



REQUEST FOR PROPOSALS

INTERNAL CONTROL AUDITING SERVICES

The purpose of this Request for Proposals (RFP) is to solicit proposals and award a contract to a qualified public accounting firm to perform a review of the Division of the Budget’s compliance with administrative and programmatic internal controls. The purpose of this review of operations is to assure conformance with management policies and the effectiveness of internal controls.

This RFP also outlines the terms and conditions, and all applicable information required for submission of a proposal. To prevent possible disqualification and to ensure compliance with the requirements of the RFP, Proposers should pay strict attention to the proposal submission deadline and follow the format and instructions contained in this document.

Date	Event
Wednesday, January 10, 2018	Issuance of Request for Proposals
Thursday, January 18, 2018 by 12:00 PM ET	Proposer Inquiries Due
On or about Wednesday, January 24, 2018	Division’s Response to Proposer Inquiries
Wednesday, February 1, 2018 by 12:00 PM ET	Proposal Submission Deadline
On or about Wednesday, February 21, 2018	Finalist Interviews
Friday, March 2, 2018	Proposal Evaluation and Selection
Sunday, April 1, 2018	Anticipated Contract Start Date

The Division reserves the right to change any of the dates stated in this RFP.

MWBE Goal: 30% participation (15% MBE 15% WBE)

SDVOB Goal: 0% participation

Contract Term: 4 years

The procurement is in a restricted period from the date this RFP is issued until the contract has been approved. All contacts/inquiries shall be made by email to the following address: Contracts@budget.ny.gov. Designated Contacts for this Procurement:

Contracts Officer: Jason DiGianni
Contract Administrator: Barbara Farley
Additional Contacts: Michelle Heaslip, Michael Pawlows, Roxanne West

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1 Scope

1.1 Background - Division of the Budget

The New York State Division of the Budget (DOB or Division) is responsible for assisting the Governor in the development of the Executive Budget and serves as the Governor's primary advisor on fiscal matters such as local government and public authority finances. DOB manages program and policy delivery outcomes and has oversight of agency performance, with an enhanced emphasis on governance. The synthesis of management and budget functions within DOB ensures that the policies, programs and projects contained in the Budget are delivered in a timely, cost-effective manner.

The NYS Governmental Accountability, Audit and Internal Control Act, (Chapter 510 of the Laws of 1999), referred to henceforth as the "Act" requires the Division to secure an auditor to perform a review of the Division's Internal Controls. A copy of the Act is attached to this Request for Proposals (Appendix D). For purposes of this audit, the successful Proposer will rely upon the definitions for internal controls as provided in Section 950 of the NYS Executive Law.

1.2 Services Required

The Division is seeking to engage a qualified public accounting firm to perform a review of DOB's compliance with administrative and programmatic internal controls. As established by the Act, Section 953 of NYS Executive Law requires a triennial audit of the Division's internal controls by an independent certified public accountant. Such audit shall be conducted in accordance with Generally Accepted Government Audit Standards (GAGAS) and shall include a report on whether the Division's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the specific objectives of internal controls as defined in the Act. The report will identify the internal controls both evaluated and not evaluated and will identify internal control weaknesses that have not been corrected, as well as the actions that are recommended to correct these weaknesses.

The selected Proposer shall conduct an audit of the internal controls used by the Division to formulate and execute the budget of New York State for two separate time periods: the 2018-2019 Fiscal Year and the 2021-2022 Fiscal Year. The budget for the 2018-2019 State Fiscal Year is formulated during the period October 1, 2017 to March 31, 2018 and is executed beginning on April 1, 2018. As such, the audit periods will be October 1, 2017 through September 30, 2018, and October 1, 2020 through September 30, 2021. By focusing on the controls used to formulate and execute the budget of a single State fiscal year, it is expected that the audit report will be clear and understandable.

To perform these services successfully, the selected Proposer will be responsible for the following:

1. Audit Plan

The selected Proposer will be responsible for developing a preliminary audit plan, detailing how it will proceed with its review of the Division's systems of internal controls. Such audit plan shall be discussed and approved by the Division in advance. The selected Proposer will then provide a final, detailed audit plan to the Division on or about May 7, 2018.

2. Audit Standards

In performing the work contemplated by this RFP, selected Proposer should follow Generally Accepted Government Accounting Standards (GAGAS) and will be required to conduct this audit in accordance with the most current Statement on Standards for Attestation Engagements (SSAE) as set forth by the American Institute of Certified Public Accountants (AICPA).

3. Documentation

The selected Proposer's working papers should contain sufficient written documentation and/or flow charts to document the internal control systems. Upon request, the working papers must be made available to the Division or its designee. All working papers and reports must be retained for a minimum of six (6) years unless the selected Proposer is notified in writing by the Division of the need to extend the retention period.

4. Final Report

In accordance with Section 953 of the Act, the product of the audit will be a special report on the system of administrative and programmatic internal controls in effect during the audit periods of October 1, 2017 through September 30, 2018 and October 1, 2020 through September 30, 2021.

The final report will be issued in accordance with the appropriate and most current auditing standards and shall contain the following:

- a) The introductory paragraph should reference the Scope and Objectives defined for the review.
- b) The scope paragraph should contain a statement indicating that the internal controls were reviewed in accordance with standards established by the American Institute of Certified Public Accountants (AICPA) and the Generally Accepted Government Audit Standards (GAGAS). The independent accountant's procedures for identifying the types of errors and irregularities that may occur, determining the internal control procedures that should prevent or detect such errors and irregularities, determining whether the necessary procedures are prescribed and followed, and evaluating any significant weaknesses should be referenced in the scope paragraph. The auditor must state either that all significant internal controls related to the Scope and

Objectives were reviewed or that all such controls were reviewed except for those described. It is anticipated that all significant internal controls related to the control objectives will be reviewed.

- c) The third paragraph should state that, because of inherent limitations of any internal controls over financial reporting, errors or irregularities may occur and not be detected. In addition, the paragraph should state that projections of any evaluation of the internal control structure to future periods are subject to the risk that the internal control structure may become inadequate because of changes in conditions, or because the degree of compliance with the policies or procedures may deteriorate.
- d) The fourth paragraph should state a conclusion as to whether management's assertion about the effectiveness of the entity's internal controls over financial reporting as of the specified date is fairly stated, in all material respects, based on the control criteria.

The body of the report should include the following:

- a) An identification of the significant internal controls determined to be relevant for the Division to achieve its objectives effectively, noting by categories those reviewed and listing any essential controls not reviewed, along with the reasons for not reviewing those controls.
- b) A statement whether the internal controls that have been determined to be relevant to the operations of the Division are established and functioning in a manner that provides reasonable assurance that the objectives of the internal controls are accomplished and that the study and evaluation performed included considering the types of errors and irregularities that could occur, determining the internal control procedures that should prevent or detect such errors and irregularities, determining whether the necessary procedures are prescribed and are being followed satisfactorily, and evaluating any significant or material weaknesses.
- c) A statement assuring that no material matters -(other than those disclosed in the report, if any) have become known which would cause the belief that the internal controls that have been determined to be relevant to the operations of the Division fail to comply with or meet the objectives of internal control. (If no material matters are disclosed in the report, this statement is not to be included.)
- d) The report shall identify any significant deficiencies or material weaknesses in the system of internal controls that would cause it to fail to achieve any of the Division's internal control objectives.
- e) A description of any significant deficiencies or material weaknesses identified and the auditor's recommendations for corrective action. The description of such weaknesses should follow this specific format for reporting a finding:

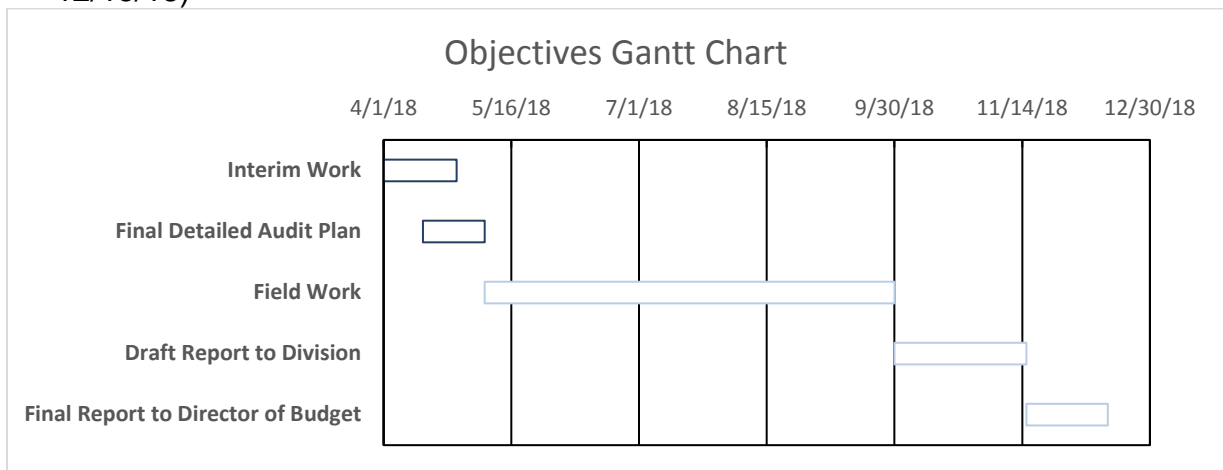
- 1) A statement of condition (i.e., what is)
 - 2) The criteria (i.e., what should be)
 - 3) The effect, the cause (if known)
 - 4) The recommendation for corrective action
- f) Any finding should contain sufficient information for Division officials to initiate timely corrective action. Findings of limited significance should be included in the report under a caption identifying them as such. All findings should be grouped by applicable Division unit. Non-significant or immaterial findings should be excluded from the report and may, if deemed appropriate, be identified in a separate management letter or orally.

The report should be addressed to the Director of the Division. Pursuant to the Act, the Director will make available the results of such audit to the public. The final report and five (5) copies should be delivered to Mark Massaroni, Internal Control Officer, Division of the Budget, State Capitol Rm. 129, Albany, New York, 12224. In addition, the final report should be provided in PDF format.

1.3 Timeline

During the 2018 Audit Period, the selected Proposer and the Division will agree upon dates for the following activities and deliverables:

1. Interim work completed and a preliminary detailed audit plan submitted (anticipated on or about 4/27/18)
2. Final detailed audit plan (on or about 5/7/18)
3. Field work for all internal control areas completed (anticipated field work between 5/7/18-9/30/18)
4. Draft report submitted to the Division (anticipated on or about 11/16/18)
5. Final report delivered to the Director of the Budget (anticipated on or about 12/15/18)



During the 2021 Audit Period, a similar schedule will be followed. The schedule will be agreed upon by the selected Proposer and the Division.

1.4 Division Functions and Internal Control Environment

The Division is charged with the responsibility of advising the Governor in matters that affect the financial health of the State. The Division assists in formulating the Governor's budget proposal to the Legislature, offers policy recommendations on fiscal issues, and oversees the implementation of the final Enacted Budget. Under the State Constitution, the Governor is also responsible for developing a revenue and expenditure plan for the State, which the Division prepares for the Governor's review. Additionally, Division staff works closely with State agencies to coordinate the development and execution of their policy programs, ensuring the Division is involved in every facet of New York State's government.

In addition to the Director of the Budget, the Division's executive staff currently includes one Deputy Director. Under their leadership, the Division is structured into various units with line or staff functions. Line units are responsible for preparing and implementing State agency budgets. Staff units perform a variety of activities including development of fiscal policy advice in revenue and expenditure forecasting, budget process management, federal and local government relations as well as providing administrative, technical and strategic planning services.

The following represents a general description of the internal control systems the Division has identified for consideration by the auditor. The auditor is responsible for confirming this judgment.

The Division has designated Mark Massaroni as its Internal Control Officer. Most internal control procedures followed in the Division are derived from statutory requirements and rules and regulations of the various control agencies, including the Office of the State Comptroller, the Department of Civil Service and the Office of General Services. Policies and procedures for administrative and personnel activities are established by the Division.

Beginning in 1988, the Division implemented a program of internal control review that included completion of a vulnerability assessment by each Division unit to survey the general and inherent control environment, priority lists, and completion of detailed documentation (including testing) of Division transactions and a review of internal control objectives attributable to the transactions. Building upon this foundation, the Division has instituted an ongoing process to monitor implementation of internal control review corrective action plans. As prescribed by the Act, the Division has successfully completed several independent audits of its systems of internal controls.

Basic documents supporting the control system include the following:

- Operations Manual – describes the major activities of the Division and prescribes the managerial policies and procedures in effect;
- Internal Control Review Application – maintains unit and Division procedures;
- Policy and procedures manuals of control agencies – includes the Office of the State Comptroller, the Department of Civil Service, and the Office of General Services;

- Human Resources Procedures Manual – provides general information concerning personnel and payroll transactions and processes, and the organizational structure and contact information for Human Resources;
- DOB Policy and Technical Memoranda;
- Integrated Budget System (IBS) Documentation;
- NYSTEP (New York State Electronic Personnel System);
- Budget Policy and Reporting Manual; and
- SFS (Statewide Financial System).

2 Proposal Requirements

The Proposer should submit a proposal which clearly and concisely provides all of the information requested. A complete proposal for this RFP is comprised of three (3) separate proposals: Technical, Cost, and Administrative.

- **Technical Proposal** – The purpose of the Technical Proposal is for the Proposer to demonstrate their qualifications, competence and capacity to undertake the engagement described herein.
- **Cost Proposal** – The Cost Proposal is the fee the Proposer will charge the Division for the services described in this RFP.
- **Administrative Proposal** – The Administrative Proposal contains standard requirements that the Proposer must agree to abide by, information requested by the Division in connection with these requirements, and additional forms to be completed by the Proposer.

2.1 Technical Proposal

The Technical Proposal should specifically detail the Proposer’s experience and qualifications in providing the services sought by the Division. **Please note, in the Technical Proposal, Proposers should not include any information related to their cost or the amount proposed for this RFP.**

Below is a listing of the technical information to be provided by the Proposer. Proposers must keep the Technical Proposal to a maximum of 30 pages (not including table of contents, resumes, and letters of reference).

A. Table of Contents

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

B. Executive Summary

An Executive Summary highlighting significant aspects of the Technical Proposal.

C. Project Approach

In this section of the proposal, the Proposer should include a narrative describing the project approach and provide information regarding how the Proposer will produce the deliverables set forth in Section 1.2. This is an opportunity for the Proposer to indicate their understanding of the scope of work included in this RFP and describe how they plan to: interact with the Division, analyze documents and observations, and produce required reports. Information provided in this narrative should demonstrate that the Proposer understands the skills and processes necessary to successfully complete the services detailed in this RFP.

The approach should include:

1. A preliminary work plan, including an explanation of the audit methodology to be followed in the performance of the services required as set forth in this RFP.
2. A proposed audit plan that describes the recommended technical approach, including tasks and projected timetable. In addition, the plan should demonstrate how the Proposer intends to organize its personnel and manage its activities, including any work to be carried out by a subcontractor, during the engagement.
3. A list of deliverable items and estimated submission dates should also be included.

D. Staff Experience and Qualifications

In this section of the Technical Proposal, Proposers should demonstrate that the staff proposed have the knowledge and ability to perform the services described in the RFP.

1. Proposers should identify the Engagement Partner, Audit Manager, and other staff including any and all subcontractors to be assigned to the engagement consistent with the title definitions in the Cost Proposal Form (Form 2) of the RFP. For each subcontractor(s) staff member, identify the name of the subcontractor(s) and NYS MWBE or SDVOB certification, if any. Include a description of the subcontractor's past work for the Proposer, if any, and how the Proposer will monitor the work performed by the subcontractor.
2. Supply a project organization chart, with names and titles of the individuals to be assigned to the project. The chart should also include any subcontractors to be assigned to the project. Discuss how the team was assembled and how the work will be completed. Where applicable, Proposer should also discuss how they will monitor the work performed by the subcontractor.
3. State all relevant information regarding the qualifications and experience of the staff to be specifically assigned to the project.
4. In an appendix of the Proposer's Technical Proposal, please include resumes for all members of the team, including subcontract personnel who are likely to work

on the project, and the New York State CPA licensure status of each person requiring a license as described in the Cost Proposal Form (Form 2), Description of Titles. Resumes do not count toward the 30-page limit.

5. Provide a statement about staff availability addressing the following:

- If selected, will the staff proposed be available for the duration of the contract?
- If certain staff will not be available for the entire contract period, how will such potential staff turnover affect the engagement?

Proposer should be aware that replacement staff are subject to the approval of the Division during the contract term.

