



# Office for People With Developmental Disabilities

## Request for Proposals

### Auditing Services and Accounting, Auditing, Consulting Services Vendor Pool

(3 LOTS: 2 Defined Audit Engagements and 1 Ad Hoc Services Vendor Pool)

May 23, 2022

## Contents

<b>1. INTRODUCTION .....</b>	<b>5</b>
1.1 OVERVIEW .....	5
1.2 DESIGNATED CONTACTS .....	6
1.3 MINIMUM QUALIFICATIONS.....	7
1.4 KEY EVENTS/TIMELINE* .....	8
1.5 MANDATORY CONFERENCE CALL.....	8
<b>2. PROPOSAL SUBMISSION.....</b>	<b>9</b>
2.1 MANDATORY EMAIL REGISTRATION FOR MANDATORY CONFERENCE CALL.....	9
2.2 RFP QUESTIONS AND CLARIFICATIONS .....	10
2.3 PROPOSAL FORMAT AND CONTENT.....	10
2.3.4 <i>Administrative Proposal (Attestation Checklist)</i> .....	11
2.3.5 <i>Technical Proposal</i> .....	14
2.3.6 <i>Cost Proposal</i> .....	17
2.4 INSTRUCTIONS FOR PROPOSAL SUBMISSION.....	18
<b>3. ADMINISTRATIVE INFORMATION .....</b>	<b>21</b>
3.1 ISSUING OFFICE .....	21
3.2 TERM OF CONTRACT .....	21
3.3 PRICE .....	21
3.4 METHOD OF PAYMENT .....	22
3.5 METHOD OF AWARD .....	22
3.6 BILLING AND PAYMENT .....	23
3.7 RESERVED RIGHTS.....	23
3.8 EXTRANEOUS TERMS .....	24
3.9 GENERAL REQUIREMENTS FOR PROPOSALS .....	25
3.10 EXCEPTIONS TO RFP.....	25
3.11 WAIVER OF RIGHTS.....	25
3.12 DISPUTE RESOLUTION.....	26
3.13 HIPAA SECURITY AND CONFIDENTIALITY .....	26
3.14 CONFIDENTIALITY OF INFORMATION/PUBLICATION RIGHTS: .....	26
3.15 PRIME CONTRACTOR RESPONSIBILITIES.....	27
3.16 PUBLIC INFORMATION REQUIREMENTS .....	27
3.17 PROCEDURE FOR HANDLING OF PROTESTS/APEALS OF BID SPECIFICATIONS AND PROPOSED AWARDS.....	28
3.18 DEBRIEFING PROCEDURES.....	28
3.19 FORMAL WRITTEN PROTESTS .....	28
3.20 BID PREPARATION EXPENSES.....	29
3.21 PROCUREMENT LOBBYING RESTRICTIONS .....	29
3.22 NON-COLLUSIVE BIDDING REQUIREMENT.....	30
3.23 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE .....	30
3.24 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES.....	30
3.25 NEW YORK STATE SERVICE-DISABLED VETERAN-OWNED BUSINESSES .....	31
3.26 BIDDERS, SUBCONTRACTORS, AND CONTRACTOR OBLIGATIONS .....	31
3.27 ENCOURAGING USE OF NYS BUSINESSES IN CONTRACT PERFORMANCE.....	32
3.28 CONFLICTS OF INTEREST .....	32
3.29 SEXUAL HARASSMENT POLICY CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW §139-L.....	33
3.30 EXECUTIVE ORDER NO. 177 CERTIFICATION .....	33
3.31 EXECUTIVE ORDER NO. 16 PROHIBITING STATE AGENCIES AND AUTHORITIES FROM CONTRACTING WITH BUSINESSES CONDUCTING BUSINESS IN RUSSIA.....	33
<b>4. EVALUATION AND SELECTION PROCESS .....</b>	<b>34</b>
4.1 PROPOSAL EVALUATION .....	34
4.2 ADMINISTRATIVE REVIEW (PASS/FAIL) .....	34



4.3	TECHNICAL EVALUATION (60 PERCENT).....	34
4.4	COST EVALUATION (30 PERCENT).....	35
4.5	INTERMEDIATE SCORE.....	36
4.6	INTERVIEWS (10 PERCENT).....	36
4.7	FINAL COMPOSITE SCORE .....	36
4.8	NOTIFICATION OF AWARD .....	36
5.	SCOPE OF WORK .....	38
5.1	LOT ONE: CERTIFICATION OF OPWDD’S CONSOLIDATED FISCAL REPORT (CFR) .....	39
5.2	LOT TWO: AUDITS OF MEDICAID SERVICE DOCUMENTATION (BILLING AND CLAIMING AUDITS) .....	49
5.3	LOT THREE: AD HOC AUDIT SERVICES.....	54
6.	CONTRACT CLAUSES AND REQUIREMENTS.....	58
6.1	ORDER OF PRECEDENCE.....	58
6.2	PROCUREMENT LOBBYING REQUIREMENT .....	58
6.3	CONTRACTOR INSURANCE REQUIREMENTS .....	60
6.4	TAX LAW SECTION 5-A CLAUSE.....	61
6.5	FREEDOM OF INFORMATION LAW/TRADE SECRETS.....	62
6.6	FORCE MAJEURE .....	62
6.7	CONSULTANT DISCLOSURE LEGISLATION.....	63
6.8	MULTI-AGENCY AND LOCAL HUMAN SERVICES DISTRICT/COUNTY USE.....	65
6.9	CONTACTS WITH EMPLOYEES.....	65
6.10	PUBLIC OFFICERS LAW .....	65
6.11	RESTRICTIONS ON COMMUNICATIONS .....	65
6.12	PROCEDURE FOR HANDLING OF PROTESTS/APEALS OF BID SPECIFICATIONS AND PROPOSED AWARDS.....	66
6.13	INFORMATION SECURITY BREACH AND NOTIFICATION .....	68
6.14	VENDOR RESPONSIBILITY.....	69
6.15	TERMINATION.....	71
	APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS.....	73
	APPENDIX A SUPPLEMENT – 1: AGENCY SPECIFIC TERMS AND CONDITIONS .....	82
	APPENDIX A SUPPLEMENT – 2: MWBE REQUIREMENTS AND PROCEDURES .....	86
	APPENDIX A SUPPLEMENT – 3: SDVOB REQUIREMENTS AND PROCEDURES.....	95
	APPENDIX A SUPPLEMENT – 4: FEDERAL ASSURANCES AND CERTIFICATIONS .....	102
	APPENDIX B: OPWDD CONTRACT BOILERPLATE .....	108
	APPENDIX C: VENDOR’S INSURANCE REQUIREMENTS .....	139
	APPENDIX D: HIPAA BUSINESS ASSOCIATE AGREEMENT .....	149
	ATTACHMENT 1: ATTESTATION CHECKLIST (ADMINISTRATIVE PROPOSAL) .....	155
	ATTACHMENT 2: DIVERSITY PRACTICES QUESTIONNAIRE .....	164
	ATTACHMENT 3: PROCUREMENT LOBBYING LAW CERTIFICATION OF COMPLIANCE .....	166
	ATTACHMENT 4: NON-COLLUSIVE BIDDING CERTIFICATION .....	168
	ATTACHMENT 5: LISTING OF PROPOSED SUBCONTRACTORS.....	170
	ATTACHMENT 6: ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE.....	171
	ATTACHMENT 7: MANDATORY OFFERER ASSURANCE OF NO CONFLICT OF INTEREST OR DETRIMENTAL EFFECT .....	172
	ATTACHMENT 8: SEXUAL HARASSMENT POLICY CERTIFICATION .....	174
	ATTACHMENT 9: EXECUTIVE ORDER 177 CERTIFICATION.....	175
	ATTACHMENT 10: CERTIFICATION UNDER EXECUTIVE ORDER NO. 16.....	176
	ATTACHMENT 11: REFERENCE FORM.....	177



<b>ATTACHMENT 12: COST PROPOSAL INSTRUCTIONS .....</b>	<b>180</b>
<b>ATTACHMENT 13: COST PROPOSAL .....</b>	<b>181</b>
<b>EXHIBIT I: OPWDD VOLUNTARY AGENCY LISTING .....</b>	<b>182</b>
<b>EXHIBIT II: LOT TWO TEMPLATE BILLING AND CLAIMING DRAFT AUDIT REPORT .....</b>	<b>183</b>
<b>EXHIBIT III: SAMPLE AD HOC SERVICES SOLICITATION .....</b>	<b>184</b>
<b>EXHIBIT IV: CONSOLIDATED FISCAL REPORT (CFR) .....</b>	<b>186</b>
<b>EXHIBIT V: CONSULTANT DISCLOSURE REPORTING REQUIREMENTS .....</b>	<b>187</b>

## 1. INTRODUCTION

### 1.1 Overview

The New York State Office for People With Developmental Disabilities (OPWDD) is seeking competitive proposals from firms owned by, managed by and/or employing staff with accounting or auditing certifications, including Certified Internal Auditors or Certified Public Accountants, qualified to work in NY State, interested in providing statewide professional audit, accounting, and/or consulting services. This Request For Proposals (RFP) has three (3) LOTS; two distinct audits (LOT ONE and LOT TWO), and a pool of qualified firms (LOT THREE) which will perform ad hoc audit/accounting/consulting services based on need – firms selected from a mini-bid process. It is anticipated this RFP will result in two (2) five-year contracts with one five-year extension at the mutual agreement of OPWDD and Contractor and approval of the Office of the State Comptroller; one for each, LOT ONE and LOT TWO; and multiple contracts with five-year terms and one five-year extension at the mutual agreement of OPWDD and Contractor and approval of the Office of the State Comptroller, available for LOT THREE services. The starting date for contracts awarded by mini-bid, to the LOT THREE pre-qualified vendor pool, that is fully executed prior to the expiration of the Ad Hoc Services Contract, shall survive the expiration date of the Ad Hoc Services Contract no longer than eighteen (18) months.

#### 1.1.1 Multiple awards will be as follows:

**LOT ONE:** One (1) award for annual certification of OPWDD's Consolidated Fiscal Report (CFR).

**LOT TWO:** One (1) award for Medicaid Service Documentation (Billing and Claiming audits)

**LOT THREE:** Multiple Mini-Bid Opportunities for Ad Hoc Services including Accounting, Auditing and Consulting Services.

The Offerer awarded the contract for the annual certification of OPWDD's Consolidated Fiscal Report (LOT ONE) will be precluded from being selected for awards in another LOT. Offerers selected for award in LOT TWO will be invited to participate in LOT THREE Ad Hoc solicitations in accordance with section 5.3. of this RFP. Offerers may choose to bid on LOT THREE only. OPWDD makes no guarantees of minimal workload assignments.

#### 1.1.2 **ENGAGEMENT TITLES** - OPWDD is providing the Engagement Titles and descriptions that will be used for evaluation purposes; Offerers are instructed to utilize these titles even if they are not consistent with the Offerers' existing titles. LOT THREE hourly rates must be proposed for each title. Offerers must provide staff who possess qualifications and perform duties as follows:

- **Engagement Principal** – Individual ultimate authority over decisions made by senior managers, who work to set the strategic vision of the company. Five years, or more, of experience leading an auditing, accounting, financial management or consulting firm, is required. Overall responsibility for the quality and delivery of the engagement and will assure OPWDD continues to have access to the resources needed to complete

an engagement. For LOTS ONE, TWO, and THREE, this individual must be a Certified Public Accountant (CPA).

- **Engagement Director** – OPWDD’s primary point of contact; Bachelors’ Degree, five or more years’ auditing, accounting, or financial experience including experience with the roles and responsibilities required for this title, which include working in a mediating capacity when problems arise and managing the contractual aspects of the engagement, such as billing and project performance ensuring deliverables conform to what has been contractually agreed upon against agreed schedule, quality, scope and budget.
- **Engagement Manager** – Bachelors’ Degree, five or more years of auditing, accounting, or financial experience, day to day lead for the engagement. Directly manages the senior associates, directs company policy for assigned division and makes important decisions on operations and finances.
- **Senior Associate** – Bachelors’ Degree, more than 3 years’ auditing, accounting, or financial experience, assigns tasks to entry-level associates and oversees the day-to-day management of data collection, advanced-level research and client issues.
- **Associate** – Bachelors’ Degree, entry level up to 3 years’ auditing, accounting, or financial experience, responsible for most of the administrative and research work within the firm.
- **Junior Associate** - entry-level role in accountancy, working with a senior associate to check the financial records of companies and make sure that they conform to business and accountancy regulations and ethics.

1.1.3 OPWDD is responsible for coordinating services for New Yorkers with developmental disabilities, including intellectual disabilities, cerebral palsy, Down syndrome, autism spectrum disorders, Prader-Willie syndrome and other neurological impairments. It provides services directly and through a network of approximately 500 nonprofit agencies, with about 80 percent of services provided by the private nonprofits and 20 percent provided by state-run services.

1.1.4 OPWDD is responsible for oversight of not-for-profit providers in OPWDD’s service delivery system. A primary tool utilized by OPWDD to help meet this need is through the audit function.

1.1.5 OPWDD conducts various types of audits and reviews to monitor the fiscal and governance affairs of not-for-profit providers, as well as compliance with rules, regulations and administrative guidelines. These critical tasks provide OPWDD executive management with essential feedback regarding adherence to regulations, financial performance and accomplishment of agency objectives.

## 1.2 Designated Contacts

### 1.2.1 OPWDD Designated Contact:

Pursuant to State Finance Law § 139-j(3)(a), the OPWDD identifies the following

allowable contact for communications related to the submission of written proposals, written questions, pre-bid questions, and debriefings.

Connie Blais  
New York State Office for People With Developmental Disabilities  
Contract Management Unit  
44 Holland Avenue, Fifth Floor  
Albany, New York 12229-0001

Email: [AuditingServicesRFP@opwdd.ny.gov](mailto:AuditingServicesRFP@opwdd.ny.gov)  
Phone: (518) 473-9300 (to be used for delivery purposes)

Further information about contacts with employees, Public Officers Law and Restrictions on Communication SFL § 139-j(3)(a), can be found in section 6.9 – 6.11 of this RFP and at <https://ogs.ny.gov/acpl>.

**1.2.2 Offerer Designated Contact:**

**1.2.3** Offerers are required to submit an **Email Registration for the Conference Call** identifying the allowable contact for communications related to the submission of written proposals, written questions, pre-bid questions and all notifications containing instructions or procurement updates. **It is important to note that the email address given on the Email Registration will be used for all communication purposes related to this RFP.**

**1.3 Minimum Qualifications**

**1.3.1** OPWDD will accept proposals from organizations with the following minimum qualifications (These qualifications are Pass/Fail; Offerers failing to meet the minimum qualifications as indicated below will result in a firm to be ineligible for the proposal evaluation process of that specific LOT(s)):

- a. Proposals must meet the Format and Content requirements of section 2.3 of this RFP;
- b. Proposals for LOTs ONE, TWO and THREE must include an affirmation that the Offerer is a public accounting firm which employs and/or can provide Certified Public Accountants licensed to practice in New York State with the ATTACHMENT 1: Attestation Checklist required with submission of the Administrative Proposal per section 2.3.4 of this RFP;
- c. All CPA Firms regardless of which LOT is being bid, must have a minimum of 5 years' professional auditing experience. An audit opinion or report from each one of the 5 years, supporting the 5-year professional auditing experience qualification must be submitted with the ATTACHMENT 1: Attestation Checklist and Administrative Proposal.

**1.3.2** Failure to meet these Minimum Qualifications will result in a proposal being found non-responsive and eliminated from consideration for the LOT where the qualification is not met.

### 1.3.3 Independence Provisions

- 1.3.3.1 Offerers interested in bidding on LOT ONE must provide an affirmation that they will be able to perform the duties as outlined in the scope of work in accordance with the independence provisions contained in Generally Accepted Government Auditing Standards (GAGAS) Chapter 3.
- 1.3.3.2 Any firm awarded a contract via this RFP will recuse itself from accepting assignments from OPWDD in which the assignment will present a conflict of interest (i.e., if the firm already has a fiscal relationship with a not-for-profit agency, they will not be able to audit that firm on behalf of OPWDD).
- 1.3.3.3 Upon selection for an interview for section 4.6 of this RFP, Offerers will be required to provide a comprehensive list of all not-for-profit agencies in the OPWDD service delivery system with which they: a) have provided services at any time from January 1, 2017 forward; or b) have a current contract; or c) are currently negotiating to provide services; or d) are otherwise engaged with the agency and/or its governance in any manner. This list must include the scope of work (contract or engagement type and the period reviewed), as applicable, for each agency.
- 1.3.3.4 This list must be updated by the Contractor and provided to the appropriate OPWDD Manager (to be determined) by January 1 of each subsequent contract year.
- 1.3.3.5 Contractor will ensure each staff assigned to an audit completes an independence statement at the onset of each new audit engagement.
- 1.3.3.6 The engagement for LOT ONE is required to be conducted by an independent CPA firm. Contractors for LOT ONE are required to meet the independence standard as defined under Generally Accepted Government Auditing Standards (GAGAS). The contractor will warrant their compliance with the independence standard and indemnify OPWDD against any third-party challenges to the contractor's independence without limitation. If found to be in violation of the independence requirement, the contractor's liability includes OPWDD legal fees incurred related to defense against third party claims. The contract will also be subject to termination under the termination provisions as stated in section 6.15. of the RFP.

### 1.4 Key Events/Timeline\*

Release of Request for Proposals.....Monday, May 23<sup>rd</sup>, 2022  
 Email Registration for Mandatory Teleconference .....Thursday, June 9<sup>th</sup>, 2022  
 Mandatory Pre-Proposal Teleconference .....2:00 p.m., Thursday, June 16<sup>th</sup>, 2022  
 Closing Date for Submission of Written Questions.....11:00 a.m., Friday, June 24<sup>th</sup>, 2022  
 Official Responses to Questions..... no later than Friday, July 8<sup>th</sup>, 2022  
 Proposal(s) Due/Bid Opening.....11:00a.m., Wednesday, July 29<sup>th</sup>, 2022  
 Interviews ..... between Wednesday, August 17<sup>th</sup> and Friday, August 26<sup>th</sup>, 2022  
 Notification of Tentative Award.....Monday, September 5<sup>th</sup>, 2022  
 Anticipated Contract Start Date (or upon OSC approval) ..... Tuesday, November 1st, 2022

\*Above dates may change at the sole discretion of OPWDD

### 1.5 Mandatory Conference Call

- 1.5.1 A mandatory Conference Call is scheduled for 2:00 p.m. for the date noted in section 1.4 of this RFP. The purpose of the Conference Call is to provide Prospective Offerers with detailed information regarding the procurement process and to address questions and concerns. WebEx access information will be provided to firms who have submitted a Mandatory Email Registration. Attendance is mandatory; attendance will be taken.
- 1.5.2 Additional questions will be permitted at the Conference Call.
- 1.5.3 Responses to questions submitted prior to the Conference Call, responses to questions received during and after the Conference Call, and notifications of amendments to the RFP will be posted at:

<https://opwdd.ny.gov/procurement-opportunities>

and the New York State Contract Reporter website:

<https://www.nyscr.ny.gov/contracts.cfm>

## **2. PROPOSAL SUBMISSION**

### **2.1 Mandatory Email Registration for Mandatory Conference Call**

- 2.1.1 Firms intending to submit a proposal in response to this RFP must participate in the Mandatory Conference Call described in section 1.5 of this RFP. Offerers must register for the Mandatory Conference Call by emailing the Designated Contact identified in section 1.2.1 of this RFP.

The Mandatory Email Registration must reference the title of this RFP and must be submitted in accordance with the timeline in section 1.4 of this RFP. The Mandatory Email Registration must provide the current mailing address, email address, and telephone number(s) for the person who will be the Offerer's designated point of contact throughout the duration of this RFP. Offerers must notify OPWDD of any and all changes relative to the point of contact provided in the Mandatory Email Registration. OPWDD is not responsible for any miscommunications that occur throughout this RFP process as a result of an Offerer's failure to provide notification of changes in the point of contact information.

Subsequent to the date for submission of the Mandatory Email Registration, prospective firms who do not submit Mandatory Email Registrations will not be considered "Offerers" as that term is used herein and will not be advised of subsequent changes in the scope of this RFP. A Mandatory Email Registration is required in order for the Offerer to participate in the Mandatory Conference Call and for OPWDD to consider a proposal.

- 2.1.2 A firm who elects not to submit a proposal but wishes to be kept advised of subsequent developments in this procurement (including changes to the RFP) can make arrangements in such regard by submission of a written request to the designated contact listed in section 1.2 of this RFP.
- 2.1.3 Firms who DO NOT INTEND to submit a proposal in response to this RFP should indicate such by submitting an email to the contact identified in section 1.2 of this RFP, to ensure their firm remains on the OPWDD's Offerers' list for future solicitations. Offerers should explain why a bid is not being submitted. Nonparticipation in this solicitation will not impact participation in future solicitations. Notification of non-participation should be returned no later than the proposal due date and time. Emails from firms who do not intend to submit

a proposal help the OPWDD demonstrate that proposals were shared with others besides those responding to this RFP, and to understand why a company did not bid.

#### 2.1.4 Cost of Proposal Preparation

All costs associated with responding to this RFP are entirely the responsibility of the Offerer and shall not be reimbursed by OPWDD. No claim will be made against OPWDD for any costs incurred by the Offerer for proposal preparation or any equipment demonstration which OPWDD may require.

### 2.2 RFP Questions and Clarifications

2.2.1 Questions concerning this RFP shall be submitted in writing by the Closing Date for Submission of Written Questions as stated in section 1.4 of this RFP.

2.2.2 Questions must be emailed to the Designated Contact as provided in section 1.2 of this RFP.

2.2.3 The SUBJECT of the e-mail must state **“Audit RFP Question”**. Each inquiry must cite the relevant proposal section and paragraph number.

2.2.4 Additional questions will be permitted at the mandatory Pre-Proposal teleconference. Responses to questions submitted prior to the teleconference and questions from the teleconference will be posted to

2.2.5 the New York State Contract Reporter website

<https://www.nyscr.ny.gov/>

2.2.6 and OPWDD’s internet site at

<https://opwdd.ny.gov/procurement-opportunities>

2.2.7 The responses to all questions will be in the form of a formal addendum which will be annexed to and become part of this RFP and any ensuing contract.

2.2.8 If the Offerer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Offerer shall immediately notify OPWDD of such error in writing, to the designated Contact listed in 1.2 of this RFP.

2.2.9 If, prior to the Deadline for Submission of Proposals, a bidder fails to notify OPWDD of a known error or an error that reasonably should have been known, the bidder shall assume the risk of proposing. If awarded the contract, the Offerer shall not be entitled to additional compensation by reason of the error or its correction. Prior to the Deadline for Submission of Proposals, any such clarifications or modifications as deemed necessary by OPWDD will be posted to the OPWDD website.

### 2.3 Proposal Format and Content

2.3.1 To be considered responsive, an Offerer must submit a complete proposal that satisfies all the requirements as stated in sections 2 and 5 of this RFP.

2.3.2 A Technical Proposal Checklist is included as part of the ATTACHMENT 1: Attestation Checklist (Administrative Proposal) of this RFP. The checklist may be of value to the Offerer as a guide. Submission of this checklist is mandatory so the failure to submit the Checklist will result in rejection of the proposal.

### 2.3.3 Offerer Covenant

In submitting a proposal, the Offerer covenants they will not make any claims for, or have any right to, damages for any misinterpretation or misunderstanding of the specifications or because of any lack of information. The information that must be furnished by the Offerer, and the manner in which it must be presented, is outlined in this section 2.3 of this RFP.

### 2.3.4 **Administrative Proposal (Attestation Checklist)**

2.3.4.1 The Attestation Checklist is an integral part of the proposal package. Submission of the Offerer's proposal, with submission of the Attestation Checklist, shall be construed by OPWDD as the Offerer's acceptance of the procedures, evaluation criteria, and other administrative instructions in this RFP. The Attestation Checklist must be signed by an individual who is authorized to contractually bind the successful Offerer. The checklist must:

2.3.4.1.1 Rank LOTs according to Offerer's preference of award. Proposals may be submitted for all three LOTs, however the selected Offerer for LOT ONE cannot be selected for any of the other LOTs. The same Offerer may be selected for LOTS TWO and THREE. Proposals may be submitted for LOT THREE only.

2.3.4.1.2 Include the Offerer's name, address, telephone and fax numbers, and the name(s), address(es), telephone number(s) and e-mail address(es) of the Offerer's contact(s) concerning the proposal.

2.3.4.1.3 Provide the New York State Supplier Identification Number and Federal Identification Number.

- To do business with the State of New York, each Bidder is required to obtain a NYS Vendor Identification Number for use in the Statewide Financial System (SFS). If you do not already have a Vendor ID Number, the Substitute Form W-9 must be completed and submitted directly to OPWDD upon notification of award. The purpose of the Substitute Form W-9, which will provide the Contractor's taxpayer identification number, business name and business contact person, is to allow the State to establish a vendor file in the State Financial System. Note: IRS Form W-9 is not acceptable for this purpose. A fillable pdf of the Substitute Form W-9 is available at: <https://www.osc.state.ny.us/files/vendors/2017-11/vendor-form-ac3237s-fe.pdf>

2.3.4.1.4 Per section 1.3.1.b, attest Offerer is a public accounting firm which employs and/or can provide Certified Public Accountants licensed to practice in New York State.

2.3.4.1.5 Per section 1.3.1.c, provide five (5) final reports, one report per year, for the past 5 years, supporting the 5-year professional auditing experience qualification.

2.3.4.1.6 Per section 1.3.3, attest Offerer does not have any relationships that would impair their independence in performing the attest engagement of the OPWDD Consolidated Fiscal Report (LOT ONE).

2.3.4.1.7 Outline any specific concerns regarding the disclosure of any information in the Offerer's proposal per section 6.5, Freedom of Information Law/Trade Secrets.

2.3.4.1.8 Confirm that Offerer has completed or updated Vendor Responsibility Questionnaire online in the Office of the State Comptroller's VendRep System:

[http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm);

- 2.3.4.1.9 Warrant the Offerer is willing and able to comply with New York laws with respect to foreign (non-New York) corporations.
- 2.3.4.1.10 Warrant the Offerer 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.
- 2.3.4.1.11 Warrant the Offerer will not delegate or subcontract its responsibilities under an agreement without the written permission of the OPWDD.
- 2.3.4.1.12 Acknowledge the costs set forth in the Cost Proposal are firm costs that are binding and irrevocable for a period of not less than 270 days from the date of proposal submission.
- 2.3.4.1.13 Acknowledge the Bidder understands and accepts the provisions of this RFP and all attachments thereto including Attachment D: HIPAA Business Associate Agreement, which incorporates a Data Use Agreement as defined in Appendix B, section 25.b. of this RFP; and agrees to comply with all applicable Federal, State and Local laws. The Offerer acknowledges and agrees to the terms and conditions of the OPWDD Standard Contract Terms, provided in Appendix B of this RFP, if selected for award of a contract resulting from this RFP.
- 2.3.4.1.14 Explicitly set forth any questions or anticipated difficulty with any such contract provisions. OPWDD reserves the right to reject any or all issues raised by a Bidder and require full acceptance of the terms of this RFP.
- 2.3.4.1.15 Acknowledge the Bidder has read the RFP, understands it, and agrees to be bound by all of the conditions therein, inclusive of all Appendixes, Attachments and Exhibits. Acknowledge the Offerer has reviewed and understands each addendum and accepts, and is willing to enter into a Contract substantially in accordance with the terms of the RFP inclusive of all Appendixes, Attachments and if the Offerer is selected for contract award, including the Questions and Answers and any Amendments or Addendums to this RFP.
- 2.3.4.1.16 Warrant all information provided by the Offerer in connection with submission of a proposal is true and accurate.
- 2.3.4.2 The NYS Procurement forms and documents, listed here with links to external websites or attached to this RFP, must be completed and signed as indicated, and submitted as part of the Administrative Proposal:

ATTACHMENT 1: Attestation Checklist (Administrative Proposal)

ATTACHMENT 2: Diversity Practices Questionnaire

ATTACHMENT 3: Procurement Lobbying Law Certification of Compliance

ATTACHMENT 4: Non-Collusive Bidding Certification

ATTACHMENT 5: Listing of Proposed Subcontractors

ATTACHMENT 6: Encouraging Use of New York State Businesses In Contract Performance

ATTACHMENT 7: Mandatory Offerer Assurance of No Conflict of Interest or Detrimental Effect

ATTACHMENT 8: Sexual Harassment Policy Certification

## ATTACHMENT 9: Executive Order 177 Certification

## ATTACHMENT 10: Certification Under Executive Order No. 16

Required forms included in APPENDIX A: Supplement – 2 that must also be submitted with the Administrative Proposal:

- Form MWBE 100 Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Program (MWBE-EEO) Policy Statement
- Form MWBE 101 Staffing Plan (Appendix A: Supplement)

2.3.4.3 Offerers must indicate their understanding of an agreement to provide the following certifications and reports upon award:

2.3.4.3.1 Contractor Certification Tax Form ST-220-TD and Contractor Certification to Covered Agency Form, ST-220-CA (See Section 10.14 Tax Provision for additional information. Fillable forms can be found at:

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

[https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

2.3.4.3.2 Planned/Annual Employment Reports

Offerers selected for Award, prior to the start of work, must provide a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract. Information on any persons working under any subcontracts with the state contractor must be included.

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

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report and instructions are attached to this RFP as EXHIBIT V.

2.3.4.3.3 Offerers selected for Award, prior to the start of work, must provide proof of Contractor Insurance Requirements per section 6.3 of this RFP:

Commercial General Liability

Commercial Auto Liability

Professional Liability

Crime Umbrella and Excess Liability

2.3.4.3.4 Workers' Compensation Documentation

- Form C-105.2 – Certificate of Workers' Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or

- Form SI-12 – Certificate of Workers’ Compensation Self-Insurance (or Form GSI-105.2 Certificate of Participation in Workers’ Compensation Group Self-Insurance); or
- Form CE-Workers’200 – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

#### 2.3.4.3.5 Disability Documentation

- Form DB-120.1 – Certificate of Disability Benefits Insurance; or
- Form DB-155 – Certificate of Disability Benefits Self-Insurance; or
- Form CE-200 – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

### 2.3.5 **Technical Proposal**

#### 2.3.5.1 General Requirements

The purpose of the technical proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to provide services in conformity with the requirements of this RFP. **There should be no dollar unit or costs included in the Technical Proposal document.** A technical proposal received, having costs delineated, will be deemed disqualified.

The technical proposal must demonstrate the qualifications of the firm and/or the particular staff to be assigned to each engagement; and include a detailed narrative of the audit approach or approaches that will meet the requirements of the Offerer’s chosen LOT or LOTs as specified in the Scope of Work, section 5 of this RFP.

The technical proposal must be prepared simply and economically providing a straightforward, concise description of the Offerer’s capabilities to satisfy the requirements of this RFP. While additional data may be presented, items presented in this section (2.3) of this RFP must be included. They represent the criteria against which the Technical Proposal will be evaluated.

#### 2.3.5.2 **Firm Qualifications and Experience**

2.3.5.2.1 The proposal must describe the size of the firm and organizational structure.

2.3.5.2.2 The proposal must provide information on the firm’s government and non-government auditing experience as required in section 1.3.1 of this RFP; and,

- the results of all federal or state desk reviews or field reviews of the firms’ audits during the past three (3) years;
- the Offerer must provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with any government oversight or regulatory bodies or professional organizations;
- prior experience with the types of ad hoc services described in sections 5.3.1.1 and 5.3.4 of this RFP.

2.3.5.2.3 The Proposal must include the most recent peer review.

2.3.5.3 **The Firm’s References** - Three references are required, it is recommended that additional references be included, from entities the Firm has engaged with in the past five years.

References must be submitted on the ATTACHMENT 11: Reference Form of this RFP for each LOT proposed with the Offerer's Technical Proposal.

**2.3.5.4 The Firm's Prior Engagements** - At a minimum, the Offerer must provide a list of audit or consulting engagements performed over the last 5 years, which are similar in scope to the types of engagements described in each LOT the firm is bidding on. For each engagement, the Offerer must provide a brief description of the scope of work, dates, dollar amount and total hours.

**2.3.5.5 For each LOT proposed, the Proposal must clearly delineate:**

**2.3.5.5.1 Similar Engagements with Non-Government and other Government Entities** - For the Offerer's office that will be assigned responsibility for the audit, list the most significant engagements (maximum of 5) performed in the last five (5) years that are similar to the engagements described for each proposed LOT. Fully describe and quantify past experience with engagements of similar size and scope as described in section 5 of this RFP. The engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact. LOT THREE proposals will list engagements and experience with the provision of auditing, accounting and consulting services as defined in section 5.3.1.1 of this RFP.

**2.3.5.5.2 Specific Audit Approach** - fully describe and quantify resources that will be devoted to each engagement in order to guarantee completion by specified deadlines per section 5 "Scope of Work" of this RFP. The proposal must set forth a work plan--including an explanation of the audit methodology to be followed--to perform the services required in the Scope of Work, section 5 of this RFP, for the LOT or LOTs the Offerer is submitting a proposal for, and for the types of audits listed in LOT THREE, section 5. of this RFP. In developing the work plan, reference should be made to such sources of information.

Offerers are required to provide the following information on their audit approach:

- proposed segmentation of the engagement
- level of staff and number of hours to be assigned to each proposed segment of the engagement
- type and extent of sampling techniques to be used in the engagement (not applicable for LOT TWO as required sampling and sampling methodology will be provided)
- provide an acknowledgment and justification that, if selected, the firm has the ability to respond rapidly and effectively to the type of engagement that may be performed under the contract.
- provide details and examples of the firm's capacity to undertake and complete the proposed engagements promptly.

