

**Request for Proposals (RFP)**

**RFP 15-OPD-7**

**New York State Department of State**

**Office of Planning and Development**

**for**

**Generic Environmental Impact Statement for**

**Long Island Transfer of Development Rights Program**

Key Event Dates:

Release Date: July 20, 2015

Letter of Intent Due: August 3, 2015

Questions Due: August 17, 2015

Questions & Answers Posted: August 31, 2015

Bid Due Date: September 29, 2015 @4 p.m.

Class Codes: 83

Group Number: 80109

Contract Period: 2 years

Designated Contact:

Chet Fiske

NYS Department of State

Email: [dos.sm.Fiscal.CAU@dos.ny.gov](mailto:dos.sm.Fiscal.CAU@dos.ny.gov)

(include in subject line: **RFP# 15-OPD-7 <name of vendor>**)

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# 1. Introduction

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## 1.1 Overview

In late October 2012 the largest storm in New York's recorded history swept ashore. Hurricane Sandy's effect was devastating, causing widespread damage to lives, homes, businesses, core infrastructure, government property and an economy just recovering from the Great Recession. Fourteen counties were declared Federal disaster areas. The storm damaged or destroyed as many as 300,000 housing units, affected or closed over 2,000 miles of roads, produced catastrophic flooding in subways and tunnels, and damaged major power transmission and communication systems.

Damage to coastal areas in New York City and Long Island were particularly devastating, accounting for billions of dollars of damage to housing, businesses and infrastructure. Approximately 19,164 properties in Nassau and Suffolk counties are in the Extreme Risk Area based on an assessment by the New York State Department of State Office of Planning and Development (hereafter referred to as "DOS" or "OPD") conducted as part of the recently completed New York Rising Community Reconstruction Program (NY Rising). Extreme Risk Areas are those areas that are at risk of permanent inundation from sea level rise and frequent inundation from any storm.

In an effort to explore the ability to relocate development out of areas of extreme risk along the coasts of Nassau and Suffolk Counties, DOS is seeking proposals for consultant services to prepare a Generic Environmental Impact Statement (GEIS) for a Transfer of Development Rights (TDR) program for areas of Nassau and Suffolk counties impacted by Hurricane Sandy. TDR is an innovative land use approach that can allocate transferable development rights to privately owned property in hazard areas in order to allow increased development in upland or interior areas that are less vulnerable. Many communities participating in NY Rising identified an interest in exploring the potential of establishing a TDR program to protect vulnerable property while retaining development rights for future community development. The GEIS would be used to assess potential environmental impacts of a TDR program and to establish the rationale for agency and local government decision-making related to the program. The GEIS would include:

- building upon risk assessment analyses conducted as part of NY Rising, a preliminary evaluation and mapping of potential sending and receiving areas consistent with appropriate land use plans. The evaluation will include the resources to be protected, potential environmental impacts associated with the increased development, the adequacy of public facilities/utilities, including adequate transportation, water supply, waste disposal and fire protection, and the potential impact of the transfer of development rights program on the availability of low or moderate income housing;
- a preliminary market analysis of vacant properties in the Extreme Risk Area and estimated assessed value adjusted to reflect the transfer of development rights;
- a process for establishing a development rights bank, including estimated needs for start-up funding;
- options for addressing the re-distribution of tax revenues and community services between municipalities and school districts included in the TDR sending and receiving areas in order to ensure that the tax burden is not unreasonably transferred between districts;
- proposed rules for allocation of TDR credits and transfer and redemption of TDR credits;

- proposed models, standards and procedures for executing conservation easements for undeveloped properties in the sending district from which development rights have been transferred;
- amendments to local zoning ordinances or laws needed to implement the TDR program;
- recommendations for post-transfer stewardship and management of vacant lands in the Extreme Risk Area.

The selected consultant and DOS will work closely with the TDR program being developed by Suffolk County Department of Economic Development and Planning, through the HUD-funded NY-CT Regional Sustainability Consortium (Consortium). (The DOS Smart Growth Director serves as an Advisory Committee Member for the Consortium.) Suffolk County has already released a “Draft Suffolk County Transfer of Development Rights (TDR) Study” (TDR Study). The TDR study has identified, inventoried and analyzed all TDR programs, policies and ordinances in Suffolk County, and is currently in the process of drafting county-wide legislation and identifying proposed “sending” and “receiving areas.” The County is also proposing a centralized website for all plans, policies and TDR credits, primarily as a one-stop-shop for developers interested in using the program.

## 1.2 Designated Contact

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

Chet Fiske  
 NYS Department of State  
 Bureau of Fiscal Administration  
 1 Commerce Plaza  
 99 Washington Avenue, Suite 1110  
 Albany, NY 12231  
 RFP # 15-OPD-7

[dos.sm.Fiscal.CAU@dos.ny.gov](mailto:dos.sm.Fiscal.CAU@dos.ny.gov) (include in subject line: **RFP# 15-OPD-7 <name of vendor>**)

## 1.3 Preferred Qualifications

The selected Firm(s) (“Contractor”) should demonstrate a superior knowledge and competence in developing myriad land use planning and management programs (specifically TDR programs). The Contractor will have experience with conducting land use feasibility analyses, market analyses, and environmental impact analyses.