E. Proposer Experience and Qualifications

In this section of the Technical Proposal, Proposers should demonstrate relevant experience by providing the following:

1. A summary of the Proposer's technical expertise that describes the unique capabilities of the Proposer. This narrative should discuss the Proposer's ability to provide successful and timely Internal Control Auditing services to the Division as well as a discussion of the Proposer's approach to project management.
2. A detailed description of the direct prior experience of the Proposer, comparable to those services detailed in Section 1.2 in the last five (5) years. Specifically, Proposers should detail three similar engagements of actual client projects that demonstrate the depth and breadth of the Proposer's expertise and experience.

Please indicate for each of the three client projects the following:

- a. Name of client organization
 - b. Role of the Proposer
 - c. Type of client (e.g., government entity (local, State, Federal), private company, etc.)
 - d. Project description
 - e. Project duration including start/end dates
 - f. Number of Proposer staff (FTEs) involved
 - g. Any other information regarding the project that would assist the Division in determining the success experienced by the client
3. Include a sample audit report resulting from one of the similar engagements as described in 2 above. The sample audit report will not count toward the 30-page limit.

F. Reference Letters

Proposers are asked to supply the Division with letters of reference for the following:

1. At least two (2) of the Proposer's engagements described above.
2. One (1) letter of reference for the proposed Engagement Partner.
3. One (1) letter of reference for the proposed Audit Manager.

Reference letters should include the name, address and contact information of the Client. Client should include a brief description of the type and scope of services of the engagement, as well as the term and quality of work performed during the engagement.

The Division may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Proposer to the client during the project.

Considering the criteria, any missing letters of reference or the inability to contact a Firm or staff reference provided by a Proposer will not be looked upon favorably and may result in a reduction of points.

2.2 Cost Proposal

Among the selection criteria is the fee the Proposer will charge the Division for the services described in this RFP. The Cost Proposal is an integral component of a Proposer's three-part submission. The Cost Proposal Form (Form 2) must be completed in its entirety according to the instructions included in Form 2. **Proposals with a fee format different from the format indicated in Form 2 will be deemed non-responsive and the entire proposal will not be considered for evaluation or award.**

Compensation for the scope of work described in this RFP shall be based upon the not-to-exceed deliverable cost and hourly rates included in the selected Proposer's cost proposal. Upon State receipt of the final deliverable, the selected Proposer shall submit an invoice identifying the deliverable and supporting breakdown of cost, including staff member name, contract title, contract hourly rate, hours worked, and calculated total cost. The selected Proposer shall include only actual hours worked. Rates in excess of the contract hourly rates are not allowed.

2.3 Administrative Proposal

The Administrative Proposal contains standard requirements the Proposer must agree to abide by, information requested by the Division in connection with these requirements, and additional forms to be completed by the Proposer. Proposers should complete and submit the administrative forms listed below:

- **Form 1:** The Proposer Information and Attestation, which will be considered an integral part of the Proposal, should be signed and submitted with the Administrative Proposal. The Proposer Information and Attestation should be signed by an individual authorized to contractually bind the Proposer. A proposal with an unsigned Proposer Information and Attestation page may be rejected. **Modified forms will not be accepted.**

- **Form 3:** Non-Collusive Bidding Certification. This form should be signed and submitted with the Administrative Proposal.
- **Form 4:** Assurances of no Conflict of Interest or Detrimental Effect. This form must be signed by an authorized executive or legal representative and should be submitted with the Administrative Proposal. **Modified forms will not be accepted.**
- **Form 5:** Article 15-A Requirements. Complete and submit the following with the Administrative Proposal:
 - Form 5.1 – Workforce Composition Form.
 - Form 5.2 – Proposer’s intended Utilization Plan for MWBE subcontractor participation. The successful Proposer will be required to formally submit the Utilization Plan within three days of notification of selection.
 - Form 5.3 – Notice of Intent to Participate.
 - Form 5.4 Equal Employment Opportunity Policy Statement – If Proposer, or any of its subcontractors, does not have an existing EEO policy statement, the Division may require the Proposer or subcontractor to adopt the attached model statement.
 - Form 5.5 – Request for Waiver Form.
- **Form 6:** MWBE Diversity Practices. Complete and submit the following with the Administrative Proposal:
 - Form 6.1 – Responses to Diversity Practices Questionnaire, including documentation.
- **Form 7:** A Vendor Responsibility Questionnaire should be certified and filed by the proposal submission deadline. The Vendor Responsibility determination is required for review and approval of the contract by the State Comptroller’s Office. Proposers should file online with the New York State VendRep System, or submit a paper Questionnaire.

For any subcontract in excess of \$100,000, a Vendor Responsibility Questionnaire should be completed by the subcontractor and certified and filed by the proposal submission deadline. Subcontractor firms should file online with the New York State VendRep System, or submit a paper Questionnaire with the Proposer’s proposal.

- **Form 8:** Procurement Lobbying Form should be completed and submitted with the Administrative Proposal confirming and certifying compliance with the Procurement Lobbying Law, including disclosure of any findings of non-responsibility. **Modified forms will not be accepted.**
- **Form 9:** Disclosure of Pending or Prior Lawsuits Form should be completed and submitted with the Administrative Proposal.

- **Form 10:** Freedom of Information Law Redaction Request form should be submitted with the Administrative Proposal. If there is specific information in a Proposer's proposal that a Proposer claims to be proprietary and/or trade secret information that meets the definition set forth in Section 87(2)(d), the Proposer should provide a letter in its Administrative Proposal outlining any specific concerns regarding disclosure under the New York State Freedom of Information Law (Article 6 of the Public Officers Law).

2.4 Proposer Inquiries/Revisions to this RFP

Questions or requests for clarification regarding this RFP should be submitted via email, citing the RFP page and section, by 12:00 P.M. ET on Thursday, January 18, 2018 to contracts@budget.ny.gov. Questions will not be accepted orally and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted to the Division's website and notice of such posting will be sent to all Proposers who have been furnished this RFP by the Division.

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be made by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

Further, if a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, immediately notify the contacts listed on the cover page of such error and request clarification or modification to the document. The Division shall make RFP modifications by addendum, provided that any such modifications would not materially benefit or disadvantage any particular Proposer. Such clarification will be given by written notice to all parties who have been furnished an RFP by the Division.

If a Proposer fails to notify the Division of a known error, or an error that reasonably should have been known, prior to the proposal submission deadline, the Proposer shall assume the risk. If awarded the contract, the Proposer shall not be entitled to additional compensation or time by reason of the error or its late correction.

There are no designated dates for the release of addenda. Therefore, interested Proposers should check the Division's website on a daily basis from time of RFP issuance through bid opening. It is the sole responsibility of the Proposer to be knowledgeable of all addenda related to this procurement.

All RFP addenda will be issued on the Division's website at the following address: www.budget.ny.gov/contract/index.html.

2.5 Submission of a Complete Three-Part Proposal

Proposers must submit hardcopy and electronic versions of their proposals in accordance with the following (A Proposal Checklist is located in Appendix C to assist Proposers in compilation of proposals.):

Hardcopy Submission

1. Technical Proposal, Cost Proposal, and Administrative Proposal must be bound individually, but may be mailed in one package.
2. Clearly mark the original and each copy as “**RFP – INTERNAL CONTROL AUDITING SERVICES Proposal submitted by [Proposer’s name]**”, and indicate if they are **original or copies**.
3. Each Proposer must submit the following hardcopies:
 - Six (6) copies of the *Technical Proposal*
 - Two (2) sets of the *Cost Proposal* with original signature
 - Two (2) sets of the *Administrative Proposal* with original signature
4. Hardcopy proposals should be sent to the following address:

Jason DiGianni
New York State Division of the Budget
State Capitol, Room 129
Albany, NY 12224

A complete package (Technical, Cost, and Administrative Proposals) must be received before **12:00 P.M. ET on Thursday, February 1, 2018**.

Electronic Submission

In addition to hardcopies, Proposers must send an identical, searchable, electronic version of each of the three hardcopy proposals submitted. The email subject line should identify the RFP and be sent to contracts@budget.ny.gov by the deadline outlined above. In case of a discrepancy, the hardcopy proposal shall prevail.

Submission of proposals in a manner other than as described in these instructions will not be accepted. ***Late hardcopy proposals will not be considered for award, even if electronic copies of the proposal arrive before the due date.***

2.6 Proposal Ownership

All proposals and accompanying documentation become the property of the State of New York and will not be returned. The Division reserves the right to use any portions of the Proposer’s proposal not specifically noted as proprietary.

3 Evaluation Process

3.1 General Information

The Division will evaluate each proposal based on the “Best Value” concept. This means that the proposal that “optimizes quality, cost, and efficiency among responsive and responsible Proposers”, shall be selected for award (State Finance Law, Article 11, § 163).

During the evaluation process, the Division may require clarifying information from a Proposer. If specific sections of the written proposal require clarification, the Division will identify the section(s) and information requested in writing. The Proposer should respond by the deadline stated in the correspondence. In addition, the Division may use the proposal, information obtained through any interviews, and the Division's own investigation of a Proposer's qualifications, experience, ability or financial standing, and any other material or information submitted by the Proposer in the course of evaluation and selection under this RFP. The State reserves the right to contact other sources not necessarily identified in the proposal to obtain information.

3.2 Submission Review

The Division's Contracts Office will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in Section 2 of this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of the Division, may be rejected. All proposals passing the submission review will be evaluated.

3.3 Evaluation and Scoring

Technical Evaluation (66.5 Points)

An Evaluation Panel will independently score each Technical Proposal that meets the submission requirements of this RFP. Evaluation Panel members will score Technical Proposals to identify Proposers with the highest probability of satisfactorily providing the services described in Section 1.2 of this RFP. Evaluations will be based on the Proposer's demonstration of its ability to provide the services required through its Technical Proposal. Individual Panel member scores will be averaged to calculate a technical score for each responsive Proposer.

MWBE Diversity Practices (3.5 points)

MWBE Diversity Practices will be evaluated based upon the Proposer's responses to the Questionnaire developed by the New York State Division of Minority and Women's Business Development, and found in Form 6.1. This Questionnaire consists of eight (8) questions for Proposers to answer. Some questions request supporting documentation to support certain answers. Additional scoring information for diversity practices can be found in Form 6.2.

Cost Evaluation (30 Points)

The Division's Contracts Office will examine the Cost Proposal Form 2, and review them for responsiveness to cost requirements. If a Cost Proposal is found to be non-responsive, that proposal will be eliminated from consideration. All complete, responsive proposals will receive a cost score.

Cost proposals will be evaluated on a pre-determined formula using the information provided in Form 2. The maximum score (30 points) will be allocated to the proposal with the lowest cost according to this formula. All other proposals will receive a proportionate score to the proposal with the lowest cost, according to the following formula:

Cost points awarded = (30 potential points) X (Low Bid / Proposer's Bid)

3.4 Finalists and Interviews

An Initial Composite Score for each responsive Proposer will be calculated by adding the Technical Proposal points, Diversity Practices points, and Cost Proposal points. The Finalist Proposers will be the Proposers with the three highest Initial Composite Scores and any Proposers within ten percent of the average Initial Composite Score of the top-three ranked Proposers.

Finalists will be notified of the date, location, and time of their interview. The interview will be designed to allow finalists to demonstrate their ability to provide the required services. The proposed Engagement Partner and Audit Manager, as well as other key personnel who would be responsible for providing the required services, should be present and participate in the interview.

Further information with regard to the format of this stage of the evaluation may be provided to the Proposer prior to the interview. The interview should substantiate the characteristics and attributes claimed by the Proposer in the written response to the RFP. Technical scores may be revised based on the information gained from Finalist interviews. However, the interviews will not be an opportunity to cure material omissions in Proposers' proposals and are not a substitute for a well-written proposal.

In the event that there is only one Finalist Proposer, the Division may choose to forego the interview at its discretion.

3.5 Final Composite Score

The Final Composite score for each responsive Proposer will be calculated by adding the final Technical Proposal points, Diversity Practices points, and Cost Proposal points for each Proposer. The Proposer with the highest final composite score will be identified and selected as the successful Proposer.

4 Award of Contract/Debriefing

4.1 Contract Award

The Division expects to award one contract as a result of this RFP. However, the Division reserves the right to not award a contract, at its sole discretion.

1. Notification of selection/non-selection will be sent to Proposers by email.
2. Contract award is subject to approval of the Office of the Attorney General and the Office of the State Comptroller.

3. Upon contract award, public announcements or news releases pertaining to the contract shall not be made without the prior written consent of the Division.
4. Upon notification of selection, the following administrative forms will be required:
 - State Finance Law Section 163(4) (g) imposes certain reporting requirements on contractors doing business with New York State. Concerning these reporting requirements, the selected Proposer agrees to complete and submit an initial planned employment data report . The selected Proposer also agrees to submit an annual employment report by May 15 of each year of the contract.
 - A Sales Tax Certification is required for review and approval of the contract by the Comptroller's Office.
 - Proof of Workers' Compensation and Disability Insurance as required by Sections 57 and 220 of the New York State Workers' Compensation Law (WCL).

These forms can be reviewed in Appendix C (Sample Contract/Post Award Forms) of the RFP.

5. Compensation/Manner of Payment

Reimbursement of the successful Proposer will be based upon the fees stipulated in the Contract. The Division will compensate the successful Proposer following submission of an approvable invoice according to the contract. Payments to the selected Proposer will only be made for actual hours worked, and will not exceed the proposed hourly rate or the proposed not-to-exceed total cost for the 2018 Audit Year and 2021 Audit Year.

The State of New York is not liable for any costs incurred by a Proposer in the preparation and/or production of any proposal, or for any work performed prior to the execution of a formal contract.

4.2 Debriefings

Unsuccessful Proposers shall be notified upon the Division's selection of a Contractor. Consistent with New York State Finance Law §163, Proposers may, within fifteen (15) calendar days of notification of selection/non-selection, request a debriefing to discuss the evaluation of their proposal.

5 Contractual Requirements

The written contract with the awarded Proposer shall be a State contract that includes the "Standard Clauses for New York State Contracts", attached to this RFP as Appendix A. The entire Agreement shall consist of the documents, appendices and forms listed below. Conflicts between these documents shall be resolved in the following order of precedence:

1. Appendix A: Standard Clauses for NYS Contracts;
2. The Contract, including all exhibits, appendices, forms and attachments;
3. The RFP and any and all modifications and clarifications thereto; and
4. The Contractor's Proposal and any clarifications thereto.

The written contract will be modeled off of the attached sample contract presented in Appendix C. Proposers offer their proposals accepting the terms and conditions of the Sample Contract.

6 Reservation of Rights

The Division reserves the right to:

- Reject any or all proposals received in response to the RFP;
- Withdraw the RFP at any time, at the Division's sole discretion;
- Accept a proposal and any subsequent proposal for the contract from someone other than the lowest cost Proposer consistent with the criteria for the evaluation of proposals;
- Make an award under the RFP in whole or in part;
- Disqualify any Proposer whose conduct and/or proposal fails to conform to the requirements of the RFP;
- Seek clarifications and revisions of proposals;
- Use proposal information obtained through site visits, management interviews and the State's investigation of a Proposer's qualifications, experience, ability or financial standing, and any material or information submitted by the Proposer in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
- Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct Proposers to submit proposal modifications addressing subsequent RFP amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Proposers;
- Waive any requirements that are not material;
- Negotiate with the successful Proposer within the scope of the RFP in the best interests of the State;
- Conduct contract negotiations with the next responsible Proposer, should the Division be unsuccessful in negotiating with the selected Proposer;
- Utilize any and all ideas submitted in the proposals received;
- Request best and final offers; and
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 an Proposer's proposal and/or to determine an Proposer's compliance with the requirements of the solicitation.

- In addition, if it is subsequently determined by the Division that the successful Proposer is non-responsible, the Division may then invite the next highest rated, qualified Proposer to enter into negotiations for purposes of executing a contract.

7 Freedom of Information Law

New York State's Freedom of Information Law (FOIL) (Public Officers Law, Article 6, Sections 84-90), available at: <https://www.dos.ny.gov/coog/foil2.html>, promotes the public's right to know the process of governmental decision-making and grants maximum public access to governmental records. All proposals submitted in response to this RFP may be subject to disclosure under FOIL.

However, pursuant to Section 87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful Proposer's contract which are "trade secrets" or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.

Please note that all information that a Proposer may claim as proprietary, copyrighted or rights-reserved is not necessarily protected from disclosure under FOIL.

