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# 1. Introduction

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## 1.1 Overview

The New York State Department of State Division of Consumer Protection hereafter referred to as DCP (formerly known as the Consumer Protection Board) was created by the NYS Legislature in 1970, to serve as the State's statutory representative of consumers on utility rate matters. The DCP represents consumers in utility rate cases and related proceedings before the New York Public Service Commission hereafter referred to as (PSC), and other federal and state regulatory agencies. The contract involves services to be performed on a project-by-project basis. The proposers will be evaluated on both qualitative and financial criteria.

## 1.2 Designated Contact

In compliance with the Procurement Lobbying Law, NYS Department of State, Division of Financial Administration has been designated the primary contact for this procurement solicitation and may be reached by email or voice for all inquiries regarding this solicitation.

LuAnn Hart  
NYS Department of State  
Bureau of Fiscal Administration  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231  
Bid # 1609  
  
webmaster@consumer.state.ny.us

## 1.3 Key Events

The Table below outlines the tentative schedule for important action dates.

### Key Events

ACTION	DATE
DCP issues Request for Proposals (RFP) for Utility Regulatory Accounting and Ratemaking Consulting	September 12, 2011
Proposers submit Intent to Submit a Proposal Notification	September 19, 2011
Proposer questions due	September 21, 2011
DOS releases Questions & Answers	September 27, 2011
Proposals due @ 4 PM EST	October 19, 2011
Contract start date (estimated)	Upon OSC Approval

## 2. Proposal Submission

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### 2.1 Intent to Submit a Proposal

Vendors who wish to submit a proposal are strongly advised to **register their intent to submit a proposal with DOS by the date stated in Section 1.3 Key Events** by sending written notice to via email at [webmaster@consumer.state.ny.us](mailto:webmaster@consumer.state.ny.us). Vendors shall include their company name, address, phone, fax, contact name, title, and email address. **Submitting a letter of intent to submit a proposal does not obligate the vendor to submit a proposal.**

### 2.2 RFP Questions and Clarifications

Questions and requests for clarification regarding this RFP shall only be directed to:

LuAnn Hart  
NYS Department of State  
Bureau of Fiscal Administration  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231  
RFP #11-DCP-04

[webmaster@consumer.state.ny.us](mailto:webmaster@consumer.state.ny.us)

Questions and requests for clarification are only accepted via e-mail or in writing. Official answers to questions will be posted on the Department's website at <http://www.dos.ny.gov/communityprojects/funding.html> on the date stated in Key Events – Section 1.3. The deadline for submission of questions will be as stated in Key Events – Section 1.3.

### 2.3 Proposal Format and Content

In order for the State to evaluate proposals fairly and completely, proposers should follow the format set forth herein and provide all of the information requested. All items identified in the following list must be addressed as concisely as possible in order for a proposal to be considered complete. Failure to conform to the stated requirements may necessitate rejection of the proposal.

1. **Cover Letter.** The cover letter must confirm that the bidder will comply with all the provisions of this RFP and should state that, should the contract be awarded to your company, you would be prepared to begin transitional operations upon Contract Approval. The cover letter must include the full contact information of the person(s) (DOS) shall contact regarding the proposal. A proposer representative authorized to make contractual obligations must sign the cover letter. The letter must also state whether or not subcontractor(s) will be used, the name, address and what purpose of each proposed subcontractor.
2. **Bidder's Qualifications and Prior Experience.** Proposers are asked to describe their capabilities to provide the services requested in this RFP. Please complete and submit with your proposal:
  - a. A description of your firm's experience in regulatory accounting and ratemaking consulting. Include the number of years the firm has been in business and list of some proceedings.
  - b. An organizational chart and staffing plan for this contract which identifies the number of employees who will be dedicated to this contract, and their responsibilities, job qualifications and years experience in consulting. In addition to this staffing plan, submit the following:
  - c. Resumes of key personnel who would be assigned to the contract.
  - d. A description of any subcontractors and how these subcontracted services relate to this proposed contract (See Section 6.9 - Subcontractors Clause).

- e. Proof or Evidence of:
- a. Expertise in utility regulatory accounting and ratemaking issues.
  - b. Experience in utility regulatory accounting and ratemaking from a consumers' perspective.
  - c. A successful record in convincing regulators of the reasonableness of consultant proposals regarding regulatory accounting and ratemaking issues.
  - d. No conflict of interest as described in the Conflict of Interest Statement.
  - e. Writing samples – must include testimony.
  - f. Record of past performance and achievements: BRIEFS, DECISIONS BY JUDGES / REGULATORS, ETC.
3. **References.** A list of similar contracts, including names, contact numbers or e-mail addresses of at least (3) references. The DCP reserves the right to check provided references as well as any other references desired to verify submitted information.
4. **Pricing. The pricing portion of your proposal (Appendix E) must be in a separate sealed envelope within the total bid package.** Do not include any pricing information in your proposal documents. Failure to comply with this requirement will result in immediate disqualification of the applicant for this opportunity.
5. Include any other documentation indicating the expertise that the proposer believes would enhance its qualifications including but not limited to examples of testimonies or briefs.
6. Include a statement that details the Minority and Women's Business Enterprise (MWBE) participation intended for this contract. The statement should take into account the overall statewide goal of 20%. Any request to waive MWBE participation must include a reasonable justification.
7. Any reservations or constraints on the part of the consultant in working with the DCP in the manner explained herein must appear in the proposal and will be a factor in evaluating the proposal.