**2.3.5.5.3 Project-Tracking (Billing) System** - A full description of the Offerer's project-tracking (billing) system, including a description of its software, process flow for entering and approving entries and responsible parties, how often data is input in the system, billing increments, any relevant tables that are cross referenced within (e.g. rates by title, etc.), and exportable formats. OPWDD must be able to trace/verify information on the vendor's invoice to the billing detail maintained by the vendor.

2.3.5.5.4 **Report Format** – the proposal must include a minimum of three sample formats for previously issued audit reports, comparable to required reports for each LOT that the Offerer is submitting a proposal for.

- Offerers may submit their choice of sample report formats for LOT THREE Ad Hoc services.

2.3.5.6 **Staff Qualifications and Experience**

2.3.5.6.1 The Offerer must identify the individuals who would be assigned to the engagement and indicate whether each person is registered/licensed to practice as a Certified Public Accountant (CPA) in New York State. The Offerer also must provide information on the government and non-government auditing experience of each person—including information on relevant continuing professional education for the past three (3) years. The firm also must indicate how the quality of staff over the term of the agreement will be assured.

2.3.5.6.2 The Offerer must describe the training and experience of staff that would qualify him or her to carry out audit responsibilities as outlined in each scope of work the Offerer is bidding on and audit projects in the areas of expenditure and compliance reviews, expenditure controls, management issues and cost reporting for the Engagement Titles provided in section 1.1.2 of this RFP. These titles will be used for evaluation purposes; Offerers are instructed to utilize these titles as defined, even if they are not consistent with Offerers existing titles.

2.3.5.6.3 Engagement principals, managers, other supervisory staff, and specialists may be replaced if those personnel leave the firm, are promoted, or are assigned to another office. These personnel may also be replaced for other reasons with the express prior written permission of OPWDD. However, in either case, OPWDD retains the right to approve or reject replacements.

2.3.5.6.4 Other audit personnel may be replaced at the discretion of the Offerer provided that replacements have substantially the same or better qualifications or experience.

2.3.5.6.5 **Resumes**

Resumes of all staff assigned to proposed engagements, are required for each of the Engagement Titles listed in 1.1.2 of this RFP. Proposals for LOT THREE must include resumes for each title.

2.3.5.7 **Diversity Practices.**

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with non-government entities and governmental units other than the State of New York.

Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs. OPWDD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity

practices of applicants to this procurement is practical, feasible, and appropriate. Accordingly, applicants are required to provide responses to the ATTACHMENT 2: Diversity Questionnaire as part of their technical proposal.

### 2.3.6 **Cost Proposal**

2.3.6.1.1 LOTs ONE and TWO require the submission of Engagement Title Hourly Rates and the number of hours to be assigned to each title, which are inclusive of personnel, support staff, overhead, travel, and all other direct and indirect expenses related to the provision of audit services as detailed in section 5 of this RFP's "Scope of Work" for each LOT.

2.3.6.1.2 LOT THREE requires Offerers to submit an hourly rate for each engagement title, inclusive of personnel, support staff, overhead, travel, and all other direct and indirect expenses related to the needed service(s). The hourly rates provided by the Offerer, will be combined to determine the LOT THREE Total for Evaluation Purposes.

2.3.6.1.3 ATTACHMENT 13: Cost Proposal submission form, which is available in an Excel version labeled "RFP Auditing Services and Accounting, Auditing, Consulting Services Vendor Pool Cost Proposal" is provided with the mailing of this RFP and wherever this RFP is posted.

➤ LOTS ONE, TWO:

- Offerers are required to indicate the LOT or LOTs in which they would like to be considered for award by clicking in the box above the respective LOT;
- Offerers are required to enter Hourly Rates for each title inclusive of personnel, support staff, overhead, travel, and all other direct and indirect expenses, etc.;
- With the exception of LOT THREE, Offerers are required to enter the Number of Hours per Engagement, for each proposed LOT, derived by considering the scope of work and details entailed in the provision of services for each LOT respectively.
- The proposed Engagement Rates will be calculated automatically on the Excel version of the Cost Proposal. Instruction for performing manual calculations of the Engagement Rate are available in ATTACHMENT 12 of this RFP;
- Engagements Rates as proposed, must not be exceeded and must be inclusive of personnel, support staff, overhead, travel, and all other direct and indirect expenses, etc., relative to performing the audit/engagement as described in the Scope of Work for each LOT presented in section 5 of this RFP. The proposed Engagement Rate is a total all-inclusive maximum price containing all direct and indirect costs, including all out-of-pocket expenses.

➤ LOT THREE:

- A LOT THREE Total will automatically be calculated for LOT THREE, based on the Offerer's Hourly Rates submitted for each one of the Engagement Titles on the Cost Proposal Form.
- LOT THREE proposals will be ranked in accordance with section 4.4 of this RFP.

2.3.6.2 An official authorized to contractually bind the prospective Offerer must sign the Cost Proposal.

- 2.3.6.3 The titles listed on the Cost Proposal will be used for evaluation purposes and it is expected that they will be utilized for billing purposes accordingly. Offerers are instructed to utilize these titles as defined in section 1.1.2 of this RFP, even if they are not consistent with Offerers existing titles.
- 2.3.6.4 **Most Favored Nation Clause:**
- The successful Bidder guarantees that the pricing offered to the State shall be the same as or lower than that offered to other customers under the same or similar terms and conditions. If, for any reason during the term of the contract the successful Bidder reduces the pricing due to special offers to a similarly situated entity, the State shall receive an equivalent reduction in pricing for the product or services delivered to the State.
- 2.3.6.5 Proposals with a rate format different from the format provided in ATTACHMENT 13: Cost Proposal Form will be considered non-responsive and will be disqualified. All rates must be presented as a fixed dollar amount carried out to no more than two decimal places (\$15.50).
- 2.3.6.6 Proposals must contain a rate for each title; a range of hourly rates is not acceptable. A proposal with \$0 indicated for an hourly rate, or proposals with a range of hourly rates, or a range of hours, will be disqualified.
- 2.3.6.7 OPWDD will not be responsible for expenses incurred in preparing and submitting the technical proposal or the cost proposal.

## **2.4 Instructions for Proposal Submission**

Submission of proposals in a manner other than as described in these instructions (e.g., fax, electronic transmission) will not be accepted and the Offerer will be disqualified.

Proposals received after 2:00 pm on the Proposal Due Date (section 1.4 of this RFP) may not be opened nor eligible for evaluation purposes, barring unavoidable circumstances beyond the Offerer's control, unless it is in the best interest of OPWDD and at the sole discretion of OPWDD.

All proposals must be submitted and received by the proposal submission date and time specified in this RFP. Proposals received after the proposal submission deadline shall be rejected.

- 2.4.1 **Packaging of RFP Response**
- 2.4.1.1 Each Offerer is expected to provide OPWDD with information, evidence and demonstrations that will make possible a contract award that best serves the stated interests of OPWDD and the State of New York. Offerers are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, systems, processes, and procedures.
- 2.4.1.2 There is no limit on the number of pages in each proposal; however, Offerers should prepare their proposals simply and economically, providing a straightforward and concise description of their abilities to satisfy the requirements of this RFP. Proposals containing preponderance of boilerplate text are discouraged. Emphasis in each proposal should be on completeness and clarity of content.
- 2.4.1.3 Failure by an Offerer to provide the appropriate information or materials in response to each stated requirement or request for information may result in lower scores during the

evaluation or determination of a non-responsive proposal. Responses to complex RFP requirements that are stated in a form semantically equivalent to “Offerer agrees to comply” may be rejected for non-responsiveness at the discretion of OPWDD.

- 2.4.1.4 Offerers must submit a complete proposal as outlined below. A proposal that does not comply with these requirements may be deemed non-responsive.
- 2.4.1.5 The Offerer must submit their proposal electronically on USB 3.0 Thumb Drives with hard copies of all documents that require original signatures. Each section (administrative, technical, and cost) of the proposal must be submitted on a separate USB 3.0. Offerer’s submitting proposals for more than one LOT may include the technical proposals for each LOT on the same thumb (separate files, clearly labeled). The cost proposal for each LOT may also be submitted on the same thumb drive (separate files, clearly labeled).
- 2.4.1.6 Two copies of all USB 3.0 Thumb Drives and two hard copies of documents requiring original signatures are required. Thumb Drives must be clearly marked to differentiate one from the other. Failure to separate each section of the proposal may result in disqualification from scoring.

Each envelope containing the USB 3.0 Thumb Drives, at a minimum should be labeled with the Offerer’s name, RFP reference of “Audit Services” and the name of the proposal (administrative, technical or cost).

- 2.4.1.7 A minimum of six (6) USB 3.0 Thumb Drives are required:
  - **Administrative Proposal:** 2 USB 3.0 Thumb Drives plus 2 hard copies of required forms containing signatures.
  - Plus a separate thumb drive containing a Redacted Proposal, if applicable to the Offerer. Per section 6.5 “Freedom of Information Law/Trade Secrets” of this RFP, Offerer must submit a redacted version of the proposal identifying information which should be protected by Public Officers Law, Article 16, Section 87(2)(d).
  - **Cost Proposal:** 2 USB 3.0 Thumb Drives plus 2 hard copies containing signatures.
- 2.4.1.8 All copies of the Proposals must be submitted in three separately sealed envelopes clearly labeled as follows:
  - Envelope One:** “Auditing Services RFP Administrative Proposal”
  - Envelope Two:** “Auditing Services RFP Technical Proposal”
  - Envelope Three:** “Auditing Services RFP Cost Proposal”
- 2.4.1.9 The OPWDD is to receive the three separately sealed proposals; one for Administrative, one for Technical and one for Cost, which may all be combined into one mailing package.
- 2.4.1.10 Clearly indicate on the outside of the mailing package that a proposal is enclosed. The proposal response must include the Offerer’s street address. Proposals with a post office box must include a street address. Complete proposals must have a label on the outside of the package that states the following:

**PROPOSAL ENCLOSED** (Bold, Large Print, All capital letters)

Title of RFP: \_\_\_\_\_

Offerer’s Name and Address: \_\_\_\_\_

Proposal Submission Date: \_\_\_\_\_

- 2.4.2 Offerer should transmit proposals in a form such that a receipt is obtained indicating the date and time of delivery and recipient.
- 2.4.2.1 Proposals must be submitted, by U.S. Mail, or by courier/delivery service (e.g., FedEx, UPS, etc.) in a sealed package to the attention of Connie Blais at the address provided in section 1.2 of this RFP. Proposals may also be hand-delivered as outlined in section 2.4.4.
- 2.4.2.2 The OPWDD must receive complete proposals by 2:00 PM Eastern Daylight Time on the Proposal Due Date as indicated in section 1.4 of this RFP. If proposal packaging labels are not sufficient to identify the contents, the OPWDD reserves the right to open packages for the purpose of identifying the source and contents of the package.
- 2.4.3 All proposals and accompanying documentation become the property of the OPWDD and ordinarily will not be returned.
- 2.4.3.1 The Offerer's proposal and all provisions of the offer must remain in effect for two-hundred seventy (270) days, during which period bids must remain firm.
- 2.4.3.2 If the Offerer selection process is not finalized by the date identified under the heading Calendar of Events in Section 1.4 of this RFP, a bid shall remain firm until such later time as either a contract is awarded by the OPWDD or the Offerer delivers to the OPWDD written notice of the withdrawal of the bid.
- 2.4.4 Building Access Procedures for Hand Deliveries
- To access the OPWDD office building, all visitors must enter through the main entrance at the front of the building and present photo identification at the security desk and comply with all requirements and procedures applicable to visitors. Offerers who intend to hand-deliver proposals or utilize independent courier services should allow extra time to comply with these procedures. Offerers hand-delivering their proposals should ask the security personnel at the security desk to call the Contract Management Unit at (518) 473-9300. Building access procedures may change or be modified at any time. Offerers assume all risks for timely, properly submitted hand deliveries.
- NOTE:** Offerers should request a receipt containing the time and date received and the signature of the receiver for all hand-deliveries and ask that this information also be written on the package(s).

### **3. ADMINISTRATIVE INFORMATION**

#### **3.1 Issuing Office**

This Request for Proposal (RFP), entitled Audit Services and Accounting, Auditing, and Consulting Services Vendor Pool, is issued by the New York State Office of People With Developmental Disabilities (OPWDD).

#### **3.2 Term of Contract**

3.2.1 The OPWDD will enter into multiple contracts with the Offerers submitting selected proposals as a result of this RFP. Each contract to be awarded as a function of this solicitation will be for a five-year (5) term, commencing upon the date of the State Comptroller's approval.

3.2.2 The eligibility period of the pre-qualified pool of vendors, selected in response to LOT THREE Ad Hoc Services, will begin upon the date of the State Comptroller's approval and end five years from that date; however any Contract resulting from a LOT THREE mini-bid, will be allowed to extend up to eighteen months beyond the termination of the pre-qualified five-year term.

3.2.3 Appendix A of this RFP provides the terms and conditions of the Standard State contract. The proposal shall be submitted with the understanding that only the acceptance in writing by a designated duly authorized OPWDD representative with the approval of the Attorney General, the Office of the State Comptroller and, when appropriate, the Division of the Budget shall constitute a contract between the Successful Bidder and the State of New York.

#### **3.3 Price**

3.3.1 The Hourly Rates submitted in response to this RFP for LOTS ONE, TWO, and THREE must be:

3.3.1.1 All-inclusive, covering all services required in this RFP, including personnel, support staff, overhead, travel, and all other direct and indirect expenses related to the provision of audit services as detailed in section 5 of this RFP's "Scope of Work" for each LOT.

3.3.1.2 Engagement Rates, calculated by multiplying the number of hours proposed times the Engagement Title Hourly Rates are not to be exceeded for the duration of the resultant contract(s), with the exception of an annual price adjustment in accordance with the following (3.3.2 of this RFP):

3.3.2 Annual price adjustments will be based on the Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; All items, not seasonally adjusted, 1982–1984=100 reference base, using the index from two months prior to the 12<sup>th</sup> month of the contract, published in mid-month of the 11<sup>th</sup> month for the previous 12 month period (if the contract begins in February, the December Index will be used, which is published in January); or mid-month of the month after the first 10 month period of the resultant contract, and every year thereafter. Price adjustments must not exceed a 3% annual increase over the term of the contract. Contractors must submit justification and a written request for a CPI adjustment 90 days prior to the end of the first 12-month period, and each subsequent year-end date.

3.3.3 LOT ONE: The July 31 deadline for the final report deliverable is required to allow OPWDD to timely file its CFR with the federal government. The contractor will be required to work without exceeding the proposed engagement rate and must notify OPWDD should they

encounter circumstances that could cause them to exceed the proposed number of hours. OPWDD reserves the right to negotiate additional hours to be added to the engagement rate to compensate the contractor for additional work incurred through no fault of their own. Such circumstances include but are not limited to significant changes in OPWDD information systems or late delivery (after May1) of the draft cost finding to the contractor. The awardee for LOT ONE will be expected to be able to commit additional resources to the engagement to ensure that the July 31 deadline for delivery of the Final Report is met.

- 3.3.4 LOT THREE: Contracts resulting from mini-bid solicitations, extending beyond one year will also be eligible for annual increases in accordance with 3.3.2 of this RFP.

### **3.4 Method of Payment**

- 3.4.1 LOT ONE Payment: Contractors may submit monthly Claims for Payment based on actual hours worked and successful completion of each deliverable as outlined in 5.1.3.6 of this RFP. Hours worked will be assessed against the proposed engagement and completion of deliverables. Payment will be based on the hours worked per title multiplied by the all-inclusive hourly rate per title as defined in the contract resulting from the RFP. However, a 5% withhold of payment will be made on each monthly invoice and 100% of the final monthly invoice until such time as all deliverables are completed to the satisfaction of OPWDD. OPWDD can impose a financial penalty for deliverables not satisfactorily received by OPWDD based on the following:

- Penalty of 50% of withhold if the Final Report is delivered after July 31, but before September 1 and OPWDD does not incur a penalty for late CFR submission; or
- Penalty of 100% of withhold if Final Report is delivered after July 30 but before September 1 and OPWDD incurs a financial penalty for late CFR submission; or
- Penalty of 100% of withhold if Final Report is delivered after September 31.

- 3.4.2 LOT TWO Payment: Contractors may submit Claims for Payment upon successful completion of each deliverable as outlined in 5.3.3.1.16 of this RFP, however a 10% withhold of payment will be enforced for a deliverable that is not satisfactorily received by the OPWDD. The portion of payment withheld will be made when the deliverable is completed to the satisfaction of the OPWDD.

- 3.4.3 LOT THREE: Payment terms will be dependent on the engagement. While it is anticipated that most projects under this contract will be of short duration, some may be longer. In these latter instances, interim bills may be submitted but may not cover a period of less than a calendar month.

### **3.5 Method of Award**

Awards will be made based on “Best Value”, defined by State Finance Law, Section 163j as the “basis for awarding contracts for services to the Offerer which optimizes quality, cost and efficiency, among responsive and responsible Offerers.” This is a competitive procurement, which will result in multiple contracts and a pool of pre-qualified firms. The major criteria in the evaluation of the proposals will include:

- Technical (60%)
- Cost (30%)
- Interview (10%)

Evaluation committees from OPWDD will review the proposals submitted and score each proposal using evaluation instruments developed for this purpose.

### **3.6 Billing and Payment**

3.6.1 Upon completion of a deliverable, as outlined in 3.4 of this RFP, Contractors must submit an invoice and/or a vendor certified Statewide Financial System (SFS) Claim for Payment Form (AC 3253-S) referencing the Contractor's New York State Supplier Identification Number, the Contract Number, the Dates of Service, hours worked by title and employee name, and hourly rates.

3.6.2 No payments will be authorized or made until a contract has been signed and executed and the work according to the executed contract has been performed. Payment to contractors shall be made upon review and approval of the Claim for Payment and/or Invoice accompanied by supporting documentation as required by the OPWDD.

3.6.2.1 Payments are made via direct deposit with New York State's electronic payment program for vendors, transferring payments directly into the Contractor's bank account. Contractors who have not already enrolled, can do so by visiting <http://osc.state.ny.us/vendors/epayments.htm>.

3.6.2.2 Invoices billing for services provided under contracts resulting from all of the LOTs in this RFP, must contain hourly rates that do not exceed the Hourly Rates submitted on the Cost Proposal Form and required for participation in this procurement.

3.6.2.3 Claim for Payments and/or Invoices must be e-mailed or mailed to:

[AccountsPayable@ogs.ny.gov](mailto:AccountsPayable@ogs.ny.gov)

or mailed to:

Office for People with Developmental Disabilities

Unit ID: **OPD01**

c/o NYS OGS BSC Accounts Payable

Building 5, 5th Floor

1220 Washington Ave.

Albany, NY 12226-1900

### **3.7 Reserved Rights**

3.7.1 The Office for People With Developmental Disabilities reserves the right to:

3.7.2 Reject any or all proposals received in response to this RFP.

3.7.3 Amend, withdraw or reissue a modified version of this RFP.

NOTE: Any such modification issued on or before the due date for proposals shall go to all entities that have submitted a Mandatory Email Registration; after that date (or an amended date, as the case may be), notification will be only to Firms who have submitted proposals or Mandatory Email Registrations. The OPWDD's right to issue modifications of this RFP permits any addition or deletion of requirements as the OPWDD may deem appropriate.

- 3.7.4 Withdraw the RFP at any time, at the OPWDD's sole discretion.
- 3.7.5 Make an award under this RFP in whole or in part.
- 3.7.6 Disqualify any Offerer whose conduct and/or proposal fails to conform to the requirements of this RFP.
- 3.7.7 Seek clarifications and revisions of proposals.
- 3.7.8 Use proposal information obtained through site visits, management interviews and the OPWDD's investigation of an Offerer's qualifications, experience, ability or financial standing, and any material or information submitted by the Offerer in response to the OPWDD's request for clarifying information in the course of evaluation and/or selection under this RFP.
- 3.7.9 Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
- 3.7.10 Prior to the bid opening, direct Offerers to submit proposal modifications addressing subsequent RFP amendments.
- 3.7.11 Change any of the scheduled dates.
- 3.7.12 Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Offerers.
- 3.7.13 Waive any requirements that are not material.
- 3.7.14 Make typographical corrections to proposals, with the concurrence of the Offerer.
- 3.7.15 Correct computational errors with the written concurrence of the Offerer.
- 3.7.16 Waive procedural technicalities in proposals received, upon notification to the Offerer.
- 3.7.17 Negotiate with the successful Offerer within the scope of the RFP in the best interests of the OPWDD.
- 3.7.18 Conduct contract negotiations with the next responsible Offerer, should the OPWDD be unsuccessful in negotiating with the selected Offerer.
- 3.7.19 Utilize any and all ideas submitted in the proposals received, unless legal patent or proprietary rights cover those ideas. Selection or rejection of any proposal does not affect this right.
- 3.7.20 Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 270 days from the bid opening.
- 3.7.21 Begin contract negotiations with other Offerers responsive to this RFP should the OPWDD be unsuccessful in negotiating a contract with the selected Offerer within a timeframe acceptable to OPWDD.
- 3.7.22 Re-solicit offers from the vendor community by re-publishing and re-advertising this RFP at any time.

### **3.8 Extraneous Terms**

- 3.8.1 Bids must conform to the terms set forth in the solicitation. Due to the requirement for uniformity of language in contracts with all Bidders or prospective Contractors, exceptions

that materially alter the Terms and Conditions set forth in this RFP will be grounds for rejection of the proposal or disqualification of the Bidder. Bidders must submit for consideration proposed extraneous terms during the question-and-answer period, as outlined in section 1.4 of this RFP.

- 3.8.2 Exceptions to this RFP may only be made to the extent that they are minor and do not materially alter the Terms and Conditions stated herein and will be subject to acceptance by OPWDD or to Bidder withdrawal prior to contract award. The State reserves the right, in its sole discretion, to determine the materiality of the Bidder's stated exception.
- 3.8.3 Only extraneous terms accepted by OPWDD, in writing, shall be expressly incorporated into the Contract. Acceptance and/or processing of a bid shall not constitute acceptance of extraneous terms. OPWDD will not entertain any exceptions to Appendix A, Standard Clauses for New York State Contracts.
- 3.8.4 Any Bidder submissions on standard, pre-printed forms, such as but not limited to product literature, order forms, license agreements, contracts, or other documents that are attached or referenced with submissions shall not be considered part of the bid or resulting Contract but shall be deemed included for informational or promotional purposes only.

### **3.9 General Requirements for Proposals**

- 3.9.1 Bidders must submit a complete response to this RFP that satisfies the requirements set forth below. Failure to do so may render the Bidder's proposal nonresponsive. A Proposal Document Checklist is included with the ATTACHMENT 1: Attestation Checklist (Administrative Proposal) in this RFP.
- 3.9.2 Proposals that make extensive use of color photographs or illustrations, or that include separate brochures or marketing materials and overly elaborate embellishments are discouraged.
- 3.9.3 All proposals submitted in response to this RFP must be written in the English language, with quantities expressed using Arabic numerals and United States Dollars (\$ USD), as applicable.

### **3.10 Exceptions to RFP**

Due to the requirement for uniformity of contract language with all Offerers, or prospective contractors, exceptions which materially alter the terms and conditions set forth in this RFP will be grounds for rejection of the proposal or disqualification of the Offerer. Exceptions to this RFP may only be made to the extent they are minor and do not materially alter the Terms and Conditions stated herein and will be subject to acceptance by the OPWDD or to Offerer withdrawal prior to contract award. The State reserves the right, in its sole discretion, to determine the materiality of the Offerer's stated exception.

### **3.11 Waiver of Rights**

No term or provision of this RFP or the resultant Contract, shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under the resultant contract, shall not constitute or consent to, a waiver of, or excuse for any other, different or subsequent breach.

### **3.12 Dispute Resolution**

Except as otherwise provided in the Contract, any dispute arising under the resulting Contracts shall be promptly referred to the New York State OPWDD Contract Manager (to be determined) and the Offerer's Engagement Partner. If the parties are unable to amicably resolve the dispute within thirty (30) days of the referral, then either party may seek legal or equitable relief in a court of competent jurisdiction.

### **3.13 HIPAA Security and Confidentiality**

3.13.1 Proposed solutions are required to comply with Federal HIPAA privacy and security standards. The successful Offerers should expect to be able to certify such compliance with its hosted solution. The successful Offerer's solution is also subject to the terms of the New York Cyber Security Policy <https://its.ny.gov/eiso/policies/security> and the New York State Information Security Breach and Notification Act

(<http://www.ag.ny.gov/new-york-state-information-security-breach-and-notification-act>).

3.13.2 The contracts with the successful Offerers will include provisions for notification of OPWDD within two hours of any suspected breach of security involving an individual's personal or health information.

3.13.3 The successful Offerer must agree to, and sign, the OPWDD HIPAA Business Association Agreement (see APPENDIX D of this RFP)

3.13.4 Contractor Access to Data

The Contractor shall not copy or transfer Data unless authorized by OPWDD. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any Data for any purpose other than fulfilling the service. Contractor is prohibited from Data Mining, cross tabulating, monitoring OPWDD's Data usage and/or access, or performing any other Data analytics other than those agreed to within the scope of the contract resulting from this RFP. A Contractor shall identify their monitoring practices for the OPWDD's written permission that will monitor the OPWDD's usage to facilitate system maintenance, service, fixes, and other such solution functionality-based services. Unless otherwise agreed to in the contract resulting from this RFP, at no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the OPWDD be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to the OPWDD upon request. Contractor must comply with any and all security requirements within the contract resulting from this RFP.

### **3.14 Confidentiality of Information/Publication Rights:**

3.14.1 The Contractor shall treat all information, including but not limited to, information relating to OPWDD service recipients and providers, obtained through its performance under contract, as strictly confidential. Contractor shall not disseminate any information obtained in any manner except as necessary to the proper discharge of its obligations under contract with the OPWDD. Materials/documents produced by the Contractor in the fulfillment of its obligations under contract with the OPWDD become the property of the OPWDD unless prior arrangements have been made with respect to specific documents. The Contractor

may not utilize any information obtained via interaction with the OPWDD in any public medium (media - radio, television), (electronic - internet), (print - newspaper, policy paper, journal/periodical, book, etc.) or public speaking engagement without the official prior approval of OPWDD Senior Management. Contractors bear the responsibility to uphold these standards rigidly and to require compliance by their employees and subcontractors. Requests for exemption to this policy shall be made in writing, at least 14 days in advance, to the OPWDD Contract Management Unit, 44 Holland Avenue, (5<sup>th</sup> Floor), Albany, New York 12229.

### **3.15 Prime Contractor Responsibilities**

- 3.15.1 In the event the selected Offerer's bid includes the provision of goods or services by another firm or manufacturer, it shall be mandatory for the selected Offerer to assume full responsibility for the delivery, installation, maintenance and support services for such items described in the proposal. Should the selected Offerer seek external financing, the OPWDD reserves the right to approve the assignment of the contract for financing purposes. In any event, OPWDD will contract only with the selected Offerer, not the Offerer's financing institution or subcontractors. OPWDD shall consider the selected Offerer to be the sole contractor with regard to all provisions of the contract resulting from this RFP.
- 3.15.2 Prior written approval by OPWDD shall be required for all subcontracts entered into by any Offerer selected under this RFP. Copies of subcontracts must be supplied to OPWDD prior to their approval. Any subcontract related to performance of the contract resulting from this RFP shall be subject to the provisions of law set forth in Sections 220, 220-d, and 220-e of the Labor Law of the State of New York, Articles 15 of the Executive Law of the State of New York, and to the provisions set forth in Appendix A - Article 5 of this RFP.

### **3.16 Public Information Requirements**

All of the proposals, upon submission, will become the property of the OPWDD. The OPWDD will have the right to disclose all or any part of a proposal to public inspection based on its determination that disclosure of all or any part of the proposal will serve the public interest. Prospective Vendors are further advised that, except for trade secrets, other proprietary information and certain personnel information (which the OPWDD has reserved the right to disclose), all parts of proposals must ultimately be disclosed to those members of the general public making inquiry under the New York State Freedom of Information Law (Public Officers Law, Article 6), although proposal contents cannot ordinarily be disclosed by the OPWDD prior to bid award.

Should a Vendor wish to request exception from public access to information contained in its proposal, the Vendor must specifically identify the information and explain in detail why public access to the information would be harmful to the Vendor. Use of generic trade secret legends encompassing substantial portions of the proposal or simple assertions of trade secret interest without substantive explanation of the basis therefore will be regarded as nonresponsive to this requirement for specificity and explanation. Information relating to Contractor price submissions, including commercial, book or list pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to Contractor. Non-responsive requests for exception from public access will not be considered by the OPWDD in the event a Freedom of Information request for proposal information is received.

**3.17 Procedure for Handling of Protests/Appeals of Bid Specifications and Proposed Awards**

OPWDD must receive formal protests concerning errors, omissions or prejudice including patently obvious errors in the bid specifications or documents at least ten (10) calendar days before the Proposal Due date set in section 1.4 of this RFP. Offerers should refer to section 6.12 of this RFP for the complete procedure for handling of protests/appeals of bid specifications and proposed awards.

**3.18 Debriefing Procedures**

Upon OPWDD's receipt of a written request within 15 calendar days of the tentative award(s) of this RFP including awards resulting from LOT THREE mini-bids, OPWDD shall provide a debriefing to any unsuccessful Offerer that responded to this RFP regarding the reasons that the proposal or bid submitted by the unsuccessful Bidder was not selected for an award. The discussion will be limited to only the evaluation results as they apply to the proposal of the Bidder receiving the debriefing. OPWDD may provide overall ranking, and ranking of Technical and Cost evaluations, and Interview; but scores will not be provided.

**3.19 Formal Written Protests**

Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest, as described below. Any Vendor or prospective Vendor who believes that there are errors or omissions in the procurement process, or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to OPWDD and request administrative relief concerning such action ("formal protest").

A formal protest must be submitted by email to the Designated Contact identified in section 1.2 of this RFP. A formal protest must include a statement of all legal and/or factual grounds for disagreement with an OPWDD specification or purchasing decision, a description of all remedies or relief requested, and copies of all applicable supporting documentation.

**3.19.1 Deadline for Submission of Formal Protests**

OPWDD must receive formal protests concerning errors, omissions, or prejudice, including patently obvious errors in the bid specifications or documents at least ten (10) calendar days before the date set in the solicitation for receipt of bids.

OPWDD must receive formal protests concerning a pending contract award within seven (7) calendar days after the protesting party ("protester") knows or should have known of the facts that form the basis of the protest.

**3.19.2 Review and Final Determination of Protests**

Protests will be resolved through written correspondence. However, the protester may request a meeting to discuss a formal protest, or OPWDD may initiate a meeting on its own motion, at which time the participants may present their concerns. Either the protester or OPWDD may elect to decline such a meeting.

Where further formal resolution is required, the Associate Commissioner shall designate an OPWDD employee ("designee") to determine and undertake the initial resolution or settlement of any protest.

The designee will conduct a review of the records involved in the protest and provide a memorandum to the Associate Commissioner summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Associate Commissioner shall: (i) evaluate the procurement team's findings and recommendations, (ii) review the materials presented by the protesting party and/or any materials required of or submitted by other Vendors, (iii) if necessary, consult with agency Counsel, and (iv) prepare a response to the protest.

A copy of the protest decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the Office of the State Comptroller (OSC), shall be sent to the protester or its agent within 45 calendar days of receipt of the protest, except that upon notice to the protester, such period may be extended. The protest decision will be recorded and included in the procurement record, or otherwise forwarded to the OSC upon issuance.

### 3.19.3 Appeals

Upon receipt of OPWDD's determination of a protest, a protester has ten (10) business days within which to file an appeal of the determination with the OSC Bureau of Contracts. The appeal must be filed with the Bureau Director and emailed to [bidprotests@osc.ny.gov](mailto:bidprotests@osc.ny.gov) or sent via US Mail to Bureau of Contracts, New York State Office of the State Comptroller, 110 State St., 11th Floor, Albany, NY 12236. The protester's appeal must contain an affirmation, in writing, that a copy of the appeal has been served on OPWDD and any other party that participated in the protest. In its appeal, the interested party shall set forth the basis on which it challenges the contracting agency's determination. The OSC Bureau of Contracts will conduct its determination of the appeal in accordance with its established policy.

## 3.20 Bid Preparation Expenses

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a bid or for any work performed prior to the formal execution of a Contract or approval by the State Comptroller, if required.

## 3.21 Procurement Lobbying Restrictions

- 3.21.1 As required by the New York State Procurement Lobbying Law (STF §§139-j and 139-k), this RFP includes and imposes certain restrictions on communications between OPWDD and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest solicitation of offers through final award and approval of the resulting Contract by OPWDD and the Office of the State Comptroller (OSC) (the "restricted period") to other than designated staff members unless the contact is permitted by the statutory exceptions set forth in STF §139-j(3)(a). Designated staff members are identified at the beginning of this RFP.
- 3.21.2 OPWDD employees are permitted to communicate with Bidders concerning this RFP only under circumstances described in the Procurement Lobbying Law. Any Bidder causing or attempting to cause a violation or circumvention of those requirements may be disqualified from further consideration for selection.
- 3.21.3 OPWDD employees are required to obtain certain information when contacted during the restricted period and to determine the responsibility of the Bidder pursuant to Sections 139-j and 139-k. A violation can result in a determination of non-responsibility, which can result

in disqualification for a contract award. In the event of two determinations within a four-year period, a Bidder will be debarred for a period of four years from obtaining a governmental procurement contract award. Further information about these requirements can be found at <http://www.ogs.ny.gov/acpl>.

