii) form 106 or a copy of bidders EEO policy**
- **Fee Schedule, Appendix Z** The Fee Schedule must be bound and placed in a sealed envelope separately and **enclosed** with the Bid

*Appendices 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.*

### 7. SEC Registration

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

## **C. BID DELIVERY**

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

### **Hand Deliveries / US Postal Service / Courier**

An envelope and/or package containing a bid should be clearly marked as follows, and shall be delivered to:

**NYSIF – Procurement Unit  
Bid # 2015-43-INV  
15 Computer Drive West  
Albany, NY 12205**

**Bidders assume all risks for timely, properly submitted deliveries.**

## METHOD OF EVALUATION & CRITERIA

### 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 paragraph A below. However, NYSIF may request, at its sole discretion, that evaluators interview the Bidder's staff, as stated in paragraph B 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.

#### **A. EVALUATION CRITERIA**

1. Capability of Bidder to perform the required services at the time of the bid, demonstrated ability to recruit and retain qualified staff for similar services, and the Bidder's experience in providing services of a similar scope. Includes references for Bidder and Bidder's liaison to NYSIF.
2. Total cost to NYSIF.
3. Minority and Women-Owned Business Enterprises (MWBE) or Small Business Enterprise (SBE) status. Bidders that are New York certified Minority and Woman-Owned Business or a New York State Small Business will receive an additional 5% for such status.

#### **MWBE or SBE**

- 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)

**METHOD OF EVALUATION & CRITERIA**

Note: Although a Bidder may meet more than one criteria, credit is to be awarded for only one category, not multiple categories.

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

For the purpose of insuring the completeness and comparability of offers, 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.

**B. METHODOLOGY**

The evaluation committee will evaluate the proposals in a three step process. In Step One, all Bidders who receive a minimum score of seventy (70) points or more will advance to the next evaluation step (semi-finalists). Any proposal scored 69 or lower will be automatically disqualified from further evaluation.

Once semi-finalists are identified, they will move to Step Two for a maximum possible value of 100 points (which includes points for fees/costs). Points from Step One will not be added to points for Step Two to determine finalists. Once the finalists are identified, they will move on to Step Three. Points from Step Two will not be added to points for Step Three to determine awardee(s). Award(s) will be based solely on the scores received in Step Three.

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

Step Two will consist of interviews by the semi-finalists as described in Section D below. Costs will also be evaluated at this step.

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

**C. STEP ONE**

	<b>100% of points for a possible 100 points</b>
<b>Criteria</b>	<b>Points</b>
Organization/Assets Under Advisement	10
Expertise and Experience of Advisement Staff	20
Ability to Satisfy Scope of Services to Specifications	40
Product Performance and Risk Management	20
Independence of Judgment and Avoidance of Conflicts of Interests	10
<b>Total Points</b>	<b>100</b>

**METHOD OF EVALUATION & CRITERIA**

All Bidders who receive a minimum score of seventy (70) points or more will advance to the next evaluation step (Semi-finalists). Any proposal scored 69 or lower will be automatically disqualified from further evaluation.

**D. STEP TWO**

Semi-finalists will be required to participate in an in-person interview with the evaluation committee. Each semi-finalist will be allotted 60 minutes. The 60-minute time frame must include the presentation as well as a question and answer period. This interview will be an opportunity for the semi-finalists to further define their offer based on the criteria of the bid selection and for NYSIF to ask questions of the semi-finalists on the stated criteria.

All interviews will take place in the New York City office. Advance notice will be given to the semi-finalist(s) of their interview date and time. Bidders will be responsible for any and all costs associated with the interview.

The evaluation committee may select up to ten (10) of the highest scoring firms, in order of their scores, to advance to the next evaluation step.

Presentation materials for Step Two must be provided to the Designated Contact via e-mail ([contracts@nysif.com](mailto:contracts@nysif.com)) at least ten days in advance of the scheduled interview. The procurement number will need to be included in the subject line. The materials shall include a model product performance and risk management portfolio as it relates to NYSIF. In this exercise, you can include a sanitized client’s portfolio if helpful in augmenting this presentation.

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

	<b>100% of points for a possible 105 points</b>
<b>Criteria</b>	<b>Points</b>
Demonstrate Expertise & Independent Judgment of Advisement Staff	25
Demonstrate Ability to Perform Scope of Service to Specifications	35
Demonstrate the Model Product Performance and Risk Management Portfolio as it relates to NYSIF	25
Fees	15
MWBE or SBE Status	5
<b>Total Points</b>	<b>105</b>

**E. STEP THREE**

Finalists will be required to participate in a second in-person interview. Each finalist will be allotted 60 minutes. The 60-minute time frame must include the presentation as well as a question and answer period. This interview will be an opportunity for the finalists to further define their offer based on the Technical Specifications (page 23-26) in the bid and for NYSIF to ask follow-

**METHOD OF EVALUATION & CRITERIA**

up questions of the finalists on the Technical Specifications and any other responses to the RFP. The final selection will be based solely on the scores received in Step Three.

It will be the responsibility of the Bidder to present the primary consultant(s) for the NYSIF account at the scheduled Step Three interview. Advance notice will be given to the finalist(s). Bidders are responsible for any and all costs incurred for travel and/or other expenses incurred for the interview.

Any additional presentation materials for Step Three must be provided to the Designated Contact, via e-mail ([contracts@nysif.com](mailto:contracts@nysif.com)) at least ten days in advance of the scheduled in-person interview. Please include the procurement number in the subject line.

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

<b>Criteria</b>	<b>100% of points for a possible 100 points</b>
	<b>Points</b>
Ability to articulate the Bidder’s capabilities as they relate to the Technical Specifications outlined in the RFP	60
Ability to address questions relating to the Technical Specifications as described in the RFP	40
<b>Total Points</b>	<b>100</b>

**NYSIF reserves the right to make multiple awards or to not make an award at all.**

**F. 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.

## **TECHNICAL SPECIFICATIONS**

### **SECTION 4 – TECHNICAL SPECIFICATIONS**

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

NYSIF is authorized to invest funds pursuant to Section 87 of the New York Workers' Compensation Law, in the types of securities as enumerated in certain subdivisions of Section 235 of the Banking Law and Section 1404 of the Insurance Law; and

**WHEREAS**, New York State Workers' Compensation Law Section 87 was amended to identify specific paragraphs within those sections pursuant to which NYSIF may invest reserves and surplus. As amended, Section 87 identifies the securities in which NYSIF may invest its reserve funds, to be those identified in paragraphs 1, 2, 3, 4, 5, 6, 11, 12, 12-a, 13, 14, 15, 19, 20, 21, 21-a, 24, 24-a, 24-b, 24-c, and 25 of New York Banking Law § 235. New York Workers' Compensation Law § 87(1) (McKinney 2014). As amended, Section 87 identified the securities in which NYSIF may invest reserve funds to be those described in New York Insurance Law § 1404(a)(2). New York Workers' Compensation Law § 87(1) (McKinney 2014). Similarly, surplus funds are to be invested in the securities described in New York Insurance Law § 1404 (a)(2), (3), (8), and (10). New York Workers' Compensation Law § 87(2) (McKinney 2014); and

**WHEREAS**, NYSIF may not invest in securities or engage in transactions that the Superintendent of the Department of Financial Services finds are against public policy or prohibited by the provisions of New York Insurance Law § 1404 (a) or New York Insurance Law § 1407 (a)(1), (2), (3), (4), (6), (8), (9), and (10). New York State Workers' Compensation Law § 87(7) (McKinney 2014);

#### **A. MANDATORY REQUIREMENTS**

1. Investment Advisors must be currently registered as an Investment Advisor with the Securities and Exchange Commission and remain registered during the term of the contract. If required under New York Law, Investment Advisor must also be registered with the New York State Department of Law and remain registered during the term of the contract. Investment Advisors must have completed, obtained and performed all registrations, examinations, approvals, authorizations, and consents required by any governmental authority for such engagements.
2. Investment Advisors are required to possess a minimum of five (5) years experience in providing institutional investment advisory services. ERISA and non-ERISA experience will be considered.
3. The individual assigned to NYSIF as lead consultant must have a minimum of seven years of professional experience in the investment consulting field.
4. Investment Advisors must have at least one billion dollars under advisement.

**TECHNICAL SPECIFICATIONS**

5. The investment consulting firm must be able to maintain a satisfactory electronic interface with NYSIF's custodian bank by disk, online connection or other means at the firm's expense.
6. The investment consulting firm must agree to be a Fiduciary to the plan as that term is defined in New York state law.
7. The investment consulting firm must agree to disclose all conflicts of interest, all sources of revenue and all affiliations and continue to do so on an ongoing basis.
8. The investment consulting firm must agree that:
  - i. In no event shall NYSIF indemnify consultant, and
  - ii. To the extent damages or costs are incurred by NYSIF as a result of the acts or inaction of Consultant, its agents, affiliates, assigns, or affiliated parties, NYSIF shall be entitled to recovery provided by law without limitation as to form or amount.
9. Attach a sample performance report that is representative of the report your firm would produce monthly, quarterly, yearly.

**B. SERVICES TO BE PROVIDED**

NYSIF is seeking proposals from qualified firms to provide investment consulting services. The services requested are those that are listed below:

1. Advising the Investment Committee, Board of Commissioners and NYSIF investment staff on investment guidelines and policies, including the development of new guidelines and policies and the amendment of existing ones.
2. Advising on investment manager analysis, including tracking of performance achieved in variance from the investment manager's contractual mandate.
3. Evaluating and overseeing managers, including periodic review and interviews of managers as requested by the NYSIF Board and staff.
4. Advising on strategic and tactical investment issues.
5. Advising on opportunistic investments.
6. Advising on internal vs. external investment management.
7. Advising on asset allocation.
8. Advising on management structure (active vs. passive, investment style mixes).

**TECHNICAL SPECIFICATIONS**

9. Advising on performance measurement.
10. Advising on asset structure, including advice on additional asset classes.
11. Advising on alternative investment vehicles.
12. Providing research on special projects.
13. Presenting economic forecasts.
14. Advising on rebalancing policies. Providing or assisting in manager searches, selections and terminations.
15. Providing or assisting in custodian bank and security lending agent searches and selection.
16. Performing quarterly performance analysis, by portfolio, asset class, and fund.
17. Providing actuarial services including but not limited to estimation of liabilities, volatility of liabilities and historical tracking of estimates vs. actuals.
18. Performing periodic asset and liability analyses.
19. Creating custom benchmarks based on NYSIF's liabilities.
20. Performing trading cost analyses.
21. Performing external management fee analyses.
22. Providing compliance reports including adherence to Statement of Investment Policy, investment manager compliance.
23. Advising on rate of return assumption.
24. Providing on-site consultation and assistance.
25. Providing objective and creative input, subject to its fiduciary responsibilities.
26. Attending approximately 10 to 11 Investment Committee and/or Board meetings per year held in the New York office. (It is expected that the consultant(s) will attend each meeting).
27. Meeting with internal investment staff as needed.

**TECHNICAL SPECIFICATIONS**

**C. TERM**

A five year contract covering the services requested in this RFP is anticipated.