If there is information in a Proposer's proposal that a Proposer claims meets the definition set forth in Section 87(2)(d), the Proposer should indicate so on Form 11 and provide a letter in its Administrative Proposal outlining any specific concerns.

Failure to identify the information which a Proposer believes should be protected by Section 87(2)(d) may result in such information being disclosed if a request is received.

It is a Proposer's responsibility to consult an attorney with any questions the Proposer may have about New York State's Freedom of Information Law. All work products described herein may also be subject to FOIL disclosure.

The State will not honor any attempt by a Proposer either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.

The selected Proposer must provide to the Division all information, records, and other written material it produces, possesses, or relies upon if such material is the object of a legitimate request to the Division pursuant to the Freedom of Information Law.

8 Ethics

8.1 Ethics Requirements

The Proposer and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors

(collectively, the "Ethics Requirements"). The Proposer certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under any resulting contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Proposer or its subcontractors and who is disqualified from providing services under any resulting contract pursuant to any Ethics Requirements may share in any net revenues of the Proposer or its subcontractors derived from any resulting contract.. The Proposer shall identify and provide the State with notice of those employees of the Proposer and its subcontractors who are former employees of the State that are proposed to perform services under any resulting contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Proposer provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate any resulting contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

8.2 Vendor Responsibility Determination

The Division will conduct a review of each prospective Proposer's Vendor Responsibility Questionnaire (Form 8) to provide reasonable assurances that the Proposer is responsible.

The Division will make a finding of responsibility or non-responsibility before making a contract award, considering any information that comes to its attention concerning the Vendor's responsibility.

If the Division identifies potentially negative information in its review, the Division will notify the Proposer. If the Division makes a preliminary finding that the Proposer is non-responsible, the Division will detail in writing to the Proposer the reasons(s) for the preliminary determination, and will provide an opportunity for the Proposer to respond before the determination is finalized.

A Proposer awarded a contract is required to update their responsibility determination if a material event occurs requiring an amendment. The awarded Proposer is also required to update vendor responsibility questionnaires as new information becomes available.

The Proposer awarded a contract shall at all times during the contract term remain responsible. During the term of this contract, any changes in the provided Questionnaire shall be disclosed to the Division, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract. Furthermore, the awarded Proposer agrees, if requested by the Division, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

The Division, in its sole discretion, reserves the right to suspend any or all activities under the contract, at any time, when it discovers information that calls into question the responsibility of the awarded Proposer. In the event of such suspension, the awarded Proposer will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the awarded Proposer must comply with the terms of the suspension order. Contract activity may resume at such time as the Division issues a written notice authorizing a resumption of performance under the contract.

Upon written notice to the awarded Proposer, and a reasonable opportunity to be heard by the appropriate Division officials or staff, the contract may be terminated by the Division at the Proposer's expense where the Proposer is determined by the Division to be non-responsible. In such event, the Division may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

The Division reserves the right to terminate a contract for non-responsibility, including failure to disclose information.

This provision shall also apply to any proposed subcontractor performing services under the resulting contract in excess of \$100,000.

8.3 Public Officers Law

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

9 Minority- and Women-Owned Businesses (MWBE)

9.1 MWBE Interest

New York State certified Minority- and Women-Owned Businesses (MWBE) may request that their firm's contact information be included on a list of MWBE firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on the Division's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its certification to contracts@budget.ny.gov. Nothing prohibits an MWBE Vendor from proposing as a prime contractor.

9.2 NYS Executive Law Article 15-A

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, the Division is required to promote

opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of Division contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Division hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15% for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the Proposer agrees that the Division may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Division will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The Proposer understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR§142.13, the Proposer further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract resulting from this RFP, such finding constitutes a breach of Contract and the Division may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplies under the Contract.

By submitting a bid or proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Proposer may arrange to provide such evidence via a non-electronic method by contacting Michael Pawlows at 518-486-4336.

Additionally, a Proposer will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted 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 the Division for review and approval.

The Division will review the submitted MWBE Utilization Plan and advise the Proposer of the Division's acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the New York State Division of the Budget, State Capitol, Room129, Albany, NY 12224, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Division to be inadequate, the Division shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

The Division may disqualify a Proposer as being non-responsive under the following circumstances:

1. If a Proposer fails to submit an MWBE Utilization Plan;
2. If a Proposer fails to submit a written remedy to a notice of deficiency;
3. If a Proposer fails to submit a request for waiver; or
4. If the Division determines that the Proposer has failed to document good faith efforts.

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

The successful Proposer will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to the Division, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Proposer agrees with all of the terms and conditions of the Sample Contract (Appendix B) and of Standard Clauses for All New York State Contracts (Appendix A) including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Proposer is required to ensure that it and any subcontractors awarded a subcontract 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 Proposer, 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, gender identity or expression, 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.

The Proposer will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement. If Proposer, or any of its subcontractors, does not have an existing EEO policy statement, Form 5.4, to the Division with its bid or proposal.

If awarded a Contract, Proposer shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by the Division on a quarterly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

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, gender identity or expression, 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.

10 Service-Disabled Veteran-Owned Business Enterprises (SDVOB)

10.1 SDVOB Interest

Service-Disabled Veteran-Owned-Businesses (SDVOB) may request that their firm's contact information be included on a list of SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on the Division's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information to contracts@budget.ny.gov. Nothing prohibits an SDVOB Vendor from proposing as a prime contractor.

10.2 NYS Executive Law Article 17-B

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York

State's economy. The Division of the Budget recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Division contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Proposers are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

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

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

APPENDICES/FORMS

APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

January 2014

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such

consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (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 Proposer 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 Proposers, subcontractors and suppliers on its procurement contracts.

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business
Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<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. Proposers are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list

of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

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

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

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may

be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Proposers/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: SAMPLE CONTRACT / POST AWARD FORMS

CONTRACT NO. _____

**THE NEW YORK STATE DIVISION OF THE BUDGET
AND**

**_____
FOR INTERNAL CONTROL AUDITING SERVICES
FOR THE PERIOD
APRIL 1, 2018 THROUGH March 31, 2022**

THIS IS AN AGREEMENT (the "AGREEMENT") by and between the NEW YORK STATE DIVISION OF THE BUDGET (hereinafter referred to as the "DIVISION"), and _____ (hereinafter referred to as "_____" or "CONTRACTOR"), with offices located at _____.

WITNESSETH

WHEREAS, the DIVISION works to promote the best use of New York State ("STATE") resources and is responsible for ensuring that fiscal and program priorities are properly carried out and in establishing financial and budgetary policies/programs for the STATE; and

WHEREAS, the DIVISION must comply with the NYS Governmental Accountability, Audit and Internal Control Act, Chapter 510 of the Laws of 1999, to secure an auditor to perform a review of the DIVISION's Internal Controls; and

WHEREAS, to assist the DIVISION, a Request for Proposals ("RFP") for Internal Control Auditing Services was issued on _____, a copy of which is incorporated hereto as, Appendix B; and

WHEREAS, after an evaluation of the proposals submitted for the performance of such work, the DIVISION has determined that _____ is a responsible and qualified firm to perform the Division's Internal Control Auditing Services based upon its Proposal dated _____, a copy of which is incorporated hereto as Appendix C; and

WHEREAS, the CONTRACTOR is willing to serve as a consultant to the DIVISION, as outlined in the RFP and herein;

NOW, THEREFORE, in consideration of the terms and conditions of this AGREEMENT, it is hereby mutually agreed by and between the DIVISION and the CONTRACTOR (each individually a "PARTY" and collectively "PARTIES"), as follows:

I. SERVICES

The DIVISION does hereby engage _____ to provide internal control auditing services consistent with Section 1 of the RFP.

CONTRACTOR shall conduct an audit of the internal controls used by the Division to formulate and execute the budget of New York State for two separate time periods: the 2018-2019 Fiscal Year and the 2021-2022 Fiscal Year. The budget for the 2018-2019 State Fiscal Year is formulated during the period October 1, 2017 to March 31, 2018, and is executed beginning on April 1, 2018. As such, the audit periods will be October 1, 2017 through September 30, 2018, and October 1, 2020 through September 30, 2021. By focusing on the controls used to formulate and execute the budget of a single State fiscal year, it is expected that the audit report will be clear and understandable.

CONTRACTOR shall be responsible for preparing the following:

1. Audit Plan

The CONTRACTOR shall be responsible for developing a preliminary audit plan, detailing how it will proceed with its review of the Division's systems of internal controls. Such audit plan shall be discussed and approved by the Division in advance. The CONTRACTOR shall then provide a final, detailed audit plan to the Division on or about May 7, 2018.

2. Audit Standards

In performing the work contemplated herein, the CONTRACTOR shall follow Generally Accepted Government Audit Standards (GAGAS) and shall conduct this audit in accordance with the most current Statement on Standards for Attestation Engagements (SSAE) as set forth by the American Institute of Certified Public Accountants (AICPA).

3. Documentation

The CONTRACTOR's working papers should contain sufficient written documentation and/or flow charts to document the internal control systems. Upon request, the working papers must be made available to the Division, or its designee. All working papers and reports must be retained for a minimum of six (6) years unless the CONTRACTOR is notified in writing by the Division of the need to extend the retention period.

4. Final Report

In accordance with Section 953 of the Act, the product of the audit will be a special report on the system of administrative and programmatic internal controls in effect during the audit periods of October 1, 2017 through September 30, 2018 and October 1, 2020 through September 30, 2021.

The final report will be issued in accordance with the appropriate and most current auditing standards and shall contain the following:

- a) The introductory paragraph should reference the Scope and Objectives defined for the review.
- b) The scope paragraph should contain a statement indicating that the internal controls were reviewed in accordance with standards established by the American Institute of Certified Public Accountants (AICPA) and the Generally Accepted Government Audit Standards (GAGAS). The CONTRACTOR's procedures for identifying the types of errors and irregularities that may occur, determining the internal control procedures that should prevent or detect such errors and irregularities, determining whether the necessary procedures are prescribed and followed, and evaluating any significant weaknesses should be referenced in the scope paragraph. The CONTRACTOR must state either that all significant internal controls related to the Scope and Objectives were reviewed or that all such controls were reviewed except for those described. It is anticipated that all significant internal controls related to the control objectives will be reviewed.
- c) The third paragraph should state that, because of inherent limitations of any internal controls over financial reporting, errors or irregularities may occur and not be detected. In addition, the paragraph should state that projections of any evaluation of the internal control structure to future periods are subject to the risk that the internal control structure may become inadequate because of changes in conditions, or because the degree of compliance with the policies or procedures may deteriorate.
- d) The fourth paragraph should state a conclusion as to whether management's assertion about the effectiveness of the entity's internal controls over financial reporting as of the specified date is fairly stated, in all material respects, based on the control criteria.

The body of the report should include the following:

- a) An identification of the significant internal controls determined to be relevant for the Division to achieve its objectives effectively, noting by categories those reviewed and listing any essential controls not reviewed, along with the reasons for not reviewing those controls.
- b) A statement whether the internal controls that have been determined to be relevant to the operations of the Division are established and functioning in a manner that provides reasonable assurance that the objectives of the internal controls are accomplished and that the study and evaluation performed included considering the types of errors and irregularities that could occur, determining the internal control procedures that should prevent or detect such errors and irregularities, determining whether the necessary procedures are prescribed and are being followed satisfactorily, and evaluating any significant or material weaknesses.
- c) A statement assuring that no material matters (other than those disclosed in the report, if any) have become known which would cause the belief that the internal controls that have been determined to be relevant to the operations of the Division fail to comply with or meet the objectives of internal control. (If no material matters are disclosed in the report, this statement is not to be included.)
- d) The report shall identify any significant deficiencies or material weaknesses in the system of internal controls that would cause it to fail to achieve any of the Division's internal control objectives.
- e) A description of any significant deficiencies or material weaknesses identified and the CONTRACTOR's recommendations for corrective action. The description of such weaknesses should follow this specific format for reporting a finding:
 - 1) A statement of condition (i.e., what is)
 - 2) The criteria (i.e., what should be)
 - 3) The effect, the cause (if known)
 - 4) The recommendation for corrective action
- f) Any finding should contain sufficient information for Division officials to initiate timely corrective action. Findings of limited significance should be included in the report under a caption identifying them as such. All findings should be grouped by applicable Division unit. Non-significant or immaterial findings should be excluded from the report and may, if deemed appropriate, be identified in a separate management letter or orally.

The report should be addressed to the Director of the Division. Pursuant to the Act, the Director will make available the results of such audit to the public. The final report and five (5) copies should be delivered to Mark Massaroni, Internal Control Officer, Division of the Budget, State Capitol Rm. 129, Albany, New York, 12224. In addition, the final report should be provided in PDF format.

II. TIMELINE

During the 2018 Audit Pperiod, the CONTRACTOR and the DIVISION will agree upon dates for the following activities and deliverables:

1. Interim work completed and a preliminary detailed audit plan submitted (anticipated on or about 4/27/18)
2. Final detailed audit plan (on or about 5/7/18)
3. Field work for all internal control areas completed (anticipated field work between 5/7/18-9/30/18)
4. Draft report submitted to the Division (anticipated on or about 11/16/18)
5. Final report delivered to the Director of the Budget (anticipated on or about 12/15/18)

During the 2021 Audit Period, a similar schedule will be followed which will be agreed upon by the CONTRACTOR and the DIVISION.

CONTRACTOR agrees to perform and furnish the services required in connection herewith in accordance with all conditions, covenants and representations contained in this AGREEMENT.

III. TERM

_____ agrees to perform the aforesaid services for a four-year period beginning April 1, 2018 and ending March 31, 2022.

IV. COMPENSATION

- A. The DIVISION shall compensate the CONTRACTOR a sum not-to-exceed an all-inclusive price of _____ for the 2018 Audit Year, and a sum not-to-exceed an all-inclusive price of _____ for the 2021 Audit Year

Compensation for the project will be in accordance with the following table:

Title	Audit Year 2018 Hourly Rate	Audit Year 2021 Hourly Rate
Engagement Partner		
Audit Manager		
Senior Auditor		
Auditor		
Internal Control Audit Year Not-to-Exceed Total		

The above rates shall apply to all hourly compensation paid under this AGREEMENT. The hourly rates are inclusive of personnel, travel, postage, reproduction and all other expenses related to the audit period.

- B. Payment under this AGREEMENT shall not exceed _____ for the 2018 Audit Year, and _____ for the 2021 Audit Year.
- C. CONTRACTOR will only be compensated for services that are performed in accordance with the services described in Section I of this AGREEMENT.
- D. Upon DIVISION receipt of the final deliverable, the CONTRACTOR shall submit an invoice identifying the deliverable and supporting breakdown of cost including staff member name, contract title, contract hourly rate, hours worked, and calculated total cost. Payments will only be made for actual hours worked and shall not exceed the proposed total cost for the 2018 Audit Year and 2021 Audit Year.
- E. The CONTRACTOR acknowledges that it will not receive payment on any invoices submitted under this AGREEMENT unless or until it complies with the State Comptroller's electronic payment procedures.
- F. Fees shall become payable by the STATE upon receipt of an invoice in accordance with this section. Properly invoiced fees not paid within 30 days of receipt of the invoice and services will be paid with interest in accordance with Article 11-A of New York State Finance Law. Any and all such invoices shall contain a detailed itemization of requested compensation which shall, at the minimum include:
1. The number assigned to this AGREEMENT (_____), the CONTRACTOR's New York State Vendor Identification Number and an invoice number;
 2. Name(s) and title(s) (as identified in this section) of the CONTRACTOR staff providing services;
 3. Name(s) of DIVISION employees, or their designee(s), requesting the services and directly involved;
 4. Specific identification of the services provided;
 5. Amounts for rates, hours and total compensation; and

6. Dates upon which the services were requested and performed.

All invoices should be submitted electronically to the DIVISION at contracts@budget.ny.gov.

G. The CONTRACTOR shall not be reimbursed for the preparation of invoices or billing statements or for the time spent correcting any error in previously submitted invoices or billing statements.

V. RELATIONSHIP OF PARTIES

The relationship of the CONTRACTOR to the DIVISION shall be that of an independent contractor. In accordance with such status as an independent contractor, the CONTRACTOR covenants and agrees to act consistent with such status: to neither hold itself out as, nor claim to be, an officer or employee of the DIVISION or the STATE by reason hereof; and not to, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DIVISION or the STATE, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership credit.

VI. STAFF

A. The CONTRACTOR shall assign _____ as the Engagement Partner, _____ as the Audit Manager, and the other personnel referenced in its proposal, but is not limited in its utilization of other personnel for its duties hereunder, subject to the approval of the DIVISION.