3.21.4 OPWDD reserves the right, in its sole discretion, to terminate the Contract in the event that OPWDD determines that the certification filed by the Bidder in accordance with STF §139-k was intentionally false or intentionally incomplete. Upon such determination, OPWDD may exercise its termination right by providing written notification to the Bidder in accordance with the written notification terms of this Contract.

3.21.5 The Procurement Lobbying Law Certification of Compliance form, included in this RFP as ATTACHMENT 3, must be completed and submitted with the proposal.

### **3.22 Non-Collusive Bidding Requirement**

3.22.1 In accordance with STF §139-d, if the Contract is awarded based upon the submission of bids, the Bidder must warrant, under penalty of perjury, that its proposal was arrived at independently and without collusion aimed at restricting competition. Each Bidder must further warrant that, at the time the Bidder submitted its proposal, an authorized and responsible person executed and delivered to OPWDD a Non-Collusive Bidding Certification on the Bidder's behalf.

3.22.2 The Non-Collusive Bidding Certification form, included in this RFP as ATTACHMENT 4, must be completed and submitted with the proposal.

### **3.23 New York State Vendor Responsibility Questionnaire**

3.23.1 The Bidder agrees to fully and accurately complete the NYS Vendor Responsibility Questionnaire (hereinafter the "Questionnaire") which is available online at:

[http://www.osc.state.ny.us/vendrep/documents/system/welcome\\_package.pdf](http://www.osc.state.ny.us/vendrep/documents/system/welcome_package.pdf)

3.23.2 Bidders are encouraged to complete the online form, as it will expedite Contract approval. If you do not have an online Questionnaire that is current and certified, you must complete a hardcopy Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon OPWDD's determination that the Bidder is responsible, and that OPWDD will be relying upon the Bidder's responses to the Questionnaire in making that determination. The Bidder agrees that if it is determined by OPWDD that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such determination, OPWDD may terminate the Contract by providing ten (10) days written notification to the Contractor. In no case shall such termination of the Contract by OPWDD be deemed a breach thereof, nor shall OPWDD be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such determination.

### **3.24 Contractor Requirements And Procedures For Equal Employment And Business Participation Opportunities For Minority Group Members And New York State Certified Minority/Women-Owned Businesses**

3.24.1 By submission of a bid in response to this solicitation, the Bidder agrees with all of the terms and conditions of Appendix A, Clause 12 – Equal Employment Opportunities for Minorities and Women.

- 3.24.2 In accordance with Article 15-a of the New York State Executive Law and in conformance with the regulations promulgated by the Minority and Women’s Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Bidder/Contractor agrees to be bound by provisions to promote equality of economic opportunity for minority group members and women, and the facilitation of minority and women-owned business enterprise participation.
- 3.24.3 The EEO and M/WBE requirements are set forth in Appendix A Supplement - 2 of this RFP.
- 3.24.4 The following MWBE EEO forms must be completed and submitted with the proposal: MWBE EEO Policy Statement and Staffing Plan are provided in the APPENDIX A: Supplement - 2.
- 3.24.5 The M/WBE goal established under this solicitation is 30%.
- 3.25 New York State Service-Disabled Veteran-Owned Businesses**
  - 3.25.1 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 (“SDVOB”), thereby further integrating such businesses into New York State’s economy. OPWDD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of OPWDD contracts.
  - 3.25.2 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, Bidders are 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.
  - 3.25.3 The SDVOB program requirements as they pertain to this RFP are detailed in APPENDIX A: Supplement – 4.
  - 3.25.4 The Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance form, included in this RFP as APPENDIX A: Supplement – 4, must be completed and submitted with the proposal.
  - 3.25.5 The SDVOB goal established under this RFP is 6%.
- 3.26 Bidders, Subcontractors, and Contractor Obligations**
  - 3.26.1 The Contractor may not subcontract the services procured under this Contract without the State’s prior written approval. OPWDD reserves the right to reject any proposed subcontractor or supplier if it determines that the company is not qualified or responsible. All such subcontracting relationships between the Contractor and its subcontractors to perform services must be memorialized by written agreement.
  - 3.26.2 The Contractor shall include in all agreements with its subcontractors, in such a manner that will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying that:
    - 3.26.2.1 The work performed by the subcontractor must be in accordance with the terms and conditions of this Contract;
    - 3.26.2.2 Nothing contained in such subcontract shall impair the rights of OPWDD or the State;

- 3.26.2.3 Nothing contained in the subcontract shall create any contractual relationship between the subcontractor and OPWDD or the State;
- 3.26.2.4 The State and OPWDD shall have the same authority to audit the records of all subcontractors as it does those of the Contractor;
- 3.26.2.5 Subcontractor shall cooperate with any investigation, audit, litigation, or other inquiry related to the Procurement or the resulting Contract.
- 3.26.3 OPWDD reserves the right, at any time during the term of the Contract, to verify that the written subcontract(s) between Contractor and subcontractor(s) complies with all of the provisions of this section and any subcontract provisions contained in the Contract resulting from this RFP.
- 3.26.4 If, at any time during the performance under this Contract, total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.
- 3.26.5 The Listing of Proposed Subcontractors form, included in this RFP as ATTACHMENT 5, must be completed and submitted with the proposal.

### **3.27 Encouraging Use Of NYS Businesses In Contract Performance**

- 3.27.1 Bidders are strongly encouraged and expected to consider New York State businesses in the fulfillment of the Contract resulting from this RFP. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.
- 3.27.2 The Encouraging Use of New York State Businesses form, included in this RFP as ATTACHMENT 6, must be completed and submitted with the proposal.

### **3.28 Conflicts Of Interest**

- 3.28.1 Throughout the procurement process, Bidders must identify and bring to the attention of OPWDD actual or apparent conflicts of interest as knowledge of such conflicts arise, as follows:
  - 3.28.1.1 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 Respondent 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.
  - 3.28.1.2 The Bidder 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 Joint Commission on Public Ethics or its predecessor State entities (collectively, "JCOPE"), and if so, a brief description must be included indicating how any matter before JCOPE was resolved or whether it remains unresolved.
- 3.28.2 The Mandatory Offerer Assurance of No Conflict of Interest or Detrimental Effect form, included in this RFP as ATTACHMENT 7, must be completed and submitted with the proposal.

- 3.28.3 Any Bidder awarded a contract under this RFP will have an on-going obligation to inform OPWDD of any actual or apparent conflicts of interest.
- 3.29 Sexual Harassment Policy Certification of Compliance with State Finance Law §139-L**
- 3.29.1 By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.
- 3.29.2 The Sexual Harassment Policy Certification form, included in this RFP as ATTACHMENT 8, must be completed and submitted with the proposal.
- 3.30 Executive Order No. 177 Certification**
- 3.30.1 In accordance with Executive Order No. 177, the Bidder must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.
- 3.30.2 The EO 177 Certification, included in this RFP as ATTACHMENT 9, must be completed and submitted with the proposal.
- 3.31 Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia**
- 3.31.1 Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found here. No. 16: Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia | Governor Kathy Hochul (ny.gov)
- 3.31.2 The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.
- 3.31.3 As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.
- 3.31.4 The Certification Under Executive Order No. 16, included in this RFP as ATTACHMENT 10, must be completed and submitted with the proposal.

#### **4. EVALUATION AND SELECTION PROCESS**

##### **4.1 Proposal Evaluation**

The purpose of the evaluation process is to analyze proposals against criteria that will ensure objectivity, fairness, equality, uniformity and best value and that the OPWDD selects a responsive and responsible Offerer of this RFP.

##### **4.1.1 Three Evaluation Teams will perform the following analysis of the submitted proposals:**

Administrative Team - determine proposal minimal requirements and format and content requirements have been met.

Technical Evaluation Team - review of Offerer qualifications, such as the number of past projects performed of a similar size and scope, tracking requirements, scheduling, approach and proposed personnel resources, reference checks and interviews; comprised of program and subject matter experts for each respective LOT.

Cost Evaluation Team - conduct a comparison of the price proposed to the prices and costs of other competing proposals.

##### **4.2 Administrative Review (Pass/Fail)**

##### **4.2.1 The Administrative Team will conduct an administrative review of proposals to determine on a **PASS/FAIL** basis the following requirements have been met – All proposals must receive a PASS for all elements to automatically move on to the Technical Evaluation; a FAIL may result in the proposal being disqualified:**

##### **4.2.1.1 Ensure all required documents and forms are included in each proposal in accordance with 2.3 and ATTACHMENT 1: Attestation Checklist (Administrative Proposal) of this RFP;**

##### **4.2.1.2 Ensure the ATTACHMENT 1: Attestation Checklist contains acknowledgements and required information as presented in 2.3.4 of this RFP;**

##### **4.2.2 Completed and signed forms or documents, required per section 2.3.4.2 and ATTACHMENT 1: Attestation Checklist of this RFP.**

##### **4.2.3 The Administrative Team will recommend the proposal for further evaluation if all minimum mandatory qualifications as set forth in sections 1.3 and 2 of this RFP have been met.**

##### **4.3 Technical Evaluation (60 percent)**

Each LOT will be evaluated separately, resulting in a ranking of the proposals for each LOT.

##### **4.3.1 Firm Qualifications and Experience as required in section 2.3.5.2 of this RFP (15 points)**

##### **4.3.2 References as required in section 2.3.5.3 of this RFP (10 points)**

##### **4.3.3 Prior Engagements as required in section 2.3.5.4 of this RFP (15 points)**

##### **4.3.4 Similar Engagement with Non-Government and other Government Entities for each LOT proposed as required in section 2.3.5.5.1 of this RFP (20 points)**

##### **4.3.5 Specific Audit Approach, Project-Tracking and Report Format for each separate LOT proposed, as required in sections 2.3.5.5.2 – 2.3.5.5.4 of this RFP (20 points)**

- 4.3.6 Staff Qualifications and Experience as required in section 2.3.5.6 of this RFP (10 points)
- 4.3.7 Diversity Practices (10 Points)
- Up to an additional 10 points may be awarded based on diversity practices and efforts of applicants to include New York State Certified Minority and Women-owned Business Enterprises (MWBES) in their business practices as required in 2.3.6 of this RFP.
- 4.3.8 Total points scored on the Technical Evaluation (maximum of 100 points) for each LOT will be multiplied by 60%, with a maximum of 60 points awarded to the highest technical score in each LOT.
- Technical points awarded = 100 potential points X 60%.
- 4.3.9 IMPORTANT TO NOTE:
- During the evaluation process, the OPWDD may require clarifying information from an Offerer. If specific sections of the written proposal require clarification, the OPWDD will contact the Offerer and request clarification. The Offerer must respond by the deadline provided by OPWDD.
  - It should be noted that references provided by the Offerer per section 2.3.5.3 of this RFP, will be evaluated and factored into the evaluation and selection of this RFP. Offerers are encouraged to provide more than the required three (3) references, with an indication of the preferred order in which to use them. It should be noted that the State reserves the right to contact other sources not necessarily identified in the proposal to obtain information
  - **There should be no dollar unit or costs included in the Technical Proposal document. Inclusion of dollar unit or costs may be cause for proposal disqualification.**
- 4.4 Cost Evaluation (30 percent)**
- 4.4.1 The cost evaluation is worth 30 percent (30 points) of the final score. The OPWDD will examine the Cost Proposal documents for responsiveness to the cost requirements. If a Cost Proposal is found to be non-responsive, that proposal will not receive a cost score and will be eliminated from consideration for this procurement. Each responsive proposal that meets the Cost Proposal requirements will receive a cost score.
- 4.4.2 Cost Proposals will be evaluated by LOT, based on the Contract Total calculated for each LOT; LOT THREE Total is for evaluation purposes only, as the value of contracts awarded under LOT THREE will be determined upon selections made resulting from mini-bid solicitations.
- 4.4.3 The maximum score (30 points) will be allocated to the proposal in each LOT with the lowest Total Engagement cost according to this formula. All other proposals in each LOT will receive a proportionate score to the proposal in that LOT with the lowest cost, according to the following calculation:
- Cost points awarded = (30 potential points) X (Low Cost / Offerer's Cost).
- 4.4.4 Cost proposals must be presented as directed in 2.3.6, using the Cost Proposal Form located at the link(s) provided in ATTACHMENT 13 of this RFP, in order to enable the evaluation of cost according to the OPWDD's prescribed formula. The Cost Proposal Submission Form is

labeled “RFP Auditing Services and Accounting, Auditing, Consulting Services Vendor Pool Cost Proposal” and is provided with the mailing of this RFP and is also posted on the following websites:

OPWDD’s Procurement Opportunities:

<https://opwdd.ny.gov/procurement-opportunities>

New York State Contract Reporter website:

<https://www.nyscr.ny.gov/contracts.cfm>

#### **4.5 Intermediate Score**

- 4.5.1 An intermediate score will be calculated for each proposal in each LOT, by adding the Technical Proposal points and the Cost Proposal points together, with the highest possible score being 90 points.

#### **4.6 Interviews (10 percent)**

- 4.6.1 OPWDD will interview the top 5 Offerers within 10 points of the highest Intermediate score in LOT ONE and LOT TWO (including ties); along with the top 10 Offerers within 10 points of the highest Intermediate score (including ties) in LOT THREE. Preferences indicated in each LOT, per section 2.3.4.1.1 of this RFP, will not determine who is interviewed for that LOT. However, if the same Offerer has the highest ranked proposal in LOT ONE and LOT TWO, the preference indicated in ATTACHMENT 1: Attestation Checklist (Administrative Proposal), will determine which LOT an award will be made in.
- 4.6.2 Interview eligible Offerers will be notified of the date, place, and time of interviews to be held between the dates listed in section 1.4 of this RFP.
- 4.6.3 Interviews will be held remotely via WebEx videoconferencing.
- 4.6.4 The Technical Evaluation Team will conduct interviews using a prepared set of questions based on the criteria listed in sections 1.3 and 4.3 of this RFP. Each question will be worth a pre-defined number of points.
- 4.6.5 The Offerers will receive points for each response confirming the ability to provide the services as specified in this RFP, with the highest possible score of 10. Only individuals assigned to positions included in the proposal must be present and participate in the interview. No new material will be permitted to be introduced during the interview.

#### **4.7 Final Composite Score**

- 4.7.1.1 The final composite score will consist of the Intermediate Score plus the Interview Score.
- 4.7.1.2 If the same Offerer has the highest ranked proposal in LOT ONE and LOT TWO, the preference indicated in ATTACHMENT 1: Attestation Checklist (Administrative Proposal), will determine which LOT will be awarded to that Offerer.
- 4.7.1.3 Tie scores – in the event of a tie in a specific LOT, award will be made to the Offerer submitting the lowest cost. If a tie continues to exist, years of experience with Government Auditing will be considered next, followed by preference given to New York State firms, and finally by a coin toss.

#### **4.8 Notification of Award**

- 4.8.1 Offerers will be notified of the Final Composite results and their ranking in each LOT.

- 4.8.1.1 The three Offerers indicating a preference for (per section 2.3.4.1.1 of this RFP) - and with the highest ranking in - LOTS ONE, TWO, and THREE will be awarded contracts for each respective LOT. The Offerer selected for LOT ONE cannot be awarded a contract in one of the other LOTS. The same Offerer may be selected for both LOTS TWO and THREE.
- 4.8.1.2 Including the Offerer(s) selected for awards in LOTS Two, and Three; up to 10 of the Offerers interviewed in accordance with section 4.6 of this RFP will be included in the LOT THREE pool for Ad Hoc Services.
- 4.8.1.3 Unsuccessful Offerers will be notified of the non-selection of their proposals.
- 4.8.2 News releases relating to this RFP or resulting contract shall not be made by any Offerer or its agent without written prior approval of OPWDD.
- 4.8.3 PLEASE NOTE: The resultant contract shall not be binding until fully executed and approved by the New York State Office of the Attorney General and the Office of the State Comptroller. The awarded Offerer will enter into a written Agreement substantially in accord with the terms of APPENDIX B, OPWDD Boilerplate Contract, to provide the required services as specified in this RFP.

## 5.

**SCOPE OF WORK**

Offerers must ensure that the services offered will meet the requirements, specifications and performance standards as detailed in this section of the RFP.

Within OPWDD's organizational structure, the oversight of voluntary providers and state operations is divided into two distinct but coordinated offices. Each of these offices has a regional structure to administer their oversight responsibilities.

**Service Access, Program Implementation & Stakeholder Support** - Five regional offices are responsible for overseeing voluntary agency coordination and monitoring. Because voluntary agencies account for approximately 80% of OPWDD's service provision, it is important for regional offices to focus on this segment of the system (see Exhibit I – List of Voluntary Agency Providers). The catchment areas of the regional offices were established to improve oversight and quality improvement, as well as to allow for cross system collaboration among State agencies.

**State Operations** - Six state operations offices are responsible for the operation and oversight of residential, day service, clinic, and other programs for which New York State is the direct provider of service or provider of record. Each of the geographic catchment areas formerly served by one of the 13 districts is now provided with oversight and direction by one of the six state regional operations offices.

OPWDD conducts various types of audits and reviews to monitor the fiscal and governance affairs of not-for-profit providers, as well as compliance with rules, regulations and administrative guidelines. These critical tasks provide OPWDD executive management with essential feedback regarding adherence to regulations, financial performance and accomplishment of agency objectives.

OPWDD's fiscal services and human resource functions operate across New York State in 15 different locations (13 District Offices; the Institution for Basic Research and Central Office).

Audits to be performed under this RFP and the resultant contracts include:

LOT ONE: Certification of OPWDD's Consolidated Fiscal Report (CFR)

LOT TWO: Audit of Medicaid service documentation (Billing and Claiming)

LOT THREE: Ad Hoc accounting, auditing, financial management and consulting services as statutory requirements and agency priorities grow and change. Types of Ad Hoc Services may include cost reporting, rate setting, Limited Fiscal Reviews (LFR) at not-for-profit agencies, compliance with accounting and reporting of costs, expenditure reviews and controls and various consulting services related to Fiscal issues, Management issues, and Quality Assurance issues.

All audits are to be performed in accordance with the Generally Accepted Government Auditing Standards (the Yellow Book).

**5.1 LOT ONE: CERTIFICATION of OPWDD's CONSOLIDATED FISCAL REPORT (CFR)****5.1.1 Introduction**

5.1.1.1 LOT ONE of this RFP is requesting proposals from Certified Public Accounting Firms to provide certification of OPWDD's annual Consolidated Fiscal Report (CFR). OPWDD's CFR is an agency-wide cost report that includes costs incurred and revenues received by OPWDD to provide State Operated services to individuals with developmental and intellectual disabilities as well as costs incurred, and revenues received to provide administrative oversight of OPWDD's Medicaid service delivery system. OPWDD's 2019-20 Certified Consolidated Fiscal Report is provided with the mailing of this RFP as a separate attachment (Exhibit IV); it is also included wherever this RFP is posted.

5.1.1.2 Offerers must be a Certified Public Accounting Firm and will be responsible for the certification of OPWDD's annual CFR. The Offerer must dedicate enough resources to complete the annual CFR Certification engagement no later than July 31 or 3 months after receipt of the draft cost finding of the year following the end of the reporting period.

**5.1.2 Purpose**

The certified CFR is utilized for the following purposes:

5.1.2.1 State Operated Medicaid Service Rates - A significant portion of the services provided through State operations are eligible for federal financial participation (FFP) under the Medicaid program. The NYS Department of Health as the single State Medicaid agency, utilizes OPWDD's annual certified CFR to establish the Medicaid rates used to claim federal reimbursement for State provided services to Medicaid eligible recipients.

5.1.2.2 Administrative Oversight of the Service Delivery System – when preparing the CFR, costs incurred by OPWDD to oversee the entire service delivery system which includes the costs reimbursed through the quarterly Medicaid Administration claims are segregated from the cost information used to develop state provided Medicaid State Plan Service rates and HCBS Waiver Service rates to provide assurance that these costs are not being double-funded.

5.1.2.3 Justification that allocation of costs is in accordance with Medicare Provider Reimbursement Manual (Publication 15) - the accumulation, allocation and reporting of costs on the certified CFR is performed using the methods described in OPWDD's Cost Allocation Plan approved by the federal DHHS Cost Allocation Services. OPWDD has developed and updates its Cost Allocation Plan using the principles contained in the Provider Reimbursement Manual (PRM-15) issued by the Centers for Medicare & Medicaid Services. When preparing the CFR, non-Medicaid costs are segregated from Medicaid program costs to provide assurance that the appropriate indirect cost allocations are distributed to non-Medicaid programs and to provide assurance that non-Medicaid costs are not included in Medicaid State Plan Service rates and HCBS Waiver rates or in quarterly Medicaid administration claims reimbursed through the OPWDD Cost Allocation Plan.

5.1.2.4 OPWDD Management Tool – the certified CFR provides management with an accurate understanding of the full cost of services provided by each district Office; and enables management to identify potential operational economies in addition to enabling OPWDD

management to assess Statewide operations in order to enhance statewide efficiencies in service provision.

### 5.1.3 Resources

5.1.3.1 New York State Consolidated Fiscal Reporting and Claiming Manual – contains instructions to be followed when preparing the Consolidated Fiscal Report (CFR). The Independent CPA Firm will perform a Compliance Examination to certify that the OPWDD’s annual cost report, the Consolidated Fiscal Report (CFR), complies with the cost principles contained in Provider Reimbursement Manual Publication 15 and that the annual cost report was prepared in accordance with the CFR Manual with modifications agreed to by Centers for Medicare & Medicaid Services (CMS) and OPWDD as follows:

5.1.3.1.1 Section 3.0 Reporting Periods – NYC = July1 – June 30; all others = January 1 –December 31  
Modification: OPWDD prepares the CFR using a 4/1 – 3/31 reporting period.

5.1.3.1.2 Section 4.0: Due Dates - OASAS, OPWDD, DOH and OCFS certified and/or funded programs must submit their completed CFR to the applicable funding State Agency– no later than the first day of the sixth month following the end of the reporting period.

Modification: OPWDD is required to submit its certified cost report within 18 months of the end of each rate period (i.e., within 18 months after the close of the OPWDD fiscal year) per the NY Waiver agreement NY.0238.R06.06.

5.1.3.1.3 Section 5.0: Software – All CFR state agencies require CFRs to be completed using approved NYS CFRS software available from NYS OMH.

Modification: OPWDD will utilize Microsoft Excel in lieu of the CFRS software to prepare its Consolidated Fiscal Report.

5.1.3.1.4 Section 6.0: Financial Statements and Federal Audit Requirements – OPWDD does not require submission of financial statements for counties, cities, towns or villages.

Modification: Since OPWDD is a governmental entity, OPWDD would be exempt from submitting the State of New York’s Comprehensive Financial Report as part of their CFR submission. The State of New York’s Comprehensive Financial Report is available on OSCs website. It does not include supplemental information by state agency; therefore, it would not be possible to reconcile OPWDDs CFR to the State of New York’s Comprehensive Financial Report.

5.1.3.1.5 Section 8.0: General Instructions – Fiscal information in the CFR is reported on a program type or program/site specific basis. OPWDD program code descriptions in Appendix G of the CFR Manual specify if the program is reported on a program/site basis or a program type basis.

Modification: Per the NY Waiver NY0238.R06.06 each State Operated waiver service is required to be reported using a separate column of the CFR. OPWDD is also required to report each Developmental Center; each State Operated ICF/ID; and each Article 16 main clinic in separate final cost centers by operating certificate on its cost report.

5.1.3.1.6 Section 11.0: CFR-i/iiA Accountant’s Report – County Local Government Units (LGUs), municipalities, and other governmental entities completing a Full CFR may submit any one

of the following to meet the certification requirement: Compliance Review (Appendix CC of the CFR Manual); Schedule CFR-ii; Schedule CFR-iiA.

Modification: In lieu of CFR-ii/iiA, OPWDD is required to submit an Audit Organization's Report (as referenced in NY Waiver – NY.0238.R06.06 Addendum A.2) to meet the CFR certification requirement.

#### 5.1.3.1.7 Section 14.0: CFR-2 Agency Fiscal Summary

Modification: OPWDD reports all Medicaid Programs on CFR-1 and CFR-4; and reports the aggregate of all Medicaid funded costs under CFR-2 Column 4 OPWDD Totals. OPWDD reports the aggregate of all non-Medicaid funded costs under CFR-2 Column 7 Other Programs Totals.

Since the Comprehensive Financial Report prepared by OSC and certified by an independent auditor is not prepared on a State Agency basis, the OPWDD CFR cannot be reconciled back to the OPWDD of New York's Comprehensive Financial Report. OPWDD will prepare a reconciliation of the total expenses reported on the OPWDD CFR to OPWDDs total cash spending recorded in the Statewide Financial System (SFS) as reported on Open Book NY for the cost reporting period.

#### 5.1.3.1.8 Section 16.0: CFR-4 Personal Services

Modification: OPWDD will separately report employee salaries directly charged to final cost centers; and employee's salaries included in each cost pool (Allocation Group) by NYS Civil Service title on CFR-4. The CFR-4 data will be reported as such so that it can be reconciled to State Operated Medicaid Service rate sheets.

#### 5.1.3.1.9 Section 40.0: Appendix G - OPWDD Program Types, Definitions and Codes

Modification: OPWDD State Operated Developmental Centers, State Operated ICF/DDs and each Article 16 main clinic are required to be reported by operating certificate on the OPWDD CFR.

OPWDD will use the Final Cost Center (Group Numbers) referenced in its approved Cost Allocation Plan as the basis for reporting programs/services unique to OPWDD on its cost report.

#### 5.1.3.1.10 Section 42.0 and 43.0: Appendix I -Agency Administration and Appendix J - Allocating Expenses for Shared Programs/Sites

Modification: OPWDDs Cost Allocation Plan (reviewed by DMH/CMS and approved by DHHS DCA) will be used in lieu of these Sections.

#### 5.1.3.1.11 Section 57.0: Appendix X – Adjustments to Reported Costs

Modification: PRM-15 and OMB Circular A-87 will be followed for OPWDD State Operations. State Operated programs are governed by the Medicaid State Plan and the Waiver Agreements.

#### 5.1.3.2 **Medicare Provider Reimbursement Manual (Publication-15)** - the cost principles described in Publication 15 issued by CMS are required to be used when preparing the annual CFR.

- 5.1.3.3 **NY State Plan Amendment (SPA) 14-03A** - State operated Developmental Center and State operated ICF/ID Medicaid service rates will be computed and reconciled to the final reported allowable costs as described in SPA 14-03A.
- 5.1.3.4 **NY Waiver – NY.0238.R06.06** - As stipulated in the NY Waiver – NY.0238.R06.06; Addendum A – Supplemental Rate Language, the federal Centers for Medicare & Medicaid Services (CMS) requires the OPWDD to annually report costs using a complete Consolidated Fiscal Report (CFR) which will be used to compute Medicaid service rates for Home & Community Based Service (HCBS) Waiver services as well as for cost reconciliations of waiver services which are required to be submitted to CMS along with the certified CFR within 18 months of the end of each rate period. The CFR annual cost report is required to be either audited by an Independent Certified Public Accountant (CPA), or the OPWDD may use the Compliance Examination identified in the New York State Consolidated Fiscal Reporting and Claiming Manual, in lieu of an audit; and the CPA shall render an opinion on the reported costs regarding reasonableness, compliance with GAAP, and that the CFR reported costs were determined in accordance with the cost principles described in the Medicare Provider Reimbursement Manual (Publication-15).
- 5.1.3.5 **Addendum A.1 Independent Accountant’s Compliance Examination Guidance** - The NY Waiver agreement includes Addendum A.1 for use by the independent accounting firm when examining OPWDD’s Consolidated Fiscal Report.
- 5.1.3.6 **Addendum A.2 Audit Organization’s Report** - The NY Waiver agreement includes Addendum A.2 for use by the independent accounting firm as a sample report of an audit organization’s examination of a CFR prepared by OPWDD. The sample report provided in Exhibit IV of this Contract, has been determined acceptable for CMS purposes; material omissions in an independent CPA’s actual report may result in CMS rejecting the report.
- 5.1.4 **Engagement Staffing Requirements**
  - 5.1.4.1 Engagement Titles - descriptions for the titles OPWDD requires for all LOTs are listed in section 1.1.2 of this RFP; Offerers are instructed to utilize these titles even if they are not consistent with the Offerer’s existing titles. Offerers must provide staff who possess qualifications and perform duties as defined in each LOT indicated on the ATTACHMENT 1: Attestation Checklist (Administrative Proposal), Technical Proposal and Cost Proposal.
  - 5.1.4.2 Independent CPA firm must be able to dedicate enough resources to complete the annual CFR Certification engagement no later than July 31 of the year following the end of the reporting period.
  - 5.1.4.3 The individual opining/signing the Accountant’s Report must be a Certified Public Accountant (CPA). The CFR Manual states:
    - 5.1.4.3.1 Signature of Independent Accountant, Firm or Sole Practitioner: The signature of the independent certified public accountant, sole practitioner, partner of the CPA firm or CPA firm that audited and certified the CFR.
    - 5.1.4.3.2 CPA Firm Registration Number: The 7-digit number assigned to the firm by the NYS Office of Professions within the NYS Education Department. Sole proprietorships should enter the certified public accountant’s license number.

- 5.1.4.4 The Independent CPA firm must effectively communicate with OPWDD management throughout the CFR Certification engagement. A tracking tool must be utilized for information requests as well as for deliverables identified during meetings to ensure all requests are received and responded to in a timely manner. Obstacles to attaining requested information as well as any delays impacting the delivery of the Final Accountant Report by July 31 must be communicated to Central Office management as soon as possible.
- 5.1.4.5 The Engagement Director will be responsible for logging, tracking and handling all communication between the Independent CPA firm and OPWDD. With exception of the Engagement Principal, all engagement titles will be required to communicate through the Engagement Director. The Engagement Director will be responsible for setting up meetings with appropriate OPWDD staff should engagement staff need to communicate with OPWDD staff. The Engagement Director will be allowed to appoint a temporary replacement should s/he become unavailable. The replacement will be expected to handle all communication as required of the Engagement Director.
- 5.1.4.6 Training of Independent CPA firm Staff - It is expected that the Engagement Principal, Engagement Director, and Engagement Manager will be responsible for training the staff involved in engagement over the entire course of the engagement. OPWDD will work with Engagement Principal, Engagement Director, and Engagement Manager in order to provide a sufficient understanding of OPWDD operations and processes related to the engagement as needed. It will be the Independent CPA firm's responsibility to train Senior Associate, Associate, and Junior Associate position titles.
- 5.1.4.7 Quality assurance of work. It is expected that the Engagement Principal, Engagement Director, and Engagement Manager will provide quality assurance reviews of all work conducted as part of the engagement, including any and all work performed by sub-contractors. All materials and request submitted to OPWDD Central Office or District Offices will be reviewed for accuracy and completion prior to submission to OPWDD.
- 5.1.5 **Project-Tracking (Billing) System**
- The Offerer's project-tracking (billing) system will track time entry records of the client that is worked on, the project that is worked on, the service code (classification of type of work), the person entering the time, the billable rate of the person, the date of the work, and the amount of time that is spent. The system also records non-billable time and time off.
- The Offerer will be responsible for reviewing the accuracy of information for billing prior to sending the invoice to OPWDD.
- 5.1.6 **Independence Provisions**
- 5.1.6.1 The Independent CPA firm is required to meet the independence standard as defined under Generally Accepted Government Auditing Standards (GAGAS). The Contractor will warrant their compliance with the independence standard and indemnify OPWDD against any third-party challenges to the contractor's independence without limitation. If found to be in violation of the independence requirement, the contractor's liability includes OPWDD legal fees incurred related to defense against third party claims. The contract will also be subject to termination under the termination provisions as stated in section 6.15 of the RFP.

- 5.1.6.2 The Independent CPA Firm must provide a written affirmation to OPWDD prior to each annual review indicating that the firm will be able to perform the duties outlined in the scope of work in accordance with the independence provisions contained in Government Auditing Standards (GASAS) Chapter 3.
- 5.1.6.3 The Independent CPA Firm will ensure each staff assigned to an audit completes an independence statement at the onset of each new audit engagement.
- 5.1.7 **Engagement Process**
  - 5.1.7.1 An Opening Conference will be held with Independent CPA firm and OPWDD Central Office management at the beginning of each annual CFR Certification engagement prior to commencing any field work.
  - 5.1.7.2 A representative sample of OPWDD District Offices must be used, in accordance with professional standards, to perform site visits. It is expected that prioritization of risks, cluster sampling techniques, etc. will be used by the independent audit firm in determining how many Districts to visit, to enhance economy/efficiency of audit. This should result in limiting annual site-visits to a representative sample of District Offices rather than visiting all 13 Districts during each annual engagement over the 5-year contract period.
  - 5.1.7.3 A detailed listing of information being requested, including supporting documentation needed for sample testing, must be provided ahead of time, giving Districts and/or Central Office ample time to pull the data for review by the Independent CPA firm.
    - 5.1.7.3.1 The Independent CPA Firm will be responsible for coordinating with Central Office staff and/or the distribution of sample materials to the district offices. The format and manner of the distribution will be subject to approval by OPWDD prior to distribution. Detail provided in documentation request must be sufficient enough for the district office to locate the documentation based on multiple data points but in no case will the Independent CPA firm be required to provide details that were not included in the source data from OPWDD.
    - 5.1.7.3.2 All outstanding items from sample documentation requests will be noted to clearly indicate if a response was received or if the response received was insufficient. If a response received was insufficient, an explanation will be provided to OPWDD as to why the documentation was found to be insufficient so that OPWDD can work with the Independent CPA firm to identify alternative acceptable sources of documentation.
  - 5.1.7.4 A Secure Portal for sharing information must be established to allow for electronic documentation transmittal to avoid HIPAA and personal employee information breaches.
    - 5.1.7.4.1 Independent CPA firm must provide audit documentation to OPWDD through a secure portal maintained by the Independent CPA firm to allow for electronic documentation transmittal to avoid HIPAA breaches. Personal employee information will be made available on-site or via secure access to OPWDD's file share. OPWDD will provide documentation to the Independent CPA firm through a SharePoint site and laptop computers that can access select OPWDD network files.
    - 5.1.7.4.2 OPWDD will provide view only access to OPWDD personnel information for the purpose of verifying information within the scope of the engagement. The Independent CPA firm

agrees not to copy, electronic or paper, confidential personnel information encountered during the engagement.