## 2.4 Instructions for Bid Submission

Only those contractors, who furnish all required information will be considered for evaluation. Submit all required proposal contents, including attachments, exhibits, supporting documents, and proposal addenda if any, to the DOS at the following address:

LuAnn Hart  
NYS Department of State  
Bureau of Fiscal Administration  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231  
RFA #11-DCP-04

**E-mail or fax proposal submissions are not acceptable and will not be considered.**

The State of New York will not be held liable for any cost incurred by the contractor for work performed in the preparation and production of a proposal or for any work performed prior to the formal execution and approval of a contract.

Proposals must be received in the above office on or before the date and time listed in Key Event Dates Section 1.3. **Bidders assume all risks for timely, properly submitted deliveries.**

The received time of proposals will be determined by the clock at the above noted location.

**NO CONSIDERATION WILL BE GIVEN TO PROPOSALS RECEIVED AFTER THE STATED DATE AND TIME.**

Bidders mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the bidding entity 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. Bidders are cautioned that receipt of bids in the DOS Mailroom is NOT sufficient. DOS cannot be responsible for the actions of your chosen carrier.

Bids must remain open and valid for 120 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS DOS and the bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120-day period until either tentative award of the contract(s) by issuing office is made or withdrawal of the proposal in writing by bidder. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing office to the successful contractor(s), who shall thereupon be obligated to execute a formal contract for Regulatory Accounting and Ratemaking. This RFP remains the property of the State at all times, and all responses to this RFP, once delivered, become the property of the State.

#### **2.4.1 Packaging of RFP Response**

1. DOS requires four (4) original and four (4) exact proposal copies, as well as four (4) original **Cost proposals (Appendix E)** to be submitted. **The Cost Proposals must be in a separately sealed envelope, clearly marked 'Cost Proposal', and included within the proposal package.** Failure to comply with this requirement will result in immediate disqualification of the applicant for this opportunity. The bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:
  - Proposer's complete name and address
  - Proposal Number – 1609 (this document)
  - Proposal Due Date and Time: **(as indicated in Section 1.3 Key Events)**
  - Proposal for Regulatory Accounting and Ratemaking Consulting

**Failure to complete all information on the bid envelope and / or packages may necessitate the premature opening of the bid and may compromise confidentiality.**

### 3. Administrative Information

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#### 3.1 Issuing Office

This RFP is being released by the New York State Department of State. References to DOS and DCP may be used interchangeably depending on the requirement referenced.

#### 3.2 Method of Award

One award will be made to a responsive and responsible bidder based on best value (See Section 4 – Evaluation and Selection Process). The selected bidder shall enter into a contract with the Department of State. The DOS reserves the right to make no award from this RFP.

#### 3.3 Term of Contract and Price Adjustment

This contract will commence upon the approval date of the Office of the State Comptroller and will be in effect for 5 years.

The contract will be fixed for only one year. On each anniversary date of the contract, the contractor will be granted an increase or decrease in their contract-pricing dependent upon fluctuations in the Consumer Price Index for all items, Northeast Region, as published by the U.S. Department of Labor, Bureau of Labor Statistics, and Washington, D.C. 20212. Visit their website at [www.bls.gov/ro2/home.htm](http://www.bls.gov/ro2/home.htm).

The 'base' month for determining adjustments will be the third month prior to the start date of the contract. The base month is fixed and will not be adjusted year to year. The pricing adjustments will be based on the difference in the base month CPI for each applicable year and will become effective in the anniversary month. For example, if the contract is awarded in September 2011, the 'base' month will be June. If the contract allows for an adjustment after the first year, it would be based on the difference between the June 2011 CPI and the June 2012 CPI and become effective in September 2012.

The consumer price index is published around the middle of each month for the prior month (i.e. the January figure is not published until mid February). The contractor has the sole responsibility to request, in letter form, an adjusted rate and shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease with the request. This request and documentation must be received at the address listed below within three months of the base month. To ensure timely delivery, certified mail is recommended. As long as the request is submitted and received within the required time frame, the adjustment will be processed using the base month Consumer Price Index. Once approved, the contractor will be notified in writing. **Request and documentation must be sent to the NYS Department of State, Bureau of Fiscal Administration, 1 Commerce Plaza, 99 Washington Avenue, Suite 1110, Albany, NY 12231.** Should the contractor fail to submit the request and supporting documentation to the proper location within three months of the applicable base month date, the contractor shall be deemed to have waived its right to any increase in price, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

#### 3.4 Price

Price shall be expressed as an hourly rate and shall be inclusive of all customs, duties, charges, labor, parking, permits, licenses, insurance and ancillary costs. Bidders shall submit a blended hourly rate for each of three specified titles. The DCP anticipates that the majority of work and billable hours would be performed by the Junior Consultant Title. The hourly rates will be evaluated based upon a weighted ratio of 1 for Clerical Worker, 2 for Senior Consultant and 7 for Junior Consultant.

