

**REQUEST FOR PROPOSALS (RFP)
RFP # 14-UIU-2**

**New York State Department of State
Utility Intervention Unit
For**

Wholesale Electric Markets Consulting and Advocacy Services

KEY DATES

Release Date: May 14, 2014 **REVISED 8/13/14**
Letter of Intent Due: May 28, 2014
Bidders Conference RSVP Due: July 21, 2104, 2:00 PM
Bidders Conference: July 28, 2014, 2:00 PM
Questions Due: August 4, 2014
Questions & Answers Posted: August 12, 2014
Bid Due Date: August 29, 2014, 4:00 PM.

Designated Contact and Bid Submission Address: LuAnn Hart, Director
Bureau of Fiscal Management
NYS Dept. of State
1 Commerce Plaza
99 Washington Ave. Suite
1110
Albany, NY 12210

Contacts for Non-Substantive Clarification Questions: Judy Fuentes:
(518) 473-0727
dos.smo.cp.UIURFP@dos.ny.gov
Include in subject line: RFP# 14-UIU-2 <name of vendor>

Bidders Conference RSVP dos.smo.cp.UIURFP@dos.ny.gov

BIDDERS CONFERENCE

Physical Location

Conference Room 505
1 Commerce Plaza
99 Washington Avenue
Albany, NY 12231

Teleconference Information

To join the audio conference only:

Dial: (Local): 1-518-549-0500

(Toll Free): 1-844-633-8697

(Alternate Toll Free): 1-866-776-3553

Code: 646 857 522

WebEx:

<https://meetny.webex.com/meetny/j.php?MTID=maef556b1acc01ce6f81353e8b2631e1e>

REQUEST FOR PROPOSALS

1.1 General Scope

As a result of a settlement agreement between the Federal Energy Regulatory Commission (“FERC”) and a market participant, the New York State Department of State (“DOS”) has been awarded funding for the specific purpose of strengthening the wholesale electric markets consumer advocacy of its Utility Intervention Unit (“UIU”). Section 94-a (4) of the New York Executive Law describes the UIU’s statutory responsibilities. The UIU has also been designated by the Board of Directors of the New York Independent System Operator (“NYISO”) as the Statewide Consumer Advocate when participating in matters before the NYISO. In this role, the UIU serves as a member of the End-Use Consumer Sector through which issues are discussed and positions are developed among sector members, including the New York State Energy Research and Development Authority (“NYSERDA”), Multiple Intervenors, Consumer Power Advocates and the City of New York, to advance the interests of end-use consumers.

The primary purpose of this Request for Proposal (“RFP”) is to secure consultant and advocacy services to assist the UIU in effectively representing the interests of end-use consumers of New York State’s regulated electric markets through active participation in the governance processes of the NYISO. These services would include seeking changes to the design of the NYISO’s markets and rules that would benefit end-use consumers and arguing against proposed changes that would harm end-use consumers. A secondary purpose is to secure consultant and advocacy services to assist the UIU in its participation in selected deliberations of the FERC and the New York State Reliability Council (“NYSRC”).

The ideal candidate(s) for this opportunity possesses at least ten years of relevant experience, a comprehensive understanding of the underlying mechanisms of wholesale electric market design, structure, and market rules. Extensive work experience in electric market design, ratemaking, market power mitigation, resource planning and electric system analysis is required. Working knowledge of the NYISO governance process is highly desired. The consultant(s) must have the capability to engage fully in the discussions of the NYISO’s Management Committee, Business Issues Committee and Operating Committee and their respective working groups as well as selected activities of FERC and of the NYSRC. An understanding of the natural gas system and markets and its effects on the electric system is also desired. Graduate degrees and practical expertise in economics and engineering as related to electric systems as well as a solid understanding of electric system modeling are preferred. Ability to explain technical concepts in understandable terms to UIU staff and other members of the End-Use Consumer Sector is crucial. Bidders should be able to fulfill the proposal objectives with little to no orientation period.

Since the primary purpose of this RFP is to obtain services that would enable the UIU to develop and maintain a full-time, long-term commitment to representation at the NYISO, Successful

~~bidders must possess a high level of expertise and experience and make a full-time, long-term commitment to this effort.~~ Successful bidders will establish, on behalf of the UIU, a regular presence at the NYISO by participating in working group(s), task force and committee meetings and interacting with other market participants, NYISO staff, and staff of the New York State Department of Public Service (“DPS”), as well as other members of the End-Use Consumer Sector. The consultant(s) must be able to establish a physical presence at the NYISO in Albany, New York, and develop good working relationships with NYISO personnel. Office space, if necessary, will be provided by DOS at 99 Washington Avenue, Albany, New York to allow for seamless interactions between UIU staff and the consultants.

Bidders may respond to this RFP to perform all or part of the work as an individual consultant or as a team of consultants. Bidders must also identify for which of the NYISO working group subject matter areas, described below in Section 2.1, they are bidding. That is, **separate bids must be submitted for each of the working group subject matter areas.**

1.2 Designated Contact

Pursuant to State Finance Law §§ 139-j and 139-k, DOS identifies the following designated contact to whom all communications attempting to influence this procurement must be made. In compliance with the Procurement Lobbying Law, the DOS’s Bureau of Financial Administration has been designated the primary contact for this procurement solicitation and may be reached by email or surface mail for all inquiries regarding this solicitation.

LuAnn Hart, Director
NYS Department of State
Bureau of Fiscal Administration
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
RFP # 14-UIU-2
dos.sm.Fiscal.CAU@dos.ny.gov (include in subject line: **RFP# 14-UIU-2 <name of vendor>**)

For further information regarding these statutory provisions, see the Lobbying Statute Summary in Section 17.1 of this solicitation.

1.3 Permissible Subject Matter Contacts

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DOS and bidders during the procurement process. Bidders are restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by DOS 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. DOS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the bidders 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, bidders are debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the DOS website:

<http://www.DOS.state.ny.us/aboutDOS/regulations/defaultAdvisoryCouncil.html>

Pursuant to State Finance Law § 139-j(3)(a), DOS also identifies the following allowable contact for communications related to technical clarifications regarding the RFP:

Judy Fuentes
New York State Department of State
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
RFP # 14-UIU-2

Email: dos.smo.cp.UIURFP@dos.ny.gov

Questions are of a technical nature if they are limited to how to prepare your application (e.g., formatting) rather than relating to the substance of the application.

1.4 Intent to Submit a Proposal

Vendors who wish to submit a proposal(s) are strongly advised to **register their intent to submit a proposal with the Bureau of Financial Administration by the date stated on the cover page of this RFP** by sending written notice via email at dos.sm.Fiscal.CAU@dos.ny.gov. (include in subject line: **RFP# 14-UIU-2 <name of vendor>**). 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.**

1.5 RFP Questions and Clarifications

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

Judy Fuentes
New York State Department of State
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
RFP # 14-UIU-2
Email: dos.smo.cp.UIURFP@dos.ny.gov

Questions and requests for clarification are only accepted via e-mail or in writing, and must be submitted by the date posted on the cover page of this RFP. Official answers to questions will be posted on the DOS's website at <http://www.dos.ny.gov/funding.html> on the date stated on the cover page of this RFP. The deadline for submission of questions is as stated on the cover page of the RFP.

A non-mandatory **Bidders Conference** will be held for this project on the date stated on the cover page of this RFP. Potential bidders are **strongly advised** to register for the conference by submitting the Bidder's Conference Registration Form (Attachment 2) by the date listed on the cover page of this RFP. This will help DOS ensure the availability of sufficient seating and teleconference capacity to accommodate all participants.

1.6 Submission of Proposals

Interested vendors should submit their Bid Proposal(s) not later than 4:00 p.m. on the Bid Due Date listed on the cover of this RFP. Separate proposals must be submitted for each of the NYISO working group subject matter areas listed in Section 2.1. Originals and copies should not be bound or stapled; please use rubber bands or clips. Proposals may be submitted via mail service, commercial carrier or hand delivered.