5.1.7.5 An Exit Conference will be held with Independent CPA firm and OPWDD Central Office management prior to the issuance of the Final Accountant's Report and Management Letter so that draft findings can be presented; and so that time can be allotted for preparation of OPWDD comments for consideration in Final Accountant's Report and Final Management Letter.

5.1.7.6 The Final Accountant's Report is to be issued no later than July 31st; or no later than 3 months after Independent CPA firm's receipt of draft cost finding from OPWDD if the draft cost finding is not provided prior to May 1st.

5.1.8 **LOT ONE Contract Deliverables**

5.1.8.1 DELIVERABLES to be provided PRIOR TO Opening Conference:

Independent CPA:

- a. Drafted CFR Certification Engagement Letter(s) with defined scope should be forwarded to Central Office management prior to Opening Conference.
- b. Compliance Examination Plan – should include a macro-level scope and methodology; description of data systems, records critical to auditor's work; description of survey (test of controls) results and prioritization of risks; cluster sampling techniques being used to enhance economy/efficiency of audit; an audit plan timeline (by phase) with target completion date for each phase, description of experience for (assigned) staff.

OPWDD:

- a. New York State Education Department (NYSED) website link to Calendar CFR Manual; CMS website link to Medicare Provider Reimbursement Manual Publication 15; NYS HCBS Waiver Agreement (to include Addendum A; A.1 and A.2)—currently approved as NY.0238.R06.06 or any future approved amendments; NY State Plan Amendment—currently approved as SPA 14-03A or any future approved amendments.
- b. Provide the source expenditure data sets for the cost period for sampling including, but not limited to: Statewide Financial System (SFS); Bonded Capital (DASNY); Debt Service (DASNY); Hard \$ Checkruns (DASNY); EBT Transactions; P-Card transactions; Personal Service (Financial Management System (FMS)).
- c. In addition, provide additional source expenditure datasets including, but not limited to: Statewide Cost Allocation Plans; Memo Bills; Provider Tax Assessments; Lag Factor; and Vacation Accruals.
- d. Provide units of services, revenues, and certified capacity datasets.
- e. Coding maps developed and used by OPWDD to assign CFR Line Numbers and Final Cost Centers (Group Numbers), or Allocation Group Numbers based on attributes in the transactional cost data.
- f. OPWDD issued laptops for access to secure file shares.

5.1.8.2 DELIVERABLES to be provided AT Opening Conference:

Independent CPA:

- a. Annual CFR Certification Work Plan – listing work activities; Independent CPA firm staff assigned; targeted deadlines established for the various work activities required to be performed throughout the CFR Certification engagement.

OPWDD:

- a. List of contacts at District Offices; Central Office; IBR.
- b. Secure Portal established and access granted to Independent CPA firm contacts for sharing information requested; organized by District and topic.

5.1.8.3 DELIVERABLES to be provided PERIODICALLY THROUGHOUT Annual CFR Certification Engagement:

Independent CPA Firm:

- a. Details of potential findings must be provided to OPWDD management as soon as they are identified.
- b. Weekly status of each activity on work plan (Not Started; In Progress, Completed); brief progress notes must be included; targeted deadlines should be updated if necessary.
- c. Provide/maintain on-going list of items requested from District/Central Office/IBR (tracking tool) – to include Requestor (Independent CPA staff name); Recipient (OPWDD staff name); date requested; date response received.
- d. Biweekly summary of outstanding issues must be provided to OPWDD management.
- e. Revisions to Audit Plan must be provided to OPWDD management, if applicable.

OPWDD:

- a. Draft Cost Finding
- b. Draft CFR Schedules
- c. Updates on status of federal approval of any amendments to the OPWDD Cost Allocation Plan that impact the annual CFR reporting period being certified

5.1.8.4 DELIVERABLES to be provided PRIOR TO or AT Exit Conference:

Independent CPA Firm:

- a. Draft Management Letter - for review and comment by OPWDD Division Managers
- b. Draft Independent Audit Report as well as Agreed Upon Procedure (Revenue) - for review and comment by OPWDD Division Managers.
- c. Draft report to the Commissioner for review and comment by OPWDD Division Managers.

OPWDD

- a. Management response to draft management letter and draft independent audit report.

5.1.8.5 DELIVERABLES to be provided POST Exit Conference:

Independent CPA Firm:

- a. The **Final Accountant's Report** is to be issued no later than July 31st; or no later than 3 months after Independent CPA firm's receipt of draft Cost Finding Work Paper from OPWDD if the draft Cost Finding Work Paper is not provided prior to May 1st.

5.1.9 LOT ONE Deliverables (required for payment): **Certification of OPWDD's Consolidated Fiscal Report (CFR)**

Description of Deliverables Required for Payment	Expected Completion
Drafted CFR Certification Engagement Letter(s) with defined scope should be forwarded to Central Office management prior to Opening Conference. Final signed letters to be delivered at Opening Conference.	Completed at opening conference
Compliance Examination Plan – should include a macro-level scope and methodology; description of data systems, records critical to auditors work; description of survey (test of controls) results and prioritization of risks; cluster sampling techniques being used to enhance economy/efficiency of audit; an audit plan timeline (by phase) with target completion date for each phase, description of experience for (assigned) staff as required in this RFP and as proposed by the selected vendor in response to this RFP.	Completed at opening conference
Annual CFR Certification Work Plan – listing work activities; Independent CPA firm staff assigned; targeted deadlines established for the various work activities required to be performed throughout the CFR Certification engagement.	Completed at opening conference
A report detailing a list of potential findings that were reported to OPWDD management as soon as they are identified. If none were identified the report will state such.	Due the last business day of the month
Weekly status of each activity on work plan (Not Started; In Progress, Completed); brief progress notes must be included; targeted deadlines should be updated if necessary.	Weekly on Fridays
Provide/maintain on-going list of items requested from District/Central Office/IBR (tracking tool) – to include Requestor (Independent CPA staff name); Recipient (OPWDD staff name); date requested; date response received.	Weekly updates every Friday
Biweekly summary of outstanding issues must be provided to OPWDD management.	Biweekly every other Friday
A report outlining revisions made to the audit plan with evidence that such changes were reported to OPWDD management as amended. If no changes were made the report will state such.	Due the last business day of the month
Draft Management Letter - for review and comment by OPWDD Division Managers.	At least two weeks prior to exit conference
Draft Independent Audit Report as well as Agreed Upon Procedure (Revenue) - for review and comment by OPWDD Division Managers.	At least two weeks prior to exit conference
Signed Final Audit Report and Agreed Upon Procedure.	Due by July 31st

**5.1.10 LOT ONE Reporting Requirements**

- 5.1.10.1 Final audit report and management letter must delivered no later July 31 of each calendar year.
- 5.1.10.2 Meeting notes for all meetings and interviews conducted with New York State staff; notes must include the names of every participant in each meeting or interview and must be provided to the OPWDD audit liaison with the weekly status updates.
- 5.1.10.3 Bi-weekly high-level summary of all open items.
- 5.1.10.4 A list of potential findings that were reported to OPWDD management as soon as they are identified. If none were identified the report will state such.
- 5.1.10.5 Weekly status of each activity on work plan (Not Started; In Progress, Completed); brief progress notes must be included; targeted deadlines should be updated if necessary.
- 5.1.10.6 A weekly report of on-going list of items requested from District/Central Office/IBR (tracking tool) – to include Requestor (Independent CPA staff name); Recipient (OPWDD staff name); date requested; date response received.
- 5.1.10.7 Revisions made to the audit plan with evidence as they occur.
- 5.1.10.8 Signed engagement letter due at opening conference.
- 5.1.10.9 Compliance examination plan due at opening conference.
- 5.1.10.10 Annual CFR Certification work plan due at opening conference.

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## 5.2 LOT TWO: AUDITS OF MEDICAID SERVICE DOCUMENTATION (BILLING AND CLAIMING AUDITS)

### 5.2.1 LOT TWO Resources

- 5.2.1.1 Pursuant to Section 1915(c) of the Social Security Act, OPWDD has been authorized to implement a Home and Community Based Services (HCBS) waiver program. This program permits OPWDD to develop an array of home and community-based services that assist individuals to live in the community and avoid more restrictive institutional-based settings. HCBS waiver services are uniquely tailored and individualized to meet each person's needs and may include residential services, day services, respite care, employment support, service coordination, and adaptive technologies, as well as a variety of self-directed services.
- 5.2.1.2 The requirement for review of billings for HCBS waiver services (billing and claiming audits) is found in the HCBS waiver agreement (Appendix I: Financial Accountability – I-1: Financial Integrity and Accountability). These compliance audits include an examination of service records for compliance with statutory, regulatory and administrative requirements.
- 5.2.1.3 OPWDD will provide standard processes, protocols and templates (engagement letters, reports, work-papers, etc.) for Billing and Claiming Audits to the Contractor(s). Documents are generally in Microsoft Word or Excel format (Version 2013). A Template Billing and Claiming Draft Audit Report is included in Exhibit II of this RFP as an illustration of this report deliverable. Exhibit II now includes two sample charts: ATTACHMENT D is a list of the 50 beneficiary months reviewed, amount in error and a category of type of error; ATTACHMENT E is a listing of any claims found to be in error. Please note this report is provided as an illustration only and is subject to change. Audit protocols for the review of service and may documentation can be found on OPWDD's website <https://opwdd.ny.gov/providers/medicaid>, be subject to modification based upon changes to programmatic requirements.

The Contractor will be required to use the documents provided during the course of the audit. Use of template language and testing tools provided is extremely important because of due process and audit appeal rights that audited entities are legally afforded. All processes, protocols and templates are proprietary and may not be shared without permission of OPWDD.

### 5.2.2 LOT TWO Requirements

- 5.2.2.1 Offerers (for billing and claiming audits) must be a CPA Firm. The Firm should have experience with, or the ability to, conduct performance audits in accordance with Generally Accepted Government Auditing Standards (GAGAS) as published by the United States Government Accountability Office (Yellowbook) and will conduct all Billing and Claiming Audits in accordance with those standards.
- 5.2.2.2 The Contractor must supply a high-speed portable scanner (Fujitsu ScanSnap iX500 or comparable) for use during fieldwork. All supporting documentation obtained from an agency during the course of the audit must be scanned and retained as part of the audit workpapers.
- 5.2.2.3 The Contractor(s) will be required to assign an Engagement Principal and Engagement Director for Billing and Claiming Audits.

- 5.2.2.3.1 It is also expected that the Contractor will assign an Engagement Manager (Auditor in Charge) and at least one Senior Associate for each audit/audit team. Any additional audit staff assigned to billing and claiming projects must have, at a minimum, a bachelor's degree.
- 5.2.2.3.2 Contractor may deploy multiple teams on Billing and Claiming Audits. All teams must report through a singular Engagement Director.
- 5.2.2.3.3 The Engagement Manager and contract staff performing billing and claiming work will be required to attend (via conference call) monthly technical meetings (1 hour in duration).
- 5.2.2.3.4 OPWDD will assign a supervisor to oversee and monitor projects assigned to the Contractor(s). The supervisor will be available for support, technical assistance and guidance. The supervisor may accompany contract staff for opening and exit conferences, as well as, at any point during the audit when OPWDD deems appropriate. Contractor is required to notify the supervisor 2 weeks prior to any such meetings so he/she can attend at their discretion.
- 5.2.2.3.5 The Offerer must provide a resume for each staff person assigned to Billing and Claiming Audits. Contractor must notify OPWDD whenever there is a change of staff assigned to Billing and Claiming Audits.
- 5.2.2.4 Each engagement will include an examination of records for a random sample of 50 beneficiary months (defined as all HCBS waiver services provided to one individual for one month by the auditee). There may be instances where a small sample may be added to the beneficiary month population adding a nominal amount of fieldwork. The results of the examination of the random sample will be statistically estimated across the population resulting in an extrapolated mean point estimate and a 90% confidence interval for the total dollars in error.
- 5.2.2.4.1 Both the random sample and the extrapolation estimates will be provided to the contractor.
- 5.2.2.5 All workpapers used to support audit findings must include the following seven elements and must be approved by the Engagement Director:
  - 5.2.2.5.1 Heading - A heading is the "name" of the work paper and includes:
    - project number and name of the audited facility or unit
    - audit area
    - description of work paper
    - period of work paper review (optional)
  - 5.2.2.5.2 Source - A listing of individuals, observations or documents used to prepare the work paper.
  - 5.2.2.5.3 Purpose - The reason the work paper was compiled or the step of the audit program completed.
  - 5.2.2.5.4 Scope of work - This may include the time period of review, the quantity of items reviewed, quantity of items available for review, etc.
  - 5.2.2.5.5 Audit Methodology – A listing of the steps taken to achieve the stated purpose.

- 5.2.2.5.6 Conclusions – The result(s) of the work paper. Conclusion should be hyperlinked to justifications (documents, tests, etc.) that the auditor used to derive the result.
- 5.2.2.5.7 Next Steps – Identify what action is planned in response to work paper.
- 5.2.2.6 Prior to an exit conference, a discussion draft report must be developed and be shared with the OPWDD contract manager for review and approval. The discussion draft must include identification of the five elements of a finding (condition, criteria, cause, effect and recommendations).
- 5.2.2.6.1 All workpapers, supporting documentation and analysis must be electronically available to OPWDD during the course of the review and, at a minimum, must be submitted to OPWDD with the draft audit report via an encrypted CD or DVD (or other sufficiently encrypted media that Contractor and OPWDD agrees to). Workpapers must be approved by the Engagement Director, and draft reports must be hyperlinked to relevant workpapers and supporting documentation.
- 5.2.2.6.2 Each project will require an attestation from the Engagement Director verifying that the project has passed a quality assurance review and that the findings and recommendations in the report are edited, factually correct and supported by the workpapers. Workpapers may also be subject to review and approval by OPWDD.
- 5.2.2.6.3 No draft or final audit report may be issued to not-for-profit agencies without approval for issuance from OPWDD.
- 5.2.2.7 Payments will be made to the Contractor as follows:
  - 5.2.2.7.1 50% of Engagement Rate upon OPWDD approval to issue draft report
  - 5.2.2.7.2 50% of Engagement Rate upon OPWDD approval to issue final report
- 5.2.2.8 Penalty Clause
  - 5.2.2.8.1 All working papers must include all seven elements (as described above); failure to complete in the appropriate manner will cause the material to be re-worked at the Contractors cost. Similar provisions apply for the elements of a finding; calculation of financial condition and error rates by program.
  - 5.2.2.8.2 Delays greater than 30 days in the deliverable from the Contractor may result in a 5% penalty for each 30 days past due the recommendation of OPWDD's supervisor and approval of the Director of the Office of Audit Services
  - 5.2.2.8.3 The New York State Office of The Medicaid Inspector General (OMIG) will issue all draft and final reports for projects that may result in Medicaid recoveries. OPWDD will require that the Contractor use template reports in the form and format provided; the Contractor must request OPWDD approval for any changes in the structure of the report. OPWDD will coordinate the issuance of all reports that must be distributed through the OMIG.
- 5.2.3 **LOT TWO Contract Deliverables**
  - 5.2.3.1 When a voluntary provider (Auditee) is selected for audit, the Contractor will be responsible for the administration of the audit from notification through drafting the final report. This includes but is not limited to:
    - 5.2.3.1.1 Contact with the not-for-profit agency for notification of the audit/review;

- 5.2.3.1.2 Explanation of the process, scope and objectives;
- 5.2.3.1.3 Fielding preliminary questions;
- 5.2.3.1.4 Mailing of the engagement letter;
- 5.2.3.1.5 Scheduling and conducting an opening conference with agency management;
- 5.2.3.1.6 An evaluation of internal controls (based on guidance established by The Committee of Sponsoring Organizations (COSO) of the Treadway Commission) including interviews with agency management to adequately document and assess the OPWDD's internal control structure related to the engagement (this may include site visits);
- 5.2.3.1.7 Scanning all supporting documentation;
- 5.2.3.1.8 Completion of fieldwork in accordance with OPWDD approved audit protocols and tools;
- 5.2.3.1.9 Regular and ongoing communication with agency management and OPWDD during the course of fieldwork;
- 5.2.3.1.10 Scheduling and conducting an exit conference;
- 5.2.3.1.11 Development of a draft audit report;
- 5.2.3.1.12 Providing a quality assurance attestation with the draft report;
- 5.2.3.1.13 Analysis of Auditee response to draft reports, including the development of auditor comments;
- 5.2.3.1.14 Development of a final audit report;
- 5.2.3.1.15 Testifying at appeal hearings (if necessary).
- 5.2.3.2 Billing and claiming staffing patterns for each engagement should limit the amount of time auditors are on-site to approximately 3 weeks. It is expected Billing and Claiming Audits will take approximately 50 auditor days. It is expected that a minimum of two staff members be on-site for the duration of fieldwork. In addition, a minimum of two staff, one of which must be the Engagement Manager, must be present at all formal meetings with an agency (opening/closing conferences/COSO interviews):

LOT TWO Deliverables: AUDITS OF MEDICAID SERVICE DOCUMENTATION (BILLING AND CLAIMING AUDITS)		
Deliverable	Action Items	Timeframe
1 OPWDD Approval of Draft Report	Administration (opening/closing conferences, technical meetings, training, status reporting, etc.)	Within 90 days after the opening conference
	COSO Evaluation	
	Audit Prep Work	
	Pulling/Organizing Files	
	Scanning	
	Evaluation of Claims	
	Development of Discussion Draft	
	Team Edit Discussion Draft (including closing conference notes)	
	Quality Assurance	

	Draft Report Preparation	
2 OPWDD Approval of Final Report	Analyzing Auditee's Response	The final report must be submitted to OPWDD no greater than 15 days from receipt of the Auditee's response to the draft audit report.
	Final Report Preparation	
	Preparation for Appeals	

- 5.2.3.3 OPWDD does not guarantee a minimum number of Billing and Claiming Audits, approximately 5 engagements will be assigned Year One, possibly increasing over the contract term.
- 5.2.3.4 The contractor must notify the assigned OPWDD audit supervisor, as well as the Director of Audit Services, immediately upon learning of any issues related to the health and welfare of individuals and within one business day for all significant financial issues and/or control deficiencies.
- 5.2.4 **LOT TWO Reporting Requirements**
- 5.2.4.1 The Engagement Director must provide a project schedule and budget, including key due dates for each engagement, as well as a weekly status update for all open audits in the form and format prescribed by OPWDD. Updates are to include brief progress notes and progress toward target deadlines.
- 5.2.4.2 For certain projects, audit reports will be issued by the OMIG in the form and format prescribed and approved by the OMIG. The report templates must be used and all changes must be approved/authorized by OPWDD and the OMIG.
- 5.2.4.3 Written weekly status updates, to include brief progress notes and target deadlines.

## 5.3

### LOT THREE: AD HOC AUDIT SERVICES

In addition to the Audit Services outlined in LOTS ONE and TWO, OPWDD has regular and ongoing needs for ad hoc accounting, auditing, and consulting services. As a result of this procurement, OPWDD intends to develop a pool of pre-qualified contractors from which to solicit accounting, auditing, and consultant services over the 5-year contract term as specific needs are identified. Ad Hoc Services “Mini-bids” will be developed outlining specific requirements for which bids will be solicited from an existing prequalified pool of contractors. The Ad Hoc awards will be made based on best value or lowest price (either by hourly rate or project cost).

#### 5.3.1 LOT THREE Technical Proposal Instructions

##### 5.3.1.1 Types of Ad Hoc Services may include, but are not limited to the following:

- Cost reporting
- Rate Setting
- Limited Fiscal Review (LFR) at not-for-profit agencies
- Compliance with accounting and reporting of costs
- Expenditure reviews and controls
- Consulting: Fiscal issues, Management issues, Quality Assurance issues

##### 5.3.1.2 Proposals must include:

###### 5.3.1.2.1 the firm’s qualifications and experience as required in 2.3.5.2,

###### 5.3.1.2.2 References for the firm as required in 2.3.5.3,

###### 5.3.1.2.3 And a ranking and listing of prior engagements as required in 2.3.5.4 of this RFP.

###### 5.3.1.2.4 The Offerer must include a narrative that describes:

- Similar engagement and other Government Entities as required in 2.3.5.5.1 for the types of LOT THREE Ad Hoc Services listed in 5.3.1.1 above;
- Specific Audit approach as required in 2.3.5.5.2 of this RFP for the types of services listed in 5.3.1.1 above.

###### 5.3.1.2.5 Project Tracking (Billing) System per 2.3.5.5.3;

###### 5.3.1.2.6 Report Format per 2.3.5.5.4; and

###### 5.3.1.2.7 Staff Qualifications and Experience per 2.3.5.6 of this RFP. Resumes are required for each of the Engagement Titles listed in 1.1.2 of this RFP.

#### 5.3.2 LOT THREE Cost Proposal Instructions

##### 5.3.2.1 Hourly Rates for each Engagement Title must be submitted on the Cost Proposal Form located at the link(s) provided in ATTACHMENT 13 of this RFP.

##### 5.3.2.2 The proposed Hourly Rates are all-inclusive containing personnel, support staff, overhead, travel, and all other direct and indirect expenses related to the provision of audit services as detailed in section 5 of this RFP’s “Scope of Work” for each LOT, including all out-of-pocket expenses, and apply to all LOTs and cannot be exceeded in the provision of services under the contracts resulting from this procurement for any of the LOTs included in this RFP.

- 5.3.2.3 The LOT THREE engagement hours and resulting Total, are for scoring purposes only – they do not reflect any actual engagement – the hours and Total are for evaluation purposes only.
- 5.3.3 **Pre-Qualification Process**
  - 5.3.3.1 Offerers must rank their award preferences on the ATTACHMENT 1: Attestation Checklist (Administrative Proposal) and place a check mark in the LOT THREE box on the Cost Proposal, indicating “Yes”, for participation in the evaluation for LOT THREE: Ad Hoc Services.
  - 5.3.3.2 Upon completion of the Evaluation and Selection Process as detailed in section 4 of this RFP, it is the OPWDD’s intent to establish a pool of pre-qualified firms who will be available on an as-needed basis, able to provide Ad Hoc Services for OPWDD.
- 5.3.4 **Ad Hoc Services Mini-Bid Process**
  - 5.3.4.1 The Ad Hoc Services Mini-Bid is a competitive procurement process by which the OPWDD will select a Firm from the pool of pre-qualified vendors to perform actual work assignments/projects. The specific scope, schedule and cost of individual projects under the resulting contracts will be determined by the mini-bid solicitation. In assignments, the OPWDD will work to define the scope of projects as well as the evaluation criteria. Any hourly costs proposed in the Ad Hoc Services Mini-Bid responses must not exceed the hourly rates submitted in the Cost Proposal for LOT THREE: Ad Hoc Services as required in sections 2.3.6 and 5.3.2 of this RFP.
  - 5.3.4.2 The Ad Hoc Services Mini-Bid process will require quick turnaround from the pool of Firms. To expedite any such procurement, the State will utilize email to the fullest extent. The following steps will be taken:
    - 5.3.4.2.1 All Firms selected during Pre-Qualification will be notified of proposed Ad Hoc Services projects/engagements.
    - 5.3.4.2.2 The Ad Hoc engagement notifications will define the particulars of the project: its scope, duration and deliverables requested (See this RFP Exhibit III: Sample Ad Hoc Services Solicitation).
    - 5.3.4.2.3 The specifics of the Ad Hoc Services evaluation will be outlined when the Ad Hoc Services proposals are sought. Ad Hoc awards will be made on either a lowest cost basis, or technical and cost components will be weighted in accordance with “best value” evaluation methodology with the weights provided as part of the mini-bid assignment documentation. Ad Hoc proposals must contain not-to-exceed rates and not-to-exceed total costs of project/engagement. Ad Hoc Services proposals must not contain rates that are greater than the rates submitted in the LOT THREE: Ad Hoc Services proposal as required in section 2.3.6 of this RFP and 5.3.2 of this RFP.
    - 5.3.4.2.4 Ad Hoc Services proposals in response to mini-bid notifications will be emailed to the OPWDD Designated Contacts, as identified in the solicitation. Hard copy follow may be required with originally signed cost proposal pages and other applicable documentation.
    - 5.3.4.2.5 The Successful Contractor will be notified by email, as will those Firms not selected.

- 5.3.4.2.6 The written contract with the awarded Firm shall be a State contract including “Standard Clauses for New York State Contracts” (Appendix A). The entire Agreement shall consist of the documents and appendices 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 Appendix A: Supplements 1 – 4;
  3. The RFP and Attachments 1 - 12, Exhibits I – V and all modifications and clarifications thereto; and
  4. Any Ad Hoc Services Mini-Bid notifications.
- 5.3.4.3 Best Value evaluation: (Administrative Proposal)
- 5.3.4.3.1 If technical requirements and qualifications for a mini-bid award are not standard to the original procurement, completed Technical Proposals will be required and evaluated by OPWDD staff. In addition to this review, the specific experience requirements, identified and listed in the mini-bid will be evaluated/weighted and proposals will be assigned a technical rate.
- 5.3.4.3.2 A financial evaluation will be conducted by OPWDD staff separately from the Technical Evaluation. A financial rank determined by the LOT THREE: Ad Hoc Services not-to-exceed hourly rates (per 2.3.6 of this RFP) or Total Project Cost will be assigned to each proposal as follows:
- The maximum score (30 points) will be allocated to the proposal in each LOT with the lowest Total Audit cost according to this formula. All other proposals will receive a proportionate score to the proposal with the lowest cost, according to the following calculation:
  - $\text{Cost points awarded} = (30 \text{ potential points}) \times (\text{Low Cost} / \text{Offerer's Cost})$ .
- 5.3.4.3.3 A final composite score will be calculated by OPWDD by adding the Technical Proposal points and the Financial Proposal points together, with the highest possible score being 100 points.
- 5.3.4.4 Lowest Price evaluation
- If technical requirements and qualifications for a mini-bid award are standard to the original procurement, a mini-bid solicitation will be issued pursuant to which award is made to the responsive and responsible bidder submitting the lowest hourly rate, or total project price.
- 5.3.4.5 Offerer selection will be based on the highest ranked proposal(s), as will be specified in the Ad Hoc Services Award solicitation, including the value and/or relative importance of cost in the ranking.
- 5.3.4.5.1 Responsive and responsible Offerers with the highest evaluation rank will be notified of position award by the OPWDD’s issuance of award. Offerers who are not selected will be notified by e-mail.
- 5.3.4.6 Ad Hoc Contract Term

- 5.3.4.6.1 The Ad Hoc Services pool of pre-qualified firms will be available for a five-year period following approval of the Office of the State Comptroller.
- 5.3.4.6.2 Contracts resulting from the Ad Hoc Services mini-bid procurement will be allowed to extend no longer than eighteen months beyond the termination date of the Ad Hoc Contract resulting from this RFP, in order to cover work in progress.
- 5.3.4.7 There is no guarantee, implied or otherwise, that the OPWDD will order services from the Contractor as a result of this Request for Proposal, and execution of an Ad Hoc Services Contract does not guarantee continued use of services.
- 5.3.4.8 Payment
  - 5.3.4.8.1 Contractors will bill for accounting, auditing and consulting services provided, as proposed in response to an awarded mini-bid solicitation. The hourly rates will not exceed the rates proposed in response to this RFP. The final total hours and the mix of titles that will be devoted to each project are subject to discussion, resulting in a final written agreement between the firm and OPWDD, that will not exceed the mini-bid proposal and contractual amounts as awarded. Such discussions shall not delay the expeditious completion of each project.
  - 5.3.4.8.2 While it is anticipated that most projects under this contract will be of short duration, some may be longer. In these latter instances, interim bills may be submitted but may not cover a period of less than a calendar month.
- 5.3.4.9 Disqualification of Mini-bid Proposals

In addition to the OPWDD rights defined in this section herein, the OPWDD, at its sole discretion, reserves the following rights when conducting the Ad Hoc Services Award solicitation:

  - 5.3.4.9.1 Disqualify a bid that is either late or non-compliant. Non-compliance includes incomplete submissions, which do not clearly indicate that the Offerer meets the mandatory service requirements for the Ad Hoc Services being bid, and incomplete Forms;
  - 5.3.4.9.2 Award the Ad Hoc Services Award solicitation to another participating Offerer after a disqualification has been made. This may be done without receiving a rebuttal from the disqualified Offerer; and
  - 5.3.4.9.3 Reject all bid proposals and not award the Ad Hoc Services Award solicitation.

## **6. CONTRACT CLAUSES AND REQUIREMENTS**

The terms bidder, respondent, offerer, and proposer are used interchangeably throughout this section.

### **6.1 Order of Precedence**

In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) the order of precedence shall be:

- (1) Appendix A- Standard Clauses for All Contracts with New York State;
- (2) Appendix A: Supplements 1 - 4;
- (3) The contract including appendices not noted above;
- (4) Attachments 1 - 12, Exhibits I – V and all modifications and clarifications thereto;
- (5) Any Ad Hoc Services Mini-Bid notifications.

### **6.2 Procurement Lobbying Requirement**

On August 23, 2005, the Legislative Law and the OPWDD Finance Law (SFL) were amended to include provisions for the regulation of attempts to influence State and other governmental entity procurement contracts. Sections 139-j and 139-k of the SFL impose procurement record requirements relating to lobbying on procurement contracts.

#### **6.2.1 Contracts subject to Procurement Lobbying Act Requirements:**

All procurement contracts with estimated annualized expenditures in excess of \$15,000 resulting from procurement transactions initiated on or after January 1, 2006 are subject to the procurement lobbying requirements and additional procurement record requirements.

The SFL defines a procurement contract as any contract or other agreement for an article of procurement<sup>1</sup> involving an estimated annualized expenditure in excess of fifteen thousand dollars.

Subject to certain exceptions, an assignment, amendment, renewal or extension of a procurement contract or any material change in a procurement contract resulting in a financial benefit to the Offerer is covered by the provisions of the Act.

Backdrop contracts, and any contracts resulting from mini-bids pursuant to the backdrop contracts, are also subject to this law.

#### **6.2.2 Bidder's Compliance with Communications During Restricted Period form, provided in ATTACHMENT 3: Procurement Lobbying Law Certification of Compliance of this RFP, must be completed and signed by the Offerer, and included with the Proposal, providing the representations outlined in sections 6.2.2.1 through 6.2.2.6 below:**

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<sup>1</sup> SFL §139-j(1)(b) defines "article of procurement" as "a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a governmental procurement."

#### 6.2.2.1 Vendor Responsibility Determination

The procurement record for every contract must include a determination that the Offerer is responsible in accordance with vendor responsibility requirements set forth in section 6.14 of this RFP. In addition to the general responsibility determination, for all contracts subject to the State Comptroller's approval the procuring entity must make a separate responsibility determination as to whether the Offerer has: (i) knowingly and willfully violated the prohibitions against impermissible contacts or certain ethics provisions, or failed to timely disclose accurate and complete information or otherwise failed to cooperate with the procuring entity, or (ii) failed to disclose prior determinations of non-responsibility by any governmental entity for any of the above reasons within the previous four (4) years.

#### 6.2.2.2 Offerer Certification; Complete Disclosure

Every procurement record must include a disclosure by Offerers with regard to non-responsibility determinations within the past four (4) years based on: (i) impermissible contacts or other violations of SFL §139-j; or (ii) the intentional provision of false or incomplete information to a governmental entity. (Note: To satisfy the requirement regarding Offerer's disclosure, the governmental entity must specifically request information regarding prior findings of non-responsibility for violations of SFL §139-j. A general request for prior findings of non-responsibility is not sufficient.) In addition, any procurement contract award shall contain a certification by the Offerer that the information provided to the procuring entity was complete, true and accurate.

#### 6.2.2.3 Contract Clause; Termination Provision

OPWDD is authorized to terminate the contract if the certification (see preceding paragraph) is found to be intentionally false or intentionally incomplete, as contained in Appendix A – Standard Clauses for All New York State Contracts.

#### 6.2.2.4 Agency Policy and Prohibitions Regarding Permissible Contacts SFL §139-j restricts contacts<sup>2</sup> by Offerers<sup>3</sup> with any governmental entity<sup>4</sup> regarding procurement contracts.

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<sup>2</sup> SFL §139-j(1)(c) defines "contacts" as "any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity's conduct or decision regarding the governmental procurement."

<sup>3</sup> SFL §139-j(1)(h) defines "Offerer" as "shall mean the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicates with the procuring agency regarding a governmental procurement in the exercise of its oversight duties shall not be considered an offerer."

<sup>4</sup> SFL §139-j(1)(a) defines "governmental entity" as "(1) any department, board, bureau, commission, division, office, council, committee or officer of the OPWDD, whether permanent or temporary; (2) each house of the OPWDD legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the OPWDD; (6) a municipal OPWDD May 2022

Subject to certain exceptions set forth in SFL §139-j(3), contacts between Offerers and governmental entity personnel, other than the governmental entity's designated contact person(s), are prohibited during the restricted period<sup>5</sup> of the governmental procurement<sup>6</sup>.