B. CONTRACTOR staff assigned to work on this project shall be subject to approval by the DIVISION. It is highly desirable that staff assigned to work on a project continue to work on the project until completion. The DIVISION reserves the right to require security clearance and criminal history checks of the CONTRACTOR and/or staff.

C. The CONTRACTOR specifically represents and agrees that its members, officers, employees, agents, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder. All employees of the CONTRACTOR, or of its subcontractors, who shall perform the services under this AGREEMENT, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform services under this

AGREEMENT on behalf of CONTRACTOR shall, in performing the services, comply with all applicable Federal and STATE laws concerning employment in the United States.

- D. This AGREEMENT is intended to secure the professional services of the CONTRACTOR because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the CONTRACTOR.
- E. The CONTRACTOR shall be fully responsible for performance of work by and conduct of its staff and subcontractor's staff. The DIVISION reserves the right to request removal of any CONTRACTOR staff or subcontractor staff if, in the DIVISION's sole discretion, such staff is not performing in accordance with the AGREEMENT.
- F. The CONTRACTOR shall notify the DIVISION immediately of any proposed changes in staff. The DIVISION has an absolute right and discretion to approve or disapprove any proposed changes in staff. The DIVISION, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld. The replacement staff must have the skills, experience and expertise that is comparable to or better than that of the person they will replace, and will be provided at the same or lower hourly rate.
- G. The CONTRACTOR and its staff must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other STATE codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with the STATE. Failure to comply with these requirements may result in termination of the AGREEMENT and/or other civil or criminal proceedings as required by law.

VII. SUBCONTRACTING

The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the DIVISION. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subcontractors, subject to approval of the DIVISION. If the CONTRACTOR determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to the DIVISION. The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts dated January 2014, and Appendix B – Request for Proposals dated January 10, 2018. Unless waived in writing by the DIVISION, all subcontracts between the CONTRACTOR and subcontractors shall expressly name the STATE, through the DIVISION, as the sole intended third party beneficiary of such subcontract. The DIVISION reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the DIVISION or the STATE a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the DIVISION.

The DIVISION reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONTRACTOR and subcontractors is in compliance with all of the provisions of this Section VI and any subcontract provisions contained in this AGREEMENT.

The CONTRACTOR shall give the DIVISION immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the CONTRACTOR's duties under the AGREEMENT. Any subcontract shall not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of the AGREEMENT.

VIII. RESERVATIONS

The DIVISION reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. In that event, the CONTRACTOR will, as directed by the DIVISION, cooperate and work in harmony with such consultants and contractors.

IX. DIVISION REPRESENTATIVES

- A. The DIVISION, with the commencement of this AGREEMENT, designates as its representative, Mark Massaroni and Karen Orcutt, or their designee(s).
- B. Such representatives shall request, oversee, supervise and accept performance of services performed by the CONTRACTOR and shall receive any required submissions. Whenever an agreement action is to be taken or approval for services given by the DIVISION such action or approval may be given only by such representative(s) designated pursuant to this Section.

- C. All Notices under this AGREEMENT shall be directed to the representatives identified in this Section, or their designee(s).
- D. The DIVISION may on written notice designate other individuals as its representatives.

X. CONFLICTS OF INTEREST

- A. The CONTRACTOR has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other contract currently in force with the STATE, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.
- B. The CONTRACTOR hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONTRACTOR's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the DIVISION immediately of any such actual or potential conflicts of interest.
- C. In conjunction with any subcontract under this AGREEMENT, the CONTRACTOR shall obtain and deliver to the DIVISION, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The CONTRACTOR shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the DIVISION a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.
- D. The DIVISION and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The DIVISION will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the DIVISION, a real or potential conflict of interest cannot be cured.

XI. PUBLIC OFFICERS LAW

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York

Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a “lifetime bar” from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

XII. ETHICS REQUIREMENTS

The CONTRACTOR and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). The CONTRACTOR certifies that all of its employees and those of its subcontractors who are former employees of the STATE and who are assigned to perform services under this AGREEMENT shall be assigned in accordance with all Ethics Requirements. During the term, no person who is employed by the CONTRACTOR or its subcontractors and who is disqualified from providing services under this AGREEMENT pursuant to any Ethics Requirements may share in any net revenues of the CONTRACTOR or its subcontractors derived from this AGREEMENT. The CONTRACTOR shall identify and provide the STATE with notice of those employees of the CONTRACTOR and its subcontractors who are former employees of the STATE that will be assigned to perform services under this AGREEMENT, and make sure that such employees comply with all applicable laws and prohibitions. The STATE may request that the CONTRACTOR provide it with whatever information the STATE deems appropriate about each such person’s engagement, work cooperatively with the STATE to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the STATE, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The STATE shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The STATE shall have the right to terminate this AGREEMENT at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

XIII. WARRANTIES

The CONTRACTOR warrants that it will perform services in good faith and in a professional manner and that the services will conform in all material respects to the

description of such services set forth herein. The warranties expressly set forth in this AGREEMENT are in lieu of all other warranties, expressed or implied including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

The CONTRACTOR warrants that its services shall be performed in accordance with applicable professional standards and that the CONTRACTOR shall correct, at no charge to the DIVISION or the STATE, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

XIV. PERFORMANCE MONITORING

The CONTRACTOR's performance will be assessed by the DIVISION according to the achievement of CONTRACTOR's contractual obligations in a timely and professional manner, as set forth herein. The DIVISION will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

XV. INDEMNIFICATION AND LIABILITY

- A. The CONTRACTOR shall be fully liable without monetary limitation for any act or omission of the CONTRACTOR, its employees, subcontractors and agents, and shall fully indemnify and hold harmless the STATE from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or tangible personal property or intellectual property caused by fault or negligence of CONTRACTOR, its employees, subcontractors or agents arising from the CONTRACTOR's performance of the AGREEMENT, provided, however, that the CONTRACTOR shall not be obligated to indemnify the STATE for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act by the STATE or the acts of third parties, other than those provided by the CONTRACTOR to perform under the AGREEMENT. In connection with the foregoing, the STATE shall give the CONTRACTOR: (i) prompt written notice of any action, claim or threat of suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at the CONTRACTOR's sole expense, and (iii) assistance in the defense of any such action at the expense of the CONTRACTOR.
- B. Notwithstanding the above, the CONTRACTOR and the DIVISION/STATE shall not be liable for any consequential, indirect or special damages of any kind which may result from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the DIVISION/STATE, the CONTRACTOR, or by others. CONTRACTOR shall not be liable for any missed or lost revenue associated with, or related to, the services provided pursuant to this contract.

XVI. REPORTS AND FINDINGS

Any and all reports and findings rendered to the DIVISION by the CONTRACTOR shall be the exclusive property of the DIVISION and subject to its exclusive use and control. The CONTRACTOR hereby waives any and all rights to such reports and findings and the control thereof.

XVII. OWNERSHIP

CONTRACTOR will retain all rights, title and interest in and to all materials developed by it prior to the effective date of this AGREEMENT and/or developed outside of CONTRACTOR's obligations hereunder.

XVIII. CONFIDENTIALITY

- A. CONTRACTOR agrees that it will not use confidential or proprietary information disclosed to CONTRACTOR in connection with the services ("Confidential Information") for any purpose other than in connection with the services. The CONTRACTOR is fully responsible for its staff, its subcontractor(s) and any subcontractor's staff with regard to Confidential Information.
- B. Information which falls into any of the following categories shall not be considered Confidential Information:
 - 1. information that is previously rightfully known to the CONTRACTOR without restriction on disclosure;
 - 2. information that becomes, from no breach of this AGREEMENT on the part of the CONTRACTOR, generally known in the relevant industry, or is otherwise publicly available; and
 - 3. information that is independently developed by CONTRACTOR without use of the confidential information.
- C. Except as specifically permitted in this AGREEMENT, CONTRACTOR shall not, at any time, in any fashion, form or manner, divulge, disclose, communicate or use, any Confidential Information other than in connection with the services or as otherwise provided herein.
- D. CONTRACTOR may disclose Confidential Information if such information is required to be disclosed by CONTRACTOR by any law, rule, regulation, judicial or administrative process or applicable professional standards, provided that, to the extent permitted by applicable law or regulation, the CONTRACTOR notifies the DIVISION prior to any such required disclosure.

- E. CONTRACTOR agrees not to issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding the services without the express advance written approval of DIVISION.
- F. CONTRACTOR agrees that, as between the PARTIES, all Confidential Information in its possession is at all times the sole property of the STATE.
- G. Notwithstanding anything herein to the contrary, CONTRACTOR shall have the right to retain one copy of the Confidential Information and any summaries, analyses, notes or extracts prepared by CONTRACTOR which are based on or contain portions of the Confidential Information evidencing its services for the STATE as required by law, regulation, professional standards or reasonable business practice.
- H. CONTRACTOR shall retain all Confidential Information in confidence, exercising the same standard of care used by CONTRACTOR to protect its own confidential and proprietary information, to prevent the disclosure of Confidential Information to any third party. CONTRACTOR shall not use Confidential Information for any purpose other than in furtherance of its professional services for the DIVISION.
- I. CONTRACTOR understands that if it breaches, or threatens to breach this AGREEMENT, the DIVISION shall have the right to seek all equitable and legal rights (including the right to seek injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable legal fees) for losses or damages resulting from such breach. CONTRACTOR acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the confidential or proprietary information identified in this AGREEMENT.

XIX. RECORDS ACCESS

DIVISION staff, others authorized by the DIVISION such as representatives of the Federal government, or other STATE agencies authorized by STATE law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the CONTRACTOR, including any and all subcontractors, involved in transactions relating to this AGREEMENT during the contract period and for a period of six years after final payment for said services.

XX. WORK PAPER RETENTION AND AVAILABILITY

- A. The work papers to be prepared by the CONTRACTOR during the AGREEMENT will be retained by the CONTRACTOR although copies thereof and access to them will be made available, upon request, to the DIVISION, representatives of the Federal

government and STATE agencies when authorized by the DIVISION, and other STATE agencies authorized by existing law, for a period of six (6) years following the date of the final payment under the contract. All such requests, and their disposition, shall be authorized by the DIVISION.

- B. The CONTRACTOR agrees to make personnel available to explain fully all data, materials, and work papers developed during the engagement for a period of six (6) years following the date of the final payment under the AGREEMENT.

XXI. DISPUTES AND DISSATISFACTION/CONFLICT RESOLUTION

- A. In the event the DIVISION is dissatisfied with the CONTRACTOR's performance of the services provided under the AGREEMENT, including but not limited to a breach of the AGREEMENT on the part of the CONTRACTOR, the DIVISION shall notify the CONTRACTOR of the dispute in writing. In the event the CONTRACTOR has any disputes with the DIVISION, the CONTRACTOR shall notify the DIVISION in writing. Such notification in both cases shall hereinafter be referred to as "Notice of Conflict", or in the case of contract breach, "Notice of Default".
- B. If either the DIVISION or the CONTRACTOR notifies the other of such dispute or dissatisfaction, the PARTY receiving the notification shall then make good faith efforts to amicably resolve the problem or settle the dispute, including meeting with the notifying PARTY's representatives to diligently attempt to reach a mutually satisfactory result.
- C. In the event of a dispute, both PARTIES will continue to fulfill their performance obligations under the AGREEMENT.
- D. Nothing shall limit either PARTY's ability to pursue all legal remedies. If the PARTIES are unable to amicably resolve the dispute after the steps described above, then either PARTY may seek legal or equitable relief in a court of competent jurisdiction in the State of New York.

XXII. TERMINATION

- A. The DIVISION reserves the right to terminate the services of the CONTRACTOR, in whole or in part, upon thirty (30) days written notice for any reason, or immediately for cause. Upon notice of termination, the CONTRACTOR shall stop work immediately and complete only those specific assignments, if any, subsequently approved by the DIVISION. In the event of termination other than for cause, the CONTRACTOR shall be entitled to compensation for services performed through the date of termination that are accepted by the DIVISION, and for any subsequent services that are accepted

by the DIVISION, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the DIVISION. The CONTRACTOR agrees to cooperate to the fullest respect with any successor consultants and contractors.

- B. After receipt of the notice of termination, the CONTRACTOR shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice.
- C. The CONTRACTOR shall submit its termination claim to the DIVISION promptly after receipt of a notice of termination, but in no event later than 30 days from the effective date thereof, unless one or more extensions in writing are granted by the DIVISION upon written request of the CONTRACTOR within such 30-day period or authorized extension thereof. Upon failure of the CONTRACTOR to submit a termination claim within the time allowed, the DIVISION may determine, on the basis of available information, the amount, if any, due to the CONTRACTOR by reason of termination, and shall thereupon pay to the CONTRACTOR the amount so determined.
- D. If the termination for cause results from unsatisfactory performance by the CONTRACTOR, the value of the work performed by the CONTRACTOR prior to termination shall be established by the DIVISION.
- E. The CONTRACTOR agrees to transfer title to the DIVISION, and to deliver in the manner, at the time, and to the extent, if any, directed by the DIVISION, such information and work products for which the CONTRACTOR produced and received compensation by the DIVISION.
- F. In addition, non-compliance with the procurement laws as noted in Section XXIV of this AGREEMENT will lead to contract termination.

XXIII. FORCE MAJEURE

Neither PARTY will be liable for losses, defaults, or damages under this AGREEMENT which result from delays in performing, or an inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this AGREEMENT, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire or any other cause beyond the reasonable control of the PARTY that was so delayed 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.

XXIV. COMPLIANCE WITH PROCUREMENT LAWS

- A. By execution of this AGREEMENT, the CONTRACTOR certifies that information provided to the STATE with respect to the Vendor Responsibility Questionnaire, Procurement Lobbying Certifications, Contractor Disclosure Form A and Section 5-a of the Tax Law (Forms ST-220-TD and ST-220-CA) is complete, true and accurate.
- B. The CONTRACTOR hereby acknowledges that the Vendor Responsibility Questionnaire and certification are made part of its proposal and thereby this AGREEMENT and that any misrepresentation of fact in the Questionnaire and attachments, or in any CONTRACTOR responsibility information that may be requested by the DIVISION, may result in termination of this AGREEMENT.

The CONTRACTOR shall at all times during the contract term remain responsible. During the term of this AGREEMENT, any changes in the provided Questionnaire shall be disclosed to the DIVISION, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of this AGREEMENT. Furthermore, the CONTRACTOR agrees, if requested by the DIVISION, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

The DIVISION, in its sole discretion, reserves the right to suspend any or all activities under this AGREEMENT, at any time, when it discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. Contract activity may resume at such time as the DIVISION issues a written notice authorizing a resumption of performance under this AGREEMENT.

Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard by the appropriate DIVISION officials or staff, this AGREEMENT may be terminated by the DIVISION at the CONTRACTOR's expense where the CONTRACTOR is determined by the DIVISION to be non-responsible. In such event, the DIVISION may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

- C. CONTRACTOR hereby acknowledges that State Finance Law Section 163(4)(g) imposes certain reporting requirements on the contractor doing business with the STATE. In furtherance of these reporting requirements, the CONTRACTOR agrees to complete and submit an initial planned employment data report and an annual employment report (Forms A and B respectively). Complete instructions and forms may also be accessed at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm>.

XXV. REQUIREMENTS AND PROCEDURES FOR M/WBE PARTICIPATION

A. General Provisions

1. The DIVISION is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all STATE contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
2. The CONTRACTOR agrees, in addition to any other nondiscrimination provision of the AGREEMENT and at no additional cost to the DIVISION, to fully comply and cooperate with the DIVISION in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBE”). The CONTRACTOR’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
3. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section XXV.G of this AGREEMENT and such other remedies are available to the DIVISION pursuant to this AGREEMENT and applicable law.

B. Contract Goals

1. For purposes of this AGREEMENT, the Division hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15% for New York State-certified

Women-owned Business Enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

2. For purposes of providing meaningful participation by MWBEs in this AGREEMENT and achieving the MWBE Contract Goals, the CONTRACTOR should reference the directory of New York State certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the CONTRACTOR is encouraged to contact the Division of Minority and Women Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on this AGREEMENT.

3. The CONTRACTOR understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.
4. The CONTRACTOR must document “good faith efforts”, to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the AGREEMENT. Such documentation shall include, but not necessarily be limited to:
 - a. Evidence of outreach to MWBEs;
 - b. Any responses by MWBEs to the CONTRACTOR’s outreach;
 - c. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - d. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the DIVISION with MWBEs; and,
 - e. Information describing specific steps undertaken by the CONTRACTOR to reasonably structure the contract scope of work to maximize opportunities for MWBE participation.