**D. COST/INVOICING**

The bidder must complete a Fee Proposal (Appendix Z) in its entirety. Bidders are required to submit an annual fee for the Investment Advisor Services, which must include all *Mandatory Requirements*. The awarded Bidder(s) must submit invoices for the Investment Advisor Fee on a quarterly basis.

## BIDDER CERTIFICATIONS

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

### Certifications:

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

\_\_\_\_\_ Bidder is willing to enter into a contractual agreement containing, at a minimum, those terms and provisions identified in this RFP. *Any exceptions to these terms and conditions must be explicitly stated in a separate section of the proposal.*

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

\_\_\_\_\_ The Bidder is in compliance with or meets all Bidder Certification Requirements (Appendix B, #39)

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

\_\_\_\_\_ The Bidder meets or exceeds all Mandatory Bidder Qualifications and has provided evidence of such in its bid/proposal.

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

### 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 Appendix B, clause 15 for additional information):

No

Yes

### 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.

## **BIDDER CERTIFICATIONS**

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- \_\_\_\_\_2. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder on this project, and will not be disclosed prior to bid opening.
- \_\_\_\_\_3. No attempt has been made nor will be made to solicit, cause or induce any firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid, or other form of complementary bid.
- \_\_\_\_\_4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary bid.
- \_\_\_\_\_5. My firm has not offered nor entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit a complementary bid on this project.
- \_\_\_\_\_6. My firm has not accepted nor been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary bid, or agreeing to do so, on this project.
- \_\_\_\_\_7. I have made a diligent inquiry of all members, officers, employees and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

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

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

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

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

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

**Sworn to before me this**

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

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

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

any State approved sums due and owing for work done upon the project.

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

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) 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.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

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

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

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

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

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

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

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

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

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

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

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

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

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

the contract, the Department of Civil Service and the State Comptroller.

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

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

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

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

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

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

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

**APPENDIX B**

**GENERAL SPECIFICATIONS**

**PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE**

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

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

**2. GOVERNING LAW**

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

**3. ETHICS COMPLIANCE**

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

**4. CONFLICT OF TERMS**

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

- a. **Appendix A** Standard Clauses for NYS Contracts
- b. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. 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 Appendix A).
- d. **Appendix 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](http://www.nysif.com/procurement).

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

**6. INTERNATIONAL BIDDING**

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

**7. BID OPENING**

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

**8. BID SUBMISSION**

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

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

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

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

## 9. LATE BIDS

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

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple awards, and acceptance of the late Bid is in the best interests of NYSIF.

Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications.

Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of NYSIF shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late Bid submissions. Determinations by NYSIF relative to Bid timeliness shall be final.

## 10. BID CONTENTS

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

## 11. ERRORS AND OMISSIONS

If a Bidder discovers any ambiguity, conflict, discrepancy, omission or other error in Bid Documents, immediately notify one of the Designated Contacts of such error and request the clarification or modification thereof. Notice to NYSIF of any problems described above must be made in writing and received at NYSIF on or before the date and time shown as the final date for Bidder inquiries. Any modifications deemed necessary by NYSIF shall be given by written notice and posted on NYSIF's Procurement website ([www.nysif.com/procurement](http://www.nysif.com/procurement)).

If Bidder 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. EXTRANEOUS TERMS

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

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

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

- a. Each proposed extraneous term must be specifically enumerated in the "Comments and Limitations" section of the proposer's bid response; and
- b. The Bidder must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and

- c. The Bidder shall enumerate the proposed addition, deletion, counter-offer, modification or deviation from the Bid Document, and the reasons therefore.

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

### 13. CONFIDENTIAL/TRADE SECRET MATERIALS

Trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by NYSIF to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing at the time of 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 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](mailto:contracts@nysif.com).

### 15. FREEDOM OF INFORMATION LAW

During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or proprietary information, a written request to NYSIF to not disclose such information must accompany the Bid. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or proprietary information. Where a Freedom of Information request is made for a trade secret or proprietary information, NYSIF reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

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

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

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

- i. **Public Works** Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.
- ii. **Building Services** Labor Law Article 9 applies to Contracts for building service work over \$1,500 with a public agency, that: (i) involve the care or maintenance of an existing building, or (ii) involve the transportation of office furniture or

equipment to or from such building, or (iii) involve the transportation and delivery of fossil fuel to such building, and (iv) the principal purpose of which is to furnish services through use of building service employees.

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

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

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

## 17. TAXES

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

- c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.

## 18. EXPENSES PRIOR TO CONTRACT EXECUTION

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

## 19. ADVERTISING RESULTS

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

## 20. PRODUCT REFERENCES

- a. **“Or Equal”** In all Bid Specifications the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. NYSIF’s decision as to acceptance of the Product as equal shall be final.
- b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Product(s) 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 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 NYSIF 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 NYSIF. Failure to do so may constitute grounds for NYSIF to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by NYSIF.

- d. **Product Warranty** Unless recycled or recovered materials are available in accordance with the “Remanufactured, Recycled, Recyclable 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 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 NYSIF’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 bids/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-responsive.

### **35. QUANTITY CHANGES PRIOR TO AWARD**

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

### **36. TIMEFRAME FOR OFFERS**

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

## **ADMINISTRATIVE**

**37. NYSIF PREROGATIVES**

The contract award is subject to the availability of funds. Moreover, NYSIF is not liable for any costs incurred by any firm for work performed to prepare its proposal or for any travel and/or other expenses incurred in the preparation and/or submission of its proposal or with respect to any presentation/interview that may be required by NYSIF. Further, NYSIF is not liable for any costs incurred by the successful 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 ;
- 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 an 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 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.

- 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. The Bidder will conform to all provisions of Appendix A, *Standard Clauses for All New York State Contracts*.

- k. The Bidder agrees that no New York State or local sales tax, transportation tax or Federal excise tax will be charged on any part of this project since NYSIF is an agency of the State of New York and tax exempt by statute.
- l. The Bidder will save and hold harmless NYSIF and its management from all claims, suits, litigation and legal liability from any acts or omissions committed by the Bidder during the course of the contract.
- m. The contractor is an independent contractor of the State and may not hold itself out nor claim to be an officer, employee or subdivision of the State nor may contractor make any claim, demand or application to or for any right based upon any different status.
- n. Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract, at the contractor's expense. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of NYSIF that it meets or exceeds all requirements of the Bid, Contract, and any applicable laws including but not limited to permits and licensing, and shall provide such proof as required by NYSIF. Failure to comply or to provide proof may constitute grounds for NYSIF to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by NYSIF. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law
- o. All contractors and contractor employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law, and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees, and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the bid, each Bidder has guaranteed knowledge of 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 other civil or criminal proceedings as required by law.
- p. 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.
- q. 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.
- r. Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between NYSIF and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of a solicitation release through final award and approval of the Procurement Contract by NYSIF and, if applicable, Office of the State Comptroller or Department of Financial Services ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j (3)(a). Designated staff, as of the date hereof, is identified in the RFP/IFB (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 four year period, the Bidder is debarred from obtaining governmental Procurement Contracts.

#### 40. PARTICIPATION OF NYS BUSINESS ENTERPRISES

It is the policy of New York State to maximize the opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as 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 (EEO) Policy Statement to NYSIF within the time frame established by NYSIF.
- c. The contractor's EEO Policy Statement shall contain, but not necessarily be limited to, and the contractor, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
  - i. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
  - ii. The contractor shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - iii. At the request of NYSIF, the contractor shall obtain from each employment agency, labor union or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- d. Except for construction contracts, prior to award of a State contract, the contractor shall submit to NYSIF a staffing plan of the anticipated work force to be utilized on the State contract or, where required, information on the contractor's total work force, including apprentices, broken down by specified ethnic background, gender and Federal Occupational Categories or other appropriate categories specified by NYSIF. The form of the staffing plan shall be supplied by NYSIF.
- e. After an award of a State contract, the contractor shall submit to the contracting agency a work force utilization report, in a form and manner required by the agency, of the work force actually utilized on the State contract, broken down by specified ethnic background, gender and Federal Occupational Categories or other appropriate categories specified by the contracting agency.

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

#### 41. DEBRIEFING

Any unsuccessful Bidder may request a debriefing by notifying NYSIF in writing within seven (7) business days after receiving notification of the contract non-award. All requests for debriefings shall be emailed to [contracts@nysif.com](mailto:contracts@nysif.com). The debriefing shall be addressed within 30 days of receipt of the written request, or as soon after that time as practicable under the circumstances.

A debriefing will be limited to a review of an unsuccessful Bidder's own submission and the scoring of that submission. An unsuccessful Bidder is not entitled to review the submission of the successful Bidder beyond being informed of the total scoring of the successful Bidder. Generally, NYSIF will provide a written response to debriefing requests, providing the unsuccessful Bidder with the top score, average score and Bidder's score for each of the major evaluation categories as well as the Bidder's ranking in each.

#### 42. NYSIF'S VENDOR PROTEST PROCEDURE

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

##### a. **Protesting NYSIF's Procurement Decisions**

##### i. **Protest Phases**

##### Solicitation Phase Protest

A prospective proposer, Offeror or Bidder may, during the procurement solicitation phase, protest the content of a Request for Proposal (RFP) or Invitation for Bid (IFB) or any aspect of NYSIF's conduct of the solicitation phase of the procurement.

Such protests must be submitted in writing to NYSIF's Director of Administration, via certified mail or overnight mail service, and must be received by NYSIF no later than 1:00 p.m. on the 7<sup>th</sup> (seventh) business day prior to the date when proposals or bids are due. Solicitation phase protests are to be addressed as follows:

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

#### Post Award Protest

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

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

#### **ii. Protest Contents**

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

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

#### **c. Appeal Process**

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

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

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

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

For contracts requiring approval by the Office of the State Comptroller (OSC), the protester may appeal to OSC directly. See

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/17.htm> for further information.

**d. Legal Appeals**

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

**APPENDIX C**

**CONTRACT PROVISIONS**

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## 1. CONTRACT DOCUMENTS

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

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

The contract may be revised, modified and/or amended by mutual written consent of both parties and where applicable the approval of the 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. 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.

## 3. 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.

## 4. 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.

**5. SAVINGS/FORCE MAJEURE**

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

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

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

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

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

**6. DISASTER RECOVERY PLAN**

**A. Disaster Recovery Plan**

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

**B. Access to Disaster Recovery Plans**

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

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

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

C. Disaster Event Notification

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

**7. PRODUCT DELIVERY**

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

**8. WEEKEND AND HOLIDAY DELIVERY**

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

**9. SHIPPING / RECEIPT OF PRODUCT**

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

**10. PRODUCT SUBSTITUTION**

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

**11. REJECTED PRODUCT**

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

## **12. INSPECTION AND ACCEPTANCE OF THE WORK**

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

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

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

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

## **13. TITLE AND RISK OF LOSS**

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

## **14. EMERGENCY CONTRACTS**

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or NYSIF determines pursuant to 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.