The statute requires that "[e]very governmental entity shall incorporate a summary of the entity's policy and prohibitions regarding permissible contacts during a governmental procurement" and a copy of the governmental entity's procedures be included in the solicitation or bid documents for all procurement contracts. The statute further requires that if a member, officer, or employee of a governmental entity becomes aware that an Offerer has violated the permissible contacts provisions of the law, such person shall immediately notify the Ethics Officer, Inspector General, or other official of the procuring governmental entity responsible for investigation of such violations.

#### 6.2.2.5 Affirmation of Compliance

All Offerers must provide a written affirmation that the Offerer understands and agrees to comply with the governmental entity's procedures relating to permissible contacts during the procurement. See section 1.2 of this RFP for OPWDD designated contact.

#### 6.2.2.6 Record of Contacts

For each procurement contract, SFL §139-k requires that all contacts between an Offerer and a governmental entity during the restricted period be recorded and made a part of the procurement record.

### 6.3 Contractor Insurance Requirements

#### 6.3.1 Prior to the start of work the Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the Term of the Contract resulting from this procurement, policies of insurance as set forth in Appendix , written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York ("admitted" carriers) with an A.M. Best Company rating of "A-" or better or as acceptable to OPWDD.

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agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (7) a subsidiary or affiliate of such a public authority."

<sup>5</sup> SFL §139-j(1)(f) defines "restricted period" as "the period of time commencing with the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Proposers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, the State comptroller."

<sup>6</sup> SFL §139-j(1)(e) defines "governmental procurement" as "(i) the public announcement, public notice, or public communication to any potential vendor of a determination of a need for a procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Proposer."

- 6.3.2 Insurer qualifications and insurance requirements are provided in Appendix C of this RFP. The Contractor must comply with these requirements to remain responsible under the terms of the Contract resulting from this solicitation.
- 6.3.2.1 If the Contractor is supplying a cloud based
- 6.3.2.2 If the contractor is supplying a data base additional insurance will apply.
- 6.3.3 Bidders must agree in the Administrative Proposal ATTACHMENT 1: Attestation Checklist, that if awarded a contract under this solicitation, they will comply with the insurer qualifications and insurance requirements.
- 6.3.4 The OPWDD may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the OPWDD to accept insurance placed with a non-authorized carrier under any circumstances.
- 6.3.5 The Contractor shall deliver to the OPWDD evidence of such policies in a form acceptable to the OPWDD. These policies must be written in accordance with the requirements of the Appendix C of this RFP, as applicable.
- 6.4 Tax Law Section 5-A Clause**

Purchases made by the State of New York are not subject to state or local sales taxes or federal excise taxes. The official State of New York Voucher for materials, equipment, supplies and services is sufficient evidence to exempt the transaction from sales tax under section 1116 (a)(1) of the Tax Law.
- 6.4.1 Section 5-a of the Tax Law, as amended and effective April 26, 2006 requires certain contractors awarded certain contracts valued at more than \$100,000 to certify to the NYS Department of Taxation and Finance (hereinafter referred to as Tax and Finance) that they are registered to collect New York State and local sales and compensating use taxes if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, for the four (4) completed sales tax quarters in which the certification is made. In addition, contractors must certify to Tax and Finance that each affiliate and subcontractor exceeding such sales threshold during the period previously indicated, is registered to collect New York State and local and compensating tax.
- 6.4.2 This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to Tax and Finance that each affiliate and subcontractor exceeding such sales threshold is registered with Tax and Finance to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to a Bidder meeting the registration requirements but who is not so registered in accordance with the law.
- 6.4.3 The Bidder that is awarded the contract as a result of this RFP will be required to complete and submit to Tax and Finance the Contractor Certification Form, ST-220-TD (Part IV-2.).

The selected Vendor must also submit the Contractor Certification to Covered Agency Form, ST-220–CA (Part IV-2.) to OPWDD certifying that they filed Form ST-220–TD and that the information contained on Form ST-220–TD was correct and complete as of the date it was filed. These forms as fillable PDF documents can be found at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) and [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf).

6.4.4 Vendors may call Tax and Finance at 1-800-698-2931 for contractor sales tax information. For additional information and frequently asked questions, please refer to Tax's web site: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

6.4.5 Bidders may call Tax and Finance at 1-800-972-1233 for questions relating to Tax Law§5-a and relating to a company's registration status with Tax and Finance. For additional information and frequently asked questions, please refer to Tax's web site: <http://www.tax.ny.gov/> <http://www.esd.ny.gov>

## 6.5 Freedom of Information Law/Trade Secrets

6.5.1 New York State's Freedom of Information Law (FOIL) (Public Officers Law, Article 6, Sections 84-90), available at: <http://www.dos.state.ny.us/coog/index.html>, promotes the public's right to know the process of governmental decision-making and grants maximum public access to governmental records. The proposal of the successful Bidder and the proposals of unsuccessful Bidders 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 Bidder'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 Firm may claim as proprietary, copyrighted or rights-reserved is not necessarily protected from disclosure under FOIL.

6.5.2 If there is information in a Firm's proposal that a Firm's claims meets the definition set forth in Section 87(2)(d), the Firm must provide a statement outlining any specific concerns.

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

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

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

6.5.6 The Contractor must provide to the Division/State 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/State pursuant to the Freedom of Information Law.

## 6.6 Force Majeure

Neither Party will be liable for losses, defaults, or damages under the Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of the 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.

## **6.7 Consultant Disclosure Legislation**

6.7.1 Chapter 10 of the Laws of 2006 amends State Finance Law § 8 and § 163 by requiring:

6.7.1.1 that the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by state agencies for consulting services during the previous fiscal year, certain additional information on employees providing services under such contracts;

6.7.1.2 that contractors annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and OSC; and,

6.7.1.3 that OSC include such employment information in the Procurement Stewardship Act Report it compiles annually.<sup>2</sup>

6.7.1.4 This legislation took effect on June 19, 2006.

6.7.2 Process and Document Preparation:

### **6.7.2.1 STATE CONTRACTORS EMPLOYMENT INFORMATION**

State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This includes information on any persons working under any subcontracts with the state contractor.

### **6.7.2.2 CONTRACTS FOR CONSULTING SERVICE**

The definition of contracts for consulting services includes any contract 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.

### **6.7.2.3 REPORT REQUIREMENTS**

6.7.2.3.1 State Finance Law § 8 (sub d 17) requires that OSC report to the Legislature on contracts for consulting services that were issued by state agencies during the previous fiscal year. OSC is required to include in the Consulting Services Report the employment information described above.

6.7.2.3.2 To enable compliance with the law, state agencies must include the New York State Consultant Services Contractor's Planned Employment form (AC 3271-S) in the procurement record submitted to OSC for new consultant contracts. The completed form must include information for all employees providing service under the contract, whether

employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.

- 6.7.2.3.3 In order to provide notice to potential contractors that the contractor selected may be required to complete the form, state agencies may incorporate the Form A into new solicitations for consulting services.
- 6.7.2.3.4 It is important to note that regardless of a contract's payment methodology (for example, deliverable based payment or lump sum payments), an agency must structure the procurement/contract to be able to ascertain and report the required data.
- 6.7.2.3.5 Submission of a completed Form A is required for OSC approval of new contracts for consulting services, except in extraordinary circumstances as determined at the sole discretion of OSC.
- 6.7.2.4 ANNUAL REPORT REQUIREMENTS
  - 6.7.2.4.1 State agencies must require state contractors to report annually on the employment information described above, including work performed by subcontractors. The annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to DCS. OSC must include the employment information in the Procurement Stewardship Act Report. State Finance Law § 163 (sub d 14) requires that OSC annually report to the State Procurement Council, the Governor and the Legislature on active procurement contracts above \$15,000.<sup>3</sup>
  - 6.7.2.4.2 State Consultant Services Contractor's Annual Employment Report (AC 3272-S) is to be used to report the information. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, Form B is required to be submitted each year the contract is in effect and is intended to capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st - March 31st).
  - 6.7.2.4.3 To enable compliance with the law, state agencies must incorporate the annual reporting requirement and the Form B template into new solicitations for consulting services to provide notice to potential contractors that the contractor selected will be required to submit the form annually. Furthermore, incorporation of the requirement for Form B to be submitted annually by the contractor is a requirement for OSC approval of new contracts for consulting services, including those contracts resulting from mini-bids, except in extraordinary circumstances as determined in the sole discretion of OSC. Since the annual reporting requirement is contained in Appendix A - Standard Clauses for All New York State Contracts as of November 2010, compliance with this requirement may be satisfied by incorporating the latest version of Appendix A into the contract.
  - 6.7.2.4.4 The State Consultant Services Contractor's Annual Employment Reports will be due no later than May 15th of each year.

### 6.7.3 COMPLETING THE FORMS

Form A and Form B must be completed for contracts for consulting services in accordance with the following:

- 6.7.3.1 Scope of Contract (Form B only): a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- 6.7.3.2 Employment Category: the specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees providing services under the contract.  
  
(Note: Access the O\*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at [online.onetcenter.org](http://online.onetcenter.org) to find a list of occupations.)
- 6.7.3.3 Number of Employees: the total number of employees in the employment category employed to provide services under the contract during the report period, including part time employees and employees of subcontractors.
- 6.7.3.4 Number of hours (to be) worked: for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the report period by the employees in the employment category.
- 6.7.3.5 Amount Payable under the Contract: the total amount paid or payable by the State to the state contractor under the contract, for work by the employees in the employment category, and for services provided during the report period.

## **6.8 Multi-Agency and Local Human Services District/County Use**

Any contract entered into pursuant to an award resulting from this RFP shall contain a provision that grants the option to extend the terms and conditions of such contract to other agencies as well as to the local social service districts in New York State providing human services.

## **6.9 Contacts with Employees**

Prospective contractors may not approach OPWDD personnel with offers of employment during the procurement period. Any firm who is aware of an OPWDD employee who is considering employment with the firm must advise Connie Blais via e-mail forthwith (see section 1.2 for contact information).

## **6.10 Public Officers Law**

All Vendors and their employees must be aware of, and comply with, the requirements of the New York State Public Officers Law, and all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the proposal, each Vendor guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers and relationships involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in civil or criminal proceedings as authorized by law.

## **6.11 Restrictions on Communications**

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between a Governmental Entity and an

Offerer during the procurement process. An Offerer is restricted from making contacts from the earliest notice of intent to release a Request for Proposal through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in this section, 1.2.1 of this RFP. Governmental Entity 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.

## **6.12 Procedure for Handling of Protests/Appeals of Bid Specifications and Proposed Awards**

### **6.12.1 Formal Written Protests**

Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below.

Any Vendor or prospective Vendor who believes that there are errors or omissions in the procurement process or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to the OPWDD and request administrative relief concerning such action ("formal protest").

A formal protest must be submitted in writing to the OPWDD, by ground mail, except where alternate arrangements have been made, to Marc Kleinhenz, Director of Contracts and Grants, 44 Holland Avenue, 5<sup>th</sup> Floor, Albany, NY 12229.

A formal protest must include a statement of all legal and/or factual grounds for disagreement with an OPWDD specification or purchasing decision; a description of all remedies or relief requested; and copies of all applicable supporting documentation.

### **6.12.2 Deadline for Submission of Formal Protests**

OPWDD must receive formal protests concerning errors, omissions or prejudice including patently obvious errors in the bid specifications or documents at least ten (10) calendar days before the date set in the solicitation for receipt of bids.

OPWDD must receive formal protests concerning a pending contract award within seven (7) calendar days after the protesting party ("protester") knows or should have known of the facts which form the basis of the protest.

### **6.12.3 Review and Final Determination of Protests**

Protests will be resolved through written correspondence. However, the protester may request a meeting to discuss a formal protest or the OPWDD may initiate a meeting on its own motion, at which time the participants may present their concerns. Either the protester or the OPWDD may elect to decline such a meeting.

Where further formal resolution is required, the Associate Commissioner shall designate an OPWDD employee ("designee") to determine and undertake the initial resolution or settlement of any protest.

The designee will conduct a review of the records involved in the protest, and provide a memorandum to the Associate Commissioner summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Associate Commissioner shall: (a) evaluate the procurement team's findings and recommendations, (b) review the materials presented by the protesting party and/or any materials required of or submitted by other Vendors, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the protest.

A copy of the protest decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the Office of the State Comptroller (OSC) shall be sent to the protester or its agent within forty-five (45) calendar days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest decision will be recorded and included in the procurement record, or otherwise forwarded to OSC upon issuance.

#### 6.12.4 **Appeals**

Upon receipt of OPWDD's determination of a protest, a protester has ten (10) business days within which to file an appeal of the determination with the OSC Bureau of Contracts. The appeal must be filed with Charlotte Davis at New York State Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany, NY 12236. The protester's appeal must contain an affirmation in writing that a copy of the appeal has been served on OPWDD and any other party that participated in the protest. In its appeal, the interested party shall set forth the basis on which it challenges the contracting agency's determination. The OSC Bureau of Contracts will conduct its determination of the appeal in accordance with its established policy.

#### 6.12.5 **Reservation of Rights and Responsibilities of the OPWDD**

The OPWDD reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and OPWDD. If the OPWDD determines that there are compelling circumstances, including the need to proceed immediately with the contract award in the best interest of the State, then these protest procedures may be suspended and such decision shall be documented in the procurement record. The OPWDD will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

#### 6.12.6 **Procurement Activity Prior to Final Protest Activity**

Receipt of a formal bid protest shall not stay action on procurement unless otherwise determined by the OPWDD. If a formal protest or appeal is received by the OPWDD on a recommended award prior to the underlying contract being forwarded to the Office of the State Comptroller (OSC), notice of receipt of the protest and appeal must be included in the procurement record forwarded to the OSC. If a final protest decision or final decision

on appeal has been reached prior to transmittal to the OSC, a copy of the final decision must be included in the procurement record and forwarded with the recommendation for award.

If a final protest decision is made after the transmittal of a bid package to the OSC, but prior to the OSC approval under SFL § 112, a copy of the final OPWDD decision shall be forwarded to the OSC when issued, along with a letter either: a) confirming the original OPWDD recommendation for award and supporting the request for final § 112 approval, b) modifying the proposed award recommendation in part and supporting a request for final § 112 approval as modified; or c) withdrawing the original award recommendation.

#### 6.12.7 **Record Retention of Bid Protests**

All records related to formal Vendor protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.

### 6.13 **Information Security Breach and Notification**

6.13.1 The New York State "Information Security Breach and Notification Act" also known as the "Internet Security and Privacy Act" took effect December 9, 2005. The Legislature and Governor have enacted the Law in response to past and continuing identity theft and security breaches affecting thousands of people. The Law requires any person or business that conducts business in New York State and that owns or licenses computerized data that includes private information (including but not necessarily limited to social security numbers, credit and debit card numbers, driver's license numbers, etc.) must disclose any breach of that private information to all individuals affected or potentially affected in an expeditious manner. Contractor shall comply with the provisions of the New York State Information Breach and Notification Act. Contractor shall be liable for the costs associated with such breach if caused by the Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors. You may view a copy of the Law at <http://public.leginfo.state.ny.us/MENUGETF.cgi?COMMONQUERY=LAWS> by searching for "INTERNET SECURITY AND PRIVACY." The law is found at Article 2 of the State Technology Law and at Article 39-F of the General Business Law.

#### 6.13.2 **Security Breach Notification**

If the successful Bidder breaches the confidentiality of a person's HIPAA or State protected information, the successful Bidder must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. The successful Bidder and the State will cooperate to mitigate the effects of any breach, intrusion, or unauthorized use or disclosure. The successful Bidder must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within two hours after becoming aware of the use or possible disclosure.

#### 6.13.3 **Stop Hacks and Improve Electronic Data Security Act ("SHIELD Act")**

The winning bidder is required to comply with New York's SHIELD Act, which amended the Information Security Breach and Notification Act. The SHIELD Act significantly strengthened New York's data security laws by expanding the types of private information that

companies must provide consumer notice in the event of a breach, and requiring that companies develop, implement, and maintain reasonable safeguards to protect the security, confidentiality and integrity of the private information.

#### **6.14 Vendor Responsibility**

Section 163 of the State Finance Law requires that contracts be awarded on the basis of lowest price or best value to a responsive and responsible Vendor. The State and courts have determined that responsibility includes integrity, previous performance, legal authority to do business in New York State, and financial and organizational ability to perform the contract.

As part of the procurement process, Vendors, affiliates and any business entity of which the Vendor is a subsidiary and subcontractors (where the subcontractor is known at the time of the contract award, its qualifications are a material factor in the award, and its subcontract will equal or exceed \$100,000 over the life of the contract) are required to complete the Contractor/Subcontractor Questionnaire (see Appendix F of this RFP) and submit it with its proposal.

OPWDD shall conduct reviews of each vendor for responsibility and responsiveness. OPWDD may, at OPWDD's sole discretion, request additional information, including meeting with the Vendor.

If the Vendor is determined by OPWDD to be not responsible, OPWDD shall inform the Vendor of such ruling. The Vendor shall have 30 days to request a meeting with OPWDD to explain the ruling and to demonstrate the finding to be incorrect or to correct/resolve any issues affecting the Vendor's responsibility. If OPWDD's findings remain unchanged after meeting with the Vendor, the Vendor shall be removed from consideration for this contract.

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of the OPWDD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

##### **6.14.1 Suspension of Work (for Non-Responsibility)**

The Commissioner of the OPWDD or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract resulting from this RFP, at any time, when he or she 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 Commissioner of the OPWDD or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

##### **6.14.2 Termination (for Non-Responsibility)**

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OPWDD officials or staff, the Contract may be terminated by the Commissioner of the OPWDD or his or her designee at the Contractor's expense where the Contractor is

determined by the Commissioner of the OPWDD or his or her designee to be non-responsible. In such event, the Commissioner of the OPWDD or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

The Vendor that is awarded this contract shall update the Contractor/Subcontractor Questionnaire (located in Appendix F) whenever such information changes and prior to any contract extensions and/or amendments. In the case of an assignment, a Contractor/Subcontractor Background Questionnaire must be submitted for the Contractor and Subcontractors. If the Vendor is determined on the basis of new or previously undisclosed information, to be not responsible, the contract may be terminated, at OPWDD's sole discretion.

### **6.14.3 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES**

#### **6.14.3.1 Return of Data**

The Contractor shall return Data in a format agreed upon with the OPWDD. This can, if specified within the contract, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor must certify all Data has been removed from its system and removed from backups within timeframes established in the contract or as agreed to with the OPWDD.

#### **6.14.3.2 Suspension of Services**

During any period of suspension of service, the OPWDD shall have full access to all Data at no charge. This can, if specified within the contract, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor shall not take any action to erase and/or withhold any OPWDD Data, except as directed by the OPWDD.

#### **6.14.3.3 Expiration or Termination of Services**

Upon expiration or termination of the contract, the OPWDD shall have full access to all Data for a period of 60 calendar days. Unless noted in the original contract, this period will be covered at no charge. This can, if specified within the contract, be carried out by providing application programmable interface or other such efficient electronic tools. During this period, the Contractor shall not take any action to erase and/or withhold any Data, except as directed by the OPWDD. OPWDD shall have the right to specify a period in excess of 60 calendar days.

#### **6.14.3.4 Contractor Performance Audit**

The Contractor shall allow the OPWDD to assess Contractor's performance by providing any materials requested in the contract (e.g., page load times, response times, uptime, fail over time). The OPWDD may perform this Contractor performance audit with a third party at its discretion, at the OPWDD's expense.

The Contractor shall perform an independent audit of its Data Centers, at least annually, at Contractor expense. The Contractor will provide a data owner facing audit report upon request by the OPWDD. The Contractor shall identify any confidential, trade secret, or Proprietary information in accordance with section 6.5 of this RFP.

## Personnel Separation of Duties

The OPWDD Agreement may require the separation of job duties, and that Contractor staff knowledge of Data be limited to that which is absolutely needed to perform job duties.

### 6.14.3.5 Business Continuity/Disaster Recover (BC/DR) Operations

If required in the OPWDD Agreement, the Contractor shall provide a Business Continuity and Disaster Recovery plan specific to the entire Cloud Solution provided. The Contractor shall specify how the BC/DR plan will impact access to the required features and functionality of the Cloud Product associated with the OPWDD Agreement.

### 6.14.4 Vendor Responsibility Status

Procurement laws and guidelines require the award of New York State contracts to responsible contractors. Vendor responsibility generally means that a contractor has the integrity to justify the award of public dollars and the capacity to fully perform the requirements of the contract. Instructions for documenting vendor responsibility are included in Attachment 1: Attestation Checklist (Administrative Proposal)

During the period of the contract, the successful Bidder shall notify OPWDD of any changes in vendor responsibility disclosures. The State reserves the right to terminate the contract for non-responsibility or failure of the successful Bidder to disclose accurately.

## 6.15 Termination

The Agreement shall be subject to the following termination provisions:

- 6.15.1 All or any part of the Agreement may be terminated by OPWDD in the event of failure of the Contractor to perform within the time requirements set forth in the Agreement.
- 6.15.2 All or any part of the Agreement may be terminated by OPWDD for cause upon the failure of the Contractor to comply with the terms and conditions of the Agreement, including the attachments hereto, provided that OPWDD shall give the Contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand - receiving the Contractor's receipt therefore, such written notice to specify the Contractor's failure and the termination of the Agreement. Termination shall be effective ten business days from receipt of such notice, established by the receipt returned to OPWDD, unless the Contractor, in the opinion of OPWDD, has cured said failure. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- 6.15.3 The Agreement may be terminated for convenience, provided that OPWDD shall give written notice to the Contractor not less than 30 days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of the Contractor's receipt for notice in the case of hand delivery. In the case of termination under this subsection, OPWDD agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith. The Contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.

- 6.15.4 The Agreement may be deemed terminated immediately at the option of OPWDD upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by OPWDD to the Contractor.
- 6.15.5 Should OPWDD determine that Federal and State funds are unavailable; OPWDD may terminate the Agreement immediately upon notice to the Contractor. If the initial notice is oral notification, OPWDD shall follow this up immediately with written notice. OPWDD will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from OPWDD.
- 6.15.6 In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion and the Contractor shall cancel as many outstanding obligations as possible. The Contractor shall take all reasonable measures to mitigate any damages for which OPWDD may be liable. OPWDD will not be obligated to pay the Contractor for any lost and/or anticipated profits.
- 6.15.7 If the Agreement is terminated for any reason, OPWDD shall have the right to award a new contract to a third party. In the event of termination for cause, OPWDD shall have the right to seek recovery of damages, and for all additional costs incurred in reassigning the contract.
- 6.15.8 OPWDD reserves the right to terminate the award resulting from this procurement in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OPWDD may exercise its termination right by providing written notification to the award recipient.
- 6.15.9 **Contractor Transition Responsibilities**
- If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of services to the State or a third party designated by the State. The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must provide the State with data generated from the inception of the Contract through the date on which Contract is terminated in a comma-delineated format unless otherwise requested by the State.



APPENDIX A: Standard Clauses for New York State Contracts

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

October 2019

**TABLE OF CONTENTS**

- 1. Executory Clause**
- 2. Non-Assignment Clause**
- 3. Comptroller's Approval**
- 4. Workers' Compensation Benefits**
- 5. Non-Discrimination Requirements**
- 6. Wage and Hours Provisions**
- 7. Non-Collusive Bidding Certification**
- 8. International Boycott Prohibition**
- 9. Set-Off Rights**
- 10. Records**
- 11. Identifying Information and Privacy Notification**
- 12. Equal Employment Opportunities For Minorities and Women**
- 13. Conflicting Terms**
- 14. Governing Law**
- 15. Late Payment**
- 16. No Arbitration**
- 17. Service of Process**
- 18. Prohibition on Purchase of Tropical Hardwoods**
- 19. MacBride Fair Employment Principles**
- 20. Omnibus Procurement Act of 1992**
- 21. Reciprocity and Sanctions Provisions**
- 22. Compliance with Breach Notification and Data Security Laws**
- 23. Compliance with Consultant Disclosure Law**
- 24. Procurement Lobbying**
- 25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors**
- 26. Iran Divestment Act**
- 27. Admissibility of Contract**

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, 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 § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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, the 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, the 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. The 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 the 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, the 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, the Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on the 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 the 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 (2 NYCRR § 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, NY 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 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 the 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, upgrading, 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

I 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.

The 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 clause. 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. The 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 the 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"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the 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. The 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. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

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

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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;

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**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 §§ 139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the Contractor fails to make the certification required by Tax Law § 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, the Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers

pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersOfferers-pursuant-nys-iran-divestment-act-2012>

The Contractor further certifies that it will not utilize on this contract any subcontractor that is identified on the Prohibited Entities List. The 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. The 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.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

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**APPENDIX A SUPPLEMENT – 1: AGENCY SPECIFIC TERMS AND CONDITIONS**

The parties to the attached Contract, Contract Enter Contract Number here, agree to be bound by the following, which are hereby made part of said Contract.

1. The Contractor shall not discriminate against any applicant for services for reasons based upon religion or religious belief. The Contractor shall not use any monies received from the State to benefit or inhibit a particular religion or religious belief.
2. The relationship of the Contractor to the State is that of an independent contractor and the officers and employees of the Contractor shall conduct themselves in a manner consistent with such status, shall neither hold themselves out as nor claim to be officers, employees, or agents of the State by reason thereof, and shall not make any claim, demand or application to or for any right of the State, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit.
3. The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons or property, including death, arising out of or related to the services to be rendered by the Contractor. It shall indemnify and hold harmless the State and its officers and employees from any and all claims, suits, actions, damages and costs of every nature and description arising out of or related to the services to be rendered by the Contractor or the violation by the Contractor, its employees, servants, agents, or contractors, of any law, ordinance, rule or regulation in connection therewith.
4. Neither party shall be liable for losses, defaults, or damages under this Contract which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Contract, due to or because of acts of God, the public enemy, earthquake, floods, typhoons, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
5. If any term or provision of the Contract shall be found to be illegal or unenforceable, then, notwithstanding, the Contract shall remain in full force and effect and such term or provision shall be deemed stricken from the Contract.
6. The Contractor shall comply with all statutory requirements relating to the confidentiality of information obtained during the performance of the Contract.
7. The Contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources.
8. Upon termination of the Contract, there shall be a reconciliation based upon the services provided by the Contractor and the payments made by the State. The Contractor shall refund to the State any overpayments made by the State pursuant to the Contract.
9. Unless otherwise provided, the Contract may be amended, modified, renewed, and/or renegotiated by written agreement of the parties which shall become effective upon approval by the Office of the State Comptroller.
10. Unless otherwise provided, the OPWDD may cancel the Contract without cause upon serving thirty (30) days' written notice on the Contractor. Cancellation by mutual agreement of all parties to the Contract will be allowed subject to documentation in writing.
11. No part of the Contractor's income or resources shall be used directly or indirectly for the benefit of, or payment to, any State employee for services provided under this Contract other than employees whose names are furnished to the OPWDD and no employee so identified shall receive any benefit or payment under this Contract without prior written approval by the OPWDD.

**Contracts**

12. This Contract contains all the terms and conditions agreed upon by the parties and no statement or representation, oral or written, express or implied, shall be deemed to exist or to bind either party or to vary any of the terms and conditions of the Contract.
13. Where applicable, the Contractor shall maintain eligibility for reimbursement from any program that provides payment for services and shall apply for and obtain all funds available for the program from any public or private source. Upon request, the OPWDD shall assist in establishing the Contractor's eligibility for such funds.
14. The Contractor must comply with the provisions of Mental Hygiene Law Section 16.33 and Executive Law Section 845-b, the regulations related to criminal history record checks adopted by OPWDD in connection with the fingerprinting of certain individuals and the policies and procedures of OPWDD in connection therewith. In particular, any individual employed by or affiliated as a volunteer with a provider of services as defined in Section 1.03(5) of the Mental Hygiene Law who has regular and substantial unsupervised or unrestricted physical contact with people receiving services (such contact hereinafter referred to as "consumer contact") and who hereafter submits or who has submitted an application for employment or otherwise becomes or became affiliated with the Contractor on or after April 1, 2005 (such individual hereinafter referred to as "a subject party") shall be required to consent and submit to a criminal history record check. Upon the completion thereof, the Contractor shall deny or hold in abeyance employment or volunteer opportunities involving consumer contact to a subject party when directed to do so by OPWDD and in those instances the Contractor shall notify the subject party that his or her criminal history record information is the basis for such action taken by the Contractor.
15. Federal False Claims Act (31 USC Sections 3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, Sections 187-194) – the Contractor is bound by all of the related laws. The law requires that OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste and abuse in federal health care programs. This information must include the whistleblower protections that are in these laws. OPWDD must also provide its contractors with information about OPWDD's own policies and procedures for detecting and preventing waste, fraud and abuse. You can find detailed descriptions of these laws, their whistleblower protections and OPWDD's policies on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). At the home page, select Information for Providers on the left side of the page, then select False Claims Recoveries. You can also visit the New York State Medicaid Inspector General website at [www.omig.ny.gov](http://www.omig.ny.gov) to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud and abuse is available from the OPWDD Contract Management Unit, 4<sup>th</sup> Floor, 44 Holland Ave., Albany NY 12229-0001. As a contractor of OPWDD, you are required to participate in the reviews and audits described in OPWDD's policies, and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all your employees and to all of your contractors involved in performing work under your contract with OPWDD.
16. Both the United States Department of Health and Human Services and the Office of the Medicaid Inspector General (OMIG) can exclude persons and organizations from federal and State healthcare programs. If this Contract is funded through the New York State Medicaid program, the following applies:

**For Contractors**

The Contractor represents that:

- (1) The United States Secretary of Health and Human Services has not excluded the Contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a, or excluded the Contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5;
- (2) The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the Contractor from



Contracts

participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a);

- (3) The New York State Medicaid Inspector General has not excluded the Contractor from participation in the New York Medicaid program under 18 NYCRR Part 515; and
- (4) No federal or State agency has otherwise excluded the Contractor from participation in the New York Medicaid program or excluded the Contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.

If, during the term of this Contract, the Contractor is excluded from participation in a federal health care program or the New York Medicaid program, or is excluded from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis, under the authorities stated above, this Contract shall be immediately terminated.

17. On February 12, 2007 the Diesel Emissions Reduction Act took effect as law. Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL"), it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirements of the law apply to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. As a contract vendor, the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and State or regional public authorities. Therefore, the Bidder/Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this Contract will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the Bidder/Contractor.

18. Notices:

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

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

**State of New York, Office for People with Developmental Disabilities (OPWDD)**

Name: Marc Kleinhenz

Title: Director of Contracts and Grants

Address: 44 Holland Ave., Albany, NY 12229

Telephone Number: (518) 474-7719

E-Mail Address: Marc.L.Kleinhenz@opwdd.ny.gov

**Contractor Name**

Name: Enter Here

Title: Enter Here

Address: Enter Here

Telephone Number: Enter Here

E-Mail Address: Enter Here



**Contracts**

- (2) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
  - (3) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.
19. 14 NYCRR Sec. 624.5(u)(2) An agency shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD. This extends to NY State contractors.
20. General conditions relating to Article 15-A and Article 17B of the Executive Law are set forth in the following pages.

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## Contracts

## APPENDIX A SUPPLEMENT – 2: MWBE Requirements and Procedures

**PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES  
REQUIREMENTS AND PROCEDURES****I. General Provisions**

- A. The Office for People With Developmental Disabilities (“OPWDD”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) 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.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OPWDD, to fully comply and cooperate with OPWDD 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 New York State-certified minority and women-owned business enterprises (“MWBEs”). 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”) and other applicable federal, state, and local laws.
- C. 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 VII of this Appendix and such other remedies are available to OPWDD pursuant to the Contract and applicable law.

**II. Contract Goals**

- A. For purposes of this Contract, OPWDD hereby establishes an overall goal of 30% percent for MWBE participation, 17% percent for New York State-certified minority-owned business enterprise (“MBE”) participation and 13% percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

**Contracts**

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

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

- C. 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. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. 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 the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - 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]
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
  2. Any responses by MWBEs to the Contractor's outreach;
  3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OPWDD with MWBEs; and,
  5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

**III. Equal Employment Opportunity (“EEO”)**

- A. 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 Contract.
- B. In performing the Contract, the Contractor shall:

**Contracts**

1. Ensure that each contractor and subcontractor performing work on the Contract 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.
2. The Contractor shall submit an EEO policy statement to OPWDD within seventy-two (72) hours after the date of the notice by OPWDD to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OPWDD may require the Contractor or subcontractor to adopt a model statement (see Form – Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. 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.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment OPWDD, 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 OPWDD, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

**C. Staffing Plan (Complete only if contract value is in excess of \$250,000)**

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

**Contracts**

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 as part of their bid or proposal or within a reasonable time, as directed by OPWDD.

**D. Workforce Utilization Report**

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by OPWDD on a [MONTHLY for Construction/QUARTERLY for goods and services] basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.

- E. 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.

**IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by OPWDD, 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 OPWDD, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. 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 the Contract. Upon the occurrence of such a material breach, OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

**V. Waivers**

**Contracts**

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by OPWDD. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, OPWDD shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If OPWDD, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, 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, OPWDD] 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.

**VI. 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 OPWDD by the 10<sup>th</sup> day following the end of each quarter during the term of the Contract.

**VII. Liquidated Damages - MWBE Participation**

- A. Where OPWDD determines that the Contractor is not in compliance with the requirements of this Appendix 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 OPWDD liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by OPWDD, the Contractor shall pay such liquidated damages to OPWDD within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director



**Contracts**

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.

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

By signing this Contract, the Awardee/Contractor/Organization agrees to adopt the following policies with respect to the project/program/product being developed or services rendered at the New York State Office for People With Developmental Disabilities.