Responses to this solicitation should be clearly marked “RFP #14-UIU-2” and directed to:

LuAnn Hart, Director
NYS Department of State
Bureau of Fiscal Administration
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
RFP # 14-UIU-2

It is the bidders' responsibility to ensure that a complete bid package(s) is delivered to Suite 1110 prior to the date and time of the Bid Due Date. Late bids due to delay by the carrier or a failure to deliver to the proper location (Suite 1110) will not be considered.

Each proposal must include **two distinct sections**, Section 1 – Technical Proposal and Section 2 – Cost Proposal. **No financial bid or pricing information should be included in a bidder’s Technical Proposal. Technical and Cost Proposals should be submitted in separate and sealed envelopes, and identified with “NYSDOS Wholesale Electric Markets Consulting Services RFP#14-UIU-2” and the name of the bidder and labeled “Technical Proposal” or “Cost Proposal.”** Bidders shall submit one original and four exact copies of each technical proposal. The Technical Proposal (original and four exact copies) should be packaged, labeled and sealed separately from the Cost Proposal (one original only). If practical, the separate technical and cost packages should be mailed as one parcel clearly marked as stated above.

No electronic or email submissions will be accepted.

Each page of the proposal should be numbered consecutively from the beginning of the proposal through all appendices. Proposal evaluators will not review any material that is submitted above the maximum stated section page limit. Any pages over the allotted limit will not be read.

The bidder’s technical proposal should include a completed Non-Collusive Bid Certification (Attachment 3), Conflict of Interest Form (Attachment 4), Lobbying Form (Attachment 5), transmittal letter (Attachment 6) and M/WBE Forms (Attachment 9) signed by an official authorized to bind the bidder to the provisions of the RFP. The transmittal letter response should attest that the bidder has the demonstrated knowledge and expertise in the services sought for in the RFP, and offered in the bid as specified regarding each working group subject matter issues.

1.7 Eligible Bidders

Eligible entities to apply are individuals and for-profit and non-profit corporations possessing the requisite skills and experiences as provided in this RFP.

Preferred Qualifications

Preference will be given to bidders with:

- a. Ten or more years of demonstrated knowledge and expertise in the wholesale electric market;
- b. Documentation evidencing the organizational capacity, knowledge, and expertise to perform all tasks necessary to identify and support services sought in this RFP; and
- c. Demonstrated experience working in collaborative partnerships with other entities.

Prequalification Requirement for not-for-profit applicants

Pursuant to the New York State Division of Budget Bulletin H-1032, dated June 7, 2013, New York State has instituted key reform initiatives to the grant contract process which require not-for-profits to register in the Grants Gateway and complete the Vendor Prequalification process in order for proposals to be evaluated. Information on these initiatives can be found on the Grants Reform Website. See Attachment 8 for more information.

Proposals received from not-for-profit applicants that have not Registered and are not Prequalified in the Grants Gateway on the proposal due date and time posted on the RFP cover cannot be evaluated. Such proposals will be disqualified from further consideration.

2.1 Consultant Responsibilities

The UIU is seeking consumer advocacy services pertinent to each of the NYISO working group/task force/subcommittee subject matter areas listed in 2.1.1. Please also refer to Appendices for additional consultant responsibilities and bid formats.

2.1.1 NYISO Working Group/ Subcommittee Subject Matter Areas

- a. Budget, Priorities and Financing (Budget and Priorities Working Group). For Cost Proposal purposes, assume 100 hours per year of contracted work.
- b. Planning and Resource Adequacy (Electric System Planning Working Group, Inter-Regional Planning Task Force, Inter-Area Planning Stakeholder Advisory Committee, Interconnection Issues Task Force, Load Forecasting Task Force, Systems Operations Advisory Subcommittee, Transmission Planning Advisory Subcommittee). For Cost Proposal purposes, assume 400 hours per year of contracted work.

- c. Capacity Markets and Demand Response (Installed Capacity Working Group, Price-Responsive Load Working Group, Load Forecasting Task Force). For Cost Proposal purposes, assume 850 hours per year of contracted work.
- d. Energy and Ancillary Markets and Demand Response (Market Issues Working Group, Price-Responsive Load Working Group, Load Forecasting Task Force). For Cost Proposal purposes, assume 850 hours per year of contracted work.
- e. Gas Supply and Electric Generation Interaction (Electric Gas Coordination Working Group). For Cost Proposal purposes, assume 200 hours per year of contracted work.

2.1.2 Consumer Advocacy Services

For each of the NYISO working group subject matter areas listed in 2.1.1, the services to be provided by successful bidders under the direction of DOS-UIU include:

- a. Developing robust working relationships with NYISO staff, DPS staff and other stakeholders in wholesale electric markets including members of all five NYISO subject matter areas.
- b. Regularly attending and actively participating in NYISO committee, working group and task force meetings as well as occasional FERC and NYSRC meetings, technical conferences and hearings, as directed by the UIU.
- c. In coordination with other members of the End-Use Consumer Sector, at the direction of the UIU, identifying, effectively presenting and vigorously advocating positions and proposals for modifications to existing wholesale electric market rules and design that would benefit end-use consumers.
- d. Thoroughly analyzing proposed modifications by the NYISO staff or other parties to existing market designs and rules to determine the impact of the changes on end-use consumers, and as directed by the UIU, vigorously promote or challenge, as warranted, those proposals.
- e. Developing analyses of other proposals introduced into the NYISO stakeholder process, the FERC, or the NYSRC from an end-use consumer perspective, as directed by the UIU.
- f. Assisting in developing discovery or information requests regarding any wholesale electric market activities and issues that the UIU determines to be important to end-use consumer interests.
- g. Submitting memoranda to the UIU identifying the relevant issues and outlining potential alternative recommendations.

- h. Drafting comments and testimony as appropriate on behalf of end-use consumers of electricity and advocating UIU positions in the NYISO stakeholder process.
- i. Interacting with, and providing resources to support the efforts of, other entities seeking to protect or advance the interests of end-use consumers on wholesale electric supply issues within the decision-making structures of the NYISO, FERC or the NYSRC.
- j. To the extent that the UIU deems necessary, appearing in any other administrative or legal proceedings that the UIU determines to be of importance to the interests of end-use consumers of electricity in New York State.
- k. To the extent that the UIU deems necessary, providing technical assistance in briefing electric wholesale market issues to the PSC or any other branch of New York State government.
- l. Other activities consistent with activities mentioned above and in support of representing the interests of end-use customers of New York State's regulated electric markets.

2.1.3 Conflict of Interest

The UIU expects the consultant to give priority to this assignment but is willing to discuss with the successful bidder during the contracting process structures and processes to prevent and eliminate any potential conflicts. See Attachment 4, Conflict of Interest Statement.

2.2 UIU Responsibilities

The UIU will provide written or oral direction to the consultant(s) as to which meetings to attend and which issues to focus upon in the short- and intermediate-term at the NYISO, FERC and the NYSRC.

The UIU will monitor consultant(s) activities so as to achieve its objectives in a cost-efficient manner. Monitoring will ensure consistency with:

- a. The objectives discussed in this RFP.
- b. UIU policy objectives and recommendations in other proceedings.
- c. The agreed-upon scope of each activity.
- d. Activity schedules, activity cost estimates and overall budget.

3.1 Bid Format

Separate bids must be submitted for each subject matter area listed in Section 2.1.1 Forms and attachments submitted should be complete and legible, include original signatures where

requested, and adhere to page limitations. Failure to submit separate bids will result in the disqualification of all combined bids. Where there are page limitations, bidders should use 12 point font with one inch margins. Each bid must contain, at a minimum, the following:

3.1.1 Transmittal Letter (see Attachment 6)

Bidders must submit a complete transmittal letter with original signature.

3.1.2 Qualifications and Overall Experience (up to 15 pages)

Bidders must identify all key personnel that will be supplying the requested services and their area(s) of expertise. Include resumes as attachments (not included in the page count) describing the accomplishments, experiences and expertise of the individuals who will be providing services relative to this RFP. If a team of consultants will provide the services, bidders must identify an individual that will serve as the single point of contact for the requested consulting services.