The Contractor will have the following expertise:

- **Knowledge expertise.**
  - **Land use regulations:** Experience in planning, understanding the legal implications of land use regulations, and designing implementation projects that include land use planning, acquisition, land trusts, conservation easements, regulation, building codes, planning for constructability, and impact mitigation.
  - **Community/Regional planning:** Experience in planning at the community and regional scale that integrates all aspects of a community’s (or multiple-communities’) social, economic, and political activities and characteristics; engages vulnerable and displaced

- populations; produces unified results with the community speaking with one voice; and sets activities and priorities for local government in establishing a community's future.
- **Market Analysis:** Experience with conducting analyses of real estate markets to determine value of real property, development potential, and market demand for development.
  - **Implementation resources:** Experience with developing and/or implementing plans which rely upon federal, state, and local funding sources, as well as private development funding sources.
- **Functional expertise.**
    - **Information and economic analysis:** Experience conducting applied information management and GIS mapping, data collection from various government and other public sources, conducting macroeconomic (labor costs, employment trends, gross regional product, etc.) research, market/industry sector analysis, capital/financing opportunities and sources, and insurance (including flood, property, and casualty).
    - **Policy analysis:** Experience analyzing the effects of zoning, land use regulations, and other regulatory programs and requirements and their legal ramifications on community planning and economic development.
    - **Cost/benefit analysis:** Experience estimating project costs, including construction, operations and maintenance, and indirect costs; and project benefits, including both financial and non-financial (social and/or cultural) benefits.
    - **Report writing:** Experience writing comprehensive, detailed reports that clearly articulate an overarching narrative while providing the detail necessary for future implementation; synthesizing and presenting data from multiple sources.
    - **Sub-contracting:** Experience managing sub-contractors assisting other communities in general planning efforts or in subject-specific areas (e.g. environmental impact, infrastructure development, shoreline development); and operating as a sub-contractor to a vendor managing multiple planning and subject-specific firms.
    - **Process management:** Experience coordinating complex projects involving multiple disciplines and managing and scheduling work to meet short deadlines.

## 2. Purpose of Project and Scope of Work

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### 2.1 Purpose of Project

**Purpose of Project:** The purpose of this project is the preparation of a Generic Environmental Impact Statement (GEIS) to assess potential environmental impacts and to establish the rationale for agency and local government decision-making for a TDR program.

The GEIS would include:

- a preliminary evaluation and mapping of potential sending and receiving areas consistent with the adopted comprehensive plans of the participating communities. The evaluation will include the resources to be protected, potential environmental impacts associated with the increased development, the adequacy of public facilities/utilities, including adequate transportation, water supply, waste disposal and fire protection, and the potential impact of the TDR program on the availability of low or moderate income housing;
- a preliminary market analysis of properties in the Extreme Risk Area and estimated assessed value adjusted to reflect the transfer of development rights;
- a process for establishing a development rights bank, including estimated needs for start-up funding;
- options for addressing the re-distribution of tax revenues and community services between municipalities and school districts included in the TDR sending and receiving areas in order to ensure that the tax burden is not unreasonably transferred between districts;
- proposed rules for allocation of TDR credits and transfer and redemption of TDR credits;
- proposed models, standards and procedures for executing conservation easement for properties in the sending district from which development rights have been transferred;
- amendments to local zoning ordinances or laws needed to implement the TDR program;
- recommendations for post-transfer stewardship and management of lands in the Extreme Risk Area.

The Contractor will be expected to draw on the work of the NY-CT Regional Sustainability Consortium, particularly the TDR report and draft legislation, and work with the Consortium's TDR Advisory Committee to refine the scope and geographic areas of focus for the TDR GEIS. The Contractor will also develop and operationalize the central web-site proposed by the County and the Sustainability Consortium of all plans, policies and TDR credits, primarily as a one-stop-shop for developers interested in using the County's TDR program.

### 2.2 Scope of Work

Within the two-year contract term, the Contractor will be expected to deliver the following tasks and products:

## **Task 1: Outreach and Regional Coordination.**

On Long Island, there are many regional initiatives, including the Long Island Regional Economic Development Council (REDC), NYSERDA's Cleaner Greener Communities Program and the NY Rising Community Reconstruction Programs; these regional efforts are numerous and diverse. Success of TDR programs depends on effectively coordinating these programs with existing plans and regional objectives and integrating them with ongoing regional planning processes.

In preparing the GEIS, the Contractor shall identify a process for achieving coordination with these, and other, regional planning processes. The most effective way for achieving this coordination is through the involvement of municipal government and regional organizations such as the Long Island Association, the Long Island Regional Planning Council, the Long Island Housing Partnership, Sustainable Long Island, Vision Long Island, and others in the preparation of the GEIS. These organizations have the ability to provide information, data resources and development goals and objectives that will benefit the GEIS and ensure that regional issues are adequately addressed. Additionally, the Contractor should identify a schedule for the preparation of interim products which may be used by communities undertaking local Community Reconstruction Zone planning that includes consideration of TDR development.

Regional organizations will contribute to the regional perspective by ensuring coordination with the plans of adjacent communities as well as with larger regional planning efforts. In this way, regional coordination will ensure that TDR program development will both inform regional planning initiatives and be informed by them. Such information sharing and technical assistance will be essential to the preparation of the GEIS and individual TDR programs, especially in light of the limited capacity many communities will likely have as they undertake the community redevelopment. To further the goal of regional coordination and information sharing, the Contractor will work with Suffolk County and the Sustainability Consortium to develop and operationalize a central website of all TDR plans, policies and credits, primarily as a one-stop-shop for those interested in using Suffolk County's TDR program.

**Product(s):** Process for outreach and regional coordination, including schedule for outreach meetings and identification of studies and analyses that may benefit regional plans. Development and operationalization of a central website proposed by Suffolk County and the Sustainability Consortium as a one stop shop for information on existing TDR plans, policies and credits.

## **Task 2: Profile of Sending and Receiving Areas**

The Contractor shall complete a thorough inventory and analysis of the potential Sending and Receiving Areas. The Contractor shall describe and characterize the sending and receiving areas in terms such as: total acres; acres developed and acres vacant; percent of the total area developed with specific land use types; percent of land area in the mapped Extreme Risk Area; total linear feet of shoreline; linear feet of natural shoreline; linear feet of shoreline developed; linear feet of shoreline with bulkheads; and other terms as may be appropriate to characterize and describe the potential sending/receiving areas.