### M/WBE

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from OPWDD 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, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

### EEO

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

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

(c) At the request of the contracting OPWDD, this organization shall request each employment OPWDD, 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

## STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

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

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

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification														
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		
<b>PREPARED BY (Signature):</b>								<b>TELEPHONE NO.:</b>						<b>DATE:</b>				
								<b>EMAIL ADDRESS:</b>										
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>								<b>Submit completed with bid or proposal MWBE 101 (Rev 03/11)</b>										

**General instructions:** All Offerers and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offerer shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offerer shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number that this report applies to along with the name and address of the Offerer.
2. Check off the appropriate box to indicate if the Offerer completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerers' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OMWBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

**GENDER** Male or Female

## APPENDIX A SUPPLEMENT – 3: SDVOB Requirements and Procedures

### **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE- DISABLED VETERAN-OWNED BUSINESSES**

#### **I. Contract Goals**

- A. The OPWDD hereby establishes an overall goal of 6% (six percent) for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the Directory of New York State Certified SDVOBs found at <https://online.ogs.ny.gov/SDVOB/search>.

Questions regarding compliance with SDVOB participation goals should be directed to OPWDD’s SDVOB Administrator at [minority.women.business.enterprise@opwdd.ny.gov](mailto:minority.women.business.enterprise@opwdd.ny.gov).

Additionally, following Contract execution, the Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development (518) 474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. The Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

#### **II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the OPWDD.
- C. The OPWDD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of the OPWDD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, the Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to the OPWDD 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 OPWDD to be inadequate, the OPWDD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five (5) business days of notification by the OPWDD, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. The OPWDD may disqualify a Bidder’s bid or proposal as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit an SDVOB Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If the OPWDD determines that the Bidder has failed to document good faith efforts.

- F. If awarded a Contract, the Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB Contract goals set forth above.
- G. The Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### **III. Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, the Bidder/Contractor shall contact OPWDD's SDVOB Administrator at [minority.women.business.enterprise@opwdd.ny.gov](mailto:minority.women.business.enterprise@opwdd.ny.gov) for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the OPWDD at that time, the provisions of clauses II I, (D) & I will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the OPWDD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. The Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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 OPWDD but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If the OPWDD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101), determines that the Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regard to such non-compliance, the OPWDD 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 SDVOB Contract goals.

Waiver requests should be sent to the OPWDD.

### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to the Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by the Contractor, if any, scheduled by the OPWDD with certified SDVOBs whom the OPWDD determined were capable of fulfilling the SDVOB goals set in the Contract.

- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.

#### **V. Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), the Contractor is required to report Monthly SDVOB Contractor Compliance to the OPWDD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the Office of General Services' Division of Service-Disabled Veterans' Business Development's website: <https://ogs.ny.gov/veterans/> and should be completed by the Contractor and submitted to the OPWDD, by the 10<sup>th</sup> day of each month during the term of the Contract, for the preceding month's activity to OPWDD's SDVOB Administrator at [minority.women.business.enterprise@opwdd.ny.gov](mailto:minority.women.business.enterprise@opwdd.ny.gov).

#### **VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the Contract and the Contractor shall pay damages as set forth therein.

**All forms are available at:** <https://ogs.ny.gov/veterans/>

**SDVOB UTILIZATION PLAN**☐ **Initial  
Plan**☐ **Revised  
plan****Contract/Solicitation #**

**INSTRUCTIONS:** This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS **Certified** Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.

**BIDDER/CONTRACTOR INFORMATION****SDVOB Goals In  
Contract**

Bidder/Contractor Name:

NYS Vendor ID:

%

Bidder/Contractor Address (Street, City, State and Zip Code):

Bidder/Contractor Telephone Number:

Contract Work Location/Region:

Contract Description/Title:

**CONTRACTOR INFORMATION**

Prepared by (Signature):

Name and Title of Preparer:

Telephone  
Number:

Date:

Email Address:

***If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form.***

**SDVOB Subcontractor/Supplier Name:**

Please identify the person you contacted:

Federal Identification No.:

Telephone No.:

Address:

Email Address:

Detailed description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$\_\_\_\_\_ or \_\_\_\_\_%

**SDVOB Subcontractor/Supplier Name:**

Please identify the person you contacted:

Federal Identification No.:

Telephone No.:

Address:

Email Address:

Detailed Description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$\_\_\_\_\_ or \_\_\_\_\_%

**FOR [Agency] USE ONLY**

[Agency] Authorized Signature:		<input type="checkbox"/> Accepted	<input type="checkbox"/> Accepted as Noted	<input type="checkbox"/> Notice of Deficiency
NAME (Please Print):	SDVOB %/\$		Date Received:	Date Processed:
Comments:				
<p><b>NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION:</b> The directory of New York State Certified SDVOBs can be viewed at: <a href="https://ogs.ny.gov/Veterans/default.asp">https://ogs.ny.gov/Veterans/default.asp</a></p> <p><b>Note:</b> <i>All listed Subcontractors/Suppliers will be contacted and verified by</i> [Agency].</p>				

**ADDITIONAL SHEET**

<b>Bidder/Contractor Name:</b>	<b>Contract/Solicitation #</b>
--------------------------------	--------------------------------

<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$_____ or _____%		
<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$_____ or _____%		
<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$_____ or _____%		
<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$_____ or _____%		
<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$_____ or _____%		
<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$_____ or _____%		

Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform)): \$ _____ or _____%		
SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform)): \$ _____ or _____%		

## Appendix A SUPPLEMENT – 4: Federal Assurances and Certifications

Certain of these assurances may not be applicable to your project or program. If you have questions, contact the Office of People with Developmental Disabilities (OPWDD). By signing and submitting this application, contract or contract amendment an authorized representative of the applicant or contractor asserts that the applicant or contractor:

1. Has the legal authority to apply for Federal Assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of the project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Executive Order Number 11246 as amended by E.O. 11375 relating to Equal Employment Opportunity, which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and

equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notifications of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
13. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
14. This contract is funded in whole or part with federal funds under the CDFA No 93.630. OPWDD is a pass-through entity of these federal funds. As a recipient of these federal funds, the Contractor may be determined, to be a sub-recipient of federal assistance. Sub-recipients of federal funds have the responsibility of reporting to OPWDD in addition to the sub-recipient's responsibility to file reports with the federal clearinghouse designated by Office of Management and Budget (OMB). If this contract will require the Contractor to expend \$750,000 or more of federal funds from this contract or in total with other contracts or grants of federal funds or assistance in the Contractor's fiscal year, regardless of the source of the funding, the Contractor is required to comply with the terms and provisions of the OMB Circular A-133. The Contractor will notify OPWDD if it reasonably expects to expend the sum of \$750,000 of federally derived funds, in its fiscal year, as soon as it has notice of awards, grants or contracts totaling \$750,000 in federal funds, but in no event later than the close of the calendar year. The Contractor will have an audit performed pursuant to the requirements of OMB Circular A-133 and provide OPWDD with

the required reports within 30 days of the Contractor's receipt of the independent audit report or within 9 months after the close of the Contractor's fiscal year, whichever event is sooner.

15. Certifies that Public Law 103-227, Part C – Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The contractor/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions of children's services and all subgrantees shall certify accordingly.
- 16.A. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. (1) The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act (41 USC 702 et seq.), the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. (2) For grantees other than individuals, Alternate I applies. For grantees who are individuals, alternate II applies. (3) Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. (4) Workplace identifications must include the actual address of buildings (or parts of buildings) or sites where work under the grant takes place. Categorical descriptions may be used (e.g. all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). (5) If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph four). (6) Definitions of terms in the Non-procurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes; Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance; Employee means the employee of a grantee directly engaged in the performance of work under a grant, including; (a) All direct charge employees; (b) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (c) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the

grantee (e.g. volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

- 16.B. Alternate I (Grantees Other Than Individuals). 1. The grantee certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (b) Establishing an ongoing drug-free awareness program to inform employees about; (1) the dangers of drug abuse in the workplace; (2) the grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above; (d) Notifying the employee in the statement required by paragraph (a) above, that, as a condition of employment under the grant, the employee will (1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for violation of a criminal drug status occurring in the workplace no later than five calendar days after such conviction; I Notify the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant; (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted; (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (2) Requiring such a Federal, State, or local health, law enforcement, or other appropriate agency; (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), I, and (f). For purposes of paragraph I regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices: Division of Grants Policy and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C., 20201
- 16.C. Alternate II (Grantees Who Are Individuals). 1. The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.
17. Agrees that, a) By signing and submitting this proposal, the prospective primary applicant is providing the certification set out below. b) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary

participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. C) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. D) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstance. E) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of People with Developmental Disabilities for assistance in obtaining a copy of those regulations. F) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. G) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. H) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs. I) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. J) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

18. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. B) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
19. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) – All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874, as supplemented by Department of Labor regulations, 29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States." The Act provides that each

contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

20. Davis-Bacon Act as amended (40 U.S.C. 276a to 276a-7) – When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act, 40 U.S.C. 276a to a-7, and as supplemented by Department of Labor regulations, 29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate of not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination issued by the Department of Labor in each solicitation and the award of the contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the HHS awarding agency.
21. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient (See also 45 CFR Part 93).
22. Debarment and Suspension (E.O.s 12549 and 12689) – Certain contracts shall not be made to parties listed on the non-procurement portion of the General Services Administration’s “Lists of Parties Excluded from Federal Procurement or Non-procurement Programs” in accordance with E.O.s 12549 and 12689, “Debarment and Suspension.” (See 45 CFR Part 76.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
23. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”
24. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
25. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Rev 07/2020

## **APPENDIX B: OPWDD CONTRACT BOILERPLATE**

The Procurement, the Bidder's Proposal, and the contract award resulting from this Request for Proposals (RFP) are subject to and incorporate the following terms and conditions.

### **1. CONTRACT TERM**

This Contract shall commence on **[Contract Start Date]** and shall continue for five (5) years, subject to the termination provisions contained in the subsequent Sections 22 and 23, titled Termination and Default, respectively, and the document titled Standard Clauses for New York State Contracts, Appendix A. At OPWDD's discretion, this Contract may be renewed for a one (1) year extension. Any extension will be subject to necessary approvals by the OPWDD's approval agencies. Fees shall not be increased for the five (5) year Contract term or the one (1) year extension.

### **2. MODIFICATION OF CONTRACT**

This Contract may be amended only by mutual written consent of the parties, and approval by the New York State Office of the Attorney General and the Office of the State Comptroller (OSC), if required.

3. Intentionally omitted.

### **4. INTEGRATION, MERGER, AND ORDER OF PRECEDENCE**

The Contract shall be comprised solely of the following documents. In the event of an inconsistency or conflict in terms, precedence shall be given in the order indicated:

- Appendix A Standard Clauses for New York State Contracts
- Appendix A Supplement and Addendum to Appendix A Supplement
- any Amendments to the Contract
- the Contract and Appendices B–D
- Exhibit 1 – the Request for Proposals (RFP)
- Exhibit 2 – the Contractor's Proposal.

All prior agreements, representations, statements, negotiations, and undertakings are superseded.

### **5. CONTRACTOR RESPONSIBILITY AS DEFINED BY STATE FINANCE LAW**

The Contractor must remain responsible, as defined by State Finance Law, relevant case law and applicable guidelines, throughout the term of the Contract. Failure to do so may result in suspension or termination of the Contract.

The Contractor must present evidence of its continuing legal authority to do business in NYS, its integrity, experience, ability, prior performance, and organizational and financial capacity upon request by the State. The Contractor is responsible for ensuring that any proposed system or technology fulfills the requirements and terms established during the duration of the Contract.

The State reserves the right to suspend any or all activities under this Contract, at any time, if 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 of suspension and must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice lifting the suspension order.

## **6. INDEPENDENT CONTRACTOR**

The Contractor is an independent contractor and its officers, employees, subcontractors and agents are not and shall not act as State employees in the performance of the Contract. The Contractor, its officers, employees, subcontractors and agents are not entitled to any of the benefits associated with employment by the State. The Contractor agrees, during the term of this Contract, to maintain, at the Contractor's expense, those benefits to which its employees would otherwise be entitled by law, including health benefits and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the State with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

## **7. CONTRACTOR PERSONNEL**

All of the Contractor's officers, employees, subcontractors or agents performing work under the Contract must meet or exceed the technical and training qualifications set forth in the Contract; must comply with all security and administrative requirements of the OPWDD; must 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 the Contract on behalf of the Contractor shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

The OPWDD, in its sole discretion, may refuse access to State systems and facilities or require removal from any State facility any employee of the Contractor or its subcontractors performing work under this Contract whom the OPWDD determines poses a security risk, has a work performance the OPWDD finds inadequate or unacceptable, or otherwise fails to meet OPWDD business requirements or expectations. Such action by the OPWDD shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

## **8. BACKGROUND CHECKS**

The Contractor employees or subcontractors who perform services under this Contract may be required to undertake and complete a full New York State Police fingerprint background investigation process, which will include a federal criminal justice site security check, as required by ITS, the OPWDD, or NYS law, rules, regulations and policies, prior to providing services. Any costs associated with the background checks, including costs related travel, will be borne by the Contractor.

## **9. EMPLOYMENT REPORTING REQUIREMENTS**

To the extent that this is a consulting services contract, as described in §8(17)(f) of the New York State Finance Law, the Contractor shall comply with all OPWDD requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Furthermore, all subcontracts entered into by the Contractor for purposes of performing the Contract shall contain a provision whereby subcontractors agree to comply with OPWDD requests and requirements related to reporting under §163(4)(g) of the New York State Finance

Law. Reports and forms filed by the Contractor pursuant to this section shall be available for public inspection and copying under the provisions of the Freedom of Information Law (FOIL).

#### **10. COOPERATION WITH THIRD PARTIES**

Upon request by the State, the Contractor shall fully cooperate with any third party designated by the State, within the scope of services under the Contract, such as but not limited to other contractors or subcontractors retained by the State.

#### **11. COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS**

Upon request by the State, the Contractor shall cooperate with the State in any investigation, audit, or other inquiry related to the Procurement or the resulting Contract, or any related litigation, at no cost to the State. This provision shall survive the termination of the Contract.

#### **12. WORK OUTSIDE THE SCOPE OF THE CONTRACT**

The Contractor shall provide the OPWDD the services set forth and defined in Appendix B, Scope of Work, attached hereto and made part of this Contract. The Contractor must not perform work outside the scope of the Contract, unless such work is authorized by a properly executed, OPWDD and/or OSC-approved written amendment to the Contract, as required. Work not so authorized will not be compensated.

#### **13. NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS**

In addition to the requirements of NYS Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the State of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries, divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers, or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) the appointment of a receiver of the Contractor's business or property or that of its Affiliates, subsidiaries, divisions, or partners; or action by the Contractor, its Affiliates, subsidiaries, divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or (v) court ordered liquidation of the Contractor, its Affiliates, subsidiaries, divisions, or partners.

Upon the State's receipt of such notice, the State shall have 30 business days from the date of notice to review the information. The Contractor may not transfer the Contract to or among Affiliates, subsidiaries, divisions, or partners, or to any other person or entity, without the express written consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to cancel the Contract, in whole or in part, for cause, if it finds, in its sole judgment, that such substantial change adversely affects the delivery of Services or is otherwise not in the best interests of the State.

#### **14. NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE**

The Contractor shall immediately notify the OPWDD upon learning of any situation that can reasonably be expected to affect the delivery of Services under the Contract adversely. If such notification is verbal, the

Contractor shall follow such initial verbal notice with a written notice to the OPWDD, which shall include a description of the situation and a recommendation of a resolution within three calendar days of the Contractor becoming aware of the situation. The Contractor's failure to provide the OPWDD with notice that should have been provided hereunder may be deemed a material breach of the Contract and a basis for termination for cause.

## **15. NOTICE**

All notices given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered. Such notices shall be addressed as set forth below, or to such different addresses as the parties may specify, from time to time, by written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

### **For the NYS Office for People with Developmental Disabilities:**

Marc Kleinhenz  
Director of Contracts and Grants  
44 Holland Ave., 5<sup>th</sup> Fl.  
Albany, NY 12229  
(518) 474-7719  
[Marc.L.Kleinhenz@opwdd.ny.gov](mailto:Marc.L.Kleinhenz@opwdd.ny.gov)

### **For the Contractor:**

Name  
Title  
Street Address  
City, State Zip  
( ) -  
Email Address

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may specify, from time to time, a new or different address in the United States as their address for purpose of receiving notice under this Contract by giving 15 days' written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Contract. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, problem resolution, and/or for dispute resolution.

## **16. PAYMENT**

Payments for services rendered shall be as specified in the Contract. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("STF"). The Contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources.

The OPWDD shall pay the Contractor in consideration of the services to be provided under this Contract in accordance with the provisions in Appendix C, Budget, and Appendix D, Billing and Payment Terms, attached hereto, for the periods of time indicated therein. The total payment for services provided under this Contract shall **not exceed [estimated total contract amount] dollars (\$000,000)**. Payment of any amount due to the Contractor under this Contract shall be contingent on the Contractor submitting invoices with supporting documentation in accordance with Appendix C, Budget, and Appendix D, Billing and Payment Terms, of this Contract. Travel will be undertaken as needed and will be consistent with the New York State Travel Guidelines. All travel costs must fall within the dollar value of this Contract.

## **17. ELECTRONIC PAYMENT REQUIREMENT**

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

## **18. WARRANTIES AND GUARANTEES**

- a. **Contract Deliverables.** The Contractor warrants and represents that the Services required by the Contract shall be performed or provided in accordance with all terms and conditions, covenants, statements, and representations contained in this Contract. The Contractor's failure to meet pre-defined service levels may result in a credit or chargeback in an amount pre-determined by the parties.
- b. **Compliance with Laws.** The Contractor warrants and represents that, throughout the term of the Contract, in the performance of its obligations under the Contract, it will: (i) comply with all laws, ordinances, rules and regulations of any governmental entity, in each case to the extent applicable to the Contractor in its performance of Services hereunder; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.
- c. **Workmanship Warranty.** The Contractor warrants and represents that all Services and deliverables shall meet the completion criteria set forth in the Contract and that services will be provided in a professional and workmanlike manner in accordance with commercially reasonable industry standards.
- d. **Personnel Eligible for Employment.** The Contractor warrants and represents that all personnel, including all subcontractor personnel, performing Services under this Contract are qualified to provide services, eligible for employment in the United States, and shall remain so throughout the term of the Contract. The Contractor shall provide such proof of compliance as is required by the OPWDD.

e. **Survival of Warranties.** All warranties contained in the Contract shall survive termination of the Contract.

## **19. INDEMNIFICATION, LIMITATION OF LIABILITY**

### **a. Indemnification**

The Contractor shall be fully liable for the actions of its agents, officers, employees, partners, or subcontractors and shall defend and indemnify fully and save harmless the State from third party suits, actions, damages, and costs of every name and description relating to bodily injury and damage to real or tangible personal property to the extent caused by the negligence or willful misconduct of the Contractor, its agents, officers, employees, partners, or subcontractors while engaged in the performance of the services, without limitation, provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of the State.

The Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its agents, officers, employees, partners, and subcontractors of State and the OPWDD security procedures or policies resulting from any criminal acts committed by the Contractor's officers, agents, employees, and subcontractors while providing services under the Contract. This Section is not subject to the limitation of liability provisions of the Contract.

### **b. Indemnification for Intellectual Property Infringement**

The Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees and legal fees), claims, judgments, liabilities, and costs that may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the services, products, documentation, or deliverables furnished or utilized by the Contractor under this Contract, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle, or defend such action, claim or suit at the Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require the Contractor, at the Contractor's sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require. This paragraph shall not apply to that portion of any infringement claim that results from (i) a material modification by the State, without the Contractor's approval, of any products, documentation, or deliverables furnished or utilized by the Contractor pursuant to this Contract, (ii) the failure of the State to use any corrections or modifications made available by the Contractor, (iii) information, materials, instructions or specifications provided by or on behalf of the State, or (iv) the use of the deliverable in combination with any product or data not provided by the Contractor whether or not with the Contractor's consent. If the State's use of any such deliverable, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its option and expense, shall have the right to (x) procure for the State the continued use of such deliverable, (y) replace such deliverable with a non-infringing deliverable, or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable is capable of performing substantially the same function. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest. This Section is not subject to the limitation of liability provisions of the Contract.

### **c. Limitation of Liability**

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being “without limitation,” and regardless of the basis on which the claim is made, the Contractor’s liability under the Contract for direct damages shall be limited to the greater of the following: (i) \$1,000,000.00; or (ii) two times the amounts paid to the Contractor under the Contract during the 12 months of the Contract term which precede the giving of notice of the claim by the State. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State. Unless otherwise specifically enumerated herein, neither party shall be liable for any incidental, punitive, consequential, indirect, or special damages of any kind that may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others, however caused, and regardless of the theory of liability, even if such party has been informed of the possibility of such damages. The limitations of liabilities, disclaimers of warranties, exclusivity of remedies, and other limitations are an essential element of the bargain between the parties (without which the transactions contemplated by this agreement would not occur) and will apply even if a remedy fails in its essential purpose.

**d. No Indemnification by the State**

The State does not agree to any indemnification provisions that require the State to indemnify or save harmless the Contractor or third parties.

**20. FEDERAL FUNDING CLAUSES**

To the extent that any of the goods or services provided under this Contract may be funded, in whole or in part, by federal funds, the Contractor agrees to comply with all applicable federal laws, rules, and regulations required for the receipt and/or expenditure of such funds pertaining to the following areas, as further set forth at Chapters II and XXX of 7 CFR and 45 CFR Parts 74 and 95, and described below:

- a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375, as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84, and 90, and 7 CFR Parts 15, 15b, and 15d.
- b. Copeland “Anti-Kickback Act” (18 U.S.C. 874 and 40 U.S.C. 276c) which provides that all contracts/sub-grants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 U.S.C. 874, as supplemented by 29 CFR Part 3, which prohibits Contractors or sub-recipients from inducing, by any means, any person employed in construction, completion, or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the federal awarding agency.
- c. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7), which requires all construction contracts awarded by recipients of more than \$2,000 to comply with the Act as supplemented by USDOL Regulations, 29 CFR Part 5 requiring all Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the “prevailing wage”) in each solicitation, and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the federal awarding agency.
- d. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers, requires compliance with 40 U.S.C. 327-333, as supplemented by USDOL Regulations 29 CFR 5, when said contracts

exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

- e. Rights to Inventions Made under a Contract or Agreement – Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by the USDHHS or USDA.
- f. Ownership Rights in Software or Modifications Thereof – The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed, or installed with federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, such software, modifications, and documentation; provided, however, that this sentence shall not apply to ‘proprietary operating/vendor software packages’ within the meaning of 45 CFR 95.617I and 7 CFR 277.18(l)(1)(iii). OPWDD will provide written notification to the Contractor when federal funds become available to fund payments to the Contractor pursuant to this Contract.
- g. Contracts and sub-grants of amounts more than \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.). Violations shall be reported to the USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.
- h. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Requires that every Contractor under a contract for more than \$100,000, and every tier of Contractors or subcontractors thereunder, shall file certification, as required, that said Contractor will not and has not used any federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or award covered by such Amendment. A Contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93.)
- i. Debarment and Suspension. (Federal E.O.s 12549 and 12689) – Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration’s “Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs” in accordance with E.O.s 12549 and 12689 (see 45 CFR 76). Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals, prior to award.
- j. Contractor shall make positive efforts to assure that small businesses and minority- and women-owned business enterprises (M/WBEs) are utilized when possible as sources of supplies, equipment, construction and services. If any subcontracts are to be let, Contractor shall: (1) include qualified small businesses and M/WBEs on solicitation lists; (2) ensure that they are solicited whenever they are potential sources; (3) when economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small business and M/WBE participation; (4) where the requirement permits, establish delivery schedules which will encourage participation by small businesses and M/WBEs; and (5) use the services and assistance of the New York State Department of Economic Development [(518) 292-5100 or website [www.empire.state.ny.us](http://www.empire.state.ny.us)], the US Small Business Administration, the Office of Minority Business

Enterprise of the US Department of Commerce, and the US Community Services Administration, as appropriate.

## 21. SUSPENSION OF WORK

The State reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Contractor will be given a formal written notice of such suspension. Examples of the reasons for such suspension include, but are not limited to, a budget freeze on State spending or declaration of emergency. Upon issuance of such notice, the Contractor shall comply with the suspension order. The Contractor shall be paid for services performed prior to suspension in accordance with the Contract. Such suspension will be lifted upon written notice to the Contractor.

## 22. TERMINATION

- a. **For Convenience.** By written notice, this Contract may be terminated, at any time, by (i) the State for convenience upon 30 days' written notice, without penalty or other early termination charges due or (ii) written mutual agreement of the parties. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.
- b. **For Cause.** For a material breach that remains uncured for more than 30 days from the date of written notice to the Contractor, the Contract may be terminated by the State, at the Contractor's expense, where the Contractor becomes unable or incapable of performing or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible or for any of the other reasons stated in this section, with the exception of termination for convenience. Such termination shall be upon written notice to the Contractor. In such event, the State may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
- c. **For Suspension or Delisting of Contractor's Securities.** If the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable, if the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Contract or exercise such other remedies as shall be available under the Contract, at law and/or equity.
- d. **For Vendor Responsibility Related Findings.** The OPWDD may, at its sole discretion, terminate the Contract if it finds, at any time during the term of the Contract, that the Contractor is non-responsible or that any information provided in the Vendor Responsibility Questionnaire submitted with the Contractor's bid was materially false or incomplete, or if the Contractor fails to comply timely or truthfully with the OPWDD's request to update its Vendor Responsibility Questionnaire.
- e. **Mitigation of Costs.** The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination without the prior written approval of the State. On or after the receipt of a notice of termination and during the termination notice period, as applicable, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State. Upon termination of the Contract, there shall be a reconciliation based upon the services provided by the Contractor and payments made by the State. The Contractor shall refund to the State any overpayments made by the State pursuant to the Contract.

## 23. DEFAULT

- a. If either party breaches a material provision of this Contract, which breach remains uncured for a period of 30 days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the 30-day period, such longer period of time approved by the non-breaching party, provided that the breaching party proceeds with reasonable diligence to completely cure the breach), or if the Contractor shall cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other party may, at its option, terminate this Contract upon 10 days' written notice and exercise such other remedies as shall be available under this Contract, at law and/or equity.
- b. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power, or remedy or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- c. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform the Contractor's obligations under this Contract, the State shall thereafter be released from all obligations to the Contractor hereunder, including any obligation to make payment to the Contractor; provided, however, that the State shall continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

## 24. TRANSITION

The State may require the Contractor to provide uninterrupted services after Contract termination/expiration ("Transition Services") as the State deems reasonable and necessary for the State to comply with all legal requirements for establishing a new contract and transitioning to a replacement the Contractor in accordance with the terms specified herein.

- a. **Transition Period.** The State shall determine the transition period in consultation with the Contractor and shall notify the Contractor in writing. The State reserves the right to amend the transition period subsequently, upon 30 days' advance written notice to the Contractor.
- b. **No Interruption in Service.** At all times during the transition period, and unless directed otherwise in writing by the State, the Contractor shall continue its contractual obligations set forth in the Contract until the services provided under the contract have been transitioned to a successor contractor, the State, or a third party designated by the State. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph, notwithstanding the issuance of a termination for cause or convenience by the State.
- c. **Transition Plan.** Within 15 days of receipt of a notice of termination, or three months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall submit to the State, for the State's review and approval, a detailed written plan for transition (Transition Plan) that outlines, at a minimum, the tasks, milestones, and deliverables associated with a smooth transition of services and corresponding timeline.
- d. **Contractor Transition Services.** Transition Services shall include the performance of the Contractor's responsibilities, as outlined in the Contract, and the transferring of those responsibilities to a successor

contractor, the State, or a third party designated by the State in accordance with the Transition Plan agreed upon by the Parties. The Contractor shall maintain the same level of service during the transition period as is set forth in the Contract until specific tasks or services are completely transitioned to or assumed by a successor contractor, the State, or a third party designated by the State.

- e. **Compensation for Transition Services.** The Contractor shall be reimbursed for Transition Services performed at the rates set forth in the Contract that are in effect at the beginning of the transition period.
- f. **Cooperation.** The Contractor shall cooperate with the State and agents working on behalf of the state (e.g., consultants) to facilitate a smooth and orderly transition. Periodic project review meetings shall be held with representatives of the Contractor, a successor contractor, the State, or a third party designated by the State.

## 25. ADDITIONAL TECHNOLOGY PROVISIONS

- a. **Data** - Any information, Analytic Derivatives (the outcome from datamining or other aggregated data analysis techniques), formula, algorithms, or other content that the OPWDD may provide to the Contractor pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that the OPWDD and/or Contractor (i) uploads to the Cloud Service, and/or (ii) creates and/or modifies using the Cloud Service.
- b. **Data Use Agreement** - A data use agreement (DUA) is an agreement that is required under the Privacy Rule and must be entered into before there is any use or disclosure of a limited data set to an outside institution or party.
- c. **Permitted License Transfers.** Should the State's business operations be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies, as applicable ("permitted license transfers"). The State may make such permitted license transfers without the need to secure the approval of the Contractor but must give thirty (30) days prior written notice to the Contractor of such transfer. There shall be no additional license or other transfer fees due the Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to licensed capacity. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the new site, and a logical or physical partition or other means of restricting use is not available, the fees due the Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.
- d. **Ownership of and Title to Contract Deliverables.** The Contractor acknowledges that it is commissioned by the State to perform the services detailed in this Contract which may include the development of intellectual property by the Contractor, its subcontractors, partners, employees or agents for the State ("Custom Products"). Unless otherwise specified in writing in this Contract, upon the creation of such Custom Products, the Contractor hereby conveys, assigns and transfers to the State the sole and exclusive rights, title and interest in the Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in performing services under the Contract in the course

of the Contractor's business. The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the State shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in this Contract.

- e. **Ownership of Material.** Ownership of all data, documentary material and reports originated and prepared exclusively for the OPWDD pursuant to any Contract resulting from this RFP shall belong to the OPWDD. The Contractor agrees that, except where noted, all materials, documents, products, reports, data and other information, whether finished, unfinished, or draft developed, gathered or compiled under this agreement by consultant are the sole exclusive property of the OPWDD and that they shall not be used by the consultant or any other person or destroyed without express written permission of the OPWDD.
- f. **Data Ownership.** All State data is owned exclusively by the State and will remain the property of the State. The Contractor is permitted to use data solely for the purposes set forth in this Contract, and for no other purpose. Contractor is prohibited from data mining, cross tabulating, monitoring OPWDD's data usage and/or access, or performing any other data analytics other than those agreed to within the Contract. At no time shall the Contractor access, use, or disclose any confidential information (including personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose. The Contractor is strictly prohibited from releasing or using data or information for any purposes other than those purposes specifically authorized by the State. The Contractor agrees that State data shall not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the Contractor or otherwise passed to other contractors, agents, subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by the State.
- g. **Data Protection and Transmission.** The Contractor shall use appropriate means to preserve and protect State data. This includes but is not limited to use of stable storage media, regular data backups and archiving, password protection of volumes, and data encryption in rest and in transit and where specifically allowed by OPWDD written agreement, on portable devices (drives, laptops). The Contractor must, in accordance with applicable law, regulations, or established requirements and the instructions of the State, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate and necessary data integrity safeguards against the deletion or alteration of such data. In the event that any data is lost or destroyed because of any act or omission of the Contractor or any non-compliance with the obligations of this Contract, then the Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, the Contractor shall reimburse the State for any costs incurred by the State in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.

The Contractor agrees that any and all State data will be stored, processed and maintained solely on designated target devices, and that no State data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the contract/agreement and or any addendum thereof, or the Contractor's designated backup and recovery processes, and is encrypted in accordance with all current federal and State statutes, regulations and requirements, to include requirements for data defined as confidential, financial information, Personal Private and Sensitive Information (PPSI), Personally Identifying Information (PII) or Protected Health Information (PHI) by statute or regulations. The Contractor shall encrypt data at rest, on file storage, database storage, or on back-up media, and in transit in accordance with state and federal law, rules,

regulations, and requirements. The solution shall provide the ability to encrypt data in motion and at rest in compliance with state or federal law. The Contractor shall use secure means (HTTPS) for all electronic transmission or exchange of system, user and application data with the State. In the event of a conflict between the terms of this section (25.g) of this RFP and Attachment D: HIPAA Business Associate Agreement, the HIPAA Business Associate Agreement shall take precedence.

- h. **Data Return and/or Destruction.** At the expiration or termination of the Contract, at the State's option, the Contractor must provide ITS with a copy of all State data, including metadata and attachments, in a mutually agreed upon, commercially standard format and give the State continued access to State data for no less than ninety (90) days beyond the expiration or termination of the Contract. Contractor cannot charge for the transfer of data unless the charges are provided for in response to solicitation.

Thereafter, except for data required to be maintained by law or this Contract, Contractor shall destroy State data from its systems and wipe all its data storage devices to eliminate any and all State data from the Contractor's systems. The sanitization process must be in compliance NYS Security Policy NYS-S13-003, <https://www.its.ny.gov/document/sanitizationsecure-disposal-standard>, and, where required, CJS sanitization and disposal standards. If immediate purging of all data storage components is not possible, the Contractor will certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. The Contractor must then certify to ITS/OPWDD, in writing, that it has complied with the provisions of this paragraph. The State may withhold payment to the Contractor if State data is not released to ITS in accordance with the preceding sections.