Bidders must describe their relevant work experience, expertise and abilities as a firm to deliver the services described in this RFP. This description should include the number of years working in the area and a brief summary of similar projects. The project descriptions should specify the level of involvement of the bidders and the results/deliverables of the project and demonstrate that the bidder is qualified to provide services listed in Section 2.1.2. Include as attachments, three examples of prior work projects, with confidential information redacted if necessary (not included in the page count). Bidders must include customer contact names and phone numbers.

Bidders must demonstrate: the ability to complete tasks on schedule; the ability to work effectively as a team member with a diverse group of stakeholders; the ability to extract and analyze complex data sets; flexibility and responsiveness to changing program needs; and willingness to commit time and resources to fulfill consultant duties as listed in this RFP.

3.1.3 References (No page limitation)

Bidders must include the names and contact information of at least three professional references for each of the personnel listed in the bid. For any personnel listed in the bid who are associated with a bidding entity, the bid package must also include at least two letters of references for that entity and any letters of recommendation.

3.2 Cost Proposal

The bidder should submit a Cost Proposal Transmittal Sheet (Attachment 7), signed by an official authorized to bind the bidder to the provisions of the RFP and the bidder's response. The signed cover sheet includes an attestation that the bidder's Cost Proposal will remain valid for a minimum of 365 days from the RFP proposal due date. All relevant fields should be complete and legible. An original signature must be submitted; failure to do so will disqualify the bid.

The Cost Proposal must include a completed Cost Proposal Bid Form (Attachment 8). The Cost Proposal Bid Detail Sheet will contain prices for contract activities listed in this RFP. All costs associated with the contract activities must be included in hourly rates listed on the Cost Proposal Bid Detail Sheet.

3.2.1 Contract Pricing Proposal Forms (See Attachment 8)

Bidders must include a pricing proposal for the provision of services requested in this RFP. Pricing proposals shall include: a fully burdened hourly rate ~~less travel expenses~~ for each identified key personnel in Section 3.1.2.

Bidders will submit pricing which will be utilized and applicable for the first year of the contract. The final three years of the contract will be subject to a one-time price increase of the lesser of two percent (2%) or the percent increase in the National Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington D.C., 2012 for the twelve (12) month period ending three (3) calendar months prior to the anniversary date of the first year of the contract.

The price increase stated above is applicable only to those fees paid by DOS. No increases to third party fees are allowed during the contract period unless authorized by DOS.

For the purposes of this proposal, use the following guidelines in assigning staff to one of the two levels listed below, provide one hourly rate for each Staff Level. DOS reserves the right to require the reassignment of the level of staff so that all bids are evaluated on equal terms.

Level 1 Staff:

Staff Types: Principals, Project Leaders, Lead Consultants, or other staff with similar responsibilities.

Experience: These staff have extensive experience and knowledge of the subject areas listed and bid for from this RFP. These upper level staff are seasoned professionals with generally 10-15 years of experience.

General Duties: Project oversight, management of Contractor's team, liaison with UIU, and stakeholder relationships.

Level 2 Staff:

Staff Types: Analysts, Consulting Assistants, or other staff with similar responsibilities.

Experience: These staff are entry level professionals with less than 10 years of experience. They work under direct supervision of mid-level staff.

General Duties: Technical support and data manipulation, but not necessarily drawing conclusions or making recommendations.

4.1 Proposal Evaluation.

4.1.1 Technical Proposal Evaluation Factors

- a. Credentials of personnel identified to fulfill RFP requirements as listed in Section 2.1.2 of this RFP. Demonstrated qualifications and expertise of primary and any supporting personnel identified in the bid. Bid proposal offers detailed descriptions of specific experiences that demonstrate expertise in the field. Possesses adequate depth of resources to provide requested services through available industry connections and institutional support. (30 points)
- b. Demonstrated ability to conduct consultant duties as listed in Section 2.1.2 of this RFP. Demonstrated experience in wholesale electric markets design and rules and the interplay between natural gas markets and the wholesale electric markets. Quality and depth of expertise and experience in providing services identified in Section 2.1. Demonstrated ability to complete tasks on schedule. Work samples exhibit the quality and relevance of previous work. Demonstrated ability to work well with others. Bidders are expected to evidence a high level of understanding of the subject area as well as the ability to communicate ideas well before an audience. (35 points)
- c. Demonstrated willingness to commit time and resources to the requested services in working flexibly and seamlessly with UIU staff and DOS attorneys in various capacities as requested in Section 3.1.2 of this RFP. Anticipated cost of services and willingness to work with the UIU to minimize costs. (10 points)
- d. Information provided by client references. (5 points)

4.1.2. Interview

The Department may request the two highest scoring bidders and any bidder scoring within 10% of the top-scoring bidder in each subject area to make a presentation regarding their bid to evaluate their ability to communicate well, their presentation skills and their advocacy skills. Presentations may result in the rescoring of Section 4.1.1.b.

4.1.3. Method of Award

This is a competitive procurement that will result in one or more contracts to perform consultant and advocacy services as stated in Section 2.1.2 of this RFP.

- a. **Comprehensive Technical Proposal Evaluation** - An Evaluation Panel composed of at least three individuals will evaluate technical proposals. The final technical score for each bid will be derived by averaging the raw technical score from each reviewer to arrive at the final technical score.

DOS reserves the right to request the top-scoring two bidders and any bidder scoring within 10% of the top-scoring bidder in each subject matter area requested in this RFP to make oral presentations to the Panel and/or other New York State employees as part of the final selection process.

- b. **Cost Proposal Evaluation** - The lowest bidder must receive the maximum number of points awarded for the cost component (20 points). The other bidders will receive a proportional score using the formula of $a = \frac{(b/c) \times 20}{b}$ where:

Cost Proposal Evaluation

- b = lowest total cost;
- c = total cost for the bidder being scored;
- a = normalized cost score for bidder being scored; and
- 20 = total cost points.

- c. **Final Selection** - The final technical score plus the final cost score for each bid will be added to provide a total combined score for each bidder. The bidder with the highest total combined score will be selected for an award.

5.1 Terms of Contract, Available Funds, and Limitations

The initial contract term is one year, with a potential renewal of one term of three years. An option to renew the requested consulting service contract is at the discretion of DOS and based on satisfactory performance and availability of funding. DOS shall have no liability under this RFP to the successful bidder for consulting services, or to any other party, beyond funds available for this RFP.

Estimated hours as provided in Section 2.1.1 of this RFP are for bid purposes. Contracts will be paid pursuant to actual hours billed up to funding ability.

This agreement shall be effective upon approval of the NYS Office of the State Comptroller. The anticipated term of the contract is the period July 1, 2014 to June 30, 2018.

DOS will negotiate the contract for services in which it reserves the right to:

- a. Adjust the total amount of funding based on the program's success, funding source approval requirements, or any other relevant factors;
- b. Terminate the contract at any time if the contractor is underperforming, or require the contractor to terminate staff that are underperforming;
- c. Incorporate necessary program changes by modifying or adding to the services required;
- d. Tailor the services as needed within the scope of the contract; and
- e. Interview bidders or individuals assigned to work on the desired contracting services as a secondary stage in the selection process, if determined necessary by DOS.

DOS will negotiate the contract for services in fulfillment of the needs of this RFP on the basis of demonstrated competence and qualifications. Contract negotiations may include, but are not limited to, the selected bidder's price proposals to ensure work is accomplished at fair and reasonable rates.

This agreement may be canceled at any time by the Department of State giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

6.1 Confidentiality

Internal drafts of DOS/UIU documents must be treated as confidential. In addition, documents obtained and/or produced during the course of the successful bidder's work under the contract shall 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.

7.1 Consultant Assurances

The successful bidder(s) 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.