C. Equal Employment Opportunity (EEO)

1. The CONTRACTOR agrees to be bound by the provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the AGREEMENT.
2. In performing the AGREEMENT, the CONTRACTOR shall:

- a. Ensure that each CONTRACTOR and each subcontractor performing work on this AGREEMENT shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- b. The CONTRACTOR shall submit an EEO policy statement to the DIVISION within seventy-two (72) hours after the date of the notice by the DIVISION to award the AGREEMENT to the CONTRACTOR.
- c. If the CONTRACTOR, or any of its subcontractors, does not have an existing EEO policy statement, the DIVISION may require the CONTRACTOR or subcontractor to adopt a model statement (see Form 5.4 Equal Employment Opportunity Policy Statement).
- d. The CONTRACTOR's EEO policy statement shall include the following language:
 - 1) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - 2) The CONTRACTOR shall state in all solicitations or advertisements for employees that, in the performance of the AGREEMENT, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - 3) The CONTRACTOR shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the CONTRACTOR's obligations herein.

- 4) The CONTRACTOR will include the provisions of subsections (1) through (3) of this Subsection d and Paragraph "5" of this Section XXV.C, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the AGREEMENT.

3. Staffing Plan

To ensure compliance with this section, the CONTRACTOR shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The CONTRACTOR shall complete the staffing plan form and submit it within a reasonable time, as directed by the DIVISION.

4. Workforce Employment Utilization Report ("Workforce Report")

- a. The CONTRACTOR shall submit a Workforce Report, and shall require each of its subcontractors to submit a Workforce Report, in such form as shall be required by the DIVISION on a QUARTERLY basis during the term of the AGREEMENT.
 - b. Separate forms shall be completed by the CONTRACTOR and any subcontractors.
 - c. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
5. The CONTRACTOR shall comply with the provisions of the Human Rights Law, and all other STATE and Federal statutory and constitutional non-discrimination provisions. The CONTRACTOR and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

D. MWBE Utilization Plan

1. The CONTRACTOR represents and warrants that the CONTRACTOR has submitted an MWBE Utilization Plan, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the CONTRACTOR may arrange to provide such evidence via a non-electronic method to the DIVISION, either prior to, or at the time of, the execution of the AGREEMENT.
2. The CONTRACTOR agrees to use such MWBE Utilization Plan for the performance of MWBEs on this AGREEMENT pursuant to the prescribed MWBE goals set forth in Section XXV.B.1.
3. The CONTRACTOR further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of this AGREEMENT. Upon the occurrence of such a material breach, the DIVISION shall be entitled to any remedy provided herein, including but not limited to, a finding that the CONTRACTOR is non-responsive.

E. Waivers

1. For waiver requests, the CONTRACTOR should use the NYSCS, provided, however, that CONTRACTOR may arrange to provide such evidence via a non-electronic method to the DIVISION.
2. If the CONTRACTOR, after making good faith efforts, is unable to comply with MWBE goals, the CONTRACTOR may submit a Request for Waiver documenting good faith efforts by the CONTRACTOR to meet such goals. If the documentation included with the waiver request is complete, the DIVISION shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
3. If the DIVISION, upon review of the MWBE Utilization Plan and updated QUARTERLY MWBE Contractor Compliance Reports determines that the CONTRACTOR is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the DIVISION may issue a notice of deficiency to the CONTRACTOR. The CONTRACTOR must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

F. Quarterly MWBE Contractor Compliance Report

The CONTRACTOR is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the CONTRACTOR may arrange to provide such report via a non-electronic method to the DIVISION by the 10th day following the end of each quarter during the term of this AGREEMENT documenting the progress made towards achievement of the MWBE goals of this AGREEMENT.

G. Liquidated Damages - MWBE Participation

1. Where the DIVISION determines that the CONTRACTOR is not in compliance with the requirements of this AGREEMENT and the CONTRACTOR refuses to comply with such requirements, or if the CONTRACTOR is found to have willfully and intentionally failed to comply with the MWBE participation goals, the CONTRACTOR shall be obligated to pay to the DIVISION liquidated damages.
2. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - a. All sums identified for payment to MWBEs had the CONTRACTOR achieved the contractual MWBE goals; and
 - b. All sums actually paid to MWBEs for work performed or materials supplied under the AGREEMENT.
3. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the DIVISION, the CONTRACTOR shall pay such liquidated damages to the DIVISION within sixty (60) days after they are assessed. Provided, however, that if the CONTRACTOR has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the CONTRACTOR following the complaint process.

XXVI. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

A. General Provisions

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. The DIVISION recognizes the need to promote the employment of

service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of DIVISION contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, CONTRACTORS are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the AGREEMENT. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this AGREEMENT, the DIVISION conducted a comprehensive search and determined that the AGREEMENT does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to the CONTRACTOR. Nevertheless, CONTRACTOR is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the AGREEMENT for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://online.ogs.ny.gov/SDVOB/search> CONTRACTOR is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the AGREEMENT.

XXVII. WAIVER, MODIFICATION, EXECUTION, OR SEVERABILITY

No waiver or modification of the AGREEMENT or any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the PARTIES hereto, and no evidence of any waiver or modification shall be offered or received in evidence in any action between the PARTIES hereto arising out of or affecting the AGREEMENT, or the rights or obligations of any PARTY hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the PARTIES further agree that the provisions of the paragraph may not be waived except as herein set forth.

In the event that any provision of the AGREEMENT shall be declared void, voidable, illegal or invalid for any reason, such provision shall be of no force and effect only to the extent that it is so declared void, voidable, illegal or invalid. All of the provisions of the AGREEMENT not specifically found to be so deficient shall remain in full force and effect.

XXVIII. CONDITIONS PRECEDENT

This AGREEMENT and any subsequent amendments to this AGREEMENT shall not be deemed executed, valid or binding unless and until approved in writing by the Offices of the Attorney General and State Comptroller.

XXIX. USE BY OTHER STATE AGENCIES, PUBLIC AUTHORITIES OR ENTITIES

The DIVISION shall have the option to extend the terms and conditions related to the scope of services covered by this AGREEMENT to any other STATE agency, public authority or entities in New York.

XXX. ADDITIONAL SERVICES

The DIVISION may, at any time, by written notice, request changes or additions to work or services within the general scope of this AGREEMENT (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of this AGREEMENT, an equitable adjustment shall be agreed upon by the PARTIES and made in the price using the billing rates set forth in the AGREEMENT, and the CONTRACTOR shall be notified in writing accordingly. A change to the scope of the AGREEMENT would be subject to the approval of the Office of the State Comptroller and Office of the Attorney General.

XXXI. ENTIRE AGREEMENT

This AGREEMENT and the Appendices identified in this section ("Appendices") constitute the entire AGREEMENT between the PARTIES hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This AGREEMENT shall not be changed, modified or altered in any manner except by an instrument in writing executed by the PARTIES hereto. The Appendices are hereby made a part of this AGREEMENT as if fully set forth at length herein. In the event of any discrepancy, disagreement or ambiguity among the following documents, they shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

- A. Appendix A – Standard Clauses for New York State Contracts dated January 2014;
- B. This AGREEMENT as it appears prior to the signature page incorporated herein;
- C. Appendix B – Request for Proposals dated January 10, 2018 including any amendments thereto;

D. Appendix C – CONTRACTOR’s Proposal in response to the RFP and any clarifications thereto.

XXXII. EXECUTORY CLAUSE

This AGREEMENT shall be deemed executory only to the extent of moneys annually appropriated and available for this purpose, and no liability on account thereof shall be incurred by the DIVISION beyond the amount appropriated. It is understood that neither this assignment nor any representation by any public employee or officer creates any legal or moral obligation to request to appropriate, or make available, moneys for the purpose of the AGREEMENT.

C _____

IN WITNESS WHEREOF, each of the PARTIES hereto has caused this AGREEMENT to be executed by its duly authorized officers on the day and year stated below.

Agency Certification

In addition to the acceptance of this AGREEMENT, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Approved by:

By: _____
Name: _____
Title: _____
Date: _____

**NEW YORK STATE
DIVISION OF THE BUDGET**

By: _____
Name: _____
Title: _____
Date: _____

**Attorney General:
ERIC T. SCHNEIDERMAN**

By: _____
Date: _____

**State Comptroller:
THOMAS P. DINAPOLI**

By: _____
Date: _____

POST AWARD FORMS:

CONTRACTOR DISCLOSURE FORMS SALES TAX CERTIFICATION INSTRUCTIONS COMPLIANCE WITH NYS WORKERS' COMPENSATION LAW

CONTRACTOR DISCLOSURE FORMS

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), Division of the Budget and the Department of Civil Service (CS).

To meet these new requirements, the selected Proposer agrees to complete:

Form A – Contractor's Planned Employment Form. The successful Contractor must complete this form upon notification of **selection by the Division**.

Form B – Contractor's Annual Employment Report. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the Division. For each covered consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such contract was in effect during such prior State fiscal year Contractor reports the:

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

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

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

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

Office of the State Comptroller
Bureau of Contracts
110 State St., 11th Floor
Albany, New York
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the

event individual employee names or social security numbers are set forth on a document, the State agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information regarding the Contractor Consultant Law requirements and report Forms A and B is available in the Office of the State Comptroller's Guide to Finance Operations, Chapter XI, Section 18.C: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp>.

SALES TAX CERTIFICATION INSTRUCTIONS

The Tax Law was amended to require contractors with State agencies to certify to the Department of Taxation and Finance (DTF) that they, their affiliates, their subcontractors and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. Tax Law Section 5-a applies to all contracts in excess of **\$100,000** for the purchase by a covered agency of commodities or services, awarded pursuant to Article XI of the State Finance Law.

The successful Contractor must complete Contractor Certification Form ST-220-CA upon notification of selection by the Division. This certification to the procuring agency, also made under penalty of perjury, states that the requisite (ST-220-TD) certification has been made to DTF and, to the best of the Contractor's knowledge, that the requisite (ST-220-TD) certification is correct and complete.

If Contractor has any questions regarding either forms, ST-220-CA or ST-220-TD, the New York State Comptroller's Guide to Financial Operations will provide background information and the forms (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/#XI/18/D.htm?Highlight=st-220>).

Contractors can refer to the Department of Taxation and Finance website, or the NYS Tax Law, Section 5-a, *Contractor Affiliate, Subcontractor, and Subcontractor Affiliate Sales and Compensating Use Tax Registration* for additional information and guidance.

COMPLIANCE WITH NYS WORKERS' COMPENSATION LAW

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Division of the Budget shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the Division, successful Proposers will be required to verify, on forms authorized by the New York State Workers' Compensation Board, that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms used to demonstrate compliance with the WCL are indicated below.

Please Note: *The insurance provider of the successful contractor must submit this insurance verification information upon notification of selection by the Division. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to comply with the requirements of this appendix will be grounds for disqualification of an otherwise successful bid.*

Workers' Compensation Requirements under WCL § 57:

To comply with coverage provisions of the WCL, Contractor must:

- 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 employee or participate in an authorized group self-insurance plan.

To verify compliance with the above, the DIVISION must receive one of the following properly executed Workers' Compensation Board forms from the Contractor, the Contractor's insurance carrier or the Workers' Compensation Board, depending on which form is appropriate:

- 1) CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage. This form is completed electronically on the Board's website and printed out, http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp; OR
- 2) C-105.2 – Certificate of Workers' Compensation Insurance. The Contractor's insurance carrier sends this form to the DIVISION. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
- 3) SI-12 – Certificate of Workers' Compensation Self-Insurance. The Contractor contacts the Board's Self-Insurance Office at 518-402-0247 to obtain this form; OR
- 4) GSI-105.2 – Certificate of Participation in Worker's Compensation Group Self-Insurance. Contractor's Group Self-Insurance Administrator sends this form to the DIVISION.

Disability Benefits Requirements under WCL § 220(8):

To comply with the coverage provisions of the WCL regarding disability benefits, Contractor may:

- A) Be legally exempt from obtaining disability benefits insurance coverage; OR
- B) Obtain such coverage from insurance carriers; OR
- C) Be a Board-approved self-insured employer.

To verify compliance with the above, the DIVISION must receive one of the following properly executed Workers' Compensation Board forms from the Contractor, the Contractor's insurance carrier or the Workers' Compensation Board, depending on which form is appropriate:

- 1) CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage. This form is completed electronically on the Board's website and printed out, http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp; **OR**
- 2) DB-120.1 – Certificate of Disability Benefits Insurance. The business's insurance carrier sends this form to the DIVISION; **OR**
- 3) DB-155 – Certificate of Disability Benefits Self-Insurance. The Contractor contacts the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

APPENDIX C: PROPOSAL CHECKLIST
Internal Control Auditing Services RFP

Proposer Name	Date
---------------	------

Technical Proposal (6 hardcopies and 1 electronic version)

- | | | |
|---|-----------|----------|
| 1. Did the Proposer provide 6 hardcopies and 1 electronic version of the Technical Proposal? | Yes _____ | No _____ |
| 2. Does the proposal contain all components of the Technical Proposal, as stated below? | Yes _____ | No _____ |
| A. Table of Contents | Yes _____ | No _____ |
| B. Executive Summary | Yes _____ | No _____ |
| C. Project Approach | Yes _____ | No _____ |
| • Preliminary Work Plan | Yes _____ | No _____ |
| • Proposed Audit Plan | Yes _____ | No _____ |
| • List of Deliverables and Submission Dates | Yes _____ | No _____ |
| D. Staff Experience and Qualifications | | |
| • Identify staff consistent with definitions in Form 2 | Yes _____ | No _____ |
| • Project Organizational Chart | Yes _____ | No _____ |
| • Qualifications and experience of staff assigned | Yes _____ | No _____ |
| • Staff resumes | Yes _____ | No _____ |
| • Staff Availability | Yes _____ | No _____ |
| E. Proposer Experience and Qualifications | | |
| • Summary of technical expertise and capabilities | Yes _____ | No _____ |
| • Direct prior experience | Yes _____ | No _____ |
| • Sample Report | Yes _____ | No _____ |
| F. Reference Letters | | |
| • At least two (2) letters of reference for Proposer's engagements, and one (1) letter of reference each for Engagement Partner and Audit Manager | Yes _____ | No _____ |
| 3. Excluding table of contents, staff resumes, letters of reference, and sample audit report, is the Technical Proposal 30 pages or less? | Yes _____ | No _____ |

Cost Proposal (2 originals and 1 electronic version)

- | | | |
|--|-----------|----------|
| 1. Did the Proposer provide 2 originals and 1 electronic version of the Cost Proposal? | Yes _____ | No _____ |
| 2. Did the Proposer complete and sign Form 2: Cost Proposal Form? | Yes _____ | No _____ |

Administrative Proposal (2 originals and 1 electronic version)

- | | | |
|---|-----------|----------|
| 1. Did the Proposer provide 2 originals and 1 electronic version of the Administrative Proposal? | Yes _____ | No _____ |
| 2. Did the Proposer submit signed copies of: | | |
| • Form 1: Proposer Information and Attestation | Yes _____ | No _____ |
| • Form 3: Non-Collusive Bidding Certification | Yes _____ | No _____ |
| • Form 4: Assurances of No Conflict of Interest or Detrimental Effect | Yes _____ | No _____ |
| • Form 5: MWBE and Equal Employment Opportunities Requirements, Forms 5.1 and 5.2 | Yes _____ | No _____ |
| • Form 6: Response to the Diversity Practices Questionnaire, with supporting documentation | Yes _____ | No _____ |
| • Form 7: Vendor Responsibility Questionnaire (hardcopy or submitted electronically in the State's VendRep system) for the Proposer and any subcontractor anticipated to receive a subcontract in excess of \$100,000 | Yes _____ | No _____ |
| • Form 8: Procurement Lobbying Form | Yes _____ | No _____ |
| • Form 9: Disclosure of Pending or Prior Lawsuits | Yes _____ | No _____ |
| • Form 10: Freedom of Information Law Redaction Request | Yes _____ | No _____ |

**APPENDIX D: NYS GOVERNMENTAL ACCOUNTABILITY, AUDIT AND
INTERNAL CONTROL ACT, LAWS OF NEW YORK, 1999, CHAPTER 510**

AN ACT to amend the state finance law, the executive law, the legislative law, the judiciary law, the public authorities law and the public officers law, in relation to systems of internal control for state agencies, certain authorities, the legislature and the judiciary

Became a law September 28, 1999, with the approval of the Governor. Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York state governmental accountability, audit and internal control act".