- i. **Secure System Development Lifecycle and Specification**

Unless otherwise agreed to by the OPWDD in writing, the contractor's current version of the solution must function as specified in the associated SoW in an environment comprised solely of components including, but not limited to operating system and database platform versions which are in an active support phase (e.g., no requirement to run on End of Life software, such as Windows 7, etc.).

Unless otherwise agreed to by the OPWDD in writing, the Contractor shall represent the below practices by providing the documentation of Contractor's adherence to the below policies available in a public website or secure portal that shall be provided to OPWDD upon request.

2) Vulnerability Management

- a. The contractor shall make commercially reasonable efforts to ensure that components including but not limited to third party libraries, components and APIs are maintained at their most recent, stable version within the released application made available to the AU.
- b. The contractor shall follow a secure coding framework appropriate to the nature of its software components. For example, web application development teams may follow the Open Web Application Security Project's Secure Coding Practices
- c. The contractor shall document and execute a remediation plan for any vulnerability identified through dynamic or static analysis, vulnerability scans or penetration tests, where the vulnerability has a CVSS severity of 7.0 or higher
- d. The contractor shall establish processes for monitoring and acting upon vulnerability notices published regarding components of the software development environment as well as components used in the solution provided to the AU
- e. The contractor shall maintain publicly available mechanisms for receiving reports of vulnerabilities identified by its customers, security researchers and similar entities.

3) Application Lifecycle Management

- a. The contractor shall ensure that any open source licenses which apply to components used in the solution confer no obligations upon the AU, or that in the event of such obligation, the AU is aware of and agrees to same.
- b. All applications released by contractor to the AU shall be signed by a publicly trusted code signing certificate so that the AU may verify the authenticity and integrity of the release. This code signing certificate shall be rotated on at least an annual basis.
- c. The contractor shall ensure that all implementation services and / or guides comprehensively address security hardening for the solution. Such hardening shall include, but not be limited to, the disabling of unnecessary features based on the SoW and the implementation of a "least privilege" access model for all users and service accounts.
- d. The contractor shall implement processes to ensure that all changes to the solution:
  - i. Are made at the direction of its product managers or equivalent role
  - ii. Are documented in a work management / issue tracking application
  - iii. Maintain evidence of security checks and approvals
  - iv. Include documented functional requirements and non-functional security requirements
  - v. Include a plan for notifying customers, including the AU, of any substantive changes upon release
- e. The contractor shall provide ample notice, and in no case less than six months, should the solution version used by the AU reach End of Life, such that it will no longer receive security updates to address vulnerabilities.

#### 4) SECURITY

##### a. Security Incidents

The OPWDD and the Contractor must, in writing, determine a Security Incident notification policy prior to the finalization of the OPWDD Agreement. If no such agreement is in place, then the default agreement shall be notification of all Security Incidents that may have a direct impact on the AU by phone immediately upon detection to the OPWDD representative.

For AUs defined as "State Agency" or "State Government" in Section 1.1.1 of this document, all notifications will be followed with a notification to the NYS Cyber Command Center by email to [cycom@its.ny.gov](mailto:cycom@its.ny.gov), to the NYS Division of Homeland Security and Emergency Services (DHSES) Cyber Incident Response Team (CIRT) by email to [cirt@dhSES.ny.gov](mailto:cirt@dhSES.ny.gov).

If requested in the OPWDD agreement and agreed to by the Contractor, a written preliminary incident analysis report must be provided to AU within 72 hours of discovery. Contractor representative must be available by phone and email for discussions with the NYS Cyber Command Center/DHSES CIRT and AU representative throughout incident response activity and must provide status updates at mutually agreed upon cadences. A written final incident analysis report, including a detailed technical section including root cause of incident, timeline, scope, impact and corrective actions taken must be delivered to AU at the conclusion of incident response.

##### b. DATA BREACH - REQUIRED CONTRACTOR ACTIONS

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

- i. notify the NYS Cyber Command Center, DHSES CIRT, and any potentially affected OPWDD's representative, by telephone as soon as possible from the time the Contractor confirms Data Breach. An OPWDD may specify a maximum notification time in their RFQ.;

- ii. consult with and receive authorization from the OPWDD as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the OPWDD;
- iii. coordinate all communication regarding the Data Breach with the NYS Cyber Command Center, DHSES CIRT, and OPWDD (including possible communications with third parties);
- iv. cooperate with the OPWDD, NYS Cyber Command Center, DHSES CIRT, and any Contractor working on behalf of the OPWDD or the NYS Cyber Command Center in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
- v. promptly take commercially reasonable steps to mitigate the effects and minimize any damage resulting from the Security Event Contractor shall provide Written notice to the OPWDD as to all such corrective actions taken by the Contractor to remedy the Data Breach. Unless otherwise agreed to in the OPWDD Agreement, if Contractor is unable to complete the corrective action within the required timeframe, the remedies provided in Appendix B, Section 52, Remedies for Breach shall apply and (i) the OPWDD may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the OPWDD, or until the OPWDD has completed a new procurement for a replacement service system; (ii) and the Contractor will be responsible for the reasonable cost of these services during this period.

Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General or other investigative or law enforcement entity to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

c. Location of Data; CONUS

- i. All Data is to be located within the Continental United States (CONUS).
- ii. When the Contractor is responsible for managing the Data and shall meet the following requirements:
  - 1. All Data shall remain in the Continental United States (CONUS).
  - 2. Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.
  - 3. Any services which directly or indirectly access Data shall be performed only from locations within CONUS.
  - 4. All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section 9.7, Encryption.
  - 5. All helpdesk, online and support services which may access Data shall be performed only from locations within CONUS.
  - 6. No Follow the Sun support shall be allowed to access Data directly or indirectly from locations outside CONUS.
- iii. When the OPWDD is responsible for managing the Data, the Contractor shall provide the OPWDD with the capability and the means or tools to meet the following requirements:
  - 1. All Data shall remain in the Continental United States (CONUS).
  - 2. Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.

3. Any services which directly or indirectly access Data shall be performed only from locations within CONUS.
  4. All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section 9.7, Encryption.
  5. All helpdesk, online and support services which may access Data shall be performed only from locations within CONUS.
  6. No Follow the Sun support shall be allowed to access Data directly or indirectly from locations outside CONUS.
- iv. Contractor may not store, act upon, or access Data outside of the Continental United States (OCONUS) and may not perform support services that may access Data from OCONUS.
  - v. Notwithstanding the foregoing, all services must be performed within CONUS and may not be authorized to be performed from OCONUS.

d. Security Reports

Contractor must log in accordance with NIST 800-92, or its successor. Upon request, the Contractor must provide the OPWDD with security logs and reports (such as SOC2 Type 2, CAIQ, and ISO27001) to allow the OPWDD to make an informed decision about the Contractor's security controls and their effectiveness.

Contractor shall cooperate with all reasonable OPWDD requests for a Written description of Contractor's physical/virtual security and/or internal control processes. The OPWDD shall have the right to reject any Contractor's RFQ response or terminate an OPWDD Agreement when such a request has been denied.

e. Reserved.

f. Reserved.

g. REQUESTS FOR DATA BY THIRD PARTIES

Unless prohibited by law, Contractor shall notify the OPWDD in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than the OPWDD, and the Contractor shall secure Written acknowledgement of such notification from the OPWDD before responding to the request for Data.

Unless compelled by law, the Contractor shall not release Data without the OPWDD's prior Written approval.

h. SECURITY POLICIES

Contractor must maintain records documenting adherence to the following security policies and must provide such records to an OPWDD, or to OGS/ITS/DHSES, upon request, through a public website or secure portal.

Policies that govern software development practices commensurate with the risk of the intended use of each software application

- Such policies shall define documented security roles for the software development team

- On no less than an annual basis, the contractor shall conduct a comprehensive review of software development policies and make changes where indicated to adequately address new or changed risk

The contractor shall deliver remote and /or on premises support only with approval of AU and with the option for AU to supervise / observe the support activity

At no time during remote and /or on premises support, or any other time, shall contractor transfer AU's data from AU's on premise installation of the software application to a remote location without the express written permission of the AU

The contractor shall 1) utilize uniquely assigned credentials for each of its workforce members to be used in supporting the AU's software application or 2) notify the AU within 24 hours of the departure of a contractor's workforce member who had knowledge of credentials used to support the AU's software application.

Upon request and with reasonable notice, the contractor shall provide the AU with a list of its workforce members with knowledge of credentials used to access the AU's software application

The contractor shall make commercially reasonable efforts to ensure that components including but not limited to third party libraries, components and APIs are maintained at their most recent, stable version within the released application made available to the AU.

The contractor shall follow a secure coding framework appropriate to the nature of its software application. For example, web application development teams may follow the Open Web Application Security Project's Secure Coding Practices

The contractor shall document and execute a remediation plan for any vulnerability identified through dynamic or static analysis, vulnerability scans or penetration tests, where the vulnerability has a CVSS severity of 4.0 or higher

The contractor shall establish processes for monitoring and acting upon vulnerability notices published regarding components of the software development environment as well as components used in the software application provided to the AU

The contractor shall maintain publicly available mechanisms for receiving reports of vulnerabilities identified by its customers, security researchers and similar entities.

The contractor shall ensure that any open source licenses which apply to components used in the software application confer no obligations upon the AU, or that in the event of such obligation, the AU is aware of and agrees to same.

All applications released by contractor to the AU shall be signed by a publicly trusted code signing certificate so that the AU may verify the authenticity and integrity of the release. This code signing certificate shall be rotated on at least an annual basis.

The contractor shall ensure that all implementation guides and training comprehensively address security hardening for the application. Such hardening shall include, but not be limited to, the disabling of unnecessary features based on the SoW and the implementation of a "least privilege" access model for all users and service accounts.

The contractor shall implement processes to ensure that all changes to the software application:

- Are made at the direction of its product managers or equivalent role
- Are documented in a work management / issue tracking application

- Maintain evidence of security checks and approvals
- Include documented functional requirements and non-functional security requirements
- Include a plan for notifying customers, including the AU, of any substantive changes upon release

In no case shall the contractor knowingly release to the AU an application which contains a vulnerability with a CVSS severity of 7.0 or higher, without the direct written permission of the AU.

i. SECURE DATA DISPOSAL

After 60 calendar days from expiration or termination of an OPWDD Agreement, or at a time mutually agreed upon by the OPWDD and the Contractor, the Contractor shall destroy Data in all of its forms, including all back-ups. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) 800-88, or its successor, as designated by the OPWDD, as applicable. If requested by the OPWDD, certificates of destruction, in a form acceptable to the OPWDD, shall be provided by the Contractor to the OPWDD.

- AUTHENTICATION TOKENS

If included in an RFQ, the OPWDD Agreement may require authentication tokens for all systems in accordance with NIST 800-63B Authentication and Lifecycle Management, or its successor.

j. CONTRACTOR PORTABLE DEVICES

Contractor shall not place Data on any portable Device unless expressly authorized by the OPWDD in writing.

OPWDD is subject to NYS security policies/standards, the Data, and/or the portable device containing the Data, shall be destroyed in accordance with applicable destruction policies (NYS S13-003 Sanitization/Secure Disposal and NYS-S14-003 Information Security Controls, or successor) when the Contractor is no longer contractually required to store the Data. For all other users, NIST 800-88 Media Sanitization guidelines must be followed unless specifically modified within the OPWDD Agreement.

k. SECURITY, CONFIDENTIALITY AND PRIVACY POLICIES AND LAWS

The Contractor shall comply with all applicable Federal, State, and OPWDD policies regarding compliance with various security, confidentiality and privacy laws, rules, regulations, and policies as set forth in the RFQ and agreed to by the OPWDD and Contractor within the OPWDD Agreement. For additional information see Appendix D – Primary Security and Privacy Mandates. At minimum, Contractor will comply with a NIST-aligned framework that will assure appropriate measures are in place to protect the confidentiality, integrity and availability of data.

As part of such compliance, Contractor shall execute written confidentiality/non-disclosure agreements as requested by the State or an OPWDD.

l. BACKGROUND CHECKS

The OPWDD may require within the RFQ that the Contractor conduct background checks on Contractor staff with access to the data or premises, and/or on Contractor staff involved with the development of OPWDD's custom solution, at no charge to the OPWDD.

As required by the OPWDD, contractors must comply with the security clearance and background check process as set forth in the RFQ at no cost to the OPWDD. For OPWDDs with direct or indirect access to the State data center, this must be a requirement of the RFQ.

m. POTENTIAL OPWDD REQUIREMENTS

OPWDD may require any of the below:

- i. The Contractor or a qualified third party shall conduct vulnerability scanning against each proposed release of software.
- ii. The Contractor shall, on at least an annual basis and upon substantive change in software features or functionality, engage a qualified third party to perform a penetration test against the solution.
- iii. The Contractor shall, upon request and with reasonable notice of the AU, provide the Executive Summary, including number of vulnerabilities and associated severity, from its most recent vulnerability scan and penetration test performed against the software application and a remediation plan, including timeline.
- iv. The Contractor shall notify the AU via mutually agreed methods and within no more than 24 hours of any vulnerability identified within its released code with a CVSS severity of 4.0 or higher
- v. The Contractor shall implement hashing within its artifact repositories along with automated controls to ensure that releases are built only from approved artifacts. Hashing must be in accordance with NIST FIPS 180-4 Secure Hash Standard.
- vi. For software applications deemed mission critical by the AU, the Contractor shall maintain ISO27001 (27034), ISO9001 (90003) or BSA Framework for Secure Software compliance, or compliance with a similar framework mutually agreed with the OPWDD.
- vii. The Contractor shall establish a core set of security requirements to be used in the acquisition of commercial and open source components for the software development environment and software applications developed therein.
- viii. The Contractor shall develop code within an Integrated Development Environment application with built in error / security checking enabled.
- ix. The Contractor shall store all source and compiled code in code repositories with access limited to authorized personnel based on role.
- x. The Contractor shall maintain separate environments for development and testing
- xi. The Contractor shall perform adequate testing on software applications used by the AU including, but not limited to security testing, unit testing, integration testing, regression testing, load testing, and user acceptance testing.
- xii. The Contractor shall not perform application testing with un-sanitized customer data without the express written permission of the AU.
- xiii. The Contractor shall implement dynamic and static analysis in the software development environment to identify vulnerabilities.
- xiv. The Contractor shall implement processes to identify and respond to any unauthorized changes in the software development environment, including but not limited to source code and artifact repositories, access management controls, etc.
- xv. The Contractor shall monitor the support status of all components of the software development environment, maintaining them at a supported level.
- xvi. The Contractor shall implement access management controls such that all access to the software development environment by the workforce is made via uniquely assigned accounts.
- xvii. The Contractor shall aggregate, protect and analyze all logs generated by systems involved in the software development process.
- xviii. The Contractor shall implement multifactor authentication for sensitive functions within the software development environment, as well as for all access to the software development environment from outside the Contractor organization.

- xix. The Contractor shall adequately protect the development environment from the rest of its business environment through strategies such as network-layer segmentation, and the use of endpoint protection software and host-based firewalls on all development endpoints.
- xx. The Contractor shall utilize one or both of the following methods to ensure that no single workforce member can implement an unauthorized change to the software application:
  - Technically enforced separation of duties such that workforce members who write code may not compile code into a releasable software application
  - Automation maintained within the software development environment which ensures that peer security code reviews are performed prior to commits to a source code repository, along with supporting controls to ensure that releases are built only from approved repositories that are not accessible to development personnel
- xxi. The Contractor shall provide a "Software Bill of Materials" to the OPWDD detailing all third party components included in the software. This SBOM shall be provided upon initial contracting and any material change to the components of the software thereafter.
- xxii. Client installations of software intended for end users (i.e., not IT administrative applications), must deliver the functionality as specified in the associated SoW solely with "user-level" permissions, and not require "root-level" or "administrator-level" permissions for the end user.

## **26. FORCE MAJEURE**

In the event that either Party is unable to perform any of its obligations under the Contract because of natural disaster, any act of God, war, civil disturbance, court order, labor dispute, or any other acts beyond the reasonable control of either Party (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give notice to the other Party and shall exercise every commercially reasonable effort to resume performance, and an extension of the time for performance shall be granted for a period to be agreed to in writing by the Parties. Any delay in performance by either Party resulting from a Force Majeure Event shall not be considered a breach or default under the Contract.

## **27. DISPUTE RESOLUTION**

- a. In the event that either party has a dispute arising out of the other's performance of the Contract, either party shall notify the other in writing. The other party shall then make all good-faith efforts to solve the problem or settle the dispute amicably, including meeting with the other party's designated representatives to attempt diligently to reach a satisfactory result. If the parties are unable to resolve the dispute or reach a satisfactory result within 10 business days of the original written dispute notification (the "Notification Date"), then the issue shall be presented to the OPWDD Deputy Commissioner of the Division of Enterprise Services, or his or her designee, who shall serve as the arbiter and issue the OPWDD's final decision within 15 business days of the Notification Date. Nothing herein shall limit either party's ability to pursue all available legal and equitable remedies. However, unless a party reasonably believes that immediate relief is required in order to avoid irreparable harm, the parties agree to defer seeking either legal or equitable relief in a court of competent jurisdiction until the OPWDD's final decision has been issued.

The Deputy Commissioner shall have the power to appoint or change his or her designee or otherwise alter the rules of the procedure upon written notice to the Contractor.

Pending the conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Contract by the State shall govern operation thereunder, and the Contractor and the OPWDD shall

continue to perform under the Contract, unless the OPWDD has suspended or terminated the Contract in accordance with the applicable terms of the Contract.

The Contractor shall be required to bring all legal proceedings relating to this Contract against the OPWDD or the State of New York in the Supreme Court of the State of New York in the County of Albany, or the New York State Court of Claims.

Nothing in this paragraph shall diminish the State's right to suspend or terminate the Contract in accordance with applicable clauses contained within this Contract.

- b. In the event of a conflict between the Contractor and other consultants or contractors of the OPWDD, the Contractor shall submit to the OPWDD a timely written explanation of the details of the conflict, including such pertinent facts as may provide the OPWDD with a firm basis for understanding the nature of the conflict. The Contractor agrees to proceed in a good-faith effort to avoid disputes and to resolve disputes with other contractors or subcontractors of the OPWDD as amicably as possible.

## **28. GENERAL PROVISION AS TO REMEDIES**

- a. The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy, or constitute a waiver of or acquiescence to, an event otherwise constituting a breach or default under the Contract.
- b. In addition to any other remedies available to the State under the Contract and State and federal law for the Contractor's default, the State may choose to exercise some or all of the following:
  - Suspend, in whole or in part, payments due to the Contractor under this Contract.
  - Pursue equitable remedies to compel the Contractor to perform.
  - Apply Service Credits against amounts due and owing by the State under the Contract.
  - Require the Contractor to cure deficient performance or perform the requirements of this Contract at no charge to the State.

## **29. INSURANCE**

The Contractor must comply with the insurance provisions set forth in Appendix E, which is attached hereto and incorporated into this Contract.

## **30. OUTSTANDING TAX LIABILITIES**

The Contractor warrants that there are no outstanding tax liabilities against the Contractor in favor of the State of New York, or in the event that such liabilities exist, a payment schedule has been arranged for their speedy satisfaction before contract execution.

## **31. SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES**

Subject to the cure period set forth in Section 23(a) of this Contract, the Contract may be terminated by the State for cause for a material breach of this Section by the Contractor.

**a. Security Procedures**

The Contractor shall comply fully with all security procedures and policies of the State, including but not limited to any required fingerprinting and background check procedures, which are communicated to the Contractor by the State during the performance of Services under the Contract. The Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any, of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, if any, while providing Services under the Contract.

**b. Nondisclosure & Confidentiality**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors, if any, have access. This requirement shall survive termination of the Contract. For purposes of the Contract, all State information of which Contractor, its officers, agents, employees, and subcontractors, if any, become aware during the course of performing services for the State, shall be deemed to be confidential information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

- Information that is previously rightfully known to the receiving party without restriction on disclosure.
- Information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain.
- Information that is independently developed by the Contractor without use of Confidential Information of the State.

The Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such confidential information in the event such disclosure is inconsistent with the requirements of this Section.

The Contractor employees and subcontractors shall be required to sign Confidentiality and Non-Disclosure Agreements, either before or upon arrival at the work site, or prior to providing services under the Contract.

State employees and subcontractors shall also be required to sign Confidentiality and Non-Disclosure Agreements before receiving access to the Contractor's confidential information. All intellectual property of the Contractor, including without limitation, the software provided by the Contractor as a service, shall be deemed to be confidential information of the Contractor.

**c. Press Releases**

The Contractor agrees that no brochure, news/media/press release, public announcement, memorandum, or other information of any kind regarding the Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract without the prior written approval of the OPWDD, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any State or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

**d. Federal or State Requirements**

The Contractor will comply with federal and State law and regulations regarding personal, private, and sensitive State Data, including, but not limited to HIPAA and HI-TECH (see Section 46, below), 45 CFR Part 160 and Subparts A and E of Part 164, 10 NYCRR Part 63, Mental Hygiene Law §§33.13 and 33.16.

In the event it becomes necessary for the Contractor to receive Confidential Information which federal or State statute or regulation prohibits from disclosure, the Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that necessitated its receipt by the Contractor has been completed. In addition, the Contractor agrees not to retain after termination of the Contract any Confidential Information which federal or State statute or regulation prohibits from disclosure.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, the Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the State accordingly. The Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which federal or State statute or regulation prohibits from disclosure.

The Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information of any New York State Agency information directly to that New York State Agency. The State may terminate the Contract if it determines that the Contractor has violated a material term of this Section. The terms of this Section shall apply equally to the Contractor, its agents, and subcontractors, if any. The Contractor agrees that all subcontractors, if any, and agents shall be made aware of and shall agree to the terms of this Section.

**e. Off Shore Restrictions**

Confidential Information accessed by or provided to the Contractor during the course of performing services for the State must not be stored or accessed outside of the continental United States.

**f. Criminal Justice Information Services (CJIS)**

If the Contractor, its employees, agents, or subcontractors shall have access to criminal justice/forensic information (including criminal history record information or other sensitive criminal justice information), as defined by the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy (accessed through the link below), on NYS systems or media, the Contractor, its employees, agents, or subcontractors must comply with the requirements of the CJIS Security Policy available at:

<https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

**32. PUBLIC INFORMATION AND FREEDOM OF INFORMATION LAW (FOIL)**

Disclosure of information related to this procurement and the resulting Contract shall be permitted, consistent with the laws of the State of New York and specifically FOIL. The OPWDD shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this procurement that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Contractor upon submission, in accordance with provisions of this Contract. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of: (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; or (ii) why the information constitutes critical infrastructure information which should be exempted from

disclosure pursuant to §87(2) of FOIL. Acceptance of the identified information by the OPWDD does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the OPWDD.

### **33. LEGAL REQUESTS AND RELEASE OF STATE DATA TO THIRD PARTIES PROHIBITED**

Except otherwise required by law, the Contractor shall not disclose State data to a third party. Except where expressly prohibited by law, the Contractor shall promptly notify the State of any subpoena, warrant, judicial, administrative, or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a "Demand") that it receives and which relates to or requires production of the State information or data the Contractor is processing or storing on the State's behalf. If the Contractor is required to produce State information or data in response to a Demand, the Contractor will provide the State with the information or data in its possession that it plans to produce in response to the Demand prior to production of such State information or data. Except as otherwise required by law, the Contractor shall provide the State reasonable time to assert its rights with respect to the withholding of such information or Data from production. If the State is required to produce State information or data in response to a Demand, the Contractor will, at the State's request and unless expressly prohibited by law, produce to the State any State information or data in its possession that may be responsive to the Demand and shall provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. The State acknowledges that the Contractor has no responsibility to interact directly with the entity making the Demand. The parties agree that the State's execution of this agreement does not constitute consent to the release or production of State data or information.

### **34. MWBE AND EEO REQUIREMENTS**

Portions of the MWBE and EEO provisions of Appendix A – Supplement may not apply where the Contract goals for MWBE participation are set at 0%.

### **35. ETHICS COMPLIANCE**

The Contractor, its officers, employees, agents, and subcontractors (if any) shall comply with the requirements of Public Officers Law §73 and §74, and other State codes, rules, and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with these provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.

Contractors, consultants, vendors, and subcontractors may hire former State Agency employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency may neither appear nor practice before the State Agency, nor receive compensation for services rendered on a matter before the State Agency, for a period of two years following their separation from State Agency service. In addition, former State Agency employees are subject to a "lifetime bar" from appearing before the State Agency 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.

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 Contract 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 Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its subcontractors derived from this Contract. 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 who will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it 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 conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract, at any time, if any work performed hereunder conflicts with any of the Ethics Requirements.

### **36. MOST FAVORABLE TERMS AND BEST PRICING**

The Contractor agrees that all fees, pricing, terms, and warranties provided by the Contractor under the Contract are substantially similar to the best equivalent terms being offered by the Contractor to any entity similarly situated to the State for substantially similar services or products. If during the term of the Contract, the Contractor enters into an arrangement with any similarly situated entity for substantially similar services or products, with better pricing or terms that are more favorable, the Contractor hereby agrees to amend the Contract to provide the same to the State.

### **37. TRANSFER OF CONTRACT**

The OPWDD may transfer/assign the Contract to another State Agency or entity, at its sole discretion, by informing the Contractor in writing of such a transfer. The Contractor shall execute any documents required to accomplish the transfer/assignment of the Contract. The Contractor shall comply with any instructions from the OPWDD to accomplish the transfer/assignment of the Contract, at no additional cost to the State.

### **38. SUBCONTRACTORS**

Full responsibility for the delivery of services must be provided by the Contractor under this Contract. The Contractor may not subcontract the services procured under this Contract without the State’s prior written approval. The OPWDD reserves the right to reject any proposed subcontractor or supplier if it determines that the company is not qualified or responsible. All such subcontracting relationships between the Contractor and its subcontractors to perform services must be memorialized by written agreement.

The Contractor shall include in all agreements with its subcontractors, in such a manner that will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying that:

- The work performed by the subcontractor must be in accordance with the terms and conditions of this Contract

- Nothing contained in such subcontract shall impair the rights of the OPWDD or the State
- The subcontract is subordinate to this Contract with OPWDD and that any and all conflicting provisions of the subcontract will be superseded by the terms of this Contract
- Nothing contained in the subcontract shall create any contractual relationship between the subcontractor and the OPWDD or the State
- The State and the OPWDD shall have the same authority to audit the records of all subcontractors as it does those of the Contractor relating to the performance of Services under the Contract
- The subcontractor shall cooperate with any investigation, audit, litigation, or other inquiry related to the Procurement or the resulting Contract.

The OPWDD reserves the right, at any time during the term of the Contract, to verify that the written subcontract(s) between the Contractor and Subcontractor(s) complies with all of the provisions of this Section and any subcontract provisions contained in this Contract.

If, at any time during the performance under this Contract, total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

### **39. WAIVER**

No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by a party to, or waiver of, a breach under the Contract shall constitute consent to, a waiver of, or excuse for any other, different, or subsequent breach. The rights, duties, and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity.

### **40. ACCESSIBILITY**

Any web-based information and applications development, or programming delivered pursuant to the Contract, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications, as such policy may be amended, modified, or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by the Contractor, and the results of such testing must be satisfactory to the OPWDD before web-based information and applications will be considered a qualified deliverable under the Contract or Procurement.

### **41. COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS**

The Contractor, while performing Services under this Contract, shall comply fully with the requirements of the Information Security Breach and Notification Act, and all security procedures and policies of the State including, but not limited to, the following:

- Acceptable Use of Information Technology Resources Policy
- Information Security Policy
- Security Logging Standard

- Information Security Risk Management Standard
- Information Security Controls Standard
- Sanitization/Secure Disposal Standard
- Mobile Device Security Standard
- Remote Access Standard
- Secure System Development Life Cycle Standard
- Secure Configuration Standard
- Secure Coding Standard

ITS Security Policies and Standards may be found at:

<http://www.its.ny.gov/tables/technologypolicyindex.htm/security>

and

<https://its.ny.gov/eiso/policies/security>

#### **42. RIGHT TO INSPECT**

The State, or contracted entities working on behalf of the State, has the right to review the Contractor's procedures, practices, and controls related to the security of State Data. Upon written request, the Contractor will, immediately or no later than five business days after the request, make available for review policies, procedures, practices, and documentation related to the protection of State Data, including but not limited to that related to information security governance, network security, risk and compliance management. Policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. The Contractor may be asked to provide a recent independent audit report on security controls prior to formal awarding of any Contract resulting from this Contract, or at any time during the Contract term.

The State shall have the right to send its officers, employees, or contracted vendors working on behalf of the OPWDD to inspect the Contractor's facilities and operations used to provide Contract services. On the basis of such inspection, the State may require the Contractor to implement corrective measures where the Contractor is found to be noncompliant with Contract provisions.

#### **43. SEVERABILITY**

In the event that one or more of the provisions of the Contract shall, for any reason, be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

#### **44. PIGGYBACKING**

The Contractor acknowledges and agrees that, pursuant to State Finance Law §163(10)l, the New York State Office of General Services may authorize and approve purchases from contracts let by the Contractor to other

New York State agencies, the United States Government, or any other state, with the concurrence of the Office of the New York State Comptroller and under appropriate circumstances.

#### **45. EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS**

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

To meet these requirements, the Contractor agrees to complete:

**Form A** – Contractor’s Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

**Form B** – Contractor’s Annual Employment Report. Throughout the term of the Contract, by May 15 of each year, the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1 through March 31 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 who 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.

The Contractor agrees to report such information simultaneously to CS and OSC as designated below:

**Department of Civil Service      Office of the State Comptroller – Bureau of Contracts**

Alfred E. Smith Office Building    110 State St., 11<sup>th</sup> Floor

Albany, NY 12239                  Albany, NY 12236

Attn: Executive Office    Attn: Consultant Reporting

**Email (preferred):** [SubmitformB@cs.ny.gov](mailto:SubmitformB@cs.ny.gov)      **Email (preferred):** [CDMOST@osc.ny.gov](mailto:CDMOST@osc.ny.gov)

The 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

that 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 is available in the Office of the State Comptroller's Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at [https://www.osc.state.ny.us/agencies/contract\\_advisories/cadvisory\\_16.htm](https://www.osc.state.ny.us/agencies/contract_advisories/cadvisory_16.htm).

**46. COMPLIANCE WITH HIPAA (HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996) AND HI-TECH (HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF 2009)**

To the extent the Contractor or its subcontractor(s) create, receive, maintain, or transmit "Protected Health Information" as defined in 45 CFR 160.103 (PHI) on behalf of the State pursuant to their responsibilities under this Contract, the Contractor must and shall require its subcontractors to comply with the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009, as amended (HI-TECH), and execute the HIPAA and HITECH Compliance Certification Form provided by the OPWDD. The successful Bidder must agree to and sign the OPWDD HIPAA Business Association Agreement. The successful Bidder must notify OPWDD and ITS within twenty-four hours of its knowledge of an actual or suspected breach of security involving an individual's Protected Health Information.

**47. DELIVERABLE ACCEPTANCE**

Completed work products and services ("Deliverables") will be delivered to the designated State approver who has been authorized to accept deliverables. Deliverables must meet contract requirements. The New York State approver will accept or reject the Deliverable within fifteen (15) business days of the receipt of the Contractor's notification of completion. If the New York State approver rejects a work product or service, the cause for rejection and all defects to be addressed will be documented by New York State and provided to the Contractor, and the Contractor will correct all identified deficiencies and resubmit the Deliverable for acceptance within five (5) business days. When resubmitted after rejection, the New York State approver will accept or reject the work product or service within seven (7) business days. The number of resubmissions shall be limited to two (2), after which time the issue shall be subject to the Dispute Resolution Section 27 for further determination. To the extent that any Deliverables are or have been approved by the State pursuant to the terms hereof at any stage of the Contractor's performance under the Contract, the Contractor shall be entitled to rely on such approval for purposes of all subsequent stages of the Contractor's performance under the Contract. However, if both parties mutually agree on a deviation from the project schedule, such a deviation from original schedule is permissible within the scope of work and/or due to regulatory changes.

**48. 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 of New York.
- 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 ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the OPWDD immediately of any actual or potential conflicts of interest.

- c. In conjunction with any subcontract under this Contract, the Contractor shall obtain and deliver to the OPWDD, 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 OPWDD 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 OPWDD and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The OPWDD will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the OPWDD, a real or potential conflict of interest cannot be cured.

## **49. MEDICAID REQUIREMENTS**

### **49.1 FEDERAL FALSE CLAIMS ACT**

Federal False Claims Act (31 U.S.C. §§3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, §§187-194) – the Contractor is bound by all of the related laws. The law requires that the OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste, and abuse in federal healthcare programs. This information must include the whistleblower protections that are in these laws. The OPWDD must also provide its contractors with information about the OPWDD’s own policies and procedures for detecting and preventing waste, fraud, and abuse. You can find detailed descriptions of these laws, their whistleblower protections, and the OPWDD’s policies on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). At the home page, select Information for Providers on the left side of the page, then select False Claims Recoveries. You can also visit the New York State Medicaid Inspector General website at [www.omig.ny.gov](http://www.omig.ny.gov) to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud, and abuse is available from the OPWDD Contract Management Unit, 4<sup>th</sup> floor, 44 Holland Ave., Albany, NY 12229-0001. As a Contractor of the OPWDD, you are required to participate in the reviews and audits described in the OPWDD’s policies and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all of your employees and to all of your contractors involved in performing work under your Contract with the OPWDD.

### **49.2 NON-EXCLUSION REPRESENTATION**

Both the United States Department of Health and Human Services and the Office of the Medicaid Inspector General (OMIG) can exclude persons and organizations from federal and State healthcare programs. If



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this Contract is funded through the New York State Medicaid program, the following applies.