The successful bidder(s) 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 ability to perform under the contract. The successful bidder(s) must also attest that it will not enter into any contractual relationship with a NYISO Market Participant (listed at <http://www.nyiso.com/public/flipbooks/NYISOAnnual2012/index.html#/84/zoomed>) without the express signed authorization of the Department and to disclose any relationship that may suggest a conflict of interest.

8.1 Proprietary Interests

All information and products developed under this contract become the sole property of the DOS. The successful bidder(s) shall not copyright any material developed under this contract.

9.1 Travel

The successful bidder(s) will be ~~based in~~ located within commuting distance of the Albany area, or be willing to pay for their own travel to all NYISO meetings scheduled to be longer than two hours to effectively carry out the requested consulting services. All travel, other than travel from the Albany area to the NYISO in Rensselaer, New York, must be first pre-approved in writing by DOS and is expected to be extremely limited, mainly for attendance at FERC meetings in Washington, D.C. or NYISO meetings in New York City. Current rates are identified at the following website:

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

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.

10.1 Reporting Requirements

The successful bidder(s) 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 successful bidder(s) shall maintain contact with the UIU regarding all communication and transactions relating to the aforementioned contract(s). Upon completion of each assignment, the results must be forwarded to the UIU.

Upon award of the contract and prior to the start of any work, the successful bidder(s) shall be available for an initial job meeting with DOS. This meeting shall include:

- a. An introduction for each respective organization, chain of command, etc.
- b. Review the scope of work and the expectations of UIU and the consultant.

11.1 Dispute and Conflict Resolution

During the course of the contract between the DOS and the successful bidder(s), any disputes between the parties will attempt to be resolved by telephone or by in-person discussions as needed, with follow-up written documentation as appropriate.

12.1 Debriefing

Once an award has been made, bidders may request a debriefing of their proposal. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's proposal, and will not include any discussion of other proposals. Requests must be received no later than ten (10) business days from date of award or non-award announcement.

13.1 Protest Procedures

In the event unsuccessful bidders wish to protest the award resulting from this RFP, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

14.1 Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user

assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

15.1 State Consultant Services Reporting

Chapter 10 of the Laws of 2006 amended certain sections of State Finance Law and Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State.

The winning bidders for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

Winning bidders must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This report must be submitted annually to the NYSDOS, the Office of the State Comptroller, and Department of Civil Service.

16.1 Lobbying Statute Summary

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, provides, among other things, the following as pertains to development of procurement contracts with governmental entities:

- a. makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its Web site;

- f. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. modifies the governance of the New York State Commission on Public Integrity
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increases the monetary threshold which triggers a lobbyist’s obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended: (i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. Sections 139-j and 139-k are collectively referred to as “new State Finance Law.”

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York State Commission on Public Integrity regarding procurement lobbying, the Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Commission on Public Integrity.

17.1 New York State Tax Law Section 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 Tax 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 agencies, from approving a contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law.

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto. 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.

18.1 Piggybacking

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.state.ny.us/procurecounc/pgbguidelines.asp>) allows the Commissioner of the NYS Office of General Services to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

19.1 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, the New York State Department of State recognizes its obligation 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 New York State Department of State 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 New York State Department of State establish 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, New York State Department of State hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% 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 New York State Department of State may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

For guidance on how New York State Department of State will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

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 #1 (Attachment 9) 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 New York State Department of State.
- b. New York State Department of State will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of State 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 the New York State Department of State, Director of Affirmative Action, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231, a written

remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of State to be inadequate, New York State Department of State 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 #2 (Attachment 9). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- d. New York State Department of State may disqualify a Bidder as being non-responsive under the following circumstances:
 - i) If a Bidder fails to submit a MWBE Utilization Plan;
 - ii) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - iii) If a Bidder fails to submit a request for waiver; or
 - iv) If New York State Department of State 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 during the term of the Contract to New York State Department of State must be made prior to the submission of a request for final payment on 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 #2) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the New York State Department of State, 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.

20.1 Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies 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” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

During the term of the Contract, should the Department of State receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of State 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 Department of State shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department of State 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. <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

21.1 Rights and Reservations

The Department of State Reserves the Right to:

1. Reject any or all proposals received in response to the RFP;
2. Withdraw the RFP at any time, at the agency's sole discretion;
3. Make an award under the RFP in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. Seek clarifications and revisions of proposals;
6. 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 RFP;
7. Prior to the *bid opening*, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
13. If unsuccessful in negotiating a state contract with the selected applicant within an acceptable time frame, the Department may begin state contract negotiations with the next ranked qualified applicant(s) in order to serve and realize the best interests of the state;
14. Utilize any and all ideas submitted in the proposals received;
15. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening;
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation;
17. Waive or modify minor irregularities in applications received;

18. Not fund an application that fails to submit a clear and concise work plan or budget;
19. Adjust or correct cost figures with the concurrence of the applicant if errors exist and can be documented to the satisfaction of the Department of State and the State Comptroller;
20. Award more than one contract resulting from this RFP; and
21. In its sole discretion, determine the total number of awards to be granted pursuant to this RFP.
22. In the event that a workplan submitted post award during contract negotiations is substantially different from the application submitted through the procurement process, DOS reserves the right to require modifications to the workplan to bring it into conformance with the application. If no such modifications are made and approved within a reasonable time period, DOS may rescind the award and make funding available to the next highest scoring application.

22.1 RFP ATTACHMENTS

1. Attachment 1: Letter of Interest
2. Attachment 2: Bidder's Conference Registration Form
3. Attachment 3: Non-Collusive Bid Certification
4. Attachment 4: Conflict of Interest Statement
5. Attachment 5: Lobbying Form
6. Attachment 6: Technical Proposal Transmittal Sheet
7. Attachment 7: Cost Proposal Transmittal Sheet
8. Attachment 8: Cost Proposal Bid Form
9. Attachment 9: M/WBE Utilization Plan (Form #1) and Staffing Plan (Form # 2)
10. Attachment 10: Sample Contract

Attachment 1

LETTER OF INTENT TO BID

This non-mandatory letter of intent to bid should be mailed or emailed to the address below and received by the date listed in the Schedule of Key Events.

LuAnn Hart, Director
NYS Department of State
Bureau of Fiscal Administration
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
RFP # 14-UIU-2dos.sm.Fiscal.CAU@dos.ny.gov

Dear Ms. Hart,

_____ has received the Request for Proposals, “Wholesale Electric Markets Consulting Services.”

We intend to submit a proposal to the New York State Department of State Utility Intervention Unit no later than 4:00PM on the date listed in the cover of the RFP.

Sincerely,

(signature)

(date)

Attachment 2

BIDDER'S CONFERENCE REGISTRATION FORM

**New York State Department of State
Utility Intervention Unit**

Request for Proposals for Wholesale Electric Consulting Services

I/we intend to participate in the bidder's conference for the Request for Proposals (RFP) for the Wholesale Electric Consulting Services on the date listed on the RFP cover page:

Organization Name: _____
Contact Name: _____
Address: _____
Title(s): _____
Telephone Number: _____
Fax Number: _____
E-mail address: _____

This registration form must be received via E-mail or mail by the due date listed in the Schedule of Key Events:

LuAnn Hart, Director
NYS Department of State
Bureau of Fiscal Administration
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
RFP # 14-UIU-2
dos.sm.Fiscal.CAU@dos.ny.gov

Those applicants submitting a "Bidder's Conference Registration Form" will be provided the call-in telephone number and participant code number to enable the applicant to participate in the Bidder's Conference.

Attachment 3

Non-Collusive Bidding Certification

RFP 14-UIU-2

By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization under penalty of perjury, that to the best of his/her knowledge and belief:

1. The prices of 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;
2. Unless otherwise required by law, 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 opening, directly or indirectly, to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Bidder's Name

By:

Signature Date

Print:
Name: _____

Title: _____

Attachment 4

Conflict of Interest Statement

RFP #14-UIU-2

The New York State Department of State ~~will~~ may not engage an individual or firm that has a conflict of interest, and may not engage an individual or firm that has the appearance of a conflict of interest.