The inventory and analysis may include, but should not be limited to, a description of the following:

- location of sending/receiving areas as they relate to the community
- total land area of sending areas and percentage in the Extreme Risk Area
- total land area of receiving area

- land ownership patterns of sending/receiving areas including: land and acres held in public ownership (municipality, county, state, and federal); land held in private ownership; and land committed to roads/right-of-ways and surface waters
- existing and adjacent land and water uses including but not limited to water-dependent, water-enhanced, residential, commercial, industrial, vacant or underutilized, parks and dedicated open space, and institutional
- land area committed to each land use category
- existing zoning and other relevant local laws
- area buildings including building name, levels, gross square footage, original use, current use, condition, reuse potential, and ownership
- historic or archeologically significant areas, sites, districts, or structures
- school district information
- transportation systems, circulation, and types (truck, car, bus, ferry, train, recreational and commercial vessels, pedestrian, bicyclists, etc.)
- parking lots and garages
- infrastructure and utilities (land and waterside), location, extent, condition, capacity
- natural features and conditions including upland and waterside features and conditions
- floodplain designation

The Contractor shall submit the draft inventory and analysis to the DOS for review and approval, and shall incorporate the DOS's comments into the final sending/receiving area profile/inventory and analysis. The approved sending/receiving area profile/inventory and analysis shall be incorporated into the draft and final GEISs.

**Product(s):** A completed inventory and analysis of Sending and Receiving areas.

### **Task 3: Economic/Market Analysis**

The Contractor shall undertake a complete economic/market analysis of the properties in the identified sending/receiving areas, including an estimated assessed value adjusted to reflect the transfer of development rights, to determine a value of the development rights.

The analysis shall be based upon existing and projected socio-economic conditions within the municipality and the region and shall consider the following: population; transportation factors; land available for development; types of potential future land uses; development impacts; municipal tax revenues.

The contractor shall identify options for addressing the re-distribution of tax revenues and community services between municipalities and school districts included in the TDR sending and receiving areas in order to ensure that the tax burden is not unreasonably transferred between districts.

The Contractor shall submit the draft economic/market analysis to the DOS for review and approval, and shall incorporate the DOS's comments into the final economic/market analysis. The approved economic/market analysis shall be incorporated into the draft and final GEISs.

**Product(s):** An economic/market analysis that provides sufficient justification for future land uses to occupy the area targeted for redevelopment.

### **Task 4: Development Rights Bank**

The Contractor shall investigate and develop a process for establishing a development rights bank, including process for valuation and allocation of development credits, estimated needs for start-up funding, and process for transfer and redemption of development rights.

The Contractor shall submit the draft framework for a development rights bank to the DOS for review and approval, and shall incorporate the DOS's comments into the final development rights bank framework. The approved framework shall be incorporated into the draft and final GEISs.

**Product(s):** Development rights bank.

#### **Task 5: Risk Reduction Easements**

The Contractor shall research and propose models, standards and procedures for executing and enforcing conservation easements to reduce risk for properties in the sending districts from which development rights have been transferred.

The Contractor shall submit the draft risk reduction easement program to the DOS for review and approval, and shall incorporate the DOS's comments into the final easement program. The approved easement program shall be incorporated into the draft and final GEISs.

**Product(s):** Risk Reduction Easement Program

#### **Task 6: Local Laws**

The Contractor shall research and propose model amendments to local zoning ordinances or laws needed to implement the transfer of development rights program.

The Contractor shall submit the draft local laws to the DOS for review and approval, and shall incorporate the DOS's comments into the final local laws for consideration by municipalities participating in the TDR program. The approved model, local laws and zoning ordinances shall be incorporated into the draft and final GEISs.

**Product(s):** Model local laws to implement the TDR program.

#### **Task 7: Post-Transfer Stewardship**

The Contractor shall research and propose potential management schemes for properties in the Extreme Risk Area that participate in the TDR post-transfer. Depending on the nature of the easement, transfer of ownership, and remaining development potential, management schemes will need to be researched, reviewed and proposed.

The Contractor shall submit potential proposals for management of Extreme Risk Area properties to the DOS for review and approval, and shall incorporate the DOS's comments into the management techniques proposed to municipalities and landowners participating in the TDR program. The approved management techniques/schemes for properties in the Extreme Risk Area will be incorporated into the draft and final GEISs.

**Product(s):** Proposed management of properties in the Extreme Risk Area post-transfer.

#### **Task 8: Draft Generic Environmental Impact Statement**

The Contractor shall produce a Draft Generic Environmental Impact Statement (DGEIS) incorporating the results and products developed under previous tasks. Appropriate graphics (maps, tables/charts, site plans, elevation and perspective drawings, renderings) shall be included. Maps and other graphics will be reproducible and prepared at an appropriate scale. Maps and other graphics shall also be prepared for

presentation to the community. The draft report and all related materials shall be provided to the Department for review and approval prior to finalization of the report.

**Products:** DGEIS and supporting graphics as described above.

### **Task 9: Final Generic Environmental Impact Statement**

Based on feedback and any comments prepared by project partners and the Department, the Contractor shall revise the DGEIS and supporting materials and complete a Final Generic Environmental Impact Statement (FGEIS). The FGEIS shall contain all materials developed under previous tasks. The Contractor shall submit the FGEIS to the Department for review and approval. The Department comments must be addressed to the satisfaction of the Department in the FGEIS prior to publication and distribution.

**Products:** FGEIS and supporting graphics as described above.

## **2.3 Confidentiality**

Certain documents obtained during the course of the consultant's work under the contract may be designated as "confidential." All individuals performing work under the contract may 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.

## **2.4 Contractor Assurances**

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

## **2.5 Proprietary Interests**

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

## **2.6 Reporting Requirements**

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

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

## 3. Proposal Submission

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### 3.1 Intent to Submit a Proposal

Vendors who wish to submit a proposal are strongly advised to **register their intent to submit a proposal with DOS by the date indicated in the table of Key Event Dates** by sending written notice via email at [dos.sm.Fiscal.CAU@dos.ny.gov](mailto:dos.sm.Fiscal.CAU@dos.ny.gov) (include in subject line: **RFP# 15-OPD-7 <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.**

### 3.2 RFP Questions and Clarifications

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

Chet Fiske  
NYS Department of State  
Bureau of Fiscal Administration  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231  
RFP #15-OPD-7  
Email: [dos.sm.Fiscal.CAU@dos.ny.gov](mailto:dos.sm.Fiscal.CAU@dos.ny.gov)  
(include in subject line: **RFP# 15-OPD-7 <name of vendor>**)