## **15. ASSIGNMENT**

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

**16. 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.

**17. 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.

SAS 70 Reports:

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

**18. POLICY COMPLIANCE**

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

**19. SUBCONTRACTORS / SUPPLIERS**

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

**20. CONTRACT BILLINGS**

Contractor shall provide complete and accurate billing invoices to NYSIF in order to receive payment. Invoices must contain all information required by the Contract. All invoices must be sent to:

[NYSIFAPVNDRINV@nysif.com](mailto:NYSIFAPVNDRINV@nysif.com)

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

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

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

**21. REMEDIES FOR BREACH**

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

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

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

**22. INSTALLATION**

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

**23. 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.

**24. 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.

**25. 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

**26. 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.

**27. 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.

**28. 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.

**29. INFORMATION SECURITY CLAUSE**

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

information and private information were, or are reasonably believed to have been, so acquired, or as otherwise provided for by applicable law.

### 30. 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.

### 31. 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.

### 32. 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.

### 33. 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

#### **34. NON-SOLICITATION**

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

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

#### **35. 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](#).

#### **36. 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.

#### **37. 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

#### **38. NOTICE**

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

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

- d. expedited delivery service
- e. e-mail

Such notices shall be addressed to:

New York State Insurance Fund  
 Procurement Unit  
 15 Computer Drive West  
 Albany, New York 12205  
 Email: [contracts@nysif.com](mailto: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.

**39. 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.

**40. 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.

**41. 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.

**42. COUNTERPARTS / SIGNATURES**

This Agreement may be executed in counterparts, each of which when so executed will be deemed to be an original. Such counterparts together will constitute one agreement.

APPENDIX D

**MacBRIDE QUESTIONNAIRE**

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

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

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

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

(1) have business operations in Northern Ireland:

YES  NO

If yes,

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

YES  NO

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

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

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

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

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

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

## APPENDIX E

### VENDOR RESPONSIBILITY QUESTIONNAIRE

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

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

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

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

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

New York State  
Standard Vendor Responsibility Questionnaire

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

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

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

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

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

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

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

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

8. Authorized Contact for this Questionnaire:

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

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

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

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

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

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

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

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

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

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

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

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

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

New York State  
Standard Vendor Responsibility Questionnaire

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

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

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

12. Authorized Contact for the Proposed Contract:

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

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

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

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

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

Yes

No

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

New York State  
Standard Vendor Responsibility Questionnaire

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

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

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

---

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

---

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

---

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

---

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

---

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

---

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

---

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

---

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

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

New York State  
Standard Vendor Responsibility Questionnaire

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

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

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

New York State  
Standard Vendor Responsibility Questionnaire

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

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

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

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

\_\_\_\_\_

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

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

\_\_\_\_\_

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

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

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

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

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

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

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



APPENDIX F  
NYS CERTIFICATIONS

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

**Is your firm a New York resident business?**

Yes  No

**Total number of people employed by your firm:**

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

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

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

Yes  No

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



## APPENDIX 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>
----------------------	-------------	---------------------	----------------------------

APPENDIX H

Disclosure of Prior Non-Responsibility Determinations

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

\_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

Bid Number: \_\_\_\_\_

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

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

No Yes

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

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

No Yes

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

No Yes

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

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

No Yes

APPENDIX H

**Disclosure of Prior Non-Responsibility Determinations**

6. If yes, please provide details below.

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

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

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

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## APPENDIX M

### CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

#### NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A, New York State Insurance Fund (“NYSIF”) recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of NYSIF contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" (“Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that NYSIF establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

#### Business Participation Opportunities for MWBEs

For purposes of this solicitation, NYSIF hereby establishes an overall goal of 30% for MWBE participation: 18% for Minority-Owned Business Enterprises (“MBE”) participation and 12% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that NYSIF may withhold payment pending receipt of the required MWBE documentation.

The directory of New York State Certified MWBEs can be viewed at:

<http://www.nylovesmwbe.ny.gov/cf/search.cfm>.

For guidance on how NYSIF will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and NYSIF may withhold payment from the Contractor as

## APPENDIX M

liquidated damages.

Making false representations or including information evidencing 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 MWBE utilization.

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.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan on Form # 103 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to NYSIF.
- B. NYSIF will review the submitted MWBE Utilization Plan and advise the Bidder of NYSIF acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to NYSIF, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by NYSIF to be inadequate, NYSIF shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form # 104. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. NYSIF may disqualify a Bidder as being non-responsive under the following circumstances:
  - a) If a Bidder fails to submit a MWBE Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If NYSIF determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to NYSIF, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance &

## APPENDIX M

Payment Report on Form #105 to NYSIF, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a Staffing Plan (Form #101) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to NYSIF, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will 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.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

**STAFFING PLAN**

**Submit with Bid or Proposal – Instructions on page 2**

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

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 Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		<b>Submit completed with bid or proposal</b>

## Form 101-Instructions

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (M/WBE 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 OM/WBE 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 or Female

## WORK FORCE EMPLOYMENT UTILIZATION

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Contractor's Name:</b>		<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Contractor's Address:</b>		

Enter the total number of employees in 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										Disabled		Veteran	
		Male (M)	Female (F)	White		Black		Hispanic		Asian		Native American		(M)	(F)	(M)	(F)
				(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)				
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		<b>Submit completed form to:</b>
		<b>NYS (add Agency name)</b>

## Form 102-Instructions

**General Instructions:** The work force utilization (M/WBE 102) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

### Instructions for completing:

9. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
10. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
11. Check off the box that corresponds to the reporting period for this report.
12. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
13. Enter the total work force by EEO job category.
14. Break down the total work force by gender and enter under the heading 'Work force by Gender'
15. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
16. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
17. 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 report, 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 or Female

M/WBE UTILIZATION PLAN

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

**Offeror's Name:**

**Address:**

**City, State, Zip Code:**

Telephone No.:

Region/Location of Work:

**Federal Identification No.:**

**Solicitation No.:**

**Project No.:**

**M/WBE Goals in the Contract:** MBE      %    WBE      %

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

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

<p><b>PREPARED BY (Signature):</b> <b>DATE:</b></p> <p><b>NAME AND TITLE OF PREPARER (Print or Type):</b> SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;"><b>TELEPHONE NO.:</b></td> <td><b>EMAIL ADDRESS:</b></td> </tr> <tr> <td colspan="2" style="text-align: center;"><b>FOR M/WBE USE ONLY</b></td> </tr> <tr> <td><b>REVIEWED BY:</b></td> <td><b>DATE:</b></td> </tr> <tr> <td colspan="2"><b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</td> </tr> <tr> <td><b>Contract No.:</b></td> <td><b>Project No. (if applicable):</b></td> </tr> <tr> <td colspan="2"><b>Contract Award Date:</b></td> </tr> <tr> <td colspan="2"><b>Estimated Date of Completion:</b></td> </tr> <tr> <td colspan="2"><b>Amount Obligated Under the Contract:</b></td> </tr> <tr> <td colspan="2"><b>Description of Work:</b></td> </tr> <tr> <td colspan="2"><b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</td> </tr> <tr> <td colspan="2"><b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</td> </tr> </table>	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>	<b>FOR M/WBE USE ONLY</b>		<b>REVIEWED BY:</b>	<b>DATE:</b>	<b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____		<b>Contract No.:</b>	<b>Project No. (if applicable):</b>	<b>Contract Award Date:</b>		<b>Estimated Date of Completion:</b>		<b>Amount Obligated Under the Contract:</b>		<b>Description of Work:</b>		<b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____		<b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____	
<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>																						
<b>FOR M/WBE USE ONLY</b>																							
<b>REVIEWED BY:</b>	<b>DATE:</b>																						
<b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____																							
<b>Contract No.:</b>	<b>Project No. (if applicable):</b>																						
<b>Contract Award Date:</b>																							
<b>Estimated Date of Completion:</b>																							
<b>Amount Obligated Under the Contract:</b>																							
<b>Description of Work:</b>																							
<b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____																							
<b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____																							

## REQUEST FOR WAIVER FORM

**INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.**

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

## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

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

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

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

Is this a final report? Check One  
 Yes \_\_\_\_\_ No \_\_\_\_\_

**M/WBE Quarterly Report  
 of**

**NYS AGENCY Contract No.** \_\_\_\_\_ **Project No.** \_\_\_\_\_

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

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

\*See bELOW for Product Codes

**Date** \_\_\_\_\_ **Name** \_\_\_\_\_ **Title** \_\_\_\_\_

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

**PRODUCT KEY CODE**

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

Form 106

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

M/WBE AND EEO POLICY STATEMENT

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

**M/WBE**

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. 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) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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

**Form 106**

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**

\_\_\_\_\_20% Minority and Women’s Business Enterprise Participation

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women’s Business Enterprise Participation

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ % Female Labor Force 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

(6/06)

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

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

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

(name)

(title)

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

(Mark an X in only one box)

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

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

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

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

(sign before a notary public)

(title)

## Instructions

### General information

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

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

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

### When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

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

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

Notary Public

Registration No.

Privacy notification

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

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



# Contractor Certification

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

# ST-220-TD

(5/07)

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

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

## General information

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

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

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

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

Mail completed form to:

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

## Privacy notification

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

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

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

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

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

## Need help?



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



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



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

To order forms and publications: 1 800 462-8100  
**Sales Tax Information Center:** 1 800 698-2909  
 From areas outside the U.S. and outside Canada: (518) 485-6800

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



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

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

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

**Section 1 — Contractor registration status**

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

**Section 2 — Affiliate registration status**

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

**Section 3 — Subcontractor registration status**

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

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

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

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





## 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/>



## Contractor Consultant Law Form B

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

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

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

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.online.onetcenter.org](http://www.online.onetcenter.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:

<b>NYSIF</b>	<b>Department of Civil Service</b>	<b>OSC-Bureau of Contracts</b>
contracts@nysif.com	Alfred E. Smith Office Building	110 State St., 11 <sup>th</sup> Floor
	Albany, NY 12239	Albany, New York 12236
	Attn: Counsel's Office	Attn: Consultant Reporting

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

Should you have any questions, please contact the NYSIF Procurement Unit at 518-437-4360 (phone), 518-437-4209 (fax), or [contracts@nysif.com](mailto:contracts@nysif.com) (email).





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**New York State Insurance Fund**

**Investment Policy Statement**

**(As Amended and Adopted September 19, 2012)**

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NEW YORK STATE INSURANCE FUND  
INVESTMENT POLICY STATEMENT  
As Amended and Adopted 9-19-2012

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Exhibit A

SECURITIES GUIDELINES

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SECURITIES LENDING GUIDELINES

Exhibit C (amended and adopted 7-18-2012)

PROXY VOTING PROCEDURES AND GUIDELINES

Exhibit D (adopted 9-19-2012)

POLICIES AND PROCEDURES FOR PROCUREMENT OF INVESTMENT  
RELATED SERVICES AND SELECTION OF EXTERNAL ASSET MANAGERS

NEW YORK STATE INSURANCE FUND  
INVESTMENT POLICY STATEMENT  
As Amended and Adopted 9-19-2012

I. INTRODUCTION

Pursuant to the laws of the State of New York, the New York State Insurance Fund (“NYSIF” or “Fund”) is vested with the authority and responsibility for the preservation of its capital and growth, surplus and reserves in support of its mission to insure employers against liability for personal injuries or death sustained by their employees. NYSIF’s portfolio of investments is comprised of the Workers’ Compensation Fund and the Disability Benefits Fund. NYSIF is also responsible for the administration and investment of the assets of the Aggregate Trust Fund.