Travel is a line item on the bid form and will be evaluated. Bidders shall submit a not-to-exceed per person round trip dollar amount as described on the bid form. Actual travel reimbursement will be per state rates. Also, see Sections 3.5 and 5.8.

### 3.5 Method of Payment

For the purposes of this contract, payments will be issued for actual hours worked with invoices submitted monthly on a per job basis. Upon satisfactory completion, inspection and approval by the DCP, an invoice shall be issued to the Claims Unit for payment. The invoice will be processed in accordance with established procedures of the DOS and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

In addition, the consultant will be entitled to reimbursement for reasonable and appropriate travel expenses actually incurred and for performance of work under the contract and must be approved by the DCP Division Director or in his or her absence, the Director of Financial Administration. Compensation for such travel will be provided at the same rates as established by the Office of the State Comptroller for state employees. All travel must be first pre-approved in writing by the DCP. Current rates are identified at the following website:

<http://nysoc3.osc.state.ny.us/agencies/travel.travel.htm>.

For the purposes of calculating the contractors travel costs, bidders are advised that reimbursement for all consultant travel, meal and lodging expenses will be made based upon, and will not exceed, the rates authorized by the New York State Office of the State Comptroller for state employees as set forth on the OSC website. However, the not to exceed trip cost quoted by the bidder, is a ceiling price for reimbursement. If the travel cost per OSC's guidelines for consultant travel exceeds the not to exceed trip cost, the contractor will only receive the quoted price for reimbursement, not the higher rate.

Invoices without the above stated information will be returned to contractor to be completed as required in the paragraph above. Payment will not be issued until a corrected invoice is received and approved by DOS.

All invoices must be submitted for payment **within 30 days of completion of work** to:

**THE CLAIMS UNIT  
Bureau of Fiscal Management  
Department of State  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
ALBANY, NEW YORK 12231**

**Also, a copy of the invoice, status report and photographs (See Section 5.9 – Reporting Requirements) must be forwarded to Melissa Johnson, 21<sup>st</sup> Floor of Corning Tower, Empire State Plaza, Albany, New York 12223.**

### 3.6 Electronic Payment

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the State Comptroller, in the State Comptroller's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by phone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the State Comptroller's has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new statewide financial system, the Office of the State Comptroller requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go to the above website and complete the Substitute W-9 form and submit following the instructions provided.

### **3.7 Past Practice**

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived. No waiver of any breach of the Agreement at any time in the past shall constitute a waiver of subsequent breach.

### **3.8 Proposal Exceptions**

The Issuing office will consider all requests to waive any proposal requirement. However, proposers should be aware that failure to obtain a waiver of any proposal requirement in advance of proposal submission could result in rejection of Bidder's proposal and disqualification from the bidding process.

Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the issuing office in writing by the 'Questions Due Date' as identified in Key Events (Section 1.3). The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either with the 'Answers to Questions' as identified in Key Events (if the response results in a change to the RFP), or directly to the requesting vendor.

### **3.9 Dispute Resolution**

It is the policy of the DOS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to proposal solicitations or contract awards. DOS encourages vendors to seek resolution of disputes through consultation with DOS staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the DOS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the designated contact person identified on the front of the bid document.

### **3.10 Examination of Contract Documents**

1. Each bidder is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may select, of the character, quality and extent of the work to be performed and the conditions under which the contract is to be executed.
2. Each bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the state as an excuse for any failure or omission on the part of the bidder to fulfill every detail of all the requirements of the documents governing the work. The bidder, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such proposer might have fully informed itself prior to bidding.
3. Any addendum issued prior to the proposal due date must be acknowledged by signature, dated and be submitted on or before the proposal due date with four (4) originals. In awarding a contract, any addenda will become a part thereof.
4. Any verbal information obtained from, or statements made by, representatives of the DOS at the time of examination of the documents or site visit shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, to all Proposers shall become a part of the contract.

### **3.11 Prime Contractor Responsibilities**

The State will contract only with the successful bidder who is the prime contractor. The issuing office considers the prime contractor, the sole contractor with regard to all provisions of the RFP, and the contract resulting from the RFP.

No subcontract entered into by the contractor shall relieve the contractor of any liabilities or obligations in this RFP or the resultant contract. The contractor accepts full responsibility for the actions of subcontractors who carry out any of the provisions of any contract resulting from this RFP.

### **3.12 Glossary of Terms**

“Issuing Office” shall mean the New York State Department of State.