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

### 3.3 Proposal Format and Content

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

1. **Cover Letter.** The cover letter must confirm that the bidder will comply with all the provisions of this RFP and should state that, should the contract be awarded to your company, you would be prepared to begin transitional operations upon Contract Approval. The cover letter must include the full contact information of the person(s) DOS shall contact regarding the proposal. A proposer representative authorized to make contractual obligations must sign the cover letter. The letter must also state whether or not subcontractor(s) will be used, the name, address and purpose of each proposed subcontractor.
2. **Proposed Approach:** Bidders should describe how the organization will complete the scope of work. A full description of the services to be provided, demonstrating how the Scope of Work (as identified above in Section 2.2) will be completed within the two-year contract term,
  - Bidders shall identify a process for achieving coordination with regional initiatives, and other, regional planning processes. Describe how coordination will be achieved. Additionally, identify a schedule for the preparation of interim products which may be used by communities undertaking local Community Reconstruction Zone planning that includes consideration of TDR development. Describe how the bidder shall develop and operate a central web-site of information on existing TDR plans, policies and credits.

- Bidders shall identify a process for completing a thorough inventory and analysis of the potential Sending and Receiving Areas including descriptions of the sending and receiving areas in terms such as: total acres; acres developed and acres vacant; percent of the total area developed with specific land use types; percent of land area in the mapped Extreme Risk Area; total linear feet of shoreline; linear feet of natural shoreline; linear feet of shoreline developed; linear feet of shoreline with bulkheads; and other terms as may be appropriate to characterize and describe the potential sending/receiving areas.
  - Bidders shall identify a process for preparing an economic/market analysis of the properties in the identified sending/receiving areas, including an estimated assessed value adjusted to reflect the transfer of development rights, to determine a value of the development rights. The analysis shall be based upon existing and projected socio-economic conditions within the municipality and the region and shall consider the following: population; transportation factors; land available for development; types of potential future land uses; development impacts; municipal tax revenues. Bidders shall identify a process for establishing a development rights bank, including the process for valuation and allocation of development credits, estimated needs for start-up funding, and process for transfer and redemption of development rights.
  - Bidders shall identify a process by which the organization intends to propose models, standards and procedures for executing and enforcing conservation easements to reduce risk for properties in the sending districts from which development rights have been transferred.
  - Bidders shall identify a process for identifying and proposing model amendments to local zoning ordinances or laws needed to implement the transfer of development rights program.
  - Bidders shall identify a process by which the organization shall propose potential management schemes for properties in the Extreme Risk Area that participate in the TDR post-transfer. Depending on the nature of the easement, transfer of ownership, and remaining development potential, management schemes will need to be researched, reviewed and proposed.
  - Bidders shall identify a process for producing the DGEIS and FEIS incorporating the results and products developed under previous tasks including appropriate graphics (maps, tables/charts, site plans, elevation and perspective drawings, renderings).
3. **Implementation Schedule:** Bidders are required to submit an implementation schedule that lists all milestones and details of when tasks will be undertaken and when products will be delivered.
4. **Team Composition and Relevant Experience.** Bidders are asked to describe their capabilities to provide the services requested in this RFP. Please complete and submit with your proposal:
- a) Bidders must provide resumes of all person(s) who will be assigned work pursuant to this RFP (including subcontractors), listing qualifications, professional accreditation, educational background, training and experience demonstrating expertise in land use planning and specifically TDR programs as well as an organizational chart and staffing plan for this contract.
  - b) Bidders are required to designate an individual as the Project Manager who will be directly responsible for all activities of the organization relevant to this RFP and provide their resume showing qualifications, educational background, training and experience. The project manager should have managed the implementation of at least one other project of similar scope and nature. A description of the project must be submitted with the resume.
  - c) Writing samples demonstrating the ability of the firm to provide the products identified in the Scope of Work (Section 2.2).
  - d) A description of any subcontractors and how these subcontracted services relate to this proposed contract (See Section 6.9 - Subcontractors Clause).

e) A list and narrative describing all projects of similar scope and nature completed in the last ten years demonstrating prior experience and in-depth knowledge of developing and implementing TDRs and New York State-based land use planning, local laws and regulations.

5. **Budget.** Budget and expense information which details all costs including:

- Expenses to provide proposed deliverables as identified on the deliverables cost sheet, inclusive of all bidder costs to complete each task. Expenses related to deliverables including administrative costs, travel, etc. must be included in deliverables listed.
- The Contractor shall attend an initial project meeting hosted by representatives of the DOS in Albany to review project and contract requirements (including project schedule and deliverables), define primary management issues, identify and share existing information, and clarify expectations and the roles and responsibilities of all parties involved in the project. Costs to attend this initial meeting, as well as four (4) semi-annual meetings hosted by DOS representatives in Albany, shall be incorporated into proposed budget

6. Include any other documentation indicating the expertise that the proposer believes would enhance its qualifications including but not limited to examples of testimonies or briefs.

7. Include a statement that details the Minority and Women's Business Enterprise (MWBE) participation intended for this contract. The statement should take into account the overall statewide goal of 30%. Any request to waive MWBE participation must include a reasonable justification.

8. Any reservations or constraints on the part of the consultant in working with the DOS in the manner explained herein must appear in the proposal and will be a factor in evaluating the proposal.

### 3.4 Instructions for Bid Submission

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

Chet Fiske  
NYS Department of State  
Bureau of Fiscal Administration  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231  
RFP #15-OPD-7

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

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

Proposals must be received in the above office on or before the date and time listed in Key Event Dates.

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

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

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

Bidders mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the bidding entity shall not excuse late bid submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and

building admittance shall not excuse late bid submissions. Bidders are cautioned that receipt of bids in the DOS Mailroom is NOT sufficient. DOS cannot be responsible for the actions of your chosen carrier.

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

### **3.4.1 Packaging of RFP Response**

1. DOS requires one (1) original and four (4) exact proposal copies, as well as two (2) original **Cost proposals (Attachment 6)** to be submitted. **The Cost Proposals must be in a separately sealed envelope, clearly marked 'Cost Proposal', and included within the proposal package.** Failure to comply with this requirement will result in immediate disqualification of the applicant for this opportunity. The bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- Proposer's complete name and address
- Proposal Number – RFP # 15-OPD-7
- Proposal Due Date and Time: **(as indicated in Key Event Dates)**

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

## 4. Evaluation and Selection Process

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### 4.1 Proposal Evaluation

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

Proposals will be reviewed for conformity with this RFP and will be evaluated for substantive content. The Evaluation Team may request that additional information or clarification be provided.