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

II. OBJECTIVES

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

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

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

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

### III. DEFINITION OF RESPONSIBILITIES

#### A. Board of Commissioners

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

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

B. Investment Committee

The Board may appoint an Investment Committee to assist in gathering information, make recommendations and report to the Board, as necessary. The Investment Committee, as a committee of the Board, shall have the responsibility and ability to monitor, report and recommend to the Board guidelines, policies and procedures pertaining to the investment of NYSIF capital, reserves and surplus. The Investment Committee shall:

1. Periodically review NYSIF's strategic investment policy and allocation of assets in light of any changes in financial, operational or market conditions, or other factors affecting the investment environment including statutory changes;
2. Recommend to the Board performance measures for NYSIF's investments, and to review the actual performance against these benchmarks;
3. Annually review the IPS, and recommend to the Board any amendment deemed necessary or appropriate;
4. Review, consider and recommend to the Board, for their approval, the engagement of Investment Consultants and Asset Managers;
5. Ensure that adequate criteria are established pursuant to these guidelines for the placement and retention of qualified Asset Managers;
6. Periodically review the criteria and procedures developed by the Chief Investment Officer for the engagement of Asset Managers, with criteria and procedures incorporated into the IPS; and
7. Periodically review and report to the Board on the performance of NYSIF's vendors, including but not limited to, external Asset Managers, investment consultants, custodian and other vendors involved in the investment management process.

C. NYSIF Investment Staff Responsibilities

Chief Investment Officer

The Chief Investment Officer shall be an officer or employee of the Fund designated by Fund Management and have primary responsibility to implement and supervise the provisions of the IPS and operational investment policies, as otherwise referenced herein. The duties of the Chief Investment Officer shall, among other things, include:

1. Implementing and monitoring the IPS and its objectives;

Attachment A

2. Establish, implement, and monitor investment strategies for NYSIF's internal investment management;
3. Implementing and monitoring NYSIF's External Asset Manager roster, reporting any significant changes to the Investment Committee and Board;
4. In coordination with the Investments Compliance Officer, perform, or require staff to perform, daily monitoring of any securities belonging to the NYSIF which, by order of the Board, approved by the Superintendent of Insurance, are loaned under a security loan agreement, as defined in paragraph IV (C) herein, to ensure that the value of the collateral posted will not fall below the market value of the loaned securities;
5. Periodically report performance to the Board and the Investment Committee;
6. Make recommendations to Fund Management for the hiring of NYSIF investment staff;
7. Implement practices and procedures for the daily administration of NYSIF investment staff;
8. Maintenance, training and supervision of Investment Department staff sufficient to carry out responsibilities as set forth herein, within the limitations of civil service and other State agency personnel requirements;
9. Engaging other NYSIF departments (*e.g.* Finance Department) regarding cash flow requirements;
10. Ensuring procedures for voting of investment proxies by external and internal managers are in accordance with NYSIF's proxy voting guidelines;
11. Recommending policy changes to the Investment Committee for Board consideration;
12. Take or recommend appropriate action to the Board, Investment Committee and Fund Management as to the status of non-statutory compliant investments; and
13. Submit to the Board, Fund Management and Investments Compliance Officer the following data on a monthly basis:
  - i. Asset Allocation;

## Attachment A

- ii. Aggregate Fund Performance, with index benchmarks;
- iii. Any developing investment manager issues or general investment related issues; and
- iv. All statutorily required reports to the Board of Commissioners and the Department of Insurance.

### Chief Fiscal Officer

The Chief Fiscal Officer shall be an officer or employee of the Fund designated by Fund Management and have primary responsibility to provide back office accounting functions as described below:

1. Daily processes of loading trades, prices, and factors. Reconcile accountings to custodian transactions, process previous transactions;
2. Weekly processes of loading dividend records and performing cash roll forward;
3. Monthly processes of cash roll forward and reconciliations for Department of Taxation and Finance. Ensure accurate prices for all investment types. Run yield calculations and accounting updates. Run Schedule D reports and interface files;
4. Quarterly processes of submitting portfolio to the Securities Valuation Office (“SVO”) and the Automated Valuation Service for NAIC pricing and rating (“AVS”). Receive and load NAIC pricing and ratings. Run various CAMRA reports for impairment analysis. Prepare all impairment related schedules and analysis and process approved impairments. Run quarterly Schedule D reports and interface file;
5. Research all investment related accounting requirements to ensure proper accounting treatment for each different type of security and proper level of disclosure;
6. Prepare monthly and year end financial reports;
7. Maintain the investment accounting system in conjunction with the Investment Office and ITS staff; and
8. Prepare quarterly and annual financial statements including Schedule D for filing with the Insurance Department of the State of New York.

Investments Compliance Officer

The Investments Compliance Officer shall be an officer or employee of the Fund designated by Fund Management and have primary responsibility to review matters of investment regulatory compliance. The Investment Compliance Officer will also serve as Counsel to Investments. Among other things, the duties shall include:

1. Review and monitor the investment trading guidelines, investment policies, practices and procedures for legal and regulatory compliance issues and/or risks;
2. Provide legal analysis, advice and counsel relating to all investment matters; draft legal memorandum and opinions on various legal issues relating to the interpretation and/or application of regulatory investment authorities, practices and procedure; and administer securities claim and loss recovery policies and services;
3. Provide review of investment-related service agreements, in coordination with the Contracts Unit, as requested by Fund Management;
4. Monitor, review and report to the Investment Committee, Fund Management and Chief Investment Officer as to the statutory compliance of all investments and/or securities;
5. Monitor, review and report to the Investment Committee, Fund Management, and Chief Investment Officer, on at least a monthly basis or as otherwise necessary, as to NYSIF investment(s) that are non-compliant with statutory authority; and
6. Monitor, coordinate and transact with external entities, including but not limited to, Investment Advisor(s), Asset Manager(s), Custodian and other external entities as to matters of investment regulatory compliance.

D. Investment Consultant Responsibilities

The Board may engage an independent investment consultant (“Investment Consultant”) as a fiduciary to assist in developing its Investment Policy Statement and assist the Board and Fund Management with regard to implementation of the IPS. The Investment Consultant will work closely with the Investment Committee, Fund Management, Chief Investment Officer, Chief Fiscal Officer and Investments Compliance Officer, but will ultimately report to the Board.

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The Investment Consultant will generally, among other responsibilities which may be otherwise specified:

1. Provide independent and unbiased information and advice to the Board, Fund Management and Chief Investment Officer;
2. Assist in the execution of the IPS;
3. Assist in the development of strategic asset allocation targets;
4. Assist in the development of performance measurement standards;
5. Provide support services in the External Asset Manager search and selection process approved by the Board;
6. Assist in developing and implementing procedures to enable the Board to monitor and evaluate External and Internal Asset Managers;
7. Provide any other advice or services that the Board determines from time to time to be necessary, useful or appropriate within the scope of the Investment Consultant contract;
8. Attend Investment Committee meetings and report on the performance of the entire investment portfolio;
9. Provide industry wide best practices from the public sector and institutional fund management in general;
10. Appear before the Board, at a minimum, annually;
11. Maintain confidentiality of all NYSIF and NYSIF prepared data and analysis;
12. The Investment Consultant is expected to meet with the Board at least annually to report on the performance of the Chief Investment Officer, Investment Department staff and External Asset Managers. In addition, the Investment Consultant is also required to meet with the Investment Committee on at least a quarterly basis, or as otherwise required or necessary for the implementation of the IPS;
13. The Investment Consultant will provide the following reports on a quarterly basis:
  - i. Asset Allocation;
  - ii. Aggregate Fund Performance, with peer group universe and index benchmarks;

- iii. Asset class level performance, with peer group and index benchmarks;
  - iv. Individual Asset Manager performance, with peer group and index benchmarks; and
  - v. Any developing investment manager issues or general investment related issues; and
14. Monitor and report to the Investment Committee and Fund Management on the External and Internal Asset Managers' operational standing and status.

E. External Asset Managers' Responsibilities

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

1. Manage NYSIF's assets under its care and/or control in accordance with the IPS and in compliance with applicable New York State law and regulation;
2. Exercise and maintain full investment discretion and responsibility over the assets in their care within the guidelines set forth herein and the stipulations and requirements of their negotiated contracts;
3. Promptly inform the Board of Commissioners and Fund Management, in writing, of all changes of a material nature pertaining to the External Asset Manager's organization and professional staff;
4. Promptly inform the Board, Fund Management, Chief Investment Officer, Investments Compliance Officer, and Investment Consultant, in writing, of all regulatory actions instituted against such External Asset Manager by the Securities and Exchange Commission, or other regulatory authorities, within 30 days of such proceeding or investigation;
5. If directed by the Chief Investment Officer, shall promptly vote all proxies and related actions in a manner consistent with the long-term interest and objectives of NYSIF. Each External Asset Manager designated to vote shall keep detailed records of said voting of proxies and related action and will comply with all regulatory obligations related thereto;

## Attachment A

6. Report to the Chief Investment Officer, on at least a semi-annual basis, but more frequently if requested or otherwise required, on the status of the portfolio, performance, economic outlook and compliance with NYSIF's investment goals and objectives;
7. Report directly to the Board and Fund Management, on demand, on the status of the portfolio and its performance for various time periods;
8. Meet and confer with the Chief Investment Officer at least annually;
9. Meet and confer with the Investment Consultant, at least annually or as otherwise required;
10. Meet and confer with Fund Management, Chief Investment Officer, Investments Compliance Officer and the independent Investment Consultant, as may be required for periodic compliance reviews and assessments; and
11. Provide copies of all documents and reports relating to investment compliance to the Board, Investments Committee, Fund Management, Chief Investment Officer and Investments Compliance Officer;
12. External Manager Reporting Responsibilities

External Asset Managers are required to immediately report material changes in organizational structure, investment philosophy, personnel, investment process, acquisition or loss(es) of major accounts, institution of regulatory actions or legal proceedings.

### A. Standard Evaluation Process

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

## Attachment A

Annual performance reviews will be conducted by either the Investment Committee, Fund Management, Chief Investment Officer and/or independent Investment Consultant on all External Asset Managers at least annually in person, and will generally include the following:

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

### B. Watch Status

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

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

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

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

1. Once an External Asset Manager is formally notified of its “watch” status, the Chief Investment Officer will meet with Manager to afford an opportunity to explain its underperformance and any action plan to remedy the poor performance and/or the qualitative issues.
2. An External Asset Manager on “watch” status must, on a monthly basis, report qualitative and quantitative data to the Investment Department and Chief Investment Officer. Examples of data/information that shall be included in such reports are updates/changes in:
  - i. Status of an Action Plan;
  - ii. Personnel;
  - iii. Process;
  - iv. Investment strategy; and
  - v. Performance.
3. The Board may terminate an External Asset Manager at any time.