“Contractor” shall mean the successful awardee of a contract pursuant to this RFP.

“Request for Proposal” or “RFP” shall mean this document.

The “State” shall mean The People of the State of New York, which shall also mean the Department of State (DOS) and Division of Consumer Protection (DCP).

“Issuing Officer” shall mean the designated contact listed in section 1.2 of this document.

“Proposer” or “Bidder” shall mean any person, partnership, corporation or other authorized firm submitting a proposal to the State pursuant to this RFP.

### **3.13 Rules of Construction**

Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this RFP, refer to this RFP.

## 4. Evaluation and Selection Process

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### 4.1 Proposal Evaluation

All proposals are subject to an evaluation by the DCP. The DCP will select the bidder who will provide the “best value”, taking into consideration qualifications, experience, services and cost, and the consistency of the proposal with the requirements of this RFP. Only proposals judged to be responsive to the submission requirements as set forth in this RFP will be evaluated. The Technical and Cost sections of each proposal will be evaluated separately, using the criteria described below.

Qualifying proposers may be scheduled for an interview/presentation with the evaluation team, to be held in Albany. Information learned from the interview/presentation, as well as from references will be considered in the technical evaluation.

An evaluation team chaired by the DCP’s Director of Utility Intervention will review all proposals. Proposals will be reviewed for conformity with this RFP and will be evaluated for substantive content. The Evaluation Team may request that additional information or clarification be provided.

The evaluation process will consist of two phases: Technical Evaluation and Cost Evaluation, as described in the following sections.

#### 4.1.1 Technical Evaluation (Maximum 70 points)

Every proposal found to satisfy the above will be separately evaluated according to the following criteria.

A. ***Criteria 1 (Maximum 40 points) - Technical Expertise and Experience***

Consultants’ technical capabilities presented in each proposal will be evaluated in terms of qualifications, expertise, experience and ability of the bidder to provide the highest quality services to the DCP. The bidder’s experience in addressing, from consumers’ perspective, the regulatory accounting and ratemaking issues identified in Section 5 of this RFP will be considered.

B. ***Criteria 2 (Maximum 30 points) – Past Record of Performance***

Consultant’s past record of performance on contracts with government agencies and private industry with respect to factors such as quality of work, ability to meet schedules and working relationship with the client will be considered. Also important is the consultant’s record of success in convincing regulators of the reasonableness of consultant’s proposals regarding regulatory accounting and ratemaking issues (i.e.: references and achievements).

#### 4.1.2 Cost Evaluation (Maximum 30 points)

Cost will be evaluated in relation to all cost proposals submitted with the lowest cost receiving the total possible 30 points and each proposer thereafter receiving the corresponding number of points in relation to the low. The “not to exceed trip cost” will be evaluated as a part of total cost. All items (A – D) on the Cost Proposal (Appendix E) will be calculated to determine the cost for evaluation purposes.

## **4.2 Notification of Award**

After the evaluation, all bidders offering proposals will be notified of the name(s) of the selected bidder(s). The selected bidder(s) will be notified that their submitted proposal has been selected and that a contract will be forthcoming for execution. The original proposal, and any additions or deletions to the proposal become part of the contract.

Public announcements or news releases pertaining to any contract resulting from this RFP shall not be made without prior approval from the issuing office.

## 5. Scope of Work

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### 5.1 General Scope

The DCP seeks a consultant to assist in the evaluation of accounting and ratemaking aspects of proposals affecting rates and charges for regulated utility services.

Services requested include evaluating the consistency of utility proposals with accounting and auditing principles and standards such as Generally Accepted Accounting Principles, Generally Accepted Auditing Standards, and New York Public Service Commission (PSC) ratemaking policies and practices. Potential issues may include:

- a. Accounting and ratemaking policies associated with operations and maintenance, pensions and Other Post-Employment Benefits.
- b. Appropriate capital structure for regulated utility operations.
- c. Determination of rate base for the purpose of setting rates, including earnings-based capitalization adjustment.
- d. Evaluation of deferred accounting requests.
- e. Determination of labor and benefit expense to be reflected in revenue requirement, including compensation, benefit costs, and workforce levels.
- f. Other issues with the potential to have a significant impact on utility revenue requirement.

**Note: Exclusive** expertise on the fair rate of return on equity is explicitly **NOT** solicited.

The number and frequency of projects on which regulatory accounting and ratemaking consulting services will be requested by the DCP depends on factors including the content and timing of future proposals that will be submitted by utilities, and cannot be determined at this time. Annual constraints on the state budget will also be a factor in the amount of services performed under this contract. There is no guaranteed minimum, and the DCP expects annual expenditures to not exceed \$75,000.00. The DCP will assess proposals related to regulatory accounting and ratemaking with the potential to significantly affect rates and charges for utility services, and will determine whether consulting services will be required. For each project on which the DCP requests consulting services, the DCP's Director of Utility Intervention will discuss the utility's proposal with the consultant, and determine the scope and deliverables of the consultant's work effort on that project based on factors including:

- a. The impact of the issue(s) on consumers.
- b. The likelihood of reasonable alternative recommendations that are in consumers' interest.
- c. The project schedule as determined by the Administrative Law Judge.
- d. The relative importance of other projects assigned or likely to be assigned under the contract. For each such project, an estimate of the work hours and consulting charges will be developed and jointly agreed upon by the DCP and the consultant, prior to project commencement.