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

#### 4.1.1 Technical Evaluation (Maximum 80 points)

Every proposal found to satisfy the above will be separately evaluated according to the criteria listed below. Proposals will be evaluated based on their quality, clarity, and demonstrated understanding of the project objectives. The proposal must include a plan outlining how each item in the Scope of Work (Section 2.2) will be addressed.

- 1) Proposed Approach: Proposals will be evaluated on the quality and completeness of the proposed approach for completing the Scope of Work within the two-year contract term demonstrating that the firm is capable of delivering a successful product. (25 points)
- 2) Implementation Schedule: Proposals will be evaluated based on their demonstrated ability to complete the project within the two-year contract term – as demonstrated by past performance on similar projects. The proposal must include an implementation schedule that lists all milestones for the development and implementation of project deliverables. (25 points)
- 3) Team Composition and Relevant Experience: The proposer must provide a list of all person(s) who will be assigned work pursuant to this RFP (including subcontractors), as well as their resumes showing qualifications, educational background, training and experience demonstrating expertise in land use planning and specifically TDR programs.
  - a) Team members will be evaluated based on relevant education, work experience and professional accreditation.
  - b) The proposer must designate an individual as the Project Manager who will be directly responsible for all activities of the organization relevant to this RFP and provide their resume showing qualifications, educational background, training and experience. The project manager should have managed the implementation of at least one other project of similar scope and nature. A description of the project must be submitted with the resume.

The proposer is required to provide a list and narrative describing all projects of similar scope and nature completed in the last ten years. Demonstration of prior experience and in-depth knowledge of developing and implementing TDRs is preferred. The proposer should demonstrate experience with New York State-based land use planning, local laws and regulations. The projects listed and described will be used to determine the proposer’s expertise, experience, and knowledge.

The proposer must submit writing samples demonstrating the ability of the firm to provide the products identified in the Scope of Work (Section 2.2). (30 points)

#### 4.1.2 Cost Evaluation (Maximum 20 points)

The bidder should submit a Cost Proposal Transmittal Sheet (Attachment 5), 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 6). 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 listed on the Cost Proposal Bid Form.

#### 4.1.3 Bonus Points

Bidders who are Certified Minority/Women Owned Business Enterprises will receive two additional bonus points. Bidders who are not Certified Minority/Women Owned Business Enterprises, but who provide proof with their proposal of a subcontractor that is a Certified Minority/Women Owned Business Enterprise will also receive the bonus points. Bidders are required to identify the subcontractor and they must commit to using the subcontractor for this engagement. Additionally, the subcontractor must meet the 30% goal that is outlined in the contract. Bonus points will be added to their total score after technical and cost evaluations have been completed. Completion of the MINORITY/WOMEN OWNED BUSINESS CERTIFICATION Form included in Attachment 7 is required.

#### 4.1.4 Method of Award

This is a competitive procurement that will result in one contract to perform consultant and advocacy services as stated in Section 2.1 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  $z = (x/y) \times 20$  where:

Cost Proposal Evaluation

- $x$  = lowest total cost;
- $y$  = total cost for the bidder being scored;
- $z$  = 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.
- d. **Bonus Points** - Bonus points will be added to the total score after technical and cost evaluations have been completed.

## 4.2 Notification of Award

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

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

## 4.3 Terms of Contract, Available Funds and Limitations

This agreement shall be effective upon approval of the NYS Office of the State Comptroller. The anticipated term of the contract is two (2) years. The contract will be fixed for only two years. There will be no additions nor cost increases.

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.

## 5. Administrative Information

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### 5.1 Issuing Office

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

### 5.2 Method of Award

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

### 5.3 Cost

The Cost Proposal Form must be completed in its entirety according to the following instructions:

- The cost proposal must include one cost for each deliverable. A range of costs is not acceptable.
- Contracts will be based on details and estimates included. Firms should assume contracts not-to-exceed cost will correlate with the deliverables estimate.
- Compensation shall not exceed the total bid for each corresponding deliverable. Payments to the selected Bidder will only be made for the proposed total cost for each deliverable.
- DOS will compensate the successful Contractor following submission of an approvable invoice.

### 5.4 Method of Payment

For the purposes of this contract, payments will be issued for products delivered per the Scope of Work (Section 2.2) upon satisfactory completion, inspection and approval by the DOS, an invoice shall be issued to the Claims Unit for payment. The invoice will be processed in accordance with established procedures of the DOS and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

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

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

**Office of Planning and Development  
Department of State  
1 Commerce Plaza  
99 Washington Avenue, Suite 1010  
ALBANY, NEW YORK 12231**

## **5.5 Electronic Payment**

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

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

## **5.6 Past Practice**

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

## **5.7 Proposal Exceptions**

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

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

## **5.8 Dispute Resolution**

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

## **5.9 Examination of Contract Documents**

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

## **5.10 Prime Contractor Responsibilities**

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

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

## **5.11 Glossary of Terms**

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

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

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

The “State” shall mean The People of the State of New York, which shall also mean the Department of State (DOS) and Office of Planning and Development (OPD).

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

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

## **5.12 Rules of Construction**

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

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

## **6. Contract Clauses and Requirements**

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### **6.1 Appendix A / Order of Precedence**

Appendix A — Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein.

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

1. Appendix A
2. The Contract
3. DOS Request for Proposal Number 15-OPD-7 (This Document) including any Addenda
4. Selected Contractor's Proposal

### **6.2 Procurement Lobbying Requirement**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DOS and a bidder during the procurement process. An Offerer/Proposer is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by 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, are 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 Offerer/Proposer pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/Proposer is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the DOS website:

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

### **6.3 Contractor Insurance Requirements**

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

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

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers acceptable to DOS; shall be primary and non-contributing to any insurance or self-insurance maintained by DOS; shall be endorsed to provide written notice be given to DOS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent LuAnn Hart, NYS Department of State, Bureau of Fiscal Administration, 1 Commerce Plaza, 99 Washington Avenue, Suite 1110, Albany, NY 12231, Bid # 1609 and shall name The People of the State of New York, its officers, agents, and employees as additional insureds there under (General Liability Additional Insured

Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 10 11 85**). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage. The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by DOS. Such approval shall not be unreasonably withheld.