§2. Legislative findings. The legislature hereby finds that the scope, size and complexity of state government make it necessary to assure that the state's systems of internal control provide reasonable control over all state operations, and provide the public, the governor, the state legislature, the judiciary and the heads of state agencies and authorities with assurance that state assets and resources, including but not limited to, cash, investments, facilities, inventories, supplies, equipment, and personal and contractual services are being utilized consistent with the requirements of law and duly established managerial policies and in an effective, economical and efficient manner. The legislature further finds that the public has a right to know the extent to which state agencies and authorities, the legislature and the judiciary are achieving the objectives of internal control described herein and consequently to be fully informed of weaknesses identified through the conduct of external audits of internal controls. The legislature further finds that prudent management of state government requires controls in all aspects of state government designed to assure that assets are properly safeguarded, that accounting entries and data are accurate and reliable, and that prescribed managerial policies are adhered to, including assurances that such assets and resources are used only for proper purposes. Therefore, this act requires systems of internal control throughout state government as well as the external audit thereof. The legislature finds that the adequacy and effectiveness of existing state government internal control and internal audit functions can be improved by the implementation of a more comprehensive system of internal control and internal audit that encompasses all of state government and will foster the effective and efficient use of government resources and ensure the integrity of accounting systems. The legislature further finds that it is responsible for the generation of revenue and the appropriation of funds; and, in keeping with the constitutional principle of the separation of powers and the fact that it is directly chosen by the people, the legislature is itself directly responsible to the public for the proper use and application of the resources necessary for its operation; and the operational

requirements of the legislature, which is a lateral, collegial institution rather than a hierarchical organization and is constitutionally charged with determining the rules of its own procedures, differ in many respects from those agencies charged with the delivery of goods and services to the people of the state. The legislature previously enacted the New York state governmental accountability, audit and internal control act of 1987. The 1987 act required a system of internal controls and internal audits of funds, materials, and workforce performance. In 1993, the 1987 act was extended to January 1, 1999. The legislature finds that the existing systems of internal control and internal audit should be reaffirmed. The legislature further finds that it is desirable to coordinate existing internal control efforts and provide a continuing statutory foundation for a comprehensive system that will foster the effective and efficient use of government resources and ensure the integrity and reliability of accounting systems.

EXPLANATION--Matter in italics is new; matter in brackets [] is old law to be omitted.

§3. The state finance law is amended by adding a new section 2-a to read as follows:

§2-a. Additional definitions. As used in subdivisions two-b and two-c of section eight of this chapter, the following terms shall have the following meanings:

1. "Internal control". A process that integrates the activities, plans, attitudes, policies, systems, resources and efforts of the people of an organization working together, and that is designed to provide reasonable assurance that the organization will achieve its objectives and mission. The objectives of an internal control system include, but are not limited to: the safeguarding of assets; checking the accuracy and reliability of accounting data and financial reporting; promoting the effectiveness and efficiency of operations; ensuring compliance with applicable laws and regulations; and encouraging adherence to prescribed managerial policies. Internal control review processes are used periodically to evaluate the ongoing internal control system and to assess and monitor the implementation of necessary corrective actions.
2. "Internal audit". An appraisal activity established by the management of an organization for the review of operations as a means of assuring conformance with management policies and the effectiveness of internal control, and conducted in conformance with generally accepted standards for internal auditing.
3. "State agency". Any state department, state university of New York, city university of New York, board, bureau, division, commission, committee, council, office or other governmental entity performing a governmental or

proprietary function for the state, or any combination thereof as provided in subdivision two of section nine hundred fifty-one of the executive law, except any public authority or public benefit corporation, the judiciary or the state legislature.

4. "Judiciary". The courts and court-related programs, including the office of court administration, of the state-funded portion of the unified court system and all components thereof as provided in subdivision two of section two hundred forty-nine-a of the judiciary law.
5. "State legislature". The legislature of the state of New York, including all components thereof as provided in subdivision two of section ninety of the legislative law.
6. "Covered authority". Any public authority or public benefit corporation, other than a bi-state authority or public benefit corporation, a majority of whose members are appointed by the governor or serve as members by virtue of holding state offices to which they were appointed by the governor, or any combination thereof.

§ 4. Subdivision 2-a of section 8 of the state finance law is amended by adding a new paragraph d to read as follows:

d. which is subject to such internal control as the comptroller deems necessary.

§ 5. Section 8 of the state finance law is amended by adding two new subdivisions 2-b and 2-c to read as follows:

2-b. For the purposes of the New York state governmental accountability, audit and internal control act, assist in the development and implementation of an audit program for the state by:

- a. Either as part of one or more audits, or separately, conducting periodic audits of internal controls and operations of state agencies (other than those state agencies for which an audit is required pursuant to sections nine hundred fifty-three and nine hundred fifty-four of the executive law) and of covered authorities. All such audits shall be performed in accordance with generally accepted government auditing standards. Nothing in the New York state governmental accountability, audit and internal control act shall be deemed to diminish or impair the comptroller's power to audit and authority to supervise accounts under articles V and X of the state constitution and this chapter. The audits shall identify internal control weaknesses that have not been corrected and actions that are

recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to the operations of the agency that is the subject of the audit, the comptroller shall so state. The comptroller shall make available to the public the results of any such audits.

b. Providing technical assistance to state agencies and covered authorities and, upon request, to the state legislature and the judiciary in the implementation of internal audit functions, which shall be consistent with generally accepted standards for internal auditing and, upon request, interpreting such standards.

2-c. Provide technical assistance, including the issuance of internal control standards, to state agencies and covered authorities and, upon request, to the state legislature and the judiciary in the implementation and periodic evaluation of internal controls, which shall be consistent with generally accepted standards for internal control and, upon request, interpret such standards.

§ 6. Section 112 of the state finance law is amended by adding a new subdivision 1-a to read as follows:

1-a. The system of accounting prescribed by the comptroller pursuant to the provisions of subdivision one of this section shall be subject to such internal control as the comptroller deems necessary.

§ 7. The executive law is amended by adding a new article 45 to read as follows:

ARTICLE 45 INTERNAL CONTROL RESPONSIBILITIES OF STATE AGENCIES

Section 950. Definitions.

951. Internal control responsibilities.

952. Internal audit responsibilities.

953. Independent audits of the executive chamber and the division of the budget.

954. Independent audits of the department of audit and control and the department of law.

§ 950. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Internal control". A process that integrates the activities, plans, attitudes, policies, systems, resources and efforts of the people of an organization working together, and that is designed to provide reasonable assurance that the organization will achieve its objectives and mission. The objectives of an internal control system include, but are not limited to: the safeguarding of assets; checking the accuracy and reliability of accounting data and financial reporting; promoting the effectiveness and efficiency of

operations; ensuring compliance with applicable laws and regulations; and encouraging adherence to prescribed managerial policies. Internal control review processes are used periodically to evaluate the ongoing internal control system and to assess and monitor the implementation of necessary corrective actions.

2. "Internal audit". An appraisal activity established by the management of an organization for the review of operations as a means of assuring conformance with management policies and the effectiveness of internal control, and conducted in conformance with generally accepted standards for internal auditing.

3. "State agency". Any state department, state university of New York, city university of New York, board, bureau, division, commission, committee, council, office or other governmental entity performing a governmental or proprietary function for the state, or any combination thereof as provided in subdivision two of section nine hundred fifty-one of this article, except any public authority or public benefit corporation, the judiciary or the state legislature.

4. "Judiciary". The courts and court-related programs, including the office of court administration, of the state-funded portion of the unified court system and all components thereof as provided in subdivision two of section two hundred forty-nine-a of the judiciary law.

5. "State legislature". The legislature of the state of New York, including all components thereof as provided in subdivision two of section ninety of the legislative law.

6. "Covered authority". Any public authority or public benefit corporation, other than a bi-state authority or public benefit corporation, a majority of whose members are appointed by the governor or serve as members by virtue of holding state offices to which they were appointed by the governor, or any combination thereof.

§ 951. Internal control responsibilities.

1. The head of each state agency shall:

a. establish and maintain for the agency guidelines for a system of internal control that are in accordance with this article and internal control standards;

b. establish and maintain for the agency a system of internal control and a program of internal control review. The program of internal control review shall be designed to identify internal control weaknesses, identify actions that are needed to correct these weaknesses, monitor the implementation

of necessary corrective actions and periodically assess the adequacy of the agency's ongoing internal control;

c. make available to each officer and employee of the agency a clear and concise statement of the generally applicable management policies and standards with which the officer or employee of such agency shall be expected to comply. Such statement shall emphasize the importance of effective internal control to the agency and the responsibility of each officer and employee for effective internal control;

d. designate an internal control officer, who shall report to the head of the agency, to implement and review the internal control responsibilities established pursuant to this section;

e. implement education and training efforts to ensure that officers and employees within such agency have achieved adequate awareness and understanding of internal control standards and, as appropriate, evaluation techniques; and

f. periodically evaluate the need for an internal audit function.

2. In order to identify all state agencies and their responsibilities for the purposes of implementing the provisions of this article, the director of the division of the budget shall issue and update as necessary a schedule which lists all covered state agencies.

§ 952. Internal audit responsibilities.

1. The director of the division of the budget, after reviewing the evaluation of the head of each state agency as to the need for an internal audit function, shall issue and, at the director's discretion, periodically revise a schedule of state agencies (other than the department of audit and control and the department of law) which are required to establish and maintain an internal audit function. The comptroller and the attorney general or their designees shall determine, and periodically review such determination of, whether an internal audit function within their respective departments is required. Establishment of such function shall be based upon an evaluation of exposure to risk, costs and benefits of implementation, and any other factors that are determined to be relevant. The head of each state agency listed in the budget director's schedule, and the comptroller and the attorney general if they or their designees so determine, shall establish an internal audit function which operates in accordance with generally accepted professional standards for internal auditing. Any such internal audit function shall be directed by an internal audit director who shall report directly to the head of such state agency. Notwithstanding any other provision of law, each internal audit director shall be appointed by the head of the state agency based on appropriate internal auditing

credentials of the proposed appointee, consistent with generally accepted standards for internal auditing, including internal auditing education and experience. The position of internal audit director shall be an exempt position and except in the case of the department of audit and control and department of law, such appointment shall be subject to the approval of the director of the budget. For agencies for which an independent audit is not required pursuant to sections nine hundred fifty-three and nine hundred fifty-four of this article, the internal audit function shall evaluate the agency's internal controls and operations. The internal audit function shall also identify internal control weaknesses that have not been corrected and make recommendations to correct these weaknesses.

2. In the event the head of a state agency does not establish an internal audit function pursuant to subdivision one of this section, he or she shall nevertheless establish and maintain the program of internal control review required by section nine hundred fifty-one of this article.

§ 953. Independent audits of the executive chamber and the division of the budget.

1. At least once every three years, the independent certified public accountant or accountants selected pursuant to this section shall conduct audits of the internal controls of the executive chamber and the division of the budget, either as a single audit or separately. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the executive chamber and division of the budget's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in CHAP. 510 section nine hundred fifty of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to the entity, the independent auditor shall so state. The governor and the director of the budget shall make available to the public the results of such audits, including any related management letters. The governor and director of the budget and any officer or employee of the executive chamber and the division of the budget shall make available upon request to such independent certified public accountants all books and records relevant to such independent audits.

2. The governor and the director of the budget, either separately or jointly, shall request proposals from independent certified public accountants for audits of the internal controls of the executive chamber and the division of the budget. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The governor and the director of the budget shall select such independent auditor or auditors in accordance with a competitive procedure

including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals.

§ 954. Independent audits of the department of audit and control and the department of law.

1. At least once every three years, the independent certified public accountants selected pursuant to this section shall conduct audits of the internal controls of the department of audit and control and the department of law, respectively. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the departments' internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in section nine hundred fifty of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to such departments, the independent auditors shall so state. The comptroller and the attorney general shall make available to the public the results of such audits, including any related management letters. The comptroller and attorney general and any officer or employee of such departments shall make available upon request to such independent certified public accountants all books and records relevant to such independent audits.

2. The comptroller and the attorney general shall request proposals from independent certified public accountants for audits of the internal controls of their respective departments. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The comptroller and attorney general shall select such independent auditors in accordance with a competitive procedure including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals.

3. Whenever the comptroller or the comptroller's appointee is a member of any board, commission, committee, council, or corporation, which constitutes a state agency, the governing body of such board, commission, committee, council, or corporation shall select an independent auditor for the purpose of conducting audits of internal controls in accordance with this section.

§ 8. Article 6 and sections 90 and 91 of the legislative law, article 6 as renumbered by chapter 941 of the laws of 1964, are renumbered article 7 and sections 100 and 101 and a new article 6 is added to read as follows:

ARTICLE 6
INTERNAL CONTROL RESPONSIBILITIES OF THE STATE LEGISLATURE

Section 89. Definitions.

90. Internal control responsibilities.

91. Internal audit responsibilities.

92. Independent audits.

§ 89. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Internal control". A process that integrates the activities, plans, attitudes, policies, systems, resources and efforts of the people of an organization working together, and that is designed to provide reasonable assurance that the organization will achieve its objectives and mission. The objectives of an internal control system include, but are not limited to: the safeguarding of assets; checking the accuracy and reliability of accounting data and financial reporting; promoting the effectiveness and efficiency of operations; ensuring compliance with applicable laws and regulations; and encouraging adherence to prescribed managerial policies. Internal control review processes are used periodically to evaluate the ongoing internal control system and to assess and monitor the implementation of necessary corrective actions.

2. "Internal audit". An appraisal activity established by the management of an organization for review of operations as a means of assuring conformance with management policies and the effectiveness of internal control, and conducted in conformance with generally accepted standards for internal auditing.

3. "Legislature". The legislature of the state of New York, including all components thereof as provided in subdivision two of section ninety of this chapter.

§ 90. Internal control responsibilities.

1. The senate and the assembly shall each:

a. establish and maintain by rule guidelines for a system of internal control; and,

b. establish and maintain a system of internal control and a program of internal control review for their respective house.

2. In order to identify all the components of the legislature and their responsibilities for the purposes of implementing the provisions of this article, the temporary president of

the senate and the speaker of the assembly shall jointly issue, and at their discretion, periodically revise a schedule which lists all components of each of their respective houses of the legislature. The temporary president of the senate and the speaker of the assembly may identify in a schedule components for which joint internal controls and internal control reviews will be established and maintained.

§ 91. Internal audit responsibilities.

1. The temporary president of the senate and the speaker of the assembly or their designees shall determine, and periodically review such determination of, whether an internal audit function within their respective house is required. Establishment of such function shall be based upon an evaluation of costs and benefits of implementation and other factors that are determined to be relevant. In the event it is determined that an internal audit function is required for one or both houses, the temporary president of the senate or the speaker of the assembly shall establish an internal audit function within the respective house which operates in accordance with generally accepted standards for internal auditing. Any such internal audit function shall be directed and shall report in a manner prescribed by the respective house. The internal audit function shall evaluate the respective house's internal controls, identify internal control weaknesses that have not been corrected and make recommendations to correct these weaknesses.

2. In the event the temporary president of the senate or the speaker of the assembly does not establish an internal audit function pursuant to subdivision one of this section he or she shall nevertheless establish and maintain the program of internal control review required by section ninety of this article.

§ 92. Independent audits.

1. At least once every three years, the independent certified public accountants selected pursuant to this section shall conduct audits of the internal controls of each house of the legislature. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the respective house's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in section eighty-nine of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to each house, the independent auditor shall so state. The temporary president of the senate and the speaker of the assembly shall make available to the public the results of such audits, including any related management letters. The temporary president and the speaker and any officer or employee of each house shall make available upon request to such

independent certified public accountants all books and records relevant to such independent audits.

2. The temporary president of the senate and the speaker of the assembly shall request proposals from independent certified public accountants for audits of the internal controls of their respective house. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The temporary president and the speaker shall select such independent auditors in accordance with a competitive procedure including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals.

§ 9. Subdivision 1 of section 211 of the judiciary law is amended by adding a new paragraph (g-1) to read as follows:

(g-1) A system of internal control for the unified court system, pursuant to article seven-D of this chapter.

§ 10. The judiciary law is amended by adding a new article 7-D to read as follows:

ARTICLE 7-D
INTERNAL CONTROL RESPONSIBILITIES OF THE JUDICIARY

Section 249. Definitions.

249-a. Internal control responsibilities.

249-b. Internal audit responsibilities.

249-c. Independent audits.