F. Custodian Bank

The Board will delegate the safekeeping of cash and securities and the collection of income to a qualified industry expert in the custodianship of assets. The firm will act as a fiduciary to the NYSIF. The Custodian is required at a minimum to summarize holdings (at cost and fair market value)

and provide a detailed accounting of cash flows on a monthly basis in addition to any other reasonable reporting (both standard and ad-hoc) that may be required by the Board or Fund Management. The Custodian Bank will report directly to the Chief Investment Officer and other members of Fund Management designated by the Board.

G. Securities Lending Agent

The Board may elect to participate in a securities lending program run by either the affiliated agent lending program of its Custodian Bank or alternatively with an independent/third-party lending agent. The securities lending program will be governed by the Securities Lending Guidelines incorporated herein as Exhibit B. The Securities Lending Agent will report directly to the Chief Investment Officer and other members of Fund Management designated by the Board. Transactions are ultimately also subject to approval by the Superintendent of Insurance.

IV. ETHICS AND CONFLICT OF INTEREST POLICY

All NYSIF Commissioners, Investment Committee members, Fund Management, officers and employees, and external service providers involved in the investment process shall refrain from personal business activity that could conflict with proper execution and management of the investment program and its policies, or that could impair their ability to make impartial decisions. These parties are required to reveal all relationships that could create, or result in the appearance of, a conflict of interest in their unbiased involvement in the investment process, and shall abide by all applicable laws and applicable ethical standards of conduct including, but not limited to, the NYSIF Commissioners' Code of Conduct, the New York State Lobbying Act and Public Officers Law §§73, 74, which supersedes and amends, in all respects, the NYSIF Code of Ethics and Personal Trading Policy for Investment Professionals.

V. GENERAL INVESTMENT PRINCIPLES

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

4. The Board rejects the concept of market timing. Thus, NYSIF assets are to be fully invested at all times.

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

## VI. ASSET ALLOCATION AND REBALANCING

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

1. Historical long term (ten years and greater) performance of financial assets will generally hold true in the future. More specifically, over long periods of time higher risk assets tend to out perform lower risk assets, but with greater volatility;
2. Diversification by manager, asset class, investment style and individual securities will reduce overall risk, or volatility, of NYSIF's assets; and
3. Investments will be made consistent with NYSIF's business objectives, underlying liabilities and statutory limitations.

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

WCF has two sub investment portfolios with distinct objectives. One portfolio is the Asset Liability Portfolio ("ALP"), which is comprised exclusively of fixed income assets used solely for the purpose of matching the assets and associated future cash flows to NYSIF's future liabilities. The second portfolio, known as the Total Return Operating Pool ("TROP"), is used to primarily help fund NYSIF's ongoing operations. Consequently, the two portfolios have separate and distinct asset allocation policies to meet their separate objectives.

Given NYSIF's objectives, financial status, risk tolerance, and statutory guidelines for the ALP, the Board has approved a strategic asset allocation of 100% domestic fixed income.

Given NYSIF's objectives, financial status, risk tolerance and statutory guidelines for TROP the Board has approved the following strategic asset allocation:

<b>Asset Class</b>		<b>Target Weight</b>	<b>Minimum Weight</b>	<b>Maximum Weight</b>
U.S. Fixed Income		65%	60%	70 %
U.S. Equity Total		35%	30%	40 %
U.S. Large Cap		20%	15%	25%
U.S. Mid Cap		6%	4%	8%
U.S. Small Cap		4%	2%	6%
<i>Total Equity</i>				
<b>Total Portfolio</b>		100.0%		

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

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

## VII. SECURITIES GUIDELINES

The Investment Committee, Fund Management, General Attorney and Investments Compliance Officer shall recommend to the Board specific investment securities guidelines for approval by the Board of Commissioners. The Chief Investment Officer will implement and utilize the approved guidelines. These guidelines shall be consistent with all legal requirements as well as prudent investment management and shall be periodically reviewed and reaffirmed or revised as necessary. The approved guidelines will be incorporated into the IPS.

## VIII. SECURITIES LENDING

Section 87(2) of the Workers' Compensation Law permits NYSIF's securities to be loaned under a security loan agreement, by order of the Board and approved by the Superintendent of Insurance. Securities lending will be deemed short-term securities

and will be managed in accordance with the short-term securities guidelines. These guidelines shall be consistent with all statutory requirements as well as prudent investment management and shall be periodically reviewed and reaffirmed or revised as necessary. The approved guidelines will be incorporated into the IPS.

#### IX. EXTERNAL ASSET MANAGER SELECTION

The Investment Committee, in consultation with the Chief Investment Officer, shall recommend engagement of External Asset Managers to the Board. The services of an External Asset Manager shall be engaged in accordance with NYSIF policies and applicable law. The selection, retention and termination of any and all External Asset Managers shall be subject to approval by the Board.

External Asset Managers must enter into NYSIF's standard External Asset Manager Contract, acknowledge receipt of and maintain compliance with NYSIF's Asset Manager Guidelines, and maintain the following criteria:

1. An External Asset Manager must be a bank, insurance company, an investment management company or an investment advisor as defined by the Investment Advisors Act of 1940;
2. An External Asset Manager must demonstrate that it has achieved historical quarterly performance numbers calculated on a time-weighted basis meeting CFA Institute standards of performance measurement;
3. An External Asset Manager must provide CFA Institute compliant monthly performance, and any other data deemed necessary to the evaluation process, to the Investment Consultant and its third party database;
4. An External Asset Manager must provide detailed information on the history of the firm, key personnel, key clients, fee schedule and support personnel;
5. An External Asset Manager must clearly articulate the investment strategies and activities that would be followed and demonstrate that the manager has successfully employed these strategies and activities over time;
6. Any External Asset Manager, if selected, must immediately submit to the Board, Fund Management and the Investment Consultant a complete description of any changes the manager proposes with respect to its investment strategies, activities or personnel;
7. Any External Asset Manager shall not have any outstanding legal judgments or past judgments which cast material doubt on the trustworthiness of the Manager and the Manager's ability to successfully execute the mandate set by NYSIF.

8. An External Asset Manager must satisfy all other criteria developed by the Fund Management, Chief Investment Officer and approved by the Board.

#### X. PROCUREMENT

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

#### XI. PROXY VOTING PROCEDURES AND GUIDELINES

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

#### XIV. CORRESPONDENCE

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

**Exhibit A**

**SECURITIES GUIDELINES**

I. **Fixed Income Securities**

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

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

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

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

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

B. Long Term Fixed Income Securities

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

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

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

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

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

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

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

## II. Equity Investments

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

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

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

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

- B. Common shares or partnership interests of any solvent American institution, if:
  - 1. all the obligations of such institution are eligible for investment by NYSIF under section I(B)(4) of these Investment Guidelines and preferred or guaranteed shares of such institution are eligible for investment by NYSIF under section II (Equity Investments) of these Investment Guidelines; and
  - 2. such equity interests of such institution, except if such institution is an insurance company, are registered on a national securities exchange or are otherwise registered pursuant to the Securities Exchange Act of 1934, (15 U.S.C. subdivision 78a-78kk) and if so otherwise registered are price quoted through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc.

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

- C. Securities of any investment company registered to the Federal Investment Company Act of 1940, 15 U.S.C. Section 802, if such investment company:
  - 1. invests at least 90% of its assets in the following types of securities:
    - a. obligations which are not in default as to principal or interest, which are valid and legally authorized, and which are assumed, guaranteed or insured by the United States or any agency or instrumentality thereof or territory or possession of the United States or of any state of the United States;

Attachment A

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

**Exhibit B**

**SECURITIES LENDING GUIDELINES**

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

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

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

**Exhibit C**

**PROXY VOTING PROCEDURES AND GUIDELINES**  
**As Amended and Adopted 07-18-2012**

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

A. **ANALYST INDEPENDENCE**

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

B. **AUDITORS**

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

**Independent Auditors**

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

C. BOARD OF DIRECTORS

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

1. Access to the Proxy

NYSIF will support proposals requesting shareholder access to management's proxy materials for the purpose of nomination of Directors in Board elections.

2. Classified Board

NYSIF believes that annual elections provide the best governance system for accountability to shareholders.

(a) NYSIF will generally vote AGAINST proposals for a Classified Board.

(b) NYSIF will vote FOR proposals to eliminate a Classified Board and elect all Directors on an annual basis.

3. Cumulative Voting

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

4. Direct Nomination of Board Members

(a) NYSIF will vote AGAINST proposals to eliminate shareholder abilities to nominate Director's directly.

(b) NYSIF will vote FOR proposals permitting shareholder ability to nominate Directors directly.

5. Election of Directors

NYSIF will vote FOR a nominee for the position of Director of a United States company in an uncontested election, except for a

nominee who has missed at least two meetings and, as a result, attended less than 75% of meetings of the Board of Directors without good cause. In addition, NYSIF will generally withhold support under the following circumstances:

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

6. Independent Directors

In general, a Board of Directors independent from management is of vital importance to a company and its shareholders. NYSIF will generally vote FOR proposals that ask a majority or a substantial majority of a company's Board of Directors to consist on independent Directors. Independence will be evaluated based upon a number of factors, including but not limited to, past or current employment by the company or one of its paid advisors or consultants, financial transactions, and family relationships of key employees of the company. A Director will not be considered independent if, within the past five years, he or she, or a relative of said Director is or has been, employed by the corporation or by a director of an affiliated entity of the corporation.

7. Supervisory Board Members

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

D. CAPITAL AND ORGANIZATIONAL STRUCTURE

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

1. Dual Class Stock

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

2. Share Repurchase Plan

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

3. Tracking Stock

NYSIF will generally not support proposals that seek to create tracking stock, although reserves the right to consider said proposals on a case-by case basis.

4. Approval of Mergers, Acquisitions and “Spin-Offs”

NYSIF will generally consider and support proposals seeking shareholders to approve a merger, acquisition or “spin off” provided the transaction is in the long-term and best economic interest of the company, as opposed to the current interest of management at the expense of shareholders.

5. Shareholder Approval for Poison Pill

NYSIF will support proposals that ask a company to submit its poison pill to shareholders for a vote.

6. Pre-emptive Rights Plans for Shareholders

NYSIF supports proposals that grant or restore pre-emptive rights to shareholders.

7. Reincorporation

- (a) NYSIF will vote against proposals submitted by management that would allow companies to reincorporate outside the United States.
- (b) NYSIF supports proposals submitted by shareholders that request companies to reincorporate in the United States.

8. Greenmail

NYSIF will support proposals that seek shareholder approval of payments to purchase or repurchase shares at a premium price to avert a hostile takeover.

9. Dividends

NYSIF will generally consider proposals which seek to declare annual dividend(s), or to increase the amount of dividends, on a case-by-case basis.

E. CORPORATE GOVERNANCE AND DIRECTOR RESPONSIBILITIES

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

1. Director Liability and Indemnification

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

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

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

2. Establishment of Board of Director Committees

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

3. Independent Board Chairman

NYSIF will generally vote FOR proposals that a company initiate steps to separate the roles of Chairman and Chief Executive Officer and take necessary steps to adopt a policy that the Board Chairman be an independent director.