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

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

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

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

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

a) Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

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

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

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

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

- i) If autos are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

d) If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss.

1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.

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

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

f) WORKERS' COMPENSATION / DISABILITY INSURANCE:

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

PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS:

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

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

A) Be legally exempt from obtaining workers' compensation insurance coverage;

or

B) Obtain such coverage from insurance carriers;

or

C) Be a Board-approved self-insured employer or participate in an authorized self-insurance plan.

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

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

or

**2) Certificate of Workers' Compensation Insurance:**

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

or

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

or

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

or

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

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

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

A) Be legally exempt from obtaining disability benefits coverage;

or

B) Obtain such coverage from insurance carriers;

or

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

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

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

or

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

or

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

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

## **6.4 Tax and Finance Clause**

TAX LAW § 5-A:

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

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

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

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

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

## **6.5 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 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% 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 A (Attachment 7) 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 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 B (Attachment 7). 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 B) 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.**

## 6.6 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process.

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

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

## **6.7 General Requirements**

1. The proposer agrees to adhere to all State and Federal laws and regulations in connection with the contract.
2. The proposer agrees to notify the DOS of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
3. The proposer agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
4. The proposer agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the DOS and DOS.
5. For reasons of safety and public policy, in any contract resulting from this RFP, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
6. For purposes of any contract resulting from this RFP, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
7. The DOS interpretation of specifications shall be final and binding upon the Contractor.
8. The DOS will make no allowance or concession to the Proposer for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Proposer has based its proposal on the more expensive option. Final decision will rest with the DOS.
10. INSPECTION – For purposes of any contract, resulting from this RFP, the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the DOS may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor and its surety shall be liable to the State of New York for costs incurred on account thereof.
11. STOP WORK ORDER - The DOS reserves the right to stop the work covered by this RFP and any contract(s) resulting therefrom at any time that it is deemed the successful proposer is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, the DOS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Proposer and its surety shall be liable to the State of New York for any such costs on account thereof. In the event that the DOS issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective.
12. It is the Contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
13. The DOS reserves the right to reject and bar from the facility any employee hired by the Contractor.

## **6.8 Contract Terms**

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

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

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

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

## **6.9 Subcontractors**

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

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

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

## **6.10 Reserved Rights**

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.

## **6.11 Extent of Services**

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

## **6.12 Debriefings**

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

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

## **6.13 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/>.

## **6.14 Termination**

### **A.) Termination**

The DOS may, upon thirty (30) days notice, terminate this Agreement in the event of the Contractor's failure to comply with any of the bid's requirements unless the Contractor obtained a waiver of the requirement. In addition, DOS may also terminate this Agreement upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of creditors. Furthermore, DOS shall have the right, in its sole discretion, at any time to terminate this Agreement, or any unit portion thereof, with or without cause, by giving thirty (30) days written notice of termination to the Contractor. Any termination by DOS under this Section shall in no event constitute or be deemed a breach of this Agreement and no liability shall be incurred by or arise against the DOS, its agents and employees therefore for lost profits or any other damages.

### **B.) Procurement Lobbying Termination**

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

## **6.15 NYS VENDOR RESPONSIBILITY QUESTIONNAIRE (hereinafter the "questionnaire")**

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

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

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

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

The Bidder agrees that if it is found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, DOS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable

for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

## 6.16 Ethics Compliance

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

## 6.17 Employee Information to be reported by Certain Consultant Contractors

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

To meet these requirements, winning bidders for procurements involving consultant services agree to complete:

Form A - the Contractor’s Planned Employment Form.

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

<b>For each covered consultant contract in effect at any time between the preceding April 1<sup>st</sup> through March 31<sup>st</sup> fiscal year or for the period of time such contract was in effect during such prior State fiscal year:</b>	<b>1. Total number of employees employed to provide the consultant services, by employment category.</b>
	<b>2. Total number of hours worked by such employees.</b>
	<b>3. Total compensation paid to all employees that performed consultant services under such Contract.*</b>

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

**\*NOTE: The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be**

**collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.**

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

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

NYS Department of State  
Chet Fiske – Contract Administration Unit  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231  
Bid # RFP 15-OPD-7

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

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

## **6.18 Force Majeure**

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

## **RFP ATTACHMENTS**

### **Appendix A: Standard Clauses for New York State Contracts**

Attachment 1: Letter of Interest

Attachment 2: Non-Collusive Bid Certification

Attachment 3: Lobbying Form

Attachment 4: Technical Proposal Transmittal Sheet

Attachment 5: Cost Proposal Transmittal Sheet

Attachment 6: Cost Proposal Bid Form/Instructions

Attachment 7: M/WBE Utilization Plan (Form A) and Staffing Plan (Form B)

Attachment 8: Sample Contract

**Attachment 1**

**LETTER OF INTEREST**

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

Chet Fiske, CMS 2  
NYS Department of State  
Bureau of Fiscal Administration  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 122311  
RFP # 15-OPD-7  
dos.sm.Fiscal.CAU@dos.ny.gov

Dear Mr. Fiske,

\_\_\_\_\_ has received the Request for Proposals, "Generic Environmental Impact Statement for Long Island Transfer of Development Rights Program."