### 5.2 Consultant Responsibilities

The purpose of the RFP is to secure services to assist the DCP in effectively representing the interests of customers of New York State's regulated electricity, natural gas and local landline telephone utilities on matters affecting the rates and charges for those services, particularly involving regulatory accounting and ratemaking. The DCP is seeking to retain a consultant that would provide the following two types of services.

### **5.2.1 Expert Witness Services**

Expert witness services may be requested concerning utility rate filings and other matters regarding regulatory accounting and ratemaking that are likely to require evidentiary hearings. The services to be provided on these projects include:

- I. Analysis of relevant portions of the utility filing or proposal.
- II. Assistance in developing discovery or information requests regarding that filing or proposal.
- III. Submittal of memoranda to DCP identifying the relevant issues and outlining potential alternative recommendations.
- IV. Filing of testimony.
- V. Review/analysis of rebuttal testimony submitted by other parties and the development of responsive testimony or cross-examination questions (as required).
- VI. Participation in evidentiary hearings, including appearing for cross-examination (as required).
- VII. Technical assistance to DCP negotiators in settlement discussions.
- VIII. Technical assistance in briefing the issues to the Administrative Law Judges and the (PSC).

### **5.2.2 Other Consulting Services**

Other consulting services may be requested regarding utility rate filings, petitions or other proposals involving regulatory accounting and ratemaking issues that are not likely to require evidentiary hearings. On these projects, the consultant will generally provide advice and support to the DCP on regulatory accounting and ratemaking issues. The services to be provided on these projects include:

- I. Analysis of relevant portions of the utility filing or proposal.
- II. Assistance in developing discovery, regarding that filing or proposal, if any.
- III. Submittal of memoranda to the DCP identifying the relevant issues and outlining potential alternative recommendations.
- IV. Assistance to DCP staff in developing written responses to the utilities' proposals.
- V. Technical assistance to DCP negotiators in settlement discussions.

### **5.2.3 Work Location**

It is expected that the consultant will conduct the vast majority of work to be performed under this contract, from the consultant's work location. Meetings between the DCP and the consultant via video or telephone conference may be required to clarify consultant assignments, review the status of consultant assignments, or to otherwise achieve DCP objectives. The consultant may also be required to present the work product with DCP staff in meetings or negotiations with other parties, and to testify in administrative proceedings conducted by the Public Service Commission.

## **5.3 DCP Responsibilities**

The DCP will identify the projects on which consulting services will be requested, and with input from the consultant, will determine the nature, duration, budget and scope of the consultant's efforts on each project as described herein.

As the client, the DCP will monitor and control each project so as to achieve its objectives in a cost effective and efficient manner. Monitoring will include elements such as adhering to:

- I. The objectives outlined in this RFP.
- II. Consistency with the DCP policy objectives and recommendations in other proceedings.

- III. The agreed-upon scope of each individual project.
- IV. Project schedules, project cost estimates and overall budget.

## 5.4 Project Assignment Process

All work under this contract for which expenses will be incurred must be pre-approved. The process will be as follows:

➤ Development of Project

The Contractor will be contacted by the DCP's Director of Utility Intervention when a new assignment is identified on which consulting services may be requested. The Parties will discuss the assignment and expected deliverables of the contractor. The contractor will develop and submit a written proposal to the Director of Utility Intervention. The proposal must be detailed and include the scope of the services to be performed, the number and names of staff persons to perform the services, the date the services will be delivered, the nature of the end product that will be delivered or produced and the total fee for the services to be performed based on the contract hourly rates by title and estimated hours.

➤ Finalization of Written Proposal

Once a final written proposal has been reviewed by the Director of Utility Intervention and agreed upon by the Director of Utility Intervention and the Contractor, the Contractor shall submit the final written proposal to the Director of the DCP for review.

➤ Necessary Approvals

All services rendered under this contract must be approved in writing by the Director of DCP.

➤ Additional Hours or Services

If during the course of the assignment it becomes evident that additional hours and or services will be required, the Contractor must submit a written addendum to the initial proposal providing for a justification and a revised fee schedule. Written approval for the additional hours and or services and the expenditure of additional funds must also be obtained from the Director of DCP

## 5.5 Confidentiality

Certain documents obtained during the course of the consultant's work under the contract may be designated as "confidential" or "trade secret." All individuals performing work under the contract will be required to sign a "confidentiality agreement" that will preclude anyone from revealing or utilizing the information contained in a confidential/trade secret document in connection with any activity other than work under the contract.