§ 249. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Internal control". A process that integrates the activities, plans, attitudes, policies, systems, resources and efforts of the people of an organization working together, and that is designed to provide reasonable assurance that the organization will achieve its objectives and mission. The objectives of an internal control system include, but are not limited to: the safeguarding of assets; checking the accuracy and reliability of accounting data and financial reporting; promoting the effectiveness and efficiency of operations; ensuring compliance with applicable laws and regulations; and encouraging adherence to prescribed managerial policies. Internal control review processes are used periodically to evaluate the ongoing internal control system and to assess and monitor the implementation of necessary corrective actions.

2. "Internal audit". An appraisal activity established by the management of an organization for the review of operations as a means of assuring conformance with

management policies and the effectiveness of internal control, and conducted in conformance with generally accepted standards for internal auditing.

3. "Judiciary". The courts and court-related programs, including the office of court administration, of the state-funded portion of the unified court system and all components thereof as provided in subdivision two of section two hundred forty-nine-a of this article.

§ 249-a. Internal control responsibilities.

1. The chief judge shall:

a. establish and maintain for the judiciary guidelines for a system of internal control;

b. establish and maintain for the judiciary a system of internal control and a program of internal control review. The program of internal review shall be designed to identify internal control weaknesses and identify actions that are needed to correct these weaknesses; and,

c. designate one or more internal control officers to implement and review the internal control responsibilities established pursuant to this section.

2. In order to identify all components of the judiciary and their responsibilities for the purposes of implementing the provisions of this article, the chief judge shall issue and, at his or her discretion, periodically revise a schedule which lists all such components.

§ 249-b. Internal audit responsibilities.

1. The chief judge or his or her designee shall determine, and periodically review his or her determination of, whether an internal audit function within the judiciary is required. Establishment of such function shall be based upon an evaluation of exposure to risk, costs and benefits of implementation, and any other factors that are determined to be relevant. In the event it is determined that an internal audit function is required, the chief judge shall establish an internal audit function which operates in accordance with generally accepted professional standards for internal auditing. Any such internal audit function shall be directed by an internal audit director who shall report directly to the chief administrative judge. The internal audit function shall evaluate the judiciary's internal controls, identify internal control weaknesses that have not been corrected and make recommendations to correct these weaknesses.

2. In the event the chief judge does not establish an internal audit function pursuant to subdivision one of this section he or she shall nevertheless establish and

maintain the program of internal control review required by section two hundred forty-nine-a of this article.

§ 249-c. Independent audits.

1. At least once every three years, the independent certified public accountant selected pursuant to this section shall conduct audits of the internal controls of the judiciary. Such audits shall be performed in accordance with generally accepted government auditing standards and shall include a report on whether the judiciary's internal controls are established and functioning in a manner that provides reasonable assurance that they meet the objectives of internal control as defined in section two hundred forty-nine of this article. The report shall identify the internal controls both evaluated and not evaluated and shall identify internal control weaknesses that have not been corrected and actions that are recommended to correct these weaknesses. If any such internal control weaknesses are significant or material with respect to the judiciary, the independent auditor shall so state. The chief judge shall make available to the public the results of such audits, including any related management letters. The chief judge and any officer or employee of the judiciary shall make available upon request to such independent certified public accountants all books and records relevant to such independent audits.

- The chief judge shall request proposals from independent certified public accountants for audits of the internal controls of the judiciary. The requests for proposals shall include a reference to the requirements for audits conducted pursuant to subdivision one of this section. The chief judge shall select such independent auditor in accordance with a competitive procedure including an evaluation, based on quality and price factors, of those proposals received in response to such requests for proposals.

§ 11. Article 9 of the public authorities law is amended by adding a new title 8 to read as follows:

TITLE 8

INTERNAL CONTROL RESPONSIBILITIES OF PUBLIC AUTHORITIES

Section 2930. Definitions.

2931. Internal control responsibilities.

2932. Internal audit responsibilities.

§ 2930. Definitions. For the purposes of this title, the following terms shall have the following meanings:

1. "Internal control". A process that integrates the activities, plans, attitudes, policies, systems, resources and efforts of the people of an organization working together, and that is designed to provide reasonable assurance that the organization will achieve its objectives and mission. The objectives of an internal control system include, but are not limited to: the safeguarding of assets; checking the accuracy and reliability of accounting data and financial reporting; promoting the effectiveness and efficiency of operations; ensuring compliance with applicable laws and regulations; and encouraging adherence to prescribed managerial policies. Internal control review processes are used periodically to evaluate the ongoing internal control system and to assess and monitor the implementation of necessary corrective actions.

2. "Internal audit". An appraisal activity established by the management of an organization for the review of operations as a means of assuring conformity with management policies and the effectiveness of internal control, and conducted in conformance with generally accepted standards for internal auditing.

3. "Covered authority". Any public authority or public benefit corporation, other than a bi-state authority or public benefit corporation, a majority of whose members are appointed by the governor or serve as members by virtue of holding state offices to which they were appointed by the governor, or any combination thereof.

§ 2931. Internal control responsibilities. The governing board of each covered authority shall:

1. establish and maintain for the authority guidelines for a system of internal control that are in accordance with this article and internal control standards;

2. establish and maintain for the authority a system of internal control and a program of internal control review. The program of internal review shall be designed to identify internal control weaknesses, identify actions that are needed to correct these weaknesses, monitor the implementation of necessary corrective actions and periodically assess the adequacy of the authority's ongoing internal controls;

3. make available to each member, officer and employee a clear and concise statement of the generally applicable managerial policies and standards with which he or she is expected to comply. Such statement shall emphasize the importance of effective internal control to the authority and the responsibility of each member, officer and employee for effective internal control;

4. designate an internal control officer, who shall report to the head of the authority, to implement and review the internal control responsibilities established pursuant to this section; and,

5. implement education and training efforts to ensure that members, officers and employees have achieved adequate awareness and understanding of internal control standards and, as appropriate, evaluation techniques.

§ 2932. Internal audit responsibilities.

1. The governing board of each covered authority or its designee shall determine, and periodically review the determination of, whether an internal audit function within the covered authority is required. Establishment of such function shall be based upon an evaluation of exposure to risk, costs and benefits of implementation, and any other factors that are determined to be relevant. In the event it is determined that an internal audit function is required, the governing board of each covered authority shall establish an internal audit function which operates in accordance with generally accepted professional standards for internal auditing. Any such internal audit function shall be directed by an internal audit director who shall report directly to the governing board of the authority. Internal audit director appointments shall be based on appropriate internal auditing credentials of the proposed appointee, consistent with generally accepted standards for internal auditing, including internal auditing education and experience. The internal audit function shall evaluate the authority's internal controls and operations, identify internal control weaknesses that have not been corrected and make recommendations to correct these weaknesses.

2. In the event the governing board does not establish an internal audit function pursuant to subdivision one of this section it shall nevertheless establish and maintain the program of internal control review required by section twenty-nine hundred thirty-one of this title.

§ 12. Paragraph (g) of subdivision 2 of section 87 of the public officers law, as added by chapter 933 of the laws of 1977, is amended to read as follows:

(g) are inter-agency or intra-agency materials which are not:

- i. statistical or factual tabulations or data;
- ii. instructions to staff that affect the public; [or]
- iii. final agency policy or determinations; [or]
- iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or

§ 13. Subdivision 2 of section 88 of the public officers law is amended by adding a new paragraph (j) to read as follows:

(j) external audits conducted pursuant to section ninety-two of the legislative law and schedules issued pursuant to subdivision two of section ninety of the legislative law.

§ 14. The state comptroller, state agencies, covered authorities, the state legislature and the judiciary, as defined in this act, are authorized to take all actions necessary to implement their respective internal control and audit responsibilities under this act.

§ 15. This act shall take effect immediately, and shall be deemed to have been in full force and effect on and after January 1, 1999.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

FORM 1: PROPOSER INFORMATION AND ATTESTATION

PLEASE SUBMIT WITH ADMINISTRATIVE PROPOSAL

Please Note: A "No" response to questions three through seven (3-7) may be grounds for disqualification from this procurement.

RFP Name: <u>Internal Controls Auditing Services</u>				
Proposal Date: <u>February 1, 2018 @ 12:00 PM ET</u>				
1	Information Regarding the Proposer's Firm:	Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: _____ Taxpayer ID: _____ NYS Vendor ID: _____		
2	Primary Contact Concerning this Proposal:	Name: _____ Title: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: _____ Email address: _____		
3	Irrevocable Offer:	The rates quoted are an irrevocable offer that is good through the execution of a contract.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4	Willingness to Perform All Services:	The Proposer is willing to, and capable of performing all of the deliverables and services described in this RFP.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5	Proposer Guarantees:	The Proposer certifies it can and will provide and make available, at a minimum, all services set forth in the RFP.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6	Proposer Warranties:	<ol style="list-style-type: none"> 1. Proposer warrants that it is willing and able to comply with New York laws with respect to foreign (non-New York) corporations. 2. Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof. 3. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the written permission of the Division. 4. Proposer warrants that all information provided by it in connection with this proposal is true and accurate. 	<input type="checkbox"/> Yes	<input type="checkbox"/> No

7	RFP and Contractual Requirements:	<ol style="list-style-type: none"> 1. The Proposer agrees to be bound by the Contractual Requirements found in Section 5 of the RFP. 2. The Proposer has read Section 6, Reservation of Rights, and agrees that the rights and prerogatives as detailed in that Section are retained by the Division of the Budget. 3. The Proposer has read, understands, and accepts the provisions of Appendix A, Standard Clauses for NYS Contracts, and Appendix B, Sample Contract, without change or amendment. 	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8	<p>By my signature on this Proposer Information and Attestation, I certify that I am authorized to bind the Proposer contractually and that the above information is true and accurate.</p> <hr/> <p>Typed or Printed Name of Authorized Representative of the Proposer</p> <hr/> <p>Title/Position of Authorized Representative of the Proposer</p> <hr/> <p>Signature</p> <hr/> <p>Date</p>			

FORM 2: COST PROPOSAL

Please submit two (2) hardcopy sets of the Cost Proposal with original signature and one (1) electronic version, as part of your proposal, to the addressee noted in Section 2.5 (Submission of a Complete Three-Part Proposal).

The Cost Proposal is an integral component of a Proposer's three-part submission. Proposers should take particular care to ensure the Cost Proposal is completed fully and in complete accordance with the instructions. Proposers are advised to submit questions about or requests for clarification of the Cost Proposal by January 18, 2018, the due date for submission of Proposer Inquiries.

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

- The Cost Proposal Form should include the not-to-exceed deliverable cost and hourly rate for each person performing the services described in Section 1.2 of the RFP. Please specify each person by name next to the corresponding title provided on the Form. Proposers are required to use the titles provided, even if these titles are not consistent with the Proposer's existing titles.
- Hourly fees must include any reproduction, travel, postage or other expenses.
- The Cost Proposal must include an hourly rate (U.S. dollars) for each title described below and a not-to-exceed total for each Audit Year listed in Form 2. Do not leave blanks or enter a zero dollar amount for any rate. Do not fail to provide a rate for each title or a not-to-exceed Audit Year total. Keep in mind, if the information requested on Form 2 is not complete, the Division may not be able to calculate a cost score.
- The cost proposal must include only one rate for each title.
- The Cost Proposal Form should be signed by the individual who signs the proposal Proposer Information and Attestation page (an individual authorized to bind the bidding Proposer contractually).

Description of Titles

The following represents the general descriptions for the staffing categories to be utilized in the Proposer's proposal.

Qualifications of Engagement Partner

Individuals at this level are Certified Public Accountants, licensed by the appropriate State licensing authority and have exhibited technical proficiency and the ability to review and manage engagements. Engagement Partners have overall responsibility for performance of the audit. Responsibilities include: scheduling of audit assignments; entrance and exit conferences; staff training and evaluation; research of audit and accounting literature; work paper review; report review; liaison with audit staff and the firm; and client relationships.

Qualifications of Audit Manager

Individuals at this level are Certified Public Accountants, licensed by the appropriate State licensing authority and have exhibited technical proficiency and the ability to review and manage engagements. Managers are responsible for the overall supervision of staff, communication and coordination of meetings with appropriate management members, and designing the project and/or audit approach. The Manager will also be responsible for reviewing all engagement workpapers and making routine visits to the client site to monitor the progress of the engagement. The manager serves as the liaison between the partner, the client, and the professional audit staff.

Qualifications of Senior Auditor

Individuals at this level are Certified Public Accountants, licensed by the appropriate State licensing authority. Senior Auditors will communicate with the audit manager and update the manager as to the status of the audit and any technical issues that may surface during the course of the engagement. Senior Auditors may be responsible for supervising and reviewing the work of Auditors. Senior Auditors will also assist with the day-to-day work of the project.

Qualifications of Auditor

Individuals at this level have a Bachelor's degree with a major in accounting or related field and are required to obtain a thorough understanding of generally accepted auditing standards and common audit practices and techniques. Associate Auditors will be responsible for performing the day-to-day, detailed testwork required to achieve and support the audit objective, including performing statistical sampling, interviewing management to gain an understanding of the client's business, testing internal controls for effectiveness, and performing analytical and substantive procedures as deemed necessary. The Associate Auditor will report findings related to non-compliance and weaknesses in internal control to the Supervisor.

**FORM 2:
NYS Division of the Budget
Request for Proposals: Internal Control Auditing Services
Cost Proposal Form**

**Proposer
Name:** _____

Audit Year 2018 (Audit period covering 10/1/17-9/30/18)				
Job Title	Name	Hourly Rate	Estimated Number of Hours	Total
Engagement Partner				
Audit Manager				
Senior Auditor				
Auditor				
Internal Control Audit Year 2018 Not-to-Exceed Total				

Audit Year 2021 (Audit period covering 10/1/20-9/30/21)				
Job Title	Name	Hourly Rate	Estimated Number of Hours	Total
Engagement Partner				
Audit Manager				
Senior Auditor				
Auditor				
Internal Control Audit Year 2021 Not-to-Exceed Total				

Authorized Signatory for the Proposer

Name (print or type)

Title

Date

FORM 3: NON-COLLUSIVE BIDDING CERTIFICATION

In accordance with New York State Finance Law, § 139-d, by submitting its bid, each Proposer and each person signing on behalf of any other Proposer certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

- 1) The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor;
- 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor; and
- 3) No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Name: _____ Title: _____

Signature: _____

Joint or combined bids by Companies or Proposers must be certified on behalf of each participant.

Legal name of Person, Proposer or Corporation

Name: _____

Title: _____

Legal name of Person, Proposer or Corporation

Name: _____

Title: _____

FORM 4: ASSURANCES OF NO CONFLICT OF INTEREST OR DETRIMENTAL EFFECT

The Proposer offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, or subcontractor, or consultant, attests that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor position the Proposer to breach any other contract currently in force with the State of New York.

Furthermore, the Proposer attests that it will not act in any manner that is detrimental to any State project on which the Proposer is rendering services. Specifically, the Proposer attests that:

- a. The fulfillment of obligations by the Proposer, as proposed in the response, does not violate any existing contracts or agreements between the Proposer and the State;
- b. The fulfillment of obligations by the Proposer, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Proposer has with regard to any existing contracts or agreements between the Proposer and the State;
- c. The fulfillment of obligations by the Proposer, as proposed in the response, does not and will not compromise the Proposer's ability to carry out its obligations under any existing contracts between the Proposer and the State;
- d. The fulfillment of any other contractual obligations that the Proposer has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
- e. During the negotiation and execution of any contract resulting from this RFP, the Proposer will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
- f. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Proposer will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
- g. No former officer or employee of the State who is now employed by the Proposer, nor any former officer or employee of the Proposer who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
- h. The Proposer has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it

could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Proposers responding to this Request for Proposals should note that the Division recognizes that conflicts may occur in the future because a Proposer may have existing or new relationships. The Division will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title: _____

Signature: _____ Date: _____

This form must be signed by an authorized executive or legal representative.

**FORM 5: MWBE AND EQUAL EMPLOYMENT OPPORTUNITIES
REQUIREMENTS**

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY
NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY
MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE
CONTRACTS)**

By submitting a bid or proposal, a Proposer will be required to submit the following documents and information as evidence of compliance with the requirements and procedures established in Section 9 of this RFP:

- A. Proposer agrees to submit with the bid a Workforce Composition Plan (Form 5.1) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the Division, a workforce utilization report identifying the workforce actually utilized on the Contract if known.
- B. Proposers are required to submit an MWBE Utilization Plan (Form 5.2) and Notice of Intent to Participate (Form 5.3) 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 the Division.
- C. The Division will review the submitted MWBE Utilization Plan and advise the Proposer of the Division's acceptance or issue a notice of deficiency within 30 days of receipt.
- D. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Division, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Division to be inadequate, the Division shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on the Request for Waiver form. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. The Division may disqualify a Proposer as being non-responsive under the following circumstances:
 - 1. If a Proposer fails to submit a MWBE Utilization Plan;
 - 2. If a Proposer fails to submit a written remedy to a notice of deficiency;
 - 3. If a Proposer fails to submit a request for waiver; or
 - 4. If Division determines that the Proposer has failed to document good faith efforts.
- F. Proposers are required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form 5.4, to the Division with its bid or proposal. If Proposer, or any of its subcontractors, does not

have an EEO Policy, the Division may require the Contractor or subcontractor to adopt the attached model statement.