4. Board Diversity

Modern corporations operate in a diverse, multi-cultural environment. Long-term financial performance is likely to be enhanced when Boards reflect and draw upon talent from the widest choice of candidates. NYSIF will support proposals that encourage diversified representation on the Board and those that aim to expand the search for women and minority candidates, including proposals asking companies to make greater efforts to diversify their boards and proposals to report to shareholders on those efforts and on the process of selecting nominees.

5. Succession Planning

NYSIF will support proposals that seek to adopt and disclose reasonably sound succession planning models, candidate identification, development and processes for the Chief Executive Officer of the company.

F. DISCLOSURE AND OPERATIONAL TRANSPARENCY

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

1. Dividend Report

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

2. Subsidiary Operations

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

3. Statutory Reporting

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

G. EXECUTIVE AND DIRECTOR COMPENSATION

These proposals generally concern those issues submitted to shareholders regarding management compensation and employee benefits. As a general matter, NYSIF favors disclosure of a company's compensation and benefit policies and opposes excessive compensation.

1. Shareholder Voting on Compensation

- (a) NYSIF will generally support proposals that request shareholder approval of future severance packages ("golden parachutes").
- (b) NYSIF also favors proposals that request companies to obtain shareholder approval of all new and amended stock-based compensation plans.
- (c) NYSIF will support proposals allowing shareholders the opportunity to hold a non-binding advisory vote on compensation practices.
- (d) NYSIF will vote on a case-by-case basis on proposals requesting ratification of a company's executive compensation plan.

2. Retirement Benefits for Outside Directors

- (a) NYSIF will generally vote AGAINST proposals seeking to establish retirement benefits for outside directors.
- (b) NYSIF will vote FOR proposals to eliminate retirement benefits for outside directors.

3. Approval of Stock Option Plans

NYSIF will review approval of stock option plans on a case-by case basis and will generally supports proposals that establish or amend stock option plans reasonably consistent with the following criteria:

- i. Dilution levels must be reasonable;
- ii. Plans should award performance with clear and distinct criteria for performance;
- iii. Options should not be awarded at below-market discounts;
- iv. Plans should not include stock appreciation or depreciation rights;
- v. Plans should not include reload provisions which allow the company to replace stock already given in the exercise of an option;
- vi. Plans should not allow paying for stock options with previously owned shares in successive or succeeding short-term transactions.

4. Performance-Based Compensation

NYSIF generally supports incentive-based compensation plans directly related to individual and corporate performance. Multiple performance measures should be used in an executive's incentive program, and the measures should be sufficiently diverse so as to not reward executive(s) multiple times for the same performance. The measures should be aligned with the company's short and long-term strategic goals, and pay should incorporate company-wide performance metrics, not just business unit performance criteria. Performance measures applicable to all performance-based awards (including annual and long-term incentive compensation) should reward superior performance—based predominantly on measures that drive long-term value creation—at minimum reasonable cost.

a. Performance-Based Stock-Options

NYSIF supports proposals that request companies to award performance-based stock options, which may be indexed to industry performance.

b. Re-pricing of Stock Options

NYSIF will generally vote AGAINST proposals to re-price stock options.

5. Holding of Option Shares

NYSIF supports proposals which require executives to hold shares derived from exercised options.

6. Survivor Benefit Plans

NYSIF will support proposals that request shareholder approval of any future agreements pertaining to payments or awards made to executives following their death. (“Golden Coffins”)

7. Employee Stock Purchase Plan

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

8. Disclosure of Executive Pay

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

- (b) NYSIF will support proposals that request report(s) which compares compensation for highest paid executives and lowest paid employees.

9. Expense Stock Options at Time of Grant

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

10. Clawback Provisions

- (a) NYSIF will support proposals requesting policies to ensure recoupment of assets and compensation in the event of fraud or matters of gross negligence or recklessness.
- (b) NYSIF supports proposals that permit recapture of unearned payments, including compensation and/or bonuses, awarded to executives.

H. GENERAL VOTING PROVISIONS

1. Confidential Voting

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

2. Supermajority Requirements

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

3. Unequal Voting Rights

NYSIF will not generally support proposals that allow a company to issue shares with special voting rights. Unequal voting rights can benefit some shareholders at the expense of others. Such rights can effectively deter premium takeover offers.

I. EQUAL EMPLOYMENT

1. Sexual Orientation

Modern corporations operate in a diverse environment. Long-term financial performance is likely to be enhanced when a corporation is committed to respect and tolerance; prohibits all forms of

discrimination; and encourages the recruitment, hiring and promotion of employees from the widest choice of candidates.

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

2. Glass Ceiling

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

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

3. EEO Reporting

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

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

J. ENVIRONMENT AND HEALTH-RELATED ISSUES

A. Climate Risk

(i) NYSIF generally supports proposals requiring companies to disclose information regarding greenhouse gas emissions and related policies.

(ii) NYSIF generally supports proposals requiring companies to disclose information to shareholders regarding describing the operational, financial, and/or reputational risks to the company from any past, present or anticipated future greenhouse gas emissions.

(iii) NYSIF generally supports proposals requiring companies to disclose information to shareholders regarding the company's operations and risks associated with emissions of carbon dioxide, sulfur dioxide, nitrogen oxide and mercury emissions.

(iv) NYSIF generally supports proposals requiring companies to disclose information to shareholders listing the greenhouse gases that the company emits and the fines paid under any state or federal environmental laws.

B. Hazardous Materials

NYSIF generally supports proposals requiring companies to disclose information to shareholders regarding its annual expenditures related to health, environmental, financial and/or regulatory risks from the use of hazardous substances in company operations.

C. Recycling

NYSIF generally supports proposals requiring companies to disclose information to shareholders regarding its efforts to adopt recycling policies and strategies.

D. Pesticides

NYSIF generally supports proposals requiring companies to disclose information to shareholders regarding its products that have been banned for sale and use in the United States or identified as potential carcinogens.

E. Smoking and Use by Minors

NYSIF generally supports proposals requiring companies to review and report on adherence to policies designed at discouraging smoking by minors.

F. Smoking and Disclosure

NYSIF generally supports proposals requiring companies to include on all its tobacco products information and warnings regarding the use of ingredients that may be harmful to consumers' health, toxicity and health hazards.

G. Animal Welfare

(a) NYSIF generally supports proposals requiring companies to report on its animal welfare standards.

(b) NYSIF generally supports proposals requiring companies to report on its use of antibiotics in animal production facilities.

**Exhibit D**

**POLICIES AND PROCEDURES FOR  
PROCUREMENT OF INVESTMENT RELATED SERVICES  
AND SELECTION OF EXTERNAL ASSET MANAGERS  
Adopted 09-19-2012**

**I. INTRODUCTION**

The New York State Insurance Fund (“NYSIF”) has established this policy for procurement of investment related services and the selection of external asset managers to assist the NYSIF Board of Commissioners in the investment of NYSIF funds in accordance with New York State Workers’ Compensation Laws, consistent with the best interests of the Fund.

With respect to the selection of external asset managers, the goal of this Policy is to open the selection process to a broader universe of qualified managers through enhanced competition and evaluation based upon objective standards and industry criteria, including but not limited to, performance, organizational strength, investment processes, investment philosophy, investment products, dollar value and composition of assets under management, growth of firm, other client relationships (including experience with large public funds), and other quantitative and qualitative standards in the investment management industry.

This Policy is subject to the applicable provisions of the laws of the State of New York and does not affect or prohibit the use or selection of any other competitive or discretionary purchase or selection method(s) as may be permitted relating to the procurement of investment related services and the selection of external asset managers for the management of NYSIF funds. This Policy is intended to supersede the NYSIF Procurement Manual for the procurements and selections described herein.

**II. PROCUREMENT OF EXTERNAL SERVICES**

Pursuant to Workers Compensation Law §87, NYSIF employs the services of external persons or entities such as investment consultants for various purposes, including, without limitation, asset allocation studies, development of investment strategies, manager recommendation, identification and/or evaluation of investment opportunities, due diligence on investment opportunities, performance reviews and specialized expertise. NYSIF may also purchase investment-related products, such as investment tracking software and subscriptions to various research products. For purposes of this Policy, the term “services” shall also include “products”.

Prior to engaging external persons or entities to provide services to NYSIF, the Chief Investment Officer (“CIO”) and NYSIF’s external investment advisor (the “Advisor”) must make a determination that such services are required and that internal resources cannot meet the need. Staff and the Advisor will make a recommendation to the Investment Committee of the NYSIF

Board of Commissioners (the “Investment Committee”) which shall (i) detail the scope of the services required and time frame; and (ii) state the reasons why the services cannot be provided internally. In these cases, the Investment Committee shall be assisted by all available NYSIF resources.

In cases where NYSIF’s procurement relates specifically to the selection of external Investment Advisor (“The Advisor”), the Chief Investment Officer (CIO) must make a determination that such services are required and that internal resources cannot meet the need. NYSIF’s Executive staff and the Chief Investment Officer (CIO) will then make a recommendation to the Investment Committee. In these instances where “The Advisor” service is being procured, the Investment Committee reserves the right to assist staff, prior to recommendation, in all aspects of the evaluation and/or interview process. The final approval of the external Investment Advisor (“The Advisor”) will be granted by the NYSIF Board of Commissioners.

NYSIF recognizes that competition among providers can produce a more favorable result as purchaser of the services and that, in many cases, procurement of services from more than a single provider may be preferable to a single provider. Therefore, in procuring services, NYSIF will qualify and select providers on a reasoned basis, balancing the considerations relevant to a decision, such as nature of services being procured, timeframe for selection, universe of potential providers, past procurement experience, available information about potential providers, likely price variations and any other necessary information as may be required.

#### SELECTION OF EXTERNAL ASSET MANAGERS

NYSIF employs external managers to manage assets. Such external managers may manage separate accounts, or may manage funds of funds. Staff will identify potential external asset managers through a search and selection process approved by the CIO and the Investment Committee.

The process will recognize that identification of external managers is continuous and dynamic, with ongoing monitoring of potential managers through different market environments and performance.

##### A. MINIMUM REQUIREMENTS

External asset managers must enter into NYSIF’s standard External Asset Manager Service Contract, acknowledge receipt of and maintain compliance with NYSIF’s Asset Manager Guidelines, and maintain the following criteria:

1. An external asset manager must be a bank, insurance company, an investment management company or an investment advisor as defined by the Investment Advisors Act of 1940;

2. An external asset manager must demonstrate that it has achieved historical quarterly performance numbers calculated on a time-weighted basis meeting CFA Institute standards of performance measurement;
3. An external asset manager must provide CFA Institute compliant monthly performance, and any other data deemed necessary to the evaluation process, to the Investment Advisor and its third party database;
4. An external asset manager must provide detailed information on the history of the firm, key personnel, key clients, fee schedule and support personnel and submit all documents as requested by NYSIF (vendor responsibility, ADV form);
5. An external asset manager must clearly articulate the investment strategies and activities that would be followed and demonstrate that the manager has successfully employed these strategies and activities over time;
6. Any external asset manager, if selected, must immediately submit to NYSIF and the Investment Advisor a complete description of any changes the manager proposes with respect to its investment strategies, activities or personnel;
7. An external asset manager must not have any outstanding legal judgments, investigation(s) or matter(s) which cast material doubt on the trustworthiness of Manager and Manager's ability to successfully execute the mandate set by NYSIF;
8. An external asset manager must satisfy all other criteria as requested by NYSIF.