A conflict of interest will be deemed to exist:

- (a) If the consultant/consulting firm, or any of its principals, affiliates, or subcontractors, has an existing contract(s) or agreement(s) with any entity whose interests are considered adverse to the interests of electricity consumers as demonstrated through the operation of the NYISO governance process (most commonly generator entities and their affiliates);
or
- (b) If the consultant/consulting firm, or any of its principals, affiliates, or subcontractors, has performed any work for any entity whose interests are considered adverse to the interests of electricity consumers as demonstrated through the operation of the NYISO governance process (most commonly generator entities and their affiliates) within two years preceding the date of the proposal.

Please refer to the listing of the most current NYISO Market Participants at http://www.nyiso.com/public/webdocs/markets_operations/committees/general_information/2014_Committee_Membership_Roster.pdf ~~http://www.nyiso.com/public/flipbooks/NYISOAnnual2012/index.html/#/84/zoomed~~. Please list below the names of all Market Participants with whom you have an existing contract(s) or agreement(s) or for whom you have performed any work within two years preceding the date of the proposal. Please summarize the nature of the work, such as the period of time work was performed, subject matter, and continuous or intermittent.

Formatted: Font: Bold

~~By your signature below, consultant attests that:~~

- ~~1. No conflict of interest, as defined above, exists; and;~~
- ~~2. No appearance of a conflict of interest, as defined above, exists; or;~~
- ~~2. The following relationship(s) may constitute the appearance of such a conflict of interest:~~

Bidder's Name
By: _____
Signature _____ Date _____
Print Name: _____
Title: _____

1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle):

No Yes

1b. 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

1c. 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)

2. 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

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)

B. Offerer/Bidder certifies that all information provided to the Department of State with respect to State Finance Law §139-k is complete, true and accurate.

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(Email Address)

Attachment 6
NYS Department of State – Utility Intervention Unit
RFP 14-UIU-2
Technical Proposal Transmittal Sheet

TECHNICAL PROPOSAL FOR _____	
<i>(insert working group subject area)</i>	
Name of Bidder Organization (Legal name as it would appear on a contract)	
Mailing Address (Street address, P.O. Box, City, State, ZIP Code)	
Federal Employee Identification Number:	
If NYS Certified:	
Minority Business Enterprise (MBE) <input type="checkbox"/>	Woman Business Enterprise (WBE) <input type="checkbox"/>
Person authorized to act as the contact for this firm in matters regarding this proposal:	
Printed Name (First, Last):	Title:
Telephone number:	Fax number:
E-mail:	
Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:	
Printed Name (First, Last):	Title:
Telephone number:	Fax number:
E-mail:	
(CORPORATIONS) Name/Title of person authorized by the Board of Directors to sign this proposal on behalf of the Board:	

Printed Name (<i>First, Last</i>):	Title:	
Signature of Bidder or Authorized Representative	Date:	

Attachment 7
NYS Department of State – Utility Intervention Unit
RFP 14-UIU-2
Cost Proposal Transmittal Sheet

COST PROPOSAL FOR _____ <i>(insert working group subject area)</i>	
Name of Bidder <i>(Legal name as it would appear on a contract)</i>	
Mailing Address <i>(Street address, P.O. Box, City, State, ZIP Code)</i>	
Federal Employee Identification Number:	
If NYS Certified:	
Minority Business Enterprise (MBE) <input type="checkbox"/>	Woman Business Enterprise (WBE) <input type="checkbox"/>
Person authorized to act as the contact for this firm in matters regarding this proposal:	
Printed Name <i>(First, Last):</i>	Title:
Telephone number:	Fax number:
E-mail:	
Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:	
Printed Name <i>(First, Last):</i>	Title:
Telephone number:	Fax number:
E-mail:	
(CORPORATIONS) Name/Title of person authorized by the Board of Directors to sign this proposal on behalf of the Board:	
Printed Name <i>(First, Last):</i>	Title:

Signature of Bidder or Authorized Representative	Date:
---	-------

By signing this form the above Bidder or Authorized Representative attests that the bid price submitted on the Bid Detail Sheet will remain valid for a minimum of 365 days from the date of submission.

Attachment 8

Cost Proposal Bid Form - Instructions

RFP 14-UIU-2

All bidders must submit a fixed hourly rate for each specified title that will be utilized for the provision of services described in this RFP. Hourly rates must be inclusive of all costs not expressly specified to be reimbursable.

For the purposes of this proposal, use the following guidelines in assigning staff to one of the two levels listed below, provide one hourly rate for each Staff Level, and list the titles within your organization as they relate to each Staff Level. Using the proposed hourly rate, compute the Total Cost of the proposal based on the Total Hours provided. The Department reserves the right to require the reassignment of the level of staff so that all bids are evaluated on equal terms.

Level 1 Staff:

Staff Types: Principals, Project Leaders, Lead Consultants, or other staff with similar responsibilities.

Experience: These staff have extensive experience and knowledge of the subject areas listed and bid for from this RFP. These upper level staff are seasoned professionals with generally 10-15 years of experience.

General Duties: Project oversight, management of Contractor's team, liaison with UIU, and stakeholder relationships.

Level 2 Staff:

Staff Types: Analysts, Consulting Assistants, or other staff with similar responsibilities.

Experience: These staff are entry level professionals with less than 10 years of experience. They work under direct supervision of mid-level staff.

General Duties: Technical support and data manipulation, but not necessarily drawing conclusions or making recommendations.

PREQUALIFICATION REQUIREMENT FOR NOT-FOR-PROFIT APPLICANTS

Pursuant to the New York State Division of Budget Bulletin H-1032, dated June 7, 2013, New York State has instituted key reform initiatives to the grant contract process which require not-for-profits to register in the Grants Gateway and complete the Vendor Prequalification process in order for proposals to be evaluated. Information on these initiatives can be found on the [Grants Reform Website](#).

Proposals received from not-for-profit applicants that have not Registered and are not Prequalified in the Grants Gateway on the proposal due date of 4:00 PM on 07/31/14 cannot be evaluated. Such proposals will be disqualified from further consideration.

Below is a summary of the steps that must be completed to meet registration and prequalification requirements. The [Vendor Prequalification Manual](#) on the Grants Reform Website details the requirements and an [online tutorial](#) are available to walk users through the process.

1) Register for the Grants Gateway.

- On the Grants Reform Website, download a copy of the [Registration Form for Administrator](#). A signed, notarized original form must be sent to the Division of Budget at the address provided in the instructions. You will be provided with a Username and Password allowing you to access the Grants Gateway.

If you have previously registered and do not know your Username please email grantsreform@budget.ny.gov. If you do not know your Password please click the [Forgot Password](#) link from the main log in page and follow the prompts.

2) Complete your Prequalification Application.

- Log in to the [Grants Gateway](#). **If this is your first time logging in**, you will be prompted to change your password at the bottom of your Profile page. Enter a new password and click SAVE.
- Click the *Organization(s)* link at the top of the page and complete the required fields including selecting the State agency you have the most grants with. This page should be completed in its entirety before you SAVE. A *Document Vault* link will become available near the top of the page. Click this link to access the main Document Vault page.
- Answer the questions in the *Required Forms* and upload *Required Documents*. This constitutes your Prequalification Application. Optional Documents are not required unless specified in this Request for Proposal.
- Specific questions about the prequalification process should be referred to your agency representative or to the Grants Reform Team at grantsreform@budget.ny.gov.

3) Submit Your Prequalification Application

- After completing your Prequalification Application, click the **Submit Document Vault** Link located below the Required Documents section to submit your Prequalification Application for State agency review. Once submitted the status of the Document Vault will change to *In Review*.
- If your Prequalification reviewer has questions or requests changes you will receive email notification from the Gateway system.
- Once your Prequalification Application has been approved, you will receive a Gateway notification that you are now prequalified to do business with New York State.