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

Sincerely,

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)





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 4**  
**NYS Department of State – GEIS for Long Island TDR Program**  
**RFP 15-OPD-7**  
**Technical Proposal Transmittal Sheet**

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:	
<b>If NYS Certified:</b>	
Minority Business Enterprise (MBE) <input type="checkbox"/>	Woman Business Enterprise (WBE) <input type="checkbox"/>
<b>Person authorized to act as the contact for this firm in matters regarding this proposal:</b>	
Printed Name (First, Last):	Title:
Telephone number:	Fax number:
E-mail:	
<b>Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:</b>	
Printed Name (First, Last):	Title:
Telephone number:	Fax number:
E-mail:	
<b>(CORPORATIONS) Name/Title of person authorized by the Board of Directors to sign this proposal on behalf of the Board:</b>	
Printed Name (First, Last):	Title:
<b>Signature of Bidder or Authorized Representative</b>	<b>Date:</b>

**Attachment 5**  
**NYS Department of State – GEIS for Long Island TDR Program**  
**RFP 15-OPD-7**  
**Cost Proposal Transmittal Sheet**

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:	
<b>If NYS Certified:</b>	
Minority Business Enterprise (MBE) <input type="checkbox"/>	Woman Business Enterprise (WBE) <input type="checkbox"/>
<b>Person authorized to act as the contact for this firm in matters regarding this proposal:</b>	
Printed Name ( <i>First, Last</i> ):	Title:
Telephone number:	Fax number:
E-mail:	
<b>Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:</b>	
Printed Name ( <i>First, Last</i> ):	Title:
Telephone number:	Fax number:
E-mail:	
<b>(CORPORATIONS) Name/Title of person authorized by the Board of Directors to sign this proposal on behalf of the Board:</b>	
Printed Name ( <i>First, Last</i> ):	Title:
<b>Signature of Bidder or Authorized Representative</b>	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 6

### Cost Proposal Bid Form - Instructions

Key Deliverables are identified in the table below and further described in Section 2.2 Scope of Work of the RFP. This must be completed and submitted with your proposal.

<b>DELIVERABLE</b>	<b>COST</b>
1: Outreach and Regional Coordination - Process for outreach and regional coordination, including schedule for outreach meetings and identification of studies and analyses that may benefit regional plans. Development and operationalization of a central web-site proposed by Suffolk County and the Sustainability Consortium as a one stop shop of information on existing TDR plans, policies and credits	\$
2: Inventory and Analysis - A completed inventory and analysis of Sending and Receiving areas	\$
3: Economic/Market Analysis – A complete economic/market analysis of the properties in the identified sending/receiving areas, including an estimated assessed value adjusted to reflect the transfer of development rights, to determine a value of the development rights and that provides sufficient justification for future land uses to occupy the area targeted for redevelopment.	\$
4: Development Rights Bank - Process for establishing a development rights bank, including process for valuation and allocation of development credits, estimated needs for start-up funding, and process for transfer and redemption of development rights.	\$
5: Risk Reduction Easement Program- Models, standards and procedures for executing and enforcing conservation easements to reduce risk for properties in the sending districts from which development rights have been transferred.	\$
6: Local Laws - Model amendments to local zoning ordinances or laws needed to implement the transfer of development rights program.	\$
7: Post – Transfer Stewardship - Management schemes for properties in the Extreme Risk Area that participate in the TDR post-transfer.	\$
8: DGEIS and supporting graphics incorporating the results and products developed under previous tasks.	\$
9: FGEIS and supporting graphics based on feedback and any comments prepared by project partners and the DOS containing all materials developed under previous tasks	\$

TOTAL COST	\$
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**Proposed deliverables are inclusive of all bidder costs to complete each task. Expenses related to deliverables including administrative costs, travel, etc. must be included in deliverables listed.**

**The total cost must remain valid for a minimum of 365 days from the proposal date.**

Bidder's Name: \_\_\_\_\_

Representative: \_\_\_\_\_

Print Name	Signature	Date
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Title: \_\_\_\_\_

## **Attachment 7**

- Form A M/WBE UTILIZATION PLAN
- Form B STAFFING PLAN
- MINORITY/WOMEN OWNED BUSINESS CERTIFICATION FORM

# 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:**

**Address:**

**City, State, Zip Code:**

Telephone No.:

Region/Location of Work:

**Federal Identification No.:**

**Project/Contract No.:**

**M/WBE Goals in the Contract:** MBE 15% WBE 15%

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.
<b>A.</b>	<i>NYS ESD CERTIFIED</i> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
<b>B.</b>	<i>NYS ESD CERTIFIED</i> <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:**  YES  NO Date: \_\_\_\_\_

**Contract No.:**

**Project No. (if applicable):**

**Contract Award Date:**

**Estimated Date of Completion:**

**Amount Obligated Under the Contract:**

**Description of Work:**

**NOTICE OF DEFICIENCY ISSUED:**  YES  NO Date: \_\_\_\_\_

**NOTICE OF ACCEPTANCE ISSUED:**  YES  NO Date: \_\_\_\_\_

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.

## 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.*

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

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

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

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

**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**

RFP #15-OPD-7

New York State Department of State - Office of Planning and Development for  
**Generic Environmental Impact Statement for  
Long Island Transfer of Development Rights Program**

**MINORITY/WOMEN OWNED BUSINESS CERTIFICATION**

Article 15-A permits State agencies to include a quantitative factor for bidders that are certified minority or women-owned business enterprises. Under RFP # 15-OPD-7 Generic Environmental Impact Statement for Long Island Transfer of Development Rights Program, bidders or subcontractors that are certified as a Minority or Women-Owned Business Enterprise (M/WBE) will receive bonus points. Bidders/subcontractors must be certified at the time of the bid submission and must maintain certification for the life of the awarded contract. M/WBE certified subcontractors must have an executed agreement with the successful bidder prior to execution of the contract under this opportunity. Failure to do so will result in the removal of M/WBE bonus points which may lower the final score and result in cancellation of the award.