### III. COMPETITIVE SEARCH AND SELECTION PROCESS

NYSIF's process for the procurement of external asset managers will generally be subject to the following competitive search and selection process:

- Approval of the NYSIF Board of Commissioners to commence with procurement based upon documented need for the services will be obtained;
- Notice of solicitation of services will be published in the New York State Contractor Reporter, NYSIF website and other publications, as necessary;
- NYSIF staff will ensure sufficient outreach has been conducted for participation in the procurement opportunity by New York State certified small businesses and Minority and Women Business Enterprises; (M/WBE);
- Potential candidates will be evaluated and/or interviewed by the Advisor based upon industry database measurements and other objective quantitative and qualitative data, which may include, but are not limited to, performance,

organizational structure/strength, investment processes and philosophy, investment products; composition of assets under management; firm growth and client relationships (including experience with large public funds). During this stage of the competitive search and selection process by “The Advisor”, the NYSIF Investment Committee reserves the right to assist “The Advisor” in all aspects of the evaluation and/or interview process;

- Potential candidates will be evaluated and/or interviewed by a designated search committee consisting of NYSIF staff (“Search Committee”), based upon objective quantitative and qualitative data and measurements, which may include, but are not limited to, performance, organizational structure/strength, investment processes; investment philosophy, investment products; dollar value composition of assets under management; growth of firm and other client relationships (including experience with large public funds). During this stage of the competitive search and selection process by the “Search Committee”, the NYSIF Investment Committee reserves the right to assist the “Search Committee” in all aspects of the evaluation and/or interview process;
- The NYSIF Investment Committee will review the findings and recommendations of the Advisor and the Search Committee for selection of asset manager(s) and make recommendation(s) to the Board of Commissioners for selection;
- Selection of asset manager will be based upon a positive recommendation from all committees and advisor(s) involved in the search process (i.e. Advisor, Search Committee and Investment Committee);
- NYSIF Board of Commissioners will consider and approve manager selection;
- Asset Manager Service Contract will be negotiated by staff and executed by parties;
- Asset Manager Service Contract must be approved by New York State Department of Financial Services.

#### V. Other Competitive Processes

In identifying or selecting external asset managers, NYSIF may, in its discretion, conduct a different competitive and transparent process in order to make a selection. All competitive process(es) utilized must be engaged and conducted in accordance with applicable law.

#### VI. Discretionary Thresholds and Exceptions to Competitive Processes

Discretionary thresholds may be established and exceptions to competitive processes may be made to the extent permitted by law and as approved by the Board of Commissioners.

VII. PROCUREMENT GUIDELINES

NYSIF may have internal guidelines (“Guidelines”) that will describe available options and processes relating to the procurement of investment services and the selection of external asset managers consistent with this Policy. The Guidelines may describe the available options, outline the procedures relating to each option and are designed as a guide to implementing procurements for services and selection of external managers in a fair and efficient manner.

# APPENDIX S

## Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at:

[http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf)

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and

functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

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

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

### Bidders/proposers can demonstrate their commitment to the use of SDVOBs by responding to the questions below:

Are you a bidder/proposer that is a NYS-certified SDVOB?    Yes    No    If yes, what is your DSDVBD Control #?

Will NYS-certified SDVOBs be used in the performance of this contract?    Yes    No

If yes, identify the NYS-certified SDVOBs that will be used below (if more than 4 identified, please attach an additional form):

#### NYS-Certified SDVOB 1:

Name

Address

Control #    Contract #    Total % Work Performed    \$ Amount

Nature of Participation

#### NYS-Certified SDVOB 3:

Name

Address

Control #    Contract #    Total % Work Performed    \$ Amount

Nature of Participation

#### NYS-Certified SDVOB 2:

Name

Address

Control #    Contract #    Total % Work Performed    \$ Amount

Nature of Participation

#### NYS-Certified SDVOB 4:

Name

Address

Control #    Contract #    Total % Work Performed    \$ Amount

Nature of Participation

Contractor will report on actual participation by each SDVOB during the term of the contract on a semi-annual basis to the Office of General Services Division of Service-Disabled Veterans' Business Development. See <http://ogs.ny.gov>

NOTE: Information about set asides for SDVOB participation in public procurement can be found at: <http://www.ogs.ny.gov/Core/SDVOBA.asp>, which provides guidance for State agencies in making determinations and administering set asides for procurements from SDVOBs.

# APPENDIX W NONDISCLOSURE AGREEMENT

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## MUTUAL NONDISCLOSURE AGREEMENT BETWEEN NEW YORK STATE INSURANCE FUND and for EXCHANGE OF CONFIDENTIAL INFORMATION

**THIS NONDISCLOSURE AGREEMENT** (the “Agreement”), is made by and between \_\_\_\_\_, having a principal place of business at \_\_\_\_\_ (“CONTRACTOR”) and the NEW YORK STATE INSURANCE FUND, an agency of the State of New York, with offices at 199 Church St, New York, New York 10007 (“AGENCY”).

### 1. DEFINITIONS

“*AGENCY Data*” means all non-public data and information whether in written, verbal or electronic form, submitted or given access to CONTRACTOR by AGENCY, including without limitation information relating to AGENCY or AGENCY's customers', policy holders, claimants, underwriting rules or information, process and methods, customer data, Confidential Personal Information (CPI), financial data, suppliers, employees and employee information, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information.

“*Privacy Laws*” means all Federal and State laws and regulations regarding the privacy of information pertaining to individuals.

### 2. AGENCY CONFIDENTIAL INFORMATION

CONTRACTOR acknowledges and agrees that it may receive AGENCY Confidential Information (as defined below) \_\_\_\_\_ (collectively, the “*Purpose*”).

(a) For purposes of this Agreement, the term “*Confidential Information*,” or “*Agency Confidential Information*” shall include all non-public information of AGENCY which CONTRACTOR has had access to (including prior to effective date), will have access to, or will create or prepare, whether in verbal, written, visual, graphic or machine-readable form, that includes, incorporates, makes reference to or utilizes in any way, without limitation, the AGENCY Data and all other proprietary information related to AGENCY’s business. AGENCY Confidential Information shall also include all information of a third party to which AGENCY has access and to which CONTRACTOR has had (including prior to effective date), or will have access. AGENCY Confidential Information shall not include aggregated statistical data derived from AGENCY Data, provided such (i) aggregated statistical data cannot be identified with either AGENCY or any AGENCY employee, customer, claimant or policy holder and (ii) AGENCY Data does not make up over thirty-three (33%) of such aggregated statistical data. Disclosure of the AGENCY Confidential Information shall not be deemed to grant any license or other right to use such AGENCY Confidential Information, except as set out in this Agreement or as set out in a separate written agreement executed by both parties.

(b) Notwithstanding anything to the contrary in this Agreement, including without limitation the

## EXHIBIT W NONDISCLOSURE ACCORD

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exceptions in Section 3 hereof, AGENCY Confidential Information includes “*Confidential Personal Information* (‘CPI’)”. CPI shall include, but not be limited to: (i) the meaning ascribed to “*Nonpublic Personal Information* (‘NPI’)” 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 AGENCY’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. The provisions of Section 3 shall not be applicable to CPI, which in all cases will be considered Confidential Information

- (c) CONTRACTOR shall, and shall cause its and its affiliates’ and subsidiaries’ employees, agents, advisors, subcontractors, and all Receiving Party Personnel (collectively, “*Contractors*”) to keep CPI confidential and use and disclose CPI only as necessary to carry out the Purpose, GLBA, HIPAA and any other applicable law, rule or regulation of any jurisdiction relating to disclosure or use of personal information. CONTRACTOR shall, and shall cause its Contractors to, implement and maintain an appropriate security program for CPI to (1) ensure the security and confidentiality of CPI, (2) protect against any threats or hazards to the security or integrity of CPI, and (3) prevent unauthorized access to or use of CPI. CONTRACTOR shall cause each of their Contractors having access to AGENCY Confidential Information or CPI to execute a written non-disclosure agreement covering their access, such agreement to contain restrictions in substantial conformity to the provisions of this Agreement. CONTRACTOR shall also cause each of its employees to execute appropriate non-disclosure agreements prohibiting the disclosure of CPI and AGENCY Confidential Information to other affiliates of CONTRACTOR. CONTRACTOR shall cause all such non-disclosure agreements with employees and Contractors to be maintained during the term of this Agreement. CONTRACTOR shall take appropriate measures to assure that AGENCY’s Confidential Information is NOT transmitted outside of the United States (provided such prohibition against transmission shall not apply to satellite transmission or other similar digital communication methods used by CONTRACTOR or its Contractors in the ordinary course of business and in conformance with this Agreement).
- (d) Without limitation of CONTRACTOR’s obligation to comply with the requirements of all applicable Privacy Laws, CONTRACTOR shall immediately notify AGENCY: (A) of any disclosure or use of any CPI by CONTRACTOR or its Contractors in breach of this Agreement and (B) of any disclosure of any CPI to CONTRACTOR or its Contractors where the purpose of such disclosure is not known to CONTRACTOR. AGENCY reserves the right to review CONTRACTOR’s and their Contractors’ (as applicable) policies and procedures used to maintain the security and confidentiality of CPI. At AGENCY’s direction and in AGENCY’s sole discretion at any time, CONTRACTOR shall immediately return to AGENCY or destroy and certify such destruction of any or all CPI (including such CPI as may have been rightfully distributed to CONTRACTOR’s Contractors or any other

## EXHIBIT W NONDISCLOSURE ACCORD

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third parties). Upon termination of this Agreement, CONTRACTOR shall immediately return to AGENCY any and all CPI which it has received under this Agreement and shall destroy all records of such CPI (including such CPI as may have been rightfully distributed to CONTRACTOR's Contractors and any other third parties). If the GLBA or any other applicable state or federal law or regulation, now or hereafter in effect, imposes a higher standard of confidentiality or security with respect to CPI, such standard shall prevail over the provisions of this Agreement. This provision shall independently survive any expiration, termination, if any, of this Agreement and any agreement with AGENCY concerning CPI.

### 3. EXCEPTIONS

Confidential Information shall not include information that: (a) is in the public domain at the time of its use or disclosure through no fault of the CONTRACTOR, or its Contractors; (b) was lawfully in the possession of or demonstrably known by the Contractor prior to its receipt from the Agency; (c) is independently developed by Contractor without use of or reference to the Agency's Confidential Information; or (d) becomes known by the Contractor from a third party and, to Contractor's knowledge, is not subject to an obligation of confidentiality to the Agency.