Please Note: Failure to comply with the 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 of enforcement proceedings as allowed by the Contract.

Attachments:

- Form 5.1 – Workforce Composition Form
- Form 5.2 – Proposer’s intended Utilization Plan for MWBE subcontractor participation. The successful Proposer will be required to formally submit the Utilization Plan within three days of notification of selection.
- Form 5.3 – Notice of Intent to Participate.
- Form 5.4 –Equal Employment Opportunity Policy Statement - If Proposer, or any of its subcontractors, does not have an existing EEO policy statement, the Division may require the Proposer or subcontractor to adopt the attached model statement.
- Form 5.5 – Request for Waiver Form.

FORM 5.1: WORKFORCE COMPOSITION FORM

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this Workforce Composition Form as part of their proposal. Proposers should include only the staff that will provide services under this procurement.

Proposer Name:	Federal Identification No.:
Address:	Procurement No.:
City, State, Zip Code:	

Description of Work:

Enter the total number of incumbents by race, sex, and ethnic group status in each of the EEO – Job Categories identified. See below for information regarding race/ethnicity identification and protected class group members.

EEO – JOB CATEGORY	TOTAL	MALE (M)	FEMALE (F)	WHITE		BLACK		HISPANIC		ASIAN		NATIVE AMERICAN		DISABLED		VETERAN	
				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																	

_____ PREPARED BY (Signature)	_____ Date	
_____ PRINTED OR TYPED NAME AND TITLE OF PREPARER	_____ TELEPHONE NO.	_____ EMAIL ADDRESS

CLASS DEFINITIONS

Hispanic – All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

American Indian or Alaskan Native – All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

Vietnam Era Veteran – A veteran who served at any time between and including January 1, 1963 and May 7, 1975.

Black (Not of Hispanic origin) – All persons having origins in any of the Black racial groups of Africa.

Asian or Pacific Islander – All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

Disabled Individual – Any person having a physical or mental impairment that substantially limits one or more major life activity, has a record of such an impairment; or is regarded as having such an impairment.

FORM 5.2: MWBE UTILIZATION PLAN

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete this MWBE Utilization Plan and submit it as part of their proposal. The Plan must contain a detailed description of the services to be provided by each Minority and/or Woman-Owned Business Enterprise (MWBE) identified by the Proposer.

Proposer Name:	Federal Identification No.:
Address:	Procurement No.:
City, State, Zip Code:	MWBE Goals: MBE: 15% WBE: 15%

1. MWBE 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
A.	NYS ESD Certified <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD Certified <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

6. WAIVER REQUESTED: MBE: YES NO If YES, submit Attachment A-5.4. WBE: YES NO If YES, submit Attachment A-5.4.

PREPARED BY (Signature): _____	TELEPHONE NO.:	EMAIL ADDRESS:
NAME AND TITLE OF PREPARER (Print or Type): _____		
DATE: _____ Proposer's Certification Status: <input type="checkbox"/> MBE <input type="checkbox"/> WBE		

<p>SUBMISSION OF THIS FORM CONSTITUTES THE PROPOSER'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN NONCOMPLIANCE AND/OR PROPOSAL DISQUALIFICATION.</p>	*****FOR DOB USE ONLY*****	
	REVIEWED BY: _____	DATE: _____
	UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____	
	MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO WBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO WAIVER GRANTED: <input type="checkbox"/> YES <input type="checkbox"/> NO Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/>	
NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO		Date: _____

**FORM 5.3: MWBE SUBCONTRACTORS AND SUPPLIERS NOTICE OF INTENT TO PARTICIPATE
NEW YORK STATE DIVISION OF THE BUDGET**

INSTRUCTIONS: A separate Notice of Intent to Participate must be completed by each MWBE identified on the MWBE Utilization Plan (Form 4.3). Parts A & C must be completed by the Proposer and Part B must be completed by MBE and/or WBE subcontractors/suppliers. Signed and completed form(s) must be returned as part of your proposal.

PART A

Proposer Name: _____ Federal Identification No.: _____
 Address: _____ Telephone No.: _____
 City, State, Zip Code: _____ Email Address: _____

PART B

THE UNDERSIGNED INTENDS TO PROVIDE SERVICES OR SUPPLIES IN CONNECTION WITH THE ABOVE PROCUREMENT:

Name of MWBE: _____ Federal Identification No.: _____
 Address: _____ Telephone No.: _____
 City, State, Zip Code: _____ Email Address: _____

DESCRIPTION OF SERVICES OR SUPPLIES:

DESIGNATION: MBE Subcontractor WBE Subcontractor MBE Supplier WBE Supplier

PART C

WAIVER Requested: MBE: YES NO If YES, submit Attachment A-5.4. WBE: YES NO If YES, submit Attachment A-5.4.

THE QUALIFICATION OF THE UNDERSIGNED AS A MBE AND/OR WBE IS CONFIRMED (CHECK ONE):

- The undersigned is a certified MWBE by the New York State Division of Minority and Woman-Owned Business Development (MWBD) (copy of certifying letter attached).
- The undersigned has applied to New York State's Division of Minority and Woman-Owned Business Development (MWBD) for MWBE certification.

THE UNDERSIGNED IS PREPARED TO PROVIDE SERVICES OR SUPPLIES AS DESCRIBED ABOVE AND WILL ENTER INTO A FORMAL AGREEMENT WITH THE PROPOSER CONDITIONED UPON THE PROPOSER'S EXECUTION OF A CONTRACT WITH THE DIVISION OF THE BUDGET.

The estimated dollar amount of the agreement is: \$ _____

 Signature of Authorized Representative of MWBE Firm

Date: _____

 Printed or Typed Name and Title of Authorized Representative of MWBE Firm

**FORM 5.4: MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES –
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

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

M/WBE

EEO

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 2____ - _____

By: _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____percent Minority and Women’s Business Enterprise Participation

_____percent Minority Business Enterprise Participation

_____percent Women’s Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____

ATTACHMENT A-5.5: REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.		
Proposer Name:	Federal Identification No.:	
Address:	Procurement No.:	
City, State, Zip Code:	MWBE Subcontract Goals: MBE: 15% WBE: 15%	
By submitting this form and the required information, the company certifies that every Good Faith Effort has been taken to promote MWBE participation pursuant to the MWBE requirements set forth under this procurement.		
Proposer is requesting a: <input type="checkbox"/> Total <input type="checkbox"/> Partial <input type="checkbox"/> Certification <input type="checkbox"/> Conditional		
<p>1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested.</p> <p>2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested.</p> <p>3. <input type="checkbox"/> ESD Certification Waiver – A waiver of the requirement that the MBE/WBE be certified by Empire State Development (ESD). (Check here if MBE/WBE is NOT ESD certified.)</p> <p>4. <input type="checkbox"/> Conditional Waiver – (Attach separate sheet outlining special conditions or extenuating circumstances.)</p>		
Prepared By (Signature)	Date	
Printed or Typed Name and Title of Preparer	Telephone Number	Email Address
***** FOR DIVISION USE ONLY *****		
SUBMISSION OF THIS FORM CONSTITUTES THE PROPOSER'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN NONCOMPLIANCE AND/OR PROPOSAL DISQUALIFICATION.	REVIEWED BY:	DATE:
	MWBE Certified: <input type="checkbox"/>	
	MWBE Not Certified: <input type="checkbox"/>	
Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency *Comments:		

MWBE REQUIREMENTS AND WAIVER SUBMISSION

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 10, as listed below. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

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

Note: Unless a Total Waiver has been granted, Proposers will be required to submit all reports and documents pursuant to the provisions set forth in the procurement and/or contract, as deemed appropriate by the Division, to determine MWBE compliance. In cases where the Division grants a full or partial waiver of MWBE participation goals, the waiver request will be posted to the Division's website.

FORM 6: MWBE DIVERSITY PRACTICES

Pursuant to New York State Executive Law §313-a, and 5 NYCRR §142.3, all agencies and authorities must evaluate the diversity practices of Proposers to best value procurements expected to exceed \$250,000, whenever practical, feasible and appropriate. Evaluating diversity practices of Proposers as part of the procurement process provides contractors with an incentive to develop mutually beneficial relationships with New York State certified MWBEs outside of the context of state contracting. These relationships help to build the capacity of MWBEs, and enhance their ability to perform ever increasing roles in state contracting.

Diversity practices are intended to be applied on procurements in which agency personnel exercise their subjective judgment in selecting one or more successful contractors on the basis of best value, not on procurements that are awarded based on lowest price.

For this procurement, the Division has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Proposers to this solicitation is practical, feasible and appropriate.

Accordingly, Proposers are required to submit responses, including documentation, to the Diversity Practices Questionnaire, Form 6.1, to the Division as part of its Administrative Proposal. The questionnaire consists of eight (8) questions for Proposers to answer. Please note that some questions request supporting documentation to support certain answers. A scoring rubric for the Diversity Practices Questionnaire can be found in Form 6.2

Attachments:

- Form 6.1 – Diversity Practices Questionnaire
- Form 6.2 – Diversity Practices Scoring Matrix

FORM 6.1: DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals. No points will be awarded if the response simply identifies an individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide government-generated evidence, such as an agreement or acceptance letter, demonstrating the extent of your company's commitment to the governmental mentoring program. Government-generated documentation supporting your company's participation in a mentoring program must be provided to receive points.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No
If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority and women-owned business enterprises if selected as the successful respondent? Yes or No
If Yes, complete the attached Utilization Plan

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

STATE OF _____)
COUNTY OF _____) ss:

On the _____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

FORM 6.2: DIVERSITY PRACTICES SCORING MATRIX

Question #1 CDO or other person tasked with function					Yes	No	Total
					5 pts	0 pts	
Question #2 Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	20 pts	14 pts	10 pts	6 pts	2 pts	0pts	
Question #3 Percentage of overhead expenses paid to M/WBEs	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	16 pts	10 pts	7 pts	4 pts	1 pts	0pts	
Question 4 M/WBE Training			Robust	Moderate	Minimum	None	
			16 pts	8 pts	4 pts	0 pts	
Question #5 M/WBE Mentoring			Robust	Moderate	Minimum	None	
			12 pts	8 pts	4 pts	0 pts	
Question #6 Written M/WBE goals included in the Company's procurements			Robust	Moderate	Minimum	No	
			20 pts	12 pts	6 pts	0 pts	
Question #7 Formal Supplier Diversity Program			Robust	Moderate	Minimum	No	
			6 pts	4 pts	2 pts	0 pts	
Question #8 Utilization Plan			Robust	Moderate	Minimum	No	
			5 pts	3 pts	1 pts	0 pts	
				Total Diversity Score (Max 100 pts)			
				Weighted Score (Max 3.5 pts.)			

FORM 7: VENDOR RESPONSIBILITY QUESTIONNAIRE INSTRUCTIONS

A contracting agency is required to conduct a review of a prospective contractor (and each subcontractor whose anticipated fees for the project are estimated to be over \$100,000) to provide reasonable assurances that the vendor is responsible. The Division of the Budget recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://www.osc.state.ny.us/vendrep/index.htm>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website <http://www.osc.state.ny.us/vendrep/> or may contact the Division of the Budget or the Office of the State Comptroller's Help Desk for a copy of the paper form.

This questionnaire is designed to provide information to assist a contracting agency in assessing a vendor's responsibility prior to entering into a contract with the vendor. Vendor responsibility is determined by a review of each Proposer or Proposer's authorization to do business in New York, business integrity, financial and organizational capacity, and performance history.

Contractors (and subcontractors) must answer every question in the questionnaire and where appropriate additional information may be required for the questionnaire to be complete and accurate. The completed questionnaire and responses will become part of the procurement record.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing contractor's business and operations as the questionnaire information must be attested to by an owner or officer of the vendor.

Vendor Responsibility Questionnaire Requirement:

The Proposer has (Please check the appropriate box):

Certified and filed the Vendor Responsibility Questionnaire on-line via the New York State VendRep System; **OR**

Included a properly executed paper copy of the Vendor Responsibility Questionnaire with the Administrative Proposal.

FORM 8: PROCUREMENT LOBBYING RESTRICTIONS

Pursuant to State Finance Law §§139-j and 139-k, certain restrictions are placed on contact with state agencies during the procurement process. The term “Contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the governmental procurement. In addition to obtaining the required identifying information, the state agency must inquire and record whether the person or organization that made the contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or contact the Governmental Entity.

The “Restricted Period” is the period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a Procurement Contract with a State agency and, ending with the final contract award and approval by, where applicable, the Office of the State Comptroller.

New York State employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period; the Offerer is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found at:
<http://ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.asp>.

Any Proposer responding to the solicitation must complete the form found below and submit it to the State agency.

Questions regarding this form may be directed to the Designated Contacts for this solicitation:

Contracts Officer:	Jason DiGianni
Contract Administrator:	Barbara Farley
Additional Contacts:	Michelle Heaslip, Michael Pawlows, Roxanne West

PROCUREMENT LOBBYING FORM

1. Offerer/Proposer certifies that it understands and agrees to comply with the procedures of the NYS Division of the Budget relative to permissible contacts as required by State Finance Law Section 139-j (3) and Section 139-j (6) (b).

2. **CONTRACTOR DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**
Pursuant to Procurement Lobbying Law (SFL §139-j)

(a) Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?
 Yes No

If yes, please answer the following question:

(b) Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?
 Yes No

If "Yes" was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

Yes No

If "Yes", please provide details regarding the finding of non-responsibility:

Governmental Entity: _____
Date of Finding of Non-Responsibility: _____
Basis of Finding of Non-Responsibility (attach additional sheets as necessary)

3. Has any governmental entity terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?
 Yes No

If yes, provide details:

Governmental Entity: _____
Date of Termination or Withholding of Contract: _____
Basis of Termination or Withholding: (add additional pages if necessary)

4. Offerer/Proposer certifies that all information provided to the Division of the Budget, with respect to State Finance Law Section 139-k is complete, true and accurate.

Name of Offerer's Firm/Company: _____

Offerer's Business Address: _____

Offerer's signature: _____ **Date:** _____

I understand that my signature represents that I am signing and responding to all certifications listed above.

Print Name: _____

Title of Person signing this form: _____

FORM 9: DISCLOSURE OF PENDING OR PRIOR LAWSUITS

Disclosure of Pending or Prior Lawsuits must be documented and submitted with the Administrative Proposal. Please include the following information:

- A. Proposers must provide a list of any legal proceedings or investigations concerning the Proposer over the last five (5) years, if any, including the nature and outcome of any lawsuit if litigation is complete. Proposers must also specifically note any prior or pending lawsuit(s) or litigation between the Proposer and any New York State department, agency, board, or commission, if any. The nature of the lawsuit and its outcome, if litigation is complete, should be described briefly below.

Does the Proposer have any information pertaining to the above that must be disclosed? If Yes, the Proposer must disclose the requisite information as part of the Proposer's Administrative Proposal.

Yes _____ No _____

- B. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Proposer or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your Firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

Does the Proposer have any information pertaining to the above that must be disclosed? If Yes, the Proposer must disclose the requisite information as part of the Proposer's Administrative Proposal.

Yes _____ No _____

- C. The Proposer must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

Does the Proposer have any information pertaining to the above that must be disclosed? If Yes, the Proposer must disclose the requisite information as part of the Proposer's Administrative Proposal.

Yes _____ No _____

FORM 10: FREEDOM OF INFORMATION LAW REDACTION REQUEST

The Proposer should indicate below if there is specific information in a Proposer's proposal that a Proposer claims to be proprietary and/or trade secret information that meets the definition set forth in Section 87(2)(d), the Proposer should provide a letter in its Administrative Proposal outlining any specific concerns regarding disclosure under the New York State Freedom of Information Law (Article 6 of the Public Officers Law).

Is the Proposer submitting a Freedom of Information Law Redaction request? If Yes, Proposer should include the specific details of its request as part of the Proposer's Administrative Proposal.

Yes _____ No _____