Vendors are strongly encouraged to begin the process as soon as possible in order to participate in this opportunity

Cost Proposal Bid Form
2.1.1.a (Budget, Priorities and Financing)
RFP 14-UIU-2

Year 1- Budget Line				
	Proposed Hourly Rates Per Staff Level	Estimated # Hours of Contract	Number of Staff Per Level	Total Bid
Level 1 Staff		100hrs/yr		\$
Level 2 Staff				\$
TOTAL:				_____

List Titles Assigned to Each Level:

A. Level 1:

B. Level 2:

Bidder's Name

Representative: _____
Print Name

Signature Date

Title: _____

Cost Proposal Bid Form
2.1.1.b (Planning and Resource Adequacy)
RFP 14-UIU-2

Year 1- Budget Line				
	Proposed Hourly Rates Per Staff Level	Estimated # Hours of Contract	Number of Staff Per Level	Total Bid
Level 1 Staff		400hrs/yr		\$
Level 2 Staff				\$
TOTAL:				_____

List Titles Assigned to Each Level:

A. Level 1:

B. Level 2:

Bidder's Name

Representative: _____
Print Name
Signature
Date

Title: _____

Cost Proposal Bid Form
2.1.1.c (Capacity Markets and Demand Response)
RFP 14-UIU-2

Year 1- Budget Line				
	Proposed Hourly Rates Per Staff Level	Estimated # Hours of Contract	Number of Staff Per Level	Total Bid
Level 1 Staff		850hrs/yr		\$
Level 2 Staff				\$
TOTAL:				_____

List Titles Assigned to Each Level:

A. Level 1:

B. Level 2:

Bidder's Name

Representative: _____
Print Name
Signature
Date

Title: _____

Cost Proposal Bid Form
2.1.1.d (Energy and Ancillary Markets and Demand Response)
RFP 14-UIU-2

Year 1- Budget Line				
	Proposed Hourly Rates Per Staff Level	Estimated # Hours of Contract	Number of Staff Per Level	Total Bid
Level 1 Staff		850hrs/yr		\$
Level 2 Staff				\$
TOTAL:				_____

List Titles Assigned to Each Level:

A. Level 1:

B. Level 2:

Bidder's Name

Representative: _____
Print Name
Signature
Date

Title: _____

Cost Proposal Bid Form
2.1.1.e (Gas supply and Electric Generation Interaction)
RFP 14-UIU-2

Year 1- Budget Line				
	Proposed Hourly Rates Per Staff Level	Estimated # Hours of Contract	Number of Staff Per Level	Total Bid
Level 1 Staff		200hrs/yr		\$
Level 2 Staff				\$
TOTAL:				_____

List Titles Assigned to Each Level:

A. Level 1:

B. Level 2:

Bidder's Name

Representative: _____
Print Name
Signature
Date

Title: _____

Attachment 9

Form #1 M/WBE UTILIZATION PLAN

Form #2 STAFFING PLAN

FORM A

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 represents the anticipated MWBE usage for the contract and must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name: _____ **Federal Identification No.:** _____
Address: _____ **Project/Contract No.:** _____
City, State, Zip Code: _____
Telephone No.: _____ **M/WBE Goals in the Contract:** MBE 10% WBE 10%
Region/Location of Work: _____

1. Projected 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.

My firm proposes to use the M/WBEs listed above. PREPARED BY (Signature): _____ DATE: _____ NAME AND TITLE OF PREPARER (Print or Type): _____	TELEPHONE NO.:	EMAIL ADDRESS:
	FOR M/WBE USE ONLY	
	REVIEWED BY:	DATE:
	UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ Contract No.: _____ Project No. (if applicable): _____ Contract Award Date: _____ Estimated Date of Completion: _____ Amount Obligated Under the Contract: _____ Description of Work: _____	
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.		
NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____		NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____

**FORM B
STAFFING PLAN**

Submit with Bid or Proposal – Instructions on page 2

Complete this form only for the anticipated work force to be utilized on the State contract.

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

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																		

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

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (FORM B) 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 DOS 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**

Attachment 10

SAMPLE CONTRACT

ORIGINATING AGENCY CODE: 19000/DOS01	NYS CONTRACT NO.:	
STATE AGENCY New York State Department of State One Commerce Plaza, 99 Washington Avenue Albany, New York 12231	CONTRACT AMOUNT: \$	
	PROGRAM ALLOCATION	
	State Funding: \$	Federal Funding: \$
CONTRACTOR (Name and Business Address)	CONTRACT PURPOSE:	
	FEDERAL FUNDS CFDA NO.: N/A	
FEDERAL TAX ID NO.:	INITIAL CONTRACT PERIOD	
NYS VENDOR ID NO.:	From:	To:
MUNICIPAL CODE:	MULTI-YEAR TERM	
	From:	To:
	STATUS	
	Sectarian entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Not-for-Profit Organization?	<input type="checkbox"/> Yes <input type="checkbox"/> No

APPENDICES ATTACHED TO AND PART OF THIS AGREEMENT

Precedence shall be given to these documents in the order listed below

- APPENDIX A Standard Clauses for New York State Contracts
- APPENDIX A1 Agency-Specific Clauses
- APPENDIX A2 Program-Specific Clauses
- APPENDIX B Budget and Workplan
- APPENDIX C Payment and Reporting Schedule
- APPENDIX D Notices
- APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
- Other (Identify)
- Other (Identify)

SIGNATURE PAGE

Contract #:

IN WITNESS THEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE

STATE AGENCY SIGNATURE

By: _____

By: _____

(print name)

(print name)

Title: _____

Title: _____

Date: _____

Date: _____

State Agency Certification: "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

STATE OF NEW YORK)
COUNTY OF _____) ss:

On this _____ day of _____, in the year 20____, before me personally appeared _____, to me known and known to me to be the person who is the _____ of _____, the organization described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said organization; and that he/she executed the foregoing agreement for and on behalf of said organization.

NOTARY PUBLIC

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

By: _____

By: _____

Date: _____

Date: _____

Appendix A
STATE OF NEW YORK
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW, THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.
- B. Funding for the first PERIOD shall not exceed the funding amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.
- C. This AGREEMENT incorporates the face page attached and all of the marked appendices identified on the face page hereof.
- D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT.

To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, is subject to the approval of the Office of the State comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.

E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix B) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

Key personnel as identified by the successful bidder in their technical proposals may not be replaced without obtaining written informed consent from the Department.

F. No part of the requirements listed in this RFP may be conducted by subcontractors without the Department's written knowing consent. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.

G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

II. Payment and Reporting

A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

III. Terminations

A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.

B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms

and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.

- C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A-1.
- D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.
- E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.
- F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

IV. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

V. Property

- A. Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

VI. Safeguards for Services and Confidentiality

- A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

- B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
- C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the Contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.
- D. CONTRACTOR shall comply with provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR's negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR's agents, officers, employees or subcontractors.

APPENDIX A-1

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

December 2012

**STANDARD CLAUSES FOR NYS
CONTRACTS**

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

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

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

3. 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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital 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

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
<http://esd.ny.gov/MWBE/directorySearch.html>

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.

APPENDIX A-2

Agency-Specific Clauses New York State Department of State

I. General

A. For the purposes of this Agreement, the terms "State," "Agency" and "Department" are interchangeable, unless the context requires otherwise. In addition, the terms "Agreement" and "Contract" are interchangeable, unless the context requires otherwise.

B. No liabilities are to be incurred beyond the contract period and no costs will be reimbursed for such liabilities unless: 1) funds have been appropriated for the requested activities in the subsequent State fiscal year, 2) the Department determines that it is in the best interest of the State to provide additional time to continue the requested activities and 3) an extension agreement is approved in accordance with Appendix A Section 1 of the Agreement.

C. To modify any terms of this Agreement within an existing period, the parties shall revise or complete the appropriate appendix form(s), which may be subject to approval of the Department and Office of the State Comptroller.

D. The Department shall not be liable for expenses of any kind incurred in excess of the State Funds as set forth on the Face Page, and shall not be responsible for seeking additional appropriations or other sources of funds for the Project.