### 4. NON-DISCLOSURE; NON-USE OF CONFIDENTIAL INFORMATION

- (a) The Contractor will maintain the confidentiality of the Agency's Confidential Information using procedures no less rigorous than those used to protect and preserve the confidentiality of its own similar proprietary information. In no event shall the Contractor use less than a reasonable degree of care to protect and preserve the Agency's Confidential Information, including its obligation to not, without the Agency's prior written permission: (i) transfer or disclose any of the Agency's Confidential Information to any third party; (ii) use any of the Agency's Confidential Information for any purpose other than for the Purpose; or (iii) take any other action with respect to the Agency's Confidential Information inconsistent with the confidential and proprietary nature of such information. Notwithstanding clause (i) of this Section 4(a), the Contractor may disclose the Agency's Confidential Information to the officers, directors, employees, consultants, attorneys, accountants, agents or other representatives of the Contractor ("Contractor Personnel") who have a need to know such Confidential Information solely in connection with the Purpose. The Contractor shall: (1) cause the Contractor Personnel to comply with this Agreement; and (2) assume full responsibility for any breach of this Agreement caused by any of the Contractor Personnel.
- (b) If the Contractor is requested or required to disclose any of the Agency's Confidential Information pursuant to a subpoena, court order, statute, law, rule, regulation or other similar requirement (a "*Legal Requirement*"), the Contractor shall, to the extent permitted by law, provide prompt notice of such Legal Requirement to the Agency so the Agency may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If the Agency is not successful in obtaining a protective order or other appropriate remedy and the Contractor is, in the opinion of its counsel, compelled to disclose such Confidential Information under pain of liability for contempt of court or other censure or liability, or if the Agency waives compliance with the provisions of

## **EXHIBIT W NONDISCLOSURE ACCORD**

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this Agreement in writing, the Contractor may disclose, without liability hereunder, such Confidential Information in accordance with, but solely to the extent necessary, in the opinion of its counsel, to comply with, the Legal Requirement. Information that would otherwise be considered AGENCY Confidential Information within the meaning of this Agreement, shall nevertheless be considered AGENCY Confidential Information and shall not be deemed otherwise because such information may be available to third parties from AGENCY pursuant to New York State Freedom of Information Law (FOIL). In the event that an independent third-party has or shall actually obtain from AGENCY, during or prior to the pendency of this Agreement, information pursuant to FOIL that would otherwise be considered AGENCY Confidential Information, and has publicly disclosed such information, then such information shall no longer be considered Confidential Information but shall instead be considered public information from the time of such disclosure.

- (c) Each party agrees and shall assure that each and every Contractor understands and agrees that Confidential Information is valuable to the Agency, is deemed to be a trade secret or other proprietary right of the Agency, notwithstanding any public disclosure thereof by any source, and will be protected by civil and criminal law, and, where appropriate, by the law of copyright.
- (d) The parties' confidentiality obligations under this Agreement shall be perpetual except as expressly superseded by a definitive written agreement executed by the parties.
- (e) AGENCY and CONTRACTOR acknowledge that CONTRACTOR is in the business of providing services to, and receiving information from other entities (collectively "CONTRACTOR customers"). CONTRACTOR shall not disclose any AGENCY Confidential Information to any CONTRACTOR Customers.
- (f) In connection with CONTRACTOR's and its Contractors' obligations under this Agreement, CONTRACTOR agrees and shall require each Contractor to use the standard of care that is consistent with the highest industry standards in continuously controlling the use and disclosure of AGENCY Confidential Information in a manner that fully protects AGENCY's rights therein.

### **5. RIGHT TO AUDIT**

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

## **EXHIBIT W NONDISCLOSURE ACCORD**

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- (b) 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 in the event of a security breach and/or to substantiate any expenditure or report to AGENCY, or as may be necessary for auditing purposes or to verify that expenditures were made and/or proper non-disclosure procedures were implemented as instructed by this Agreement. Such records, accounts and all supportive documentation shall be kept for at least six (6) years subsequent to the termination date of this Agreement.

### **6. INFORMATION SECURITY BREACH**

In the event of a Breach of Security as defined in NY CLS Gen Bus §899-aa and NY CLS State Technology Law §208, or otherwise, involving AGENCY supplied Personal Information or Private Information from systems owned, operated, sub-contracted or otherwise routed through Contractors systems or networks, CONTRACTOR shall notify AGENCY immediately, without unreasonable delay. "Breach of Security" shall mean the unauthorized acquisition or acquisition without valid authorization of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a business. "Personal Information" shall mean any information concerning a person which, because of name, number, mark or other identifier, can be used to identify such person. "Private Information" shall mean personal information in combination with any one or more of the following data elements, when either the personal information or the data information or the data element is not encrypted or encrypted with an encryption key that has also been acquired: (i) social security number; (ii) driver's license number or non-driver identification cards number; or (iii) account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account. CONTRACTOR additionally undertakes to, solely at its own cost and expense, provide any requisite notices that either CONTRACTOR or AGENCY 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 AGENCY. CONTRACTOR'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.

### **7. RETURN OF CONFIDENTIAL INFORMATION**

Notwithstanding Section 2(d) above, following a request of the Agency or upon the termination of this Agreement, the Contractor shall promptly, but in no event more than five (5) business days following such request or the termination of this Agreement, return to the Agency all or any portion of the Agency's Confidential Information or, at the Agency's election, destroy all or any part of the Agency's Confidential Information, and upon request by the Agency, provide certification thereof; provided that in lieu of returning Confidential Information that has been included in the Contractor's notes, analyses, and studies, the Contractor may destroy such Confidential Information and provide certification thereof.

### **8. THE AGENCY POLICIES**

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CONTRACTOR shall use its best efforts to comply with all of AGENCY's rules, regulations, policies and procedures that might affect CONTRACTOR's delivery of services or products in effect (the "*Policies & Procedures*"), including but not limited to AGENCY's security procedures, procurement policies and privacy policies, provided that such Policies & Procedures are generally applicable to all similarly situated vendors to AGENCY. CONTRACTOR will advise all of CONTRACTOR'S Contractors involved in the performance of services or the delivery of products of their obligation to comply with the Policies & Procedures.

**9. CONTRACTOR TRADE SECRETS**

The AGENCY acknowledges that the business methods and investigative techniques and pricing structure of CONTRACTOR, other than payment amounts by NYSIF, are confidential proprietary business assets of the CONTRACTOR and AGENCY agrees to use reasonable means to protect the same to the extent practicable and permitted by law. In the event such information is demanded by subpoena, request pursuant to the New York Freedom of Information law or other legal process, the AGENCY will give CONTRACTOR notice within three (3) business days for the purpose of affording it the opportunity to interpose objections to its disclosure. AGENCY acknowledges that CONTRACTOR considers the above described information to be trade secrets within the meaning of NY Public Officers Law §87(2)(d). AGENCY will also give notice to CONTRACTOR in the event of unintentional disclosure within three (3) business days upon discovery. In the event of termination of the relationship between CONTRACTOR and AGENCY for any reason, AGENCY agrees not to disclose any of the aforementioned information to any successor contractor performing the same or similar services.

**10. TERM**

This Agreement shall continue in effect until terminated by written notice to the other party. The confidentiality obligations of the parties shall survive termination of this Agreement in accordance with Section 4(d).

**11. NOTICE**

Any notice, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered to a party (i) when delivered by hand or courier, or (ii) six (6) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the address of such party set forth below (or at such other address as the party may from time to time specify by notice delivered in the foregoing manner):

AGENCY:                      New York State Insurance Fund  
   199 Church Street  
   New York, New York 10007

CONTRACTOR:

**12. NO ASSIGNMENT**

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This Agreement and the parties' respective rights, duties and obligations under this Agreement are not transferable or assignable by either party. Any attempt to transfer or assign this Agreement or any of its rights, duties or obligations under this Agreement is void. For purposes of this section 12, a transfer of more than fifty percent (50%) ownership interest in CONTRACTOR or a consolidation or merger of CONTRACTOR into another entity, including an affiliate of CONTRACTOR, shall be considered an assignment of this Agreement and shall be prohibited unless (i) consented to in writing by AGENCY and (ii) the transferee or resultant surviving entity explicitly agrees to the terms of this Agreement.

### **13. MODIFICATIONS**

This Agreement can only be modified by a written agreement duly signed by hand by the persons authorized to sign agreements on behalf of CONTRACTOR and AGENCY, and variance from the term or conditions of this Agreement will be of no effect. Without limiting the foregoing, terms and conditions which are displayed or conveyed electronically or are associated with, or are responded to by the operation of a mouse or other pointing device, typing on a keyboard, "virtual" actions, an automated computer program, the removal of shrink-wrap, the opening of a package, the loading or use of software or other goods or services, or any other action other than a handwritten signature as set forth above, will not be effective and will not amend or modify this Agreement.

### **14. SEVERABILITY**

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or be impaired thereby.

### **15. GOVERNING LAW; VENUE**

All questions concerning the validity, interpretation and performance of this Agreement shall be governed by and decided in accordance with the Laws of the State of New York, without regard to any conflicts of laws and principles thereof.

### **16. COMPLETE AGREEMENT**

This Agreement is the complete and exclusive statement of the agreement between the parties as to the subject matter hereof and supersedes all communications between the parties related to the subject matter of this Agreement. Each party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement.

### **17. NO WAIVER**

A waiver of a breach or default under this Agreement shall not be a waiver of any other or subsequent breach or default. The failure or delay in enforcing compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition unless such term or condition is expressly waived in writing.

### **18. INJUNCTIVE RELIEF**

Each party acknowledges that a breach of its obligations under this Agreement may, as determined by a court of competent jurisdiction, result in irreparable and continuing damage to the other party

## **EXHIBIT W NONDISCLOSURE ACCORD**

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for which monetary damages will not be sufficient. Each party further agrees that in the event of a breach or threatened breach by the Contractor of any of the provisions of this Agreement, the Agency shall be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or other equitable relief, and such further relief as may be proper from a court of competent jurisdiction.

### **19. CONSTRUCTION**

The Parties are sophisticated and have been represented by counsel during the negotiation of this Agreement. As a result, the Parties believe the presumption of any laws or rules relating to the interpretation of contracts against the drafter thereof should not apply, and hereby waive any such presumption.

### **20. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Both Parties agree that signature pages may be detached from separate counterparts and attached to a separate counterpart so that all signature pages are physically attached to the same document. Transmission by facsimile of an executed counterpart to this Agreement will be deemed due and sufficient delivery of such counterpart, and a photocopy of an executed counterpart sent by facsimile transmission may be treated by the parties as a duplicate original.

### **21. STANDARD CLAUSES FOR AGENCY CONTRACTS**

The parties agree that the Standard Clauses for NYS Contracts attached as Appendix A to this Agreement shall be incorporated by reference into this Agreement and that in the event of a conflict between any term or condition in the text of this Agreement and Appendix A, that the terms of Appendix A shall govern and control.

### **22. BINDING AGREEMENT**

This Agreement shall be binding upon the parties hereto and inure to the benefit of the parties hereto, their respective successors and permitted assigns.



**APPENDIX Z  
FEE SCHEDULE PROPOSAL**

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

**Service Fee**

Proposed annual fee for Investment Advisor Services \$ \_\_\_\_\_

Annual Fee to be billed quarterly

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

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