**Prime Bidder**

I certify that \_\_\_\_\_ (name of business) is a:

- New York State Certified Minority-Owned Business in good standing \_\_\_Yes \_\_\_No
- New York State Certified Women-Owned Business in good standing \_\_\_Yes \_\_\_No

**Prime Bidder Information**

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

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

FEIN \_\_\_\_\_

**Subcontractor Information** (to be completed by prime bidder)

I certify that \_\_\_\_\_ (name of business) is a:

- New York State Certified Minority-Owned Business in good standing \_\_\_Yes \_\_\_No
- New York State Certified Women-Owned Business in good standing \_\_\_Yes \_\_\_No

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

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Name of Subcontractor \_\_\_\_\_

Subcontractor Address \_\_\_\_\_

Subcontractor FEIN \_\_\_\_\_

**Attachment 8  
Sample Contract**

**STATE OF NEW YORK AGREEMENT**

<p><b><u>STATE AGENCY:</u></b> New York State Department of State One Commerce Plaza 99 Washington Avenue, Suite 640 Albany, New York 12231</p>	<p><b><u>NYS COMPTROLLER'S NUMBER:</u></b>  <b><u>ORIGINATING AGENCY CODE:</u></b> DOS01/3800000</p>
<p><b><u>CONTRACTOR:</u></b></p>	<p><b><u>TYPE OF PROGRAM(S):</u></b> Office of Planning and Development for Consultant Services: Generic Environmental Impact Statement for Long Island Transfer of Development Rights Program</p>
<p><b><u>FEDERAL TAX IDENTIFICATION NO:</u></b>  <b><u>VENDOR IDENTIFICATION NO.:</u></b>  <b><u>MUNICIPAL CODE:</u></b></p>	<p><b><u>INITIAL CONTRACT PERIOD:</u></b>  FROM:  TO:  <b><u>FUNDING AMOUNT FOR INITIAL PERIOD:</u></b> \$</p>
<p><b><u>STATUS:</u></b> CONTRACTOR IS ( ) IS NOT ( ) A SECTARIAN ENTITY CONTRACTOR IS ( ) IS NOT ( ) A NOT-FOR-PROFIT ORGANIZATION.</p>	

**APPENDICES ATTACHED AND PART OF THIS AGREEMENT:**

<u>X</u>	APPENDIX A	Standard Clauses as required by the Attorney General for all State contracts
—		
<u>X</u>	APPENDIX B	Budget and Program Work Plan
<u>X</u>	APPENDIX C	Payment and Reporting Schedule
<u>X</u>	APPENDIX D	Notices
<u>X</u>	APPENDIX X	Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
<u>X</u>	OTHER (Identify)	<u>Request for Proposals</u>
<u>X</u>	OTHER (Identify)	<u>Bidder's Proposal</u>
—	OTHER (Identify)	_____
—	OTHER (Identify)	_____

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

**CONTRACTOR**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Printed Name

Title:

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

Contract No.

**STATE AGENCY**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Printed Name

Title:

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            )  
  ) SS.:  
County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described herein which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary) \_\_\_\_\_

**VENDOR CONTRACT  
AGREEMENT  
NYS DEPARTMENT OF STATE**

**Contract Number:**

This AGREEMENT, by and between the New York State Department of State, with its principal offices at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231 (hereinafter referred to as STATE, AGENCY or DEPARTMENT) and ?? (hereinafter referred to as CONTRACTOR)

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. The period of this AGREEMENT shall be as specified on the face page hereof. Should funding become unavailable, this AGREEMENT may be suspended until funding becomes available. In such event the STATE shall notify the CONTRACTOR immediately of learning of such unavailability of funds, however, any such suspension shall not be deemed to extend the term of this AGREEMENT beyond the end date specified on the face page hereof.

B. Funding for the entire contract period shall not exceed the amount specified as "Funding Amount for Initial Period" on the face page hereof in the following order of precedence:

1. Appendix A
2. Agreement
3. Appendix B
4. Appendix C
5. Appendix D
6. Appendix X

C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.

D. To modify the AGREEMENT, the parties shall revise or complete Appendix X and any appropriate form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the STATE.

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. 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, a sum not to exceed the amount noted on the face page hereof. 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 terminate this AGREEMENT without cause by thirty (30) days prior written notice.

D. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A.

E. 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.

F. 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.

G. 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. 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 A.

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.

#### **VI. Representations and Warranties**

A. This Agreement cannot be assigned, transferred, conveyed, sublet or otherwise disposed of in any way without previous consent in writing by the STATE to the CONTRACTOR.

B. It is agreed that this Agreement shall be void and of no effect unless the CONTRACTOR shall secure compensation for the benefit of, and keep insured during the life of the Agreement, such employees engaged thereon as are required to be covered by relevant insurance riders.

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

**January 2014**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

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

office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

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

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

business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses,

etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is

committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical

Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

NYS Department of Economic Development

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

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the

Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

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

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

**Appendix B**

**Other Sample Contract Components  
Deliverables Based Work Plan and Budget**

<b>Contract:</b>	
Recipient Organization Name:	Type:
Office:	
Email:	

**Work Plan Deliverables and Budget:**

<b>DELIVERABLE</b>	<b>COST</b>
1: Outreach and Regional Coordination - Process for outreach and regional coordination, including schedule for outreach meetings and identification of studies and analyses that may benefit regional plans. Development and operationalization of a central web-site proposed by Suffolk County and the Sustainability Consortium as a one stop shop of information on existing TDR plans, policies and credits	\$
2: Inventory and Analysis - A completed inventory and analysis of Sending and Receiving areas	\$
3: Economic/Market Analysis – A complete economic/market analysis of the properties in the identified sending/receiving areas, including an estimated assessed value adjusted to reflect the transfer of development rights, to determine a value of the development rights and that provides sufficient justification for future land uses to occupy the area targeted for redevelopment.	\$
4: Development Rights Bank - Process for establishing a development rights bank, including process for valuation and allocation of development credits, estimated needs for start-up funding, and process for transfer and redemption of development rights.	\$
5: Risk Reduction Easement Program- Models, standards and procedures for executing and enforcing conservation easements to reduce risk for properties in the sending districts from which development rights have been transferred.	\$
6: Local Laws - Model amendments to local zoning ordinances or laws needed to implement the transfer of development rights program.	\$
7: Post – Transfer Stewardship - Management schemes for properties in the Extreme Risk Area that participate in the TDR post-transfer.	\$
8: DGEIS and supporting graphics incorporating the results and products developed under previous tasks.	\$
9: FGEIS and supporting graphics based on feedback and any comments prepared by project partners and the DOS containing all materials developed under previous tasks	\$
<b>TOTAL COST</b>	<b>\$</b>

## **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](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto: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](mailto: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