E. The Contractor shall perform all services to the satisfaction of the Department. The Contractor shall provide all services and meet the program objectives described in Appendix B in accordance with: provisions of this Agreement; relevant State, federal and local laws, rules and regulations, administrative and fiscal guidelines; where applicable, operating certificates for facilities or licenses for an activity or program, and conditions of applicable permits, administrative orders and judicial orders.

F. The Contractor agrees to proceed expeditiously with the Project and to complete assigned activities in accordance with this Agreement.

G. Subcontracting by the Contractor shall not be permitted except by prior written approval of the Department. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this Agreement and its Appendices.

H. Neither party shall be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or the inability to perform, all or any of the obligations or responsibilities imposed upon either party pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy; earthquake, floods, typhoons, civil strife, force or any other cause beyond the reasonable control of the party that was 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 shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

I. Contractor agrees not to enter into any contractual relationship with a NYISO Market Participant (listed at <http://www.nyiso.com/public/flipbooks/NYISOAnnual2012/index.html#/84/zoomed>) without the expressed signed authorization of the Department and to disclose any relationship that may suggest a conflict of interest.

II. License To Use And Reproduce Documents And Other Works

By acceptance of this Agreement, Contractor transfers to the Department an irrevocable, royalty-free nonexclusive license to use, reproduce in any medium, including the Department's website, and distribute any work prepared for or in connection with the Project, including but not limited to: reports, maps, designs, plans, analysis, and documents regardless of the medium in which they are originally produced. Contractor warrants to the Department that it has sufficient title or interest in such works to license pursuant to this Agreement. Such warranty shall survive the termination of this agreement. Contractor agrees to provide the original of each such work, or a copy thereof which is acceptable to the Department, to the Department before payments shall be made under this Agreement.

III. Contractor's Insurance Requirements

A. Prior to the commencement of the work, the Contractor shall file with the Department of State, Certificates of Insurance evidencing compliance with all requirements contained in this Agreement. Such certificate shall be of form and substance acceptable to the Department.

B. Acceptance and/or approval by the Department does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Agreement.

C. All insurance required by the Agreement shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing to any insurance or self-insurance maintained by the Department; shall be endorsed to provide written notice be given to the Department, 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 which shall be sent to New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231-0001; and shall name the People of the State of New York and their directors, officers, agents, and employees as additional insured thereunder.

D. The Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject.

E. 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 the Department and rated at least "A" Class "VII" in the most recently published Best's Insurance Report.

F. The Contractor shall cause all insurance to be in full force and effect as of the 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. The Contractor shall not take any action, or omit 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.

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

H. Unless the Contractor is self-insured, Contractor shall, throughout the term of the Agreement or as otherwise required by this Agreement, 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 Agreement, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies). Where Contractor is self-insured, the Contractor shall provide suitable evidence of such to the Department relating to the risks and coverage amounts as provided hereunder.

1. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.
2. Comprehensive 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.
3. An Owner's Protective Liability Policy with limits no less than \$1,000,000 in the name of the Contractor.

IV. Subcontracting Requirements

The Contractor may not subcontract any portion of the activities covered by this Agreement as provided for in Appendix A without the prior written approval of the Department of any subcontractor and the terms of any subcontract. Subcontractors shall comply with all applicable requirements of the Agreement between the Contractor and the State.

V. Compliance with Procurement Requirements

A. Vendor/Contractor hereby acknowledges that the Vendor Responsibility Questionnaire and certification is made a part of this contract by reference hereto and that any misrepresentation of fact in the Questionnaire and attachments, or in any contractor

responsibility information that may be requested by the Department of State, may result in termination of this contract. During the term of this Contract, any changes in the provided Questionnaire shall be disclosed to the Department, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract.

B. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Department, 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.

C. The Department reserves the right to suspend any or all activities under this Contract, at any time, when information is discovered that calls into question 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 the Department issues a written notice authorizing a resumption of performance under the Contract.

D. Should it be determined at any time that a Contractor is not responsible, the Department will notify the vendor in writing setting forth the basis for the determination and affording the Contractor reasonable time in which to refute the determination, justify why the basis for the determination is not relevant to this contract or to take corrective action to eliminate the responsibility impediment. If the responsibility condition cannot be reconciled to the satisfaction of the Department the contract or contract offer will be terminated by written notification given by the Department to the Contractor. In such event, the Department may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

VI. Confidentiality

A. All the reports, information, data, and other papers and materials in whatever form prepared or assembled by the Contractor under this Agreement are confidential, and the Contractor shall not discuss them with or make them available to any individual or organization, other than in connection with the performance of duties and responsibilities under this Agreement, without the prior written approval of the Department. These provisions do not apply in whatever form to information that is in the public domain nor shall they restrict the Contractor from giving notices required by law or complying with an order to provide information or data when such order is issued by a court of competent jurisdiction. If disclosure of confidential information is required of the Contractor by judicial subpoena or other court process, the Contractor agrees to immediately notify the Department of such process and allow the Department to inspect any such data or information and interpose objections prior to delivery to the court.

B. The Contractor shall not copy or divulge to any third party any information or data obtained or produced in connection with the performance of its duties and

responsibilities pursuant to this Agreement other than in connection with such duties and responsibilities. The Contractor shall ensure that all confidential or privileged records are kept in appropriately secured areas, and shall take reasonable precautions to protect the records in its custody from the dangers of fire, theft, flood, natural disasters and other physical threats, as well as unauthorized access.

C. Unless the Department designates otherwise in writing, all information or data and all other documents generated or collected by the Contractor in the scope of its work under this Agreement shall be deemed to be the exclusive property of the State of New York. No one else shall have any right, including, but not limited to, intellectual property rights (including trademark and copyright rights) in those items. No use of such materials or information shall be made without permission of the Department. Consistent with these provisions, the Contractor shall have the right to keep and use all copies of its work product, including memoranda, notes, briefs, depositions and other transcripts.

VII. Payment and Records Retention

A. Payments shall be made as set forth in Appendix C.

B. The Contractor shall maintain, at its principal place of business, detailed books and accounting records supported by original documentation relating to the incurring of all expenditures, as well as payments made pursuant to this Agreement. The Contractor shall make such records available for review by the Department upon request at any time. The Department shall have the right to conduct progress assessments and review books and records as necessary. The Department shall have the right to conduct an on-site review of the Project and/or books and records of the Contractor prior to, and for a reasonable time following, issuance of the final payment. The Department shall be entitled to disallow any cost or expense, and/or terminate or suspend this Agreement, if the Contractor has misrepresented any expenditures or Project activities in its application to the Department, or in this Agreement, or in any progress reports or payment requests made pursuant hereto. The Contractor shall maintain such books and accounting records in a manner so that reports can be produced therefrom in accordance with generally accepted accounting principles. The Contractor shall maintain separate fiscal books and records for all funds received through the Department pursuant to this Agreement.

C. During the term of this Agreement and for a period of six years after its termination, the Contractor shall make all such books and records available to the Department and the Office of the State Comptroller, or their designated representatives, for inspection and audit.

VIII. Equal Employment Opportunity

The Contractor hereby assures that it is, and shall be for the duration of this Agreement, in compliance with Title VII of the Civil Rights Act of 1964, as amended, and other federal and state equal employment opportunity laws.

IX. Article 15-A of the New York State Executive Law

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. This law supersedes any other provision in state law authorizing or requiring an equal employment opportunity program or a program for securing participation by minority and women-owned business enterprises. 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.

A. General Provisions

1. The Department of State is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

2. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of State (the "Agency"), to fully comply and cooperate with the Agency in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

3. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

B. Contract Goals

For purposes of this procurement, the Agency hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation.

C. Equal Employment Opportunity (EEO)

1. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

2. Contractor shall comply with the following provisions of Article 15-A:

a. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

b. The Contractor shall submit an EEO policy statement to the Agency within seventy two (72) hours after the date of the notice by Agency to award the Contract to the Contractor.

c. If Contractor or Subcontractor does not have an existing EEO policy statement, the Agency may provide the Contractor or Subcontractor a model statement (see Form A - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).

d. The Contractor's EEO policy statement shall include the following language:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

(2) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the

contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(3) 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.