Confidential documents will only be available to individuals on a need-to-know basis, are to be kept and used in a secure setting and cannot be copied. Penalties have been established by the State of New York for any violation of the confidentiality agreement.

## 5.6 Contractor Assurances

- a. The bidder and subsequent contractor must agree that it will perform its obligations under the contract in accordance with all applicable Federal, State and local laws, rules and regulations now and hereafter in effect.
- b. The bidder and subsequent contractor must warrant and affirm that the terms of the RFP, its proposal, and any resulting contract do not violate any contracts or agreements to which it is a party and that its contractual obligations will not adversely influence its capabilities to perform under the contract.

## 5.7 Proprietary Interests

All information and products developed under this contract become the sole property of the DOS/DCP. The consultant shall not copyright any material developed under this contract.

## 5.8 Travel

In addition, the consultant will be entitled to reimbursement for reasonable and appropriate travel expenses actually incurred for performance of work under the Contract up to the not-to-exceed per person / trip amount bid on the cost proposal. Compensation for such travel will be provided at the same rates as established by the Office of the State Comptroller for NYS Management/Confidential employees. All travel must be first pre-approved in writing by DOS/DCP and will be extremely limited, mainly for administrative hearings. Current rates are identified at the following website:

<http://web3.osc.state.ny.us/agencies/travel/travel.htm>.

## 5.9 Reporting Requirements

The Contractor will be responsible for the completion of a variety of administrative and reporting requirements, and the cost of same shall be included in the bid price.

During the term of any contract resulting from this RFP, the Contractor shall maintain a designated officer or employee as its representative for contact with the State and for all communication and transactions relating to any contract resulting from this RFP. Upon completion of each assignment, the results must be forwarded to the DCP.

Upon award of the contract and prior to the start of any work, the Contractor shall be available for an initial job meeting with DCP. This meeting shall include:

- An introduction for each respective organization, chain of command, etc.
- Review the scope of work and the expectations of DCP and the Contractor.

## 6. Contract Clauses and Requirements

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### 6.1 Appendix A / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated June 2006, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein.

The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A
2. The Contract
3. DCP Request for Proposal Number 1609 (This Document) including any Addenda
4. Selected Contractor's Proposal

### 6.2 Procurement Lobbying Requirement

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DCP and a bidder during the procurement process. An Offerer/Proposer is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by DCP and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. DCP employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Proposer pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/Proposer is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at the following website:

<http://www.ogs.state.ny.us/aboutogs/regulations/defaultAdvisoryCouncil.html>

### 6.3 Contractor Insurance Requirements

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, Division of Consumer Protection (hereinafter referred to as "DCP"), New York State Department of State (hereinafter referred to as DOS), Certificates of Insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements contained in this Section. Such Certificates shall be of a form and substance acceptable to DOS/DCP.

Certificate acceptance and/or approval by DOS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers acceptable to DOS; shall be primary and non-contributing to any insurance or self insurance maintained by DOS; shall be endorsed to provide written notice be given to DOS, 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; shall be sent LuAnn Hart, NYS Department of State, Bureau of Fiscal Administration, 1 Commerce Plaza, 99 Washington Avenue, Suite 1110, Albany, NY 12231, Bid # 1609 and shall name The People of the State of New York, its officers, agents, and employees as additional insureds there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 10 11 85**). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

The Contractor 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 DOS. Such approval shall not be unreasonably withheld.

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

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

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The 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.

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

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, 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 Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

a) Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. 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.

1. If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.

b) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

c) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against DOS arising from Contractors work.

1. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
2. If the Contract includes disposal of materials from the job site, the Contractor must furnish to DOS, evidence of pollution legal liability insurance in the amount of \$2,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Contract.

- i) If autos are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.
- d) If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss.
  - 1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
  - 2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
- e) Waiver of Subrogation. Contractor 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 DOS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against DOS or (ii) any other form of permission for the release of DOS.

**Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of DOS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to DOS. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for DCP'S and/or DOS' immediate termination of any contract resulting from this RFP, subject only to a five (5) business day cure period. Any termination by DOS under this section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the the Department of State its agents and employees therefore for lost profits or any other damages.**

f) WORKERS' COMPENSATION / DISABILITY INSURANCE:

Workers' Compensation, Employer's Liability, and Disability Benefits meeting all New York State statutory requirements are required. If coverage is obtained from an insurance company through an insurance policy, the policy shall provide coverage for all states of operation that apply to the performance of the contract. In addition, if employees will be working on, near or over navigable waters, coverage provided under the US Longshore and Harbor Workers' Compensation Act must be included. Also, if the contract is for temporary services, or involves renting equipment with operators, the Alternate Employer Endorsement, WC 00 03 01A, must be included on the policy naming the People of the State of New York as the alternate employer.

PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS:

**ACORD forms are NOT acceptable proof of workers' compensation coverage.**

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, contractors shall:

- A) Be legally exempt from obtaining workers' compensation insurance coverage;  
or
- B) Obtain such coverage from insurance carriers;  
or
- C) Be a Board-approved self-insured employer or participate in an authorized self-insurance plan.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms** to DOS at the time of bid submission or shortly after the opening of bids:

1) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us));

or

2) *Certificate of Workers' Compensation Insurance:*

a) **Form C-105.2 (9/07)** if coverage is provided by the contractor's insurance carrier, **contractor must request its carrier** to send this form to the New York State DOS;

or

b) **Form U-26.3** if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State DOS;

or

c) *Certificate of Workers' Compensation Self-Insurance - Form SI-12*, available from the New York State Workers' Compensation Board's Self-Insurance Office;

or

d) *Certificate of Participation in Workers' Compensation Group Self-Insurance Form SI-105.2*, available from the contractor's Group Self-Insurance Administrator.

**PROOF of COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:**

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, contractors shall:

A) Be legally exempt from obtaining disability benefits coverage;

or

B) Obtain such coverage from insurance carriers;

or

C) Be a Board-approved self-insured employer.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms** to the Department of State at the time of bid submission or shortly after the opening of bids:

A) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us));

or

B) **Form DB-120.1**, *Certificate of Disability Benefits Insurance*. Contractor must request its business insurance carrier to send this form to the New York State DOS;

or

C) **Form DB-155**, *Certificate of Disability Benefits Self-Insurance*. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

**All forms must name the DOS as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

## **6.4 Tax and Finance Clause**

TAX LAW § 5-A:

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' 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 and 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.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this RFP. Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Proposers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698--2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: <http://www.nystax.gov>

## **6.5 Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses**

Article 15-A of the New York State Executive Law, as amended, authorized the creation of a division of Minority and Women's Business Enterprise Development to promote employment and business opportunities on state contracts for minorities and women. Under this statute, State agencies are charged with establishing business participation goals for minorities and women.

The Department of State administers a Minority and Women-owned Business Enterprises (MWBE) Program as mandated by Article 15-A. The Department recognizes the need to take affirmative steps to promote the employment of minority group members and women and to ensure that Minority and Women's Business Enterprises (MWBE's) are given opportunity to participate in the performance of its procurement program. Contractors are encouraged to make every good faith effort to promote and assist the participation of MWBE's as subcontractors and suppliers on this contract for the provisions of services and materials. Contracts will be awarded with consideration to the demonstration of efforts by prime Proposer(s) to consider opportunities for participation by MWBEs. Accordingly, the Department expects the cooperation of all vendors in carrying out this policy.

Questions regarding this program should be directed to the Department's Minority and Women-owned Business Program by calling (518) 474-6740. Potential contractors can access the [NYS Directory of Certified Minority and Women-owned Business Enterprises](#) on-line through the Empire State Development website at: <http://www.esd.ny.gov/MWBE.html>.

## 6.6 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal 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.

SHOULD YOU FEEL YOUR FIRM'S BID/PROPOSAL CONTAINS ANY SUCH TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, **YOU MUST SUBMIT A REQUEST TO EXCEPT SUCH INFORMATION FROM DISCLOSURE.** SUCH REQUEST MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION SHOULD BE EXCEPTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME OF SUBMISSION OF THE SUBJECT INFORMATION.

REQUESTS FOR EXEMPTION OF THE ENTIRE CONTENTS OF A BID/PROPOSAL FROM DISCLOSURE HAVE GENERALLY NOT BEEN FOUND TO BE MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXEMPTION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR FIRM.

## 6.7 General Requirements

1. The proposer agrees to adhere to all State and Federal laws and regulations in connection with the contract.
2. The proposer agrees to notify the DCP of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
3. The proposer agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
4. The proposer agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the DOS and DCP.
5. For reasons of safety and public policy, in any contract resulting from this RFP, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
6. For purposes of any contract resulting from this RFP, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
7. The DOS interpretation of specifications shall be final and binding upon the Contractor.
8. The DOS will make no allowance or concession to the Proposer for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Proposer has based its proposal on the more expensive option. Final decision will rest with the DOS.

10. INSPECTION – For purposes of any contract, resulting from this RFP, the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the DOS/DCP may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor and its surety shall be liable to the State of New York for costs incurred on account thereof.
11. STOP WORK ORDER - The DOS reserves the right to stop the work covered by this RFP and any contract(s) resulting therefrom at any time that it is deemed the successful proposer is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, the DCP shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Proposer and its surety shall be liable to the State of New York for any such costs on account thereof. In the event that the DCP issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective.
12. It is the Contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
13. The DCP reserves the right to reject and bar from the facility any employee hired by the Contractor.

## **6.8 Contract Terms**

All provisions and requirements of, Appendix A, Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this RFP, and will be binding upon the parties to such contract.

All provisions and requirements, which are attached hereto and form a part hereof, will be incorporated into any contract resulting from this RFP, and will be binding upon the parties to such contract.

It is stipulated and agreed by the parties that the law of the State of New York shall solely and in all respects govern with relation to any dispute, litigation, or interpretation arising out of or connected with any contract resulting from this RFP.

Any contract resulting from this RFP shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the Comptroller of the State of New York.

## **6.9 Subcontractors**

Before any part of the contract shall be sublet, the Contractor shall submit to the DCP in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as the Director may require concerning the proposed subcontractor's ability and qualifications.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the Contract Documents including, but not limited to the General Conditions and Requirements.

## **6.10 Procurement Rights**

The State of New York reserves the right to:

1. Reject any and all proposals received in response to this RFP.

2. Disqualify a Proposer from receiving the award if the Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Waive or modify minor irregularities in proposals received, after prior notification to the Proposer.
4. Adjust any Proposer's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Proposer will cause the State to incur additional costs.
5. Utilize any and all ideas submitted in the proposals received.
6. Negotiate with Proposers responding to this RFP within the RFP requirements to serve the best interests of the State.
7. The State may begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected Contractor within 21 days of selection notification.
8. The State is not liable for any cost incurred by a Proposer in the preparation and production of a proposal or for any work performed prior to the issuance of a contract.
9. Waive any non-material requirement not met by all Proposers.
10. Not make an award from this RFP.
11. If two or more offers are found to be substantially equivalent, the DOS, at his sole discretion, will determine award.
12. The State reserves the right to make multiple contract awards pursuant to the RFP.
13. DCP retains the right to have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
14. Seek clarifications of proposals.
15. Make an award under this RFP in whole or in part.

## **6.11 Extent of Services**

DCP reserves the right to re-negotiate at its discretion, to reduce the amount of services provided under any contract resulting from this solicitation. This reduction in services shall be effectuated by written amendment to the contract and subject to approval by the Office of the State Comptroller.

## **6.12 Debriefings**

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Prior to contract award, DOS / DCP shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. After contract award, DOS / DCP shall, upon request, provide a debriefing to any bidder that responded to the IFB or RFP, regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder within thirty days of contract approval as posted on the OSC website (web address below).

<http://www1.osc.state.ny.us/transparency/contracts/contractsearch.cfm>

## **6.13 Termination**

### **A.) Termination**

The DCP may, upon thirty (30) days notice, terminate this Agreement in the event of the Contractor's failure to comply with any of the bid's requirements unless the Contractor obtained a waiver of the requirement. In addition, DCP may also terminate this Agreement upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of creditors. Furthermore, DCP

shall have the right, in its sole discretion, at any time to terminate this Agreement, or any unit portion thereof, with or without cause, by giving thirty (30) days written notice of termination to the Contractor. Any termination by DCP under this Section shall in no event constitute or be deemed a breach of this Agreement and no liability shall be incurred by or arise against the DCP, its agents and employees therefore for lost profits or any other damages.

#### B.) Procurement Lobbying Termination

The DCP reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the DCP may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

### **6.14 NYS VENDOR RESPONSIBILITY QUESTIONNAIRE (hereinafter the “questionnaire”)**

DOS conducts a review of prospective contractors (“Bidders”) to provide reasonable assurances that the Bidder is responsive and responsible. A Questionnaire is used for non-construction contracts and is designed to provide information to assess a Bidder’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the “Questionnaire.” The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible, and that the State will be relying upon the Bidder’s responses to the Questionnaire when making its responsibility determination.

DOS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller’s (OSC) website, [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

In order to assist the State in determining the responsibility of the Bidder, the Bidder should complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Bidder’s Questionnaire cannot be viewed by DOS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is found by the State that the Bidder’s responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, DOS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

### **6.15 Ethics Compliance**

All proposers/contractors and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Contract, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations, 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.

## 6.16 Employee Information to be Reported by Certain Consultant Contractors

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning 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*” (“covered consultant contract” or “covered consultant services”). The amendments also 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 and the Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered contracts awarded on and after such date.

To meet these new requirements, the Contractor agrees to complete:

Form A - the Contractor’s Planned Employment Form upon bid/quote submittal.

Form B - the Contractor’s Annual Employment Report throughout the term of the Contract by May 1<sup>st</sup> of each year. The following information must be reported:

**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:**

- 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.\***

(Information must be reported on the Contractor’s Annual Employment Report (Form B) or other format stipulated by DOS.)

**\*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 via Form B to the Department of Civil Service, the Office of the State Comptroller and the Department of State, as designated below:

NYS Office of the State Comptroller  
Bureau of Contracts  
110 State St, 11<sup>th</sup> floor  
Albany, NY 12236  
Attn: Consultant Reporting

NYS Department of State  
LuAnn Hart – Contract Administration Unit  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231  
Bid # 11-DCP-04

NYS Department of Civil Service  
Alfred E. Smith Office Building  
Albany, NY 12239

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.

### **6.17 Force Majeure**

Neither party hereto will be liable for losses, defaults, or damages under any contract resulting from this solicitation which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this solicitation, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.