(4) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

3. 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, reed (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.

X. Submission of All Correspondence and Documentation

A. Unless otherwise stated in Appendix A-1 the Contractor agrees to provide the Department with electronic versions of the required products in Word and/or Excel formats.

B. Contractor agrees to provide the Department with an original and one copy of payment request documentation as described in Appendix C.

XI. Default and Termination

A. The Department may terminate the Agreement in accordance with the terms and conditions in Section III of the Agreement.

B. In addition to whatever other reserved rights it has to terminate the Agreement, the Department may terminate the Agreement when it is in the best interests of the State or (1) for cause, (2) for convenience, or (3) due to unavailability of funds.

C. If the Department determines the Contractor has breached a term of the Agreement and if the Department determines the defect can be remedied, it may issue a written notice providing the Contractor with a minimum of 30 days to correct the defect and the notice may include a prospective termination date. If the Contractor fails to correct the defect or fails to make a good faith effort to do so as determined by the Department to the Department's satisfaction, the Department may terminate the Agreement for cause.

D. The Department shall also have the right to postpone or suspend the Agreement or deem it abandoned without this action being a breach of the Agreement. The Department shall provide written notice to the Contractor indicating the Agreement has been postponed, suspended or abandoned. During any postponement, suspension or abandonment the Contractor agrees not to do any work under the Agreement without prior written approval of the Department.

E. In the event the Agreement is postponed, suspended, abandoned or terminated, the Department shall make a settlement with the Contractor upon an equitable basis in good faith and under the general compensation principles and rates established in the Agreement by the Department. This settlement shall fix the value of the work which was performed by the Contractor to the Department's satisfaction prior to the postponement, suspension, abandonment or termination of the Agreement.

F. Any funds paid to the Contractor by the Department which are not expended under the terms of the Agreement shall be repaid to the Department.

XII. Fully-Executed Agreement or Amendment Thereto

A. If this Agreement, or amendments thereto, allocates funds totaling \$50,000 or less, it shall be deemed to be fully executed when approved and signed by the Contractor and the Department.

B. If this Agreement, or amendments thereto, allocates funds totaling more than \$50,000, it shall be deemed to be fully executed when approved by the Office of the State Comptroller.

Appendix C: Payment and Reporting Schedule

This contract is a true cost reimbursement AGREEMENT. The CONTRACTOR may claim and be reimbursed for eligible project costs incurred and paid for by the CONTRACTOR. Eligible project costs must be incurred and goods and services must be received and accepted by the CONTRACTOR within the contract period. The total of such reimbursement shall not exceed the funding amount for this AGREEMENT as outlined in the most recently approved Appendix B and shall be claimed by the CONTRACTOR in accordance with the approved contract.

I. Payment Terms and Conditions

- A. Payment requests must be certified by a duly authorized representative of the CONTRACTOR as accurately representing such accomplishments and expenses as recorded in the CONTRACTOR'S accounting records, including where goods or services are provided by third parties not party to this AGREEMENT, a certification that any payment obligations arising from the provision of such goods or services have been paid by the CONTRACTOR and do not duplicate reimbursement or costs and services received from other sources.
- B. No payment under this AGREEMENT, other than advances as authorized herein, will be made by the STATE to the CONTRACTOR unless proof of performance of required services or accomplishments is provided. If the CONTRACTOR fails to perform the services required under this AGREEMENT the STATE shall, in addition to any remedies available by law or equity, recoup payments made but not earned, by set-off against any other public funds owed to CONTRACTOR.
- C. The CONTRACTOR will be entitled to receive payments for work, projects, and services rendered as detailed and described in the approved Appendix B. Billing vouchers submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for vouchers submitted by the CONTRACTOR shall be rendered electronically unless payment by paper check is expressly authorized by the Secretary of State, in the Secretary'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, by email at epunit@osc.state.ny.us or by telephone at (518) 474-6019. The CONTRACTOR acknowledges that it will not receive payment on any vouchers submitted under this contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Secretary of State has expressly authorized payment by paper check as set forth above.

D. The CONTRACTOR shall submit to the STATE quarterly voucher claims and reports of expenditures on such forms and in such detail as the STATE shall require. The CONTRACTOR shall submit complete and accurate vouchers to the State's designated payment office located at the following address:

Ms. LuAnn Hart, Director of Fiscal Management
NYS Department of State
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231

If work concludes early, a voucher may be submitted for the remaining contract value as described in Appendix B. All vouchers submitted by the CONTRACTOR pursuant to this AGREEMENT shall be submitted to the STATE no later than 30 days after the end date of the period for which reimbursement is being claimed. In no event shall the amount received by the CONTRACTOR exceed the budget amount approved by the STATE. All contract advances in excess of actual expenditures will be recouped by the STATE prior to the end of the applicable budget period.

II. Reporting Terms and Conditions

- A. The CONTRACTOR will provide the STATE with the reports of progress or other specific work products pursuant to this AGREEMENT as described in Appendix C. All required reports or other work products developed under this AGREEMENT must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the STATE in order for the CONTRACTOR to be eligible for payment.
- B. The Contractor shall provide to the Department project status updates by teleconference on an approximate weekly basis, and upon request by the Department. The Contractor will develop and electronically mail an agenda prior to each such teleconference. The Contractor will prepare a monthly status report covering all project tasks performed during the month. All monthly project status reports are due by the 4:00 p.m. on last business day of the month.

III. Other

- A. The DEPARTMENT shall have the right to conduct on-site progress assessments and reviews of the project and CONTRACTOR'S records during the life of the AGREEMENT and for a reasonable time following the issuance of the final payment. The CONTRACTOR shall furnish proper facilities, where necessary or useful, for such access and inspection at the DEPARTMENT'S convenience.

- B. The DEPARTMENT shall be entitled to disallow any cost or expense, or terminate or suspend this AGREEMENT if found that the CONTRACTOR has misrepresented any expenditure(s) or project activities in the AGREEMENT, or in any progress reports(s) or payment requests made pursuant hereto.
- C. The CONTRACTOR is required to keep separate books and records for all funds received and activities conducted under the AGREEMENT, and to make such books and records available for inspection and audit for 6 years following termination of the AGREEMENT.

Appendix D: Notices

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - (a) via certified or registered United States mail, return receipt requested;
 - (b) by facsimile transmission;
 - (c) by personal delivery;
 - (d) by expedited delivery service; or
 - (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

State of New York Department of State
Name: LuAnn Hart, Director of Fiscal Management
Address: One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231
Telephone Number: (518) 474-6101
Facsimile Number: (518) 474-4777
E-Mail Address: LuAnn.Hart@dos.ny.gov

Contractor Name:	
Name of Contact Person:	
Title:	
Address:	
Office Number:	
Cell Number	
Facsimile Number:	
E-Mail Address:	

2. 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 United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
3. The parties may, from time to time, specify any new or different address in the United States as their address for 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.

Appendix X

Agency Code: _____ Contract Number: _____
Contract Period _____ Funding for Amendment \$ _____

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the New York State Department of State, having its principal office in Albany, New York (hereinafter referred to as the STATE), and _____; (hereinafter referred to as the CONTRACTOR), for modification of contract number noted above, as amended herein and noted below.

Type of contract modification:
 Renewal Revised total contract value: \$ _____
 No Cost Time Extension
 Amendment: _____
 Attached Appendices: _____

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE STATE AGENCY SIGNATURE
By: _____ By: _____

(print name) (print name)
Title: _____ Title: _____
Date: _____ Date: _____

State Agency Certification: "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

STATE OF NEW YORK)
COUNTY OF _____) SS.:

On this ____ day of _____, in the year 20____, before me personally appeared _____, to me known and known to me to be the person who is the _____ of _____, the organization described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said organization; and that he/she executed the foregoing agreement for and on behalf of said organization.

NOTARY PUBLIC