The Contractor represents that:

1. The United States Secretary of Health and Human Services has not excluded the Contractor from participation in a federal healthcare program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a, or excluded the Contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5.
2. The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the Contractor from participation

in a federal healthcare program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a).

3. The New York State Medicaid Inspector General has not excluded the Contractor from participation in the New York Medicaid program under 18 NYCRR Part 515.
4. No federal or State agency has otherwise excluded the Contractor from participation in the New York Medicaid program or excluded the Contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.

If, during the term of this Contract, the Contractor is excluded from participation in a federal healthcare program or the New York Medicaid program, or is excluded from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis, under the authorities stated above, this Contract shall be immediately terminated.

**By submitting a Bid/Proposal for this RFP, the Offerer/Contractor agrees to the terms and conditions expressed within this Appendix B document.**

## APPENDIX C: Vendor's Insurance Requirements

The Vendor shall be required to procure, at its sole cost and expense, all insurance required by Section B of this Appendix, and, unless otherwise required by this Appendix, provide proof of the same with Solicitation response. For all required insurance for all LOTs, evidence of insurance must be provided in the form acceptable to OPWDD as specified in Section B of this Appendix. Evidence of insurance shall be submitted in accordance with Solicitation Section 6.3 Content. OPWDD reserves the right to require Vendors to explain or supplement their evidence of insurance prior to Contract award.

After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request, according to the timelines set forth in Section A.14 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OPWDD may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

The Vendor shall deliver to OPWDD evidence of the insurance required by this Attachment in a form satisfactory to OPWDD. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OPWDD does not, and shall not be construed to, relieve the Vendor of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

**A. General Conditions Applicable to Insurance.** All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Vendor are specified in Section B-*Insurance Requirements* below.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by OPWDD, all policies of insurance required by this Attachment shall be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** The Vendor shall provide OPWDD with a Certificate or Certificates of Insurance, in the form satisfactory to OPWDD (e.g., an ACORD certificate), with Solicitation response. Certificates shall reference the Solicitation or award number and shall name "The New York State Office of General Services, Procurement Services, Empire State Plaza, Corning Tower, 38th Floor, Albany New York, 12242" as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OPWDD and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);

- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Refer to this Solicitation and any Contract resulting from this Solicitation by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and Contain the following language in the Description of Operations / Locations / Vehicles section: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 (covering ongoing operations) and CG 20 37 04 13 (covering completed operations)), and General liability coverage is provided on the current edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insured.

Only original documents (certificates and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

Except for (i) Data Breach and Privacy/Cyber Liability coverage, (ii) Technology Errors and Omissions, and (iii) Crime insurance coverages, OPWDD generally requires Vendors to submit only certificates of insurance and additional insured endorsements, although OPWDD reserves the right to request other proof of insurance. Vendors are requested to refrain from submitting entire insurance policies, unless specifically requested by OPWDD. If an entire insurance policy is submitted but not requested, OPWDD shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OPWDD does not constitute proof of compliance with the insurance requirements and does not discharge Vendors from submitting the requested insurance documentation.

4. **Forms and Endorsements.** For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Vendor shall provide, a Schedule of Forms and Endorsements with the Solicitation response and, upon request, all Forms and Endorsements, unless otherwise agreed to in writing by OPWDD. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Attachment. Only original documents or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.
5. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Vendor's insurance.
6. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation or at law or in equity.
7. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OPWDD. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss

payments with the deductibles or self-insured retentions. If the Vendor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided at the time of Solicitation response.

8. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor.
9. **Waiver of Subrogation.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Vendor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to OPWDD upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
10. **Additional Insured.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Vendor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insured: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Additional Insured Endorsements shall be provided with Solicitation response and upon request to:

The New York State Office of General Services  
Procurement Services - 22802  
38th Floor, Corning Tower  
Empire State Plaza  
Albany, New York 12242

A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Vendors who are self-insured, Vendor shall be obligated to defend and indemnify the above-named additional insured with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Vendor would have been required to pursuant to this Attachment had Vendor obtained such insurance policies.

As clarification, "The People of the State of New York" means the State of New York and its subsidiary governmental entities. This is the name in which the State, as a governmental entity, enters into contracts, takes title to property, and initiates legal actions. Using the term "People" does not mean that the insurer is insuring all residents of New York State; rather, it means that the State government is being insured.

11. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided with Solicitation response and upon request.
12. **Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Vendor shall provide OPWDD with a copy of any such notice received from an insurer together with proof of

replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

**13. *Policy Renewal/Expiration.*** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OPWDD. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OPWDD, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OPWDD.

**14. *Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** During the term of any Contract resulting from this Solicitation, as set forth herein, certain insurance documents must be provided to the OPWDD Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OPWDD as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days
- For schedules of forms and endorsements and all forms and endorsements: 60 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OPWDD, OPWDD shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

- B. Insurance Requirements:** Vendors and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of this Solicitation, or any Contract resulting from this Solicitation, or as required by law, whichever is greater.

**PLEASE NOTE – FOR LOT 3 CLOUD AND LOT 4 IMPLEMENTATION ONLY**

Depending upon the risk, OPWDD(s) may require the Contractor to provide additional insurance and/or increased insurance coverages. OPWDD(s) must define these requirements in the OPWDD(s) RFQ. Contractors shall not exceed Contract pricing in response to an OPWDD(s) RFQ.

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

Minimum Insurance Coverage	
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Damage to Rented Premises	\$50,000
Medical Expenses	\$5,000

Aggregate limits shall apply on a per location basis, or as otherwise agreed to in writing by OPWDD. This aggregate limit applies separately to each location at which the insured works.

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in any Contract resulting from this Solicitation;
- Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation;
- Cross liability for additional insureds; and
- Explosion, collapse and underground hazards.

- 2. Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance under any Contract resulting from this Solicitation, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OPWDD. If, however, during the term of any Contract resulting from this Solicitation, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain

Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OPWDD in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under any Contract resulting from this Solicitation, the Contractor must: (i) obtain Comprehensive Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, on a form provided by OPWDD. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OPWDD in accordance with the insurance requirements of any Contract resulting from this Solicitation.

3. **Data Breach and Privacy/Cyber Liability:** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the OPWDDs' systems due to the actions of the Contractor which results in unauthorized access to the OPWDD(s) or their data. Said insurance shall be maintained in the following limits:

Data Breach and Privacy/Cyber Liability		
Lot		Minimum Insurance Coverage
Lot 1 – Software		\$1,000,000
Lot 2 – Hardware		\$1,000,000
Lot 3 – Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Lot 4 - Implementation		\$1,000,000
* See NYS-S14-002 Information Classification Standard or successor available at <a href="http://www.its.ny.gov/tables/technologypolicyindex.htm">http://www.its.ny.gov/tables/technologypolicyindex.htm</a> for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.		

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a claims made basis, Vendor must include with Solicitation response an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting

Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

4. **Technology Errors and Omissions:** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Technology Errors and Omissions Insurance. Said insurance shall be maintained in the following limits:

Technology Errors and Omissions		
Lot		Minimum Insurance Coverage
Lot 1 – Software		\$1,000,000
Lot 2 – Hardware		\$1,000,000
Lot 3 – Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Lot 4 – Implementation		\$1,000,000
<p>*See NYS-S14-002 Information Classification Standard or successor available at <a href="http://www.its.ny.gov/tables/technologypolicyindex.htm">http://www.its.ny.gov/tables/technologypolicyindex.htm</a> for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>		

Said insurance shall provide coverage for damages arising from computer related services including but not limited to the following:

1. Consulting;
2. Data processing;
3. Programming;
4. System integration;
5. Hardware or software development;
6. Installation;
7. Distribution or maintenance;
8. Systems analysis or design;
9. Training;
10. Staffing or other support services; and
11. Manufactured, distributed, licensed, marketed or sold cloud computing services.

The policy shall include coverage for third party fidelity including cyber theft.

If the policy is written on a claims made basis, Vendor must include with Solicitation response an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

5. **Crime Insurance:** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Crime Insurance. Said insurance shall be maintained in the following limits:

Crime Insurance		
Lot		Minimum Insurance Coverage
Lot 1 – Software		\$2,000,000
Lot 2 – Hardware		\$2,000,000
Lot 3 – Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000

	High Risk	\$10,000,000
Lot 4 - Implementation		\$2,000,000
<p>*See NYS-S14-002 Information Classification Standard or successor available at <a href="http://www.its.ny.gov/tables/technologypolicyindex.htm">http://www.its.ny.gov/tables/technologypolicyindex.htm</a> for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>		

Crime Insurance on a “loss sustained form” or “loss discovered form” providing coverage for Third Party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Vendor’s and Contractor’s insurer as a result of this Solicitation must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Vendor and Contractor as a result of this Solicitation.
- The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an OPWDD and their officers, agents, and employees as “Loss Payees” for all Third Party coverage secured. An Endorsement naming as Loss Payees “The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an OPWDD and their officers, agents and employees” shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

- 6. Workers’ Compensation Insurance & Disability Benefits Coverage:** Sections 57 and 220 of the New York State Workers’ Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Vendor will not be awarded a Contract unless proof of workers’ compensation and disability insurance is provided to OPWDD.** Proof of workers’ compensation and disability benefits coverage, or proof of exemption must be submitted to OPWDD at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage.**

Proof of Compliance with the Workers’ Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers’ Compensation Board’s website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form C-105.2 (9/07), *Certificate of Workers’ Compensation Insurance*, sent to OPWDD by the Vendor’s insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OPWDD upon request from the Vendor; or

- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Vendor's Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OPWDD by the Vendor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

## **APPENDIX D: HIPAA BUSINESS ASSOCIATE AGREEMENT**

THIS Agreement is made by and between New York State Office for People with Developmental Disabilities ("Covered Entity"), and \_\_\_\_\_ ("Business Associate").

WHEREAS, Business Associate provides certain services to Covered Entity through existing written contract \_\_\_\_\_ (the Contract) and, in connection with such services, creates, uses or discloses, for or on behalf of Covered Entity, certain individually identifiable protected health information relating to individuals served by the Covered Entity ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, including Subpart D of the Health Information Technology for Economic and Clinical Health Act (HITECH) of Title XIII, Division A of the American Recovery and Reinvestment Act of 2009, and related regulations, 45 CFR Parts 160 and 164 (the HIPAA Privacy and Security Rules); and

WHEREAS, by reason of such activities, the parties believe that Business Associate is a "business associate" of Covered Entity, as such term is defined in 45 CFR 160.103; and

WHEREAS, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA and HITECH, including requirements applicable to the relationship between a covered entity and its business associates;

NOW, THEREFORE, the parties agree as follows:

### **Definitions**

- i. Catch-all definition: The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- ii. Specific definitions:
  1. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the specific Business Associate listed in the first paragraph of this Agreement.
  2. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean OPWDD.
  3. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

### **Obligations and Activities of Business Associate**

- i. Business Associate agrees to:
  1. Not use or further disclose Protected Health Information other than as Required by Law, or as otherwise permitted or as required by this Agreement.
  2. Use appropriate safeguards to prevent use or disclosure of the Protected Health Information, other than as provided for by this Agreement, and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity pursuant to this Agreement in accordance with 45 CFR 164 (the HIPAA Security Rule).

Business Associate agrees to comply fully with the responsibilities of Business Associates as set forth in sections 13401 and 13404 of the HITECH Act.

3. To report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. Further, Business Associate agrees to report to Covered entity any security, incident, including a breach of Unsecured Protected Health Information as defined by the Security Rule, of which it becomes aware. In the event of such a breach:
  1. Business Associate shall promptly notify Covered Entity of the breach when it is discovered. A breach is considered discovered on the first day on which Business Associate knows or should have known of such breach. Such notification shall identify the Individuals, and their contact information, whose Unsecured Protected Health Information has, or is reasonably believed to have been, the subject of the breach. Business Associate shall provide additional information concerning such breach to Covered Entity as requested.
  2. Covered Entity or Business Associate, as determined by Covered Entity, shall notify individuals promptly about a breach of their Unsecured Protected Health Information, as soon as possible but not later than 60 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall be in a form and format prescribed by Covered Entity and shall meet the requirements of section 13402 of the HITECH Act
4. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
5. To ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
6. To provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
7. To make any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
8. To make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
9. To document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
10. To provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section (2)(i) of this Agreement, to permit

Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

- ii. Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that it is required to comply with the confidentiality, disclosure, and re-disclosure requirements of 42 C.F.R, Part 2, Mental Hygiene Law Sections 33.13 and 33.16, 10 NYCRR Part 63, and 14 NYCRR 633.19 to the extent such requirements may be applicable.
- iii. Business Associate hereby agrees to ensure that any agent, including a subcontractor, to whom MCD/PHI is provided, agrees to the same restrictions and conditions that apply throughout this Agreement. Further, Business Associate agrees to state in any such agreement, contract or document that the party to whom MCD/PHI is being provided may not further disclose it without the prior written approval of the New York State Department of Health. Business Associate agrees to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that that involves MCD/PHI.
- iv. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule and the Security Rule to the same extent that Covered Entity is responsible for compliance with such Rules. Business Associate acknowledges that it is subject to civil and criminal penalties for violations of such provisions in the same manner as if Covered Entity violated such provisions.

#### **Permitted Uses and Disclosures by Business Associate**

- i. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information:
  - 1. To perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to the Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
  - 2. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
  - 3. For the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - 4. To provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B). Data aggregation includes the combining of protected information created or received by a business associate through its activities under this contract with other information gained from other sources.
  - 5. To report violations of law to appropriate Federal and State authorities, consistent with New York State Mental Hygiene Law and 45 CFR 164.502(j)(1).

#### **Third Party Contracts**

**The federal Center for Medicare and Medicaid Services (CMS) requires that all contracts and/or agreements executed between the Department of Health and any second party that will receive Medicaid Confidential Data must include contract language that will bind such parties to ensure that contractor(s) abide by the regulations and laws that govern the protection of individual,**

**Medicaid confidential level data. This notification requires that the following language is included in this contract and all future contracts that will govern the receipt and release of such confidential data:**

Medicaid Confidential Data/Protected Health Information includes all information about a recipient or applicant, including enrollment information, eligibility data and protected health information.

Business Associate must comply with the following state and federal laws and regulations:

- Section 367b(4) of the NY Social Services Law
- New York State Social Services Law Section 369 (4)
- Article 27-F of the New York Public Health Law & 18 NYCRR 360-8.1
- Social Security Act, 42 USC 1396a (a)(7)
- Federal regulations at 42 CFR 431.302, 42 C.F.R. Part 2
- The Health Insurance Portability and Accountability act (HIPAA), at 45 CFR Parts 160 and 164
- NYS Mental Hygiene Law Section 33.13
- NY Civil Rights Law 79-L

Please note that MCD released to Business Associate may contain AIDS/HIV related confidential information as defined in Section 2780(7) of the New York Public Health Law. As required by New York Public Health Law Section 2782(5), the following notice is provided to you:

“This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for the release for further disclosure.”

**Alcohol and Substance Abuse Related Confidentiality Restrictions:**

Alcohol and substance abuse information is confidential pursuant to 42 C.F.R. Part 2. General authorizations are ineffective to obtain the release of such data. The federal regulations provide for a specific release for such data.

Business Associate agrees to ensure that it and any agent, including a subcontractor, to whom Business Associate provides MCD/PHI, agrees to the same restrictions and conditions that apply throughout this Agreement. Further, Business Associate agrees to state in any such agreement, contract or document that the party to whom Business Associate is providing the MCD/PHI may not further disclose it without the prior written approval of the New York State Department of Health. Business Associate agrees to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that Business Associate enters into that involves MCD/PHI.

**ANY AGREEMENT, CONTRACT OR DOCUMENT WITH A SUBCONTRACTOR MUST CONTAIN ALL OF THE ABOVE PROVISIONS PERTAINING TO CONFIDENTIALITY. IT MUST CONTAIN THE HIV/AIDS NOTICE AS WELL AS A STATEMENT THAT THE SUBCONTRACTOR MAY NOT USE OR DISCLOSE THE MCD WITHOUT THE PRIOR WRITTEN APPROVAL OF THE NYSDOH.**

#### **Obligations of Covered Entity**

- i. Covered Entity shall notify Business Associate of any:
  1. Limitation(s) in the Notice of Privacy Practices Covered Entity produces in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of Protected Health Information.
  2. Changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate’s permitted or required uses or disclosures of Protected Health Information.

3. restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

#### **Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Covered Entity may permit Business Associate to use or disclose Protected Health Information for data aggregation or management and administrative activities of business Associate, if the Agreement includes provisions for same.

#### **Remedies in Event of Breach**

Business Associate hereby recognizes that irreparable harm may result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections 2 or 3 above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of such Sections. Furthermore, in the event of breach of Sections 2 or 3 by Contractor, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

#### **Consideration**

Business Associate acknowledges that the covenants and assurances it has made in the Agreement shall be relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

#### **Term and Termination**

- i. Term. The Term of this Agreement shall be effective as of the Effective Date of this agreement and shall not terminate until all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of the Covered Entity is destroyed or returned to the Covered Entity or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the termination provisions in this section.
- ii. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide Business Associate with an opportunity to cure the breach and then terminate this Agreement and any other agreement between Covered Entity and Business Associate if Business Associate does not cure the breach within the time period specified by the Covered Entity
- iii. Effect of Termination
  1. Except as provided in paragraph 2 of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered

Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protection of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

#### **Miscellaneous**

- i. Regulatory References: A reference in this Agreement to a section in the Privacy Rule means the section as in effect, or as amended, and for which compliance is required.
- ii. Agreement: The Parties agree to take such action to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191, and any other applicable law.
- iii. Survival: The respective rights and obligations of Business Associate under Sections 6 and 8 of this Agreement shall survive the termination of this Agreement, as shall the rights of access and inspection of Covered Entity.
- iv. Interpretation: Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

#### **Material Breach**

The parties acknowledge that in the event the Covered Entity learns of a pattern, or activity, or practice of the Business Associate that constitutes violation of a material term of this Agreement, then the parties shall promptly take reasonable steps to cure the violation. If such steps are, in the judgment of the Covered Entity, unsuccessful, ineffective, or not feasible, then the Covered Entity may terminate this Agreement upon written notice to the Business Associate, if feasible, and if not feasible, shall report the violation to the Secretary of HHS. Written notice may be transacted by certified or registered mail, return receipt requested; facsimile transmission; personal delivery; expedited delivery service; or via email.

#### **Law Governing Conflicts**

This Agreement shall be enforced and construed in accordance with the laws of the State of New York. Jurisdiction of any litigation with respect to this Agreement shall be in New York, with venue in a court of competent jurisdiction in Albany County.

**By submission of a proposal responding to this RFP, Offerer understands and agrees to the terms and conditions of this attachment.**

### ATTACHMENT 1: Attestation Checklist (Administrative Proposal)

<b>Offerer Information</b> Provide information for the Offerer's Primary Contact with regard to the proposal submitted.
Entity Legal Name:
Primary Contact Name:
Street Address:
City, State, ZIP Code:
Telephone Number: (    )    -
Fax Number: (    )    -
Primary Contact Email Address:
Taxpayer Employer Identification Number (EIN):
NYS Vendor Identification Number (see RFP Section 3.1.12):
<b>Person Authorized to Receive Notices</b> See Clause 20, Appendix A-1 Supplement, Section A of this RFP.
Authorized Contact Name:
Street Address:
City, State, ZIP Code:
Telephone Number: (    )    -
Fax Number: (    )    -
Authorized Contact Email Address:
<b>Administrative Proposal (Attestation Checklist) (See RFP Section 2.3.4 unless otherwise noted)</b>  RFP sections are referenced for the purpose of guiding Offerers, and are not intended to be exclusive of other non-referenced parts.  *Offerers must check "Yes" to indicate their understanding of, agreement with, and or completion of, each requirement; Offerers must include an explanation where "No" is indicated in the last row of this Checklist.

REQUIREMENT	RESPONSE*
1.2.1 The offerer understands there is one allowable contact for communications related to the submission of written proposals, written questions, pre-bid questions, and debriefings, per section 1.2.1 of the RFP.	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.2.3 Offerers are required to submit an Email Registration for the Conference Call identifying the allowable contact for communications related to the submission of written proposals, written questions, pre-bid questions and all notifications containing instructions or procurement updates. <b>It is important to note that the email address given on the Email Registration will be used for all communication purposes related to this RFP.</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.3.1 OPWDD will accept proposals from organizations with the following minimum qualifications (These qualifications are Pass/Fail; Offerers failing to meet the minimum qualifications as indicated below will result in a firm to be ineligible for the proposal evaluation process of that specific LOT(s)): Proposals must meet the Format and Content requirements of section 2.3 of this RFP; Proposals for LOTs ONE, TWO and THREE must include an affirmation that the Offerer is a public accounting firm which employs and/or can provide Certified Public Accountants licensed to practice in New York State with the ATTACHMENT 1: Attestation Checklist required with submission of the Administrative Proposal per section 2.3.4 of this RFP; All CPA Firms regardless of which LOT is being bid, must have a minimum of 5 years' professional auditing experience. An audit opinion or report from each one of the 5 years, supporting the 5-year professional auditing experience qualification must be submitted with the ATTACHMENT 1: Attestation Checklist and Administrative Proposal.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Independence Provisions Offerers interested in bidding on LOT ONE must provide an affirmation that they will be able to perform the duties as outlined in the scope of work in accordance with the independence provisions contained in Generally Accepted Government Auditing Standards (GAGAS) Chapter 3. Any firm awarded a contract via this RFP will recuse itself from accepting assignments from OPWDD in which the assignment will present a conflict of interest (i.e., if the firm already has a fiscal relationship with a not-for-profit agency they will not be able to audit that firm on behalf of OPWDD). Upon selection for an interview for section 4.6 of this RFP, Offerers will be required to provide a comprehensive list of all not-for-profit agencies in the OPWDD service delivery system with which they: a) have provided services at any time from January 1, 2017 forward; or b) have a current	<input type="checkbox"/> Yes <input type="checkbox"/> No

<p>contract; or c) are currently negotiating to provide services; or d) are otherwise engaged with the agency and/or its governance in any manner. This list must include the scope of work (contract or engagement type and the period reviewed), as applicable, for each agency.</p> <p>This list must be updated by the Contractor and provided to the appropriate OPWDD Manager (to be determined) by January 1 of each subsequent contract year.</p> <p>Contractor will ensure each staff assigned to an audit completes an independence statement at the onset of each new audit engagement.</p> <p>The engagement for LOT ONE is required to be conducted by an Independent CPA firm. Contractors for LOT ONE are required to meet the independence standard as defined under Generally Accepted Government Auditing Standards (GAGAS). The contractor will warrant their compliance with the independence standard and indemnify OPWDD against any third-party challenges to the contractor's independence without limitation. If found to be in violation of the independence requirement, the contractor's liability include OPWDD legal fees incurred related to defense against third party claims. The contract will also be subject to termination under the termination provisions as stated in section 6.15. of the RFP.</p>	
<p>2.1.1 Firms intending to submit a proposal in response to this RFP must participate in the Mandatory Conference Call described in section 1.5 of this RFP. Offerers must register for the Mandatory Conference Call by emailing the Designated Contact identified in section 1.2.1 of this RFP and has submitted the email Registration in accordance with section 2.1 of the RFP.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>2.3.4.1 The Attestation Checklist is an integral part of the proposal package. Submission of the Offerer's proposal, with submission of the Attestation Checklist, shall be construed by OPWDD as the Offerer's acceptance of the procedures, evaluation criteria, and other administrative instructions in this RFP.</p> <p>The Attestation Checklist must be signed by an individual who is authorized to contractually bind the successful Offerer.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>2.3.4.1.1 Rank LOTs according to Offerer's preference of award. Proposals may be submitted for all three LOTs, however the selected Offerer for LOT ONE cannot be selected for any of the other LOTs. The same Offerer may be selected for LOTS TWO and THREE. Proposals may be submitted for LOT THREE only.</p> <p>Offerer's Preference of Award:</p>	<p>1. _____</p> <p>2. _____</p> <p>3. _____</p>
<p>2.3.4.1.2 Include the Offerer's name, address, telephone and fax numbers, and the name(s), address(es), telephone number(s) and e-mail address(es) of the Offerer's contact(s) concerning the proposal.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <b>Included above</b>

2.3.4.1.3 Provide the New York State Supplier Identification Number and Federal Identification Number.	NYS ID: _____ FEIN: _____
2.3.4.1.4 Per section 1.3.1.b, Attest Offerer is a public accounting firm which employs and/or can provide Certified Public Accountants licensed to practice in New York State.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.5 Per section 1.3.1.c, provide five (5) final reports, one report per year, for the past 5 years, supporting the 5-year professional auditing experience qualification.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.6 Per section 1.3.3, Attest Offerer does not have any relationships that would impair their independence in performing the attest engagement of the OPWDD Consolidated Fiscal Report (LOT ONE).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.7 Outline any specific concerns regarding the disclosure of any information in the Offerer's proposal per section 6.5, Freedom of Information Law/Trade Secrets.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.8 Confirm that Offerer has completed or updated Vendor Responsibility Questionnaire online in the Office of the State Comptroller's VendRep System: <a href="http://www.osc.state.ny.us/vendrep/vendor_index.htm">http://www.osc.state.ny.us/vendrep/vendor_index.htm</a> ;	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.9 Warrant the Offerer is willing and able to comply with New York laws with respect to foreign (non-New York) corporations.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.10 Warrant the Offerer 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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.11 Warrant the Offerer will not delegate or subcontract its responsibilities under an agreement without the written permission of the OPWDD.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.12 Acknowledge the costs set forth in the Cost Proposal are firm costs that are binding and irrevocable for a period of not less than 270 days from the date of proposal submission.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.13 Acknowledge the Bidder understands and accepts the provisions of this RFP and all attachments thereto including Attachment D: HIPAA Business Associate Agreement, which incorporates a Data Use Agreement as defined in Appendix B, section 25.b. of this RFP; and agrees to comply with all applicable Federal, State and Local laws. The Offerer acknowledges and agrees to the terms and conditions of the OPWDD Standard Contract Terms, provided in Appendix B of this RFP, if selected for award of a contract resulting from this RFP.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.14 Explicitly set forth any questions or anticipated difficulty with any such contract provisions. OPWDD reserves the right to reject any or all issues raised by a Bidder and require full acceptance of the terms of this RFP.	<input type="checkbox"/> Yes <input type="checkbox"/> No

2.3.4.1.15 Acknowledge the Bidder has read the RFP, understands it, and agrees to be bound by all of the conditions therein, inclusive of all Appendixes, Attachments and Exhibits. Acknowledge the Offerer has reviewed and understands each addendum and accepts, and is willing to enter into a Contract substantially in accordance with the terms of the RFP inclusive of all Appendixes, Attachments and if the Offerer is selected for contract award, including the Questions and Answers and any Amendments or Addendums to this RFP.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.1.16 Warrant all information provided by the Offerer in connection with submission of a proposal is true and accurate.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.2 The NYS Procurement forms and documents, listed here with links to external websites or attached to this RFP, must be completed and signed as indicated, and submitted as part of the Administrative Proposal:	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 1: Attestation Checklist (Administrative Proposal)	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 2: Diversity Practices Questionnaire	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 3: Procurement Lobbying Law Certification of Compliance	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 4: Non-Collusive Bidding Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 5: Listing of Proposed Subcontractors	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 6: Encouraging Use of New York State Businesses In Contract Performance	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 7: Mandatory Offerer Assurance of No Conflict of Interest or Detrimental Effect	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 8: Sexual Harassment Policy Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 9: Executive Order 177 Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No
ATTACHMENT 10: Certification Under Executive Order No. 16	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Required forms included in APPENDIX A: Supplement – 2 that must also be submitted with the Administrative Proposal:</b>	
Form MWBE 100 Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Program (MWBE-EEO) Policy Statement	<input type="checkbox"/> Yes <input type="checkbox"/> No
Form MWBE 101 Staffing Plan (Appendix A: Supplement)	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Required forms included in APPENDIX A SUPPLEMENT – 3: SDVOB Requirements and Procedures must also be submitted with the Administrative Proposal</b>	
<b>SDVOB UTILIZATION PLAN</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>ADDITIONAL SHEET</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>2.3.4.3 Offerers must indicate their understanding of an agreement to provide the following certifications and reports upon award:</b>	
Contractor Certification Tax Form ST-220-TD and Contractor Certification to Covered Agency Form, ST-220-CA (See Section 10.14 Tax Provision for additional information. Fillable forms can be found at: <a href="http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf">www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf</a> <a href="http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf">www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf</a>	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.3.2 Planned/Annual Employment Reports, Exhibit V State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term State Consultant Services Form B, Contractor's Annual Employment Report	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.3.3 Offerers selected for Award, prior to the start of work, must provide proof of Contractor Insurance Requirements per section 6.3 of this RFP: Commercial General Liability Commercial Auto Liability Professional Liability Crime Umbrella and Excess Liability	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.3.4 Workers' Compensation Documentation Form C-105.2 – Certificate of Workers' Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or Form SI-12 – Certificate of Workers' Compensation Self-Insurance (or Form GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance); or Form CE- Workers'200 – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.4.3.5 Disability Documentation Form DB-120.1 – Certificate of Disability Benefits Insurance; or Form DB-155 – Certificate of Disability Benefits Self-Insurance; or Form CE-200 – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.3.5 Technical Proposal Checklist</b>	
<b>2.3.5.1</b> There should be no dollar unit or costs included in the Technical Proposal document.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Size 2.3.5.2.1 The proposal must describe the size of the firm and organizational structure.	<input type="checkbox"/> Yes <input type="checkbox"/> No

2.3.5.2.2 The proposal must provide information on the firm's government and non-government auditing experience as required in section 1.3.1 of this RFP; and,				<input type="checkbox"/> Yes <input type="checkbox"/> No
the results of all federal or state desk reviews or field reviews of the firms' audits during the past three (3) years; the Offerer must provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with any government oversight or regulatory bodies or professional organizations; prior experience with the types of ad hoc services described in sections 5.3.1.1 and 5.3.4 of this RFP.				<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.5.2.3 The Proposal must include the most recent peer review.				<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.3.5.3 the Firm's References (Attachment 11) included with Technical Proposal</b>				<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.3.5.4 Prior Engagements</b>				<input type="checkbox"/> Yes <input type="checkbox"/> No
At a minimum, the Offerer must provide a list of audit or consulting engagements performed over the last 5 years, which are similar in scope to the types of engagements described in each Lot the firm is bidding on. For each engagement, the Offerer must provide a brief description of the scope of work, dates, dollar amount and total hours.				<input type="checkbox"/> Yes <input type="checkbox"/> No
	<b>LOT ONE</b>	<b>LOT TWO</b>	<b>LOT THREE</b>	
<b>2.3.5.5.1 Similar Engagements with Non-Government and other Government Entities</b>				<input type="checkbox"/> Yes <input type="checkbox"/> No
Rank and list separately up to 5 engagements of similar size and scope for each Lot proposed: over last 5 years, maximum of 5 engagements	1.3.1.c 2.3.5.4 5.1	1.3.1.c 2.3.5.4 5.2	1.3.1.c 2.3.5.4 5.3.1.2.3 5.3.1.2.4	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.3.5.5.2 Specific Audit Approach</b>				
work plan/methodology	5.1.1 – 5.1.3	5.2.2 5.2.3	5.3.1.1 5.3.1.2.4	<input type="checkbox"/> Yes <input type="checkbox"/> No
proposed segmentation of the engagement	5.1.1 – 5.1.3	5.2.3 5.2.4	5.3.1.1	<input type="checkbox"/> Yes <input type="checkbox"/> No
level of staff and number of hours to be assigned to each proposed segment of the engagement	2.3.5.6.2 5.1.4	2.3.5.6.2 5.2.2.1 5.2.2.3.5	5.3.1.2.7 5.3.2.1 5.3.2.2	<input type="checkbox"/> Yes <input type="checkbox"/> No
type and extent of sampling techniques to be used in the engagement	5.1.7	5.2.2.4- 5.2.2.4.1	5.3.1.1 5.3.1.2.4	<input type="checkbox"/> Yes <input type="checkbox"/> No

provide an acknowledgment and justification that, if selected, the firm has the ability to respond rapidly and effectively to the type of engagement that may be performed under the contract.	2.3.5.6.2 5.1.1.2 5.1.2 - 5.1.4 5.1.6 - 5.1.10	2.3.5.6.2 5.2.2.1 5.2.2.6.2 5.2.3	2.3.5.6.2 5.3.1.1 5.3.1.2.7	<input type="checkbox"/> Yes <input type="checkbox"/> No
provide details and examples of the firm's capacity to undertake and complete the proposed engagements promptly	2.3.5.6.2 5.1.4 5.1.7 5.1.8 5.1.9 5.1.10	2.3.5.6.2 5.2.2.1 5.2.2.6.2 5.2.3 5.2.4	2.3.5.6.2 5.3.1.1 5.3.1.2.7	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.3.5.5.3 Project-Tracking (Billing) System</b>	5.1.5	5.2.3.2	5.3.1.2.5 5.3.2 5.3.4.1 5.3.4.2.3 5.3.4.8.1	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.3.5.5.4 Report Format</b>	5.1.3 5.1.8 5.1.9 5.1.10	5.2.1.2- 5.2.1.3 5.2.2.5- 5.2.2.5.6 5.2.4.2	5.3.1.2.6	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.3.5.6 Staff Qualifications and Experience (including Resumes for each Engagement Title)</b>	5.1.4	2.3.5.6.2 5.2.2.1 5.2.2.3.5	2.3.5.6.2 5.3.1.2.7	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.3.5.7 Diversity Practices 4.3.7, Attachment 2</b>				<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.3.6 Cost Proposal</b>				
2.3.6.2 An official authorized to contractually bind the prospective Offerer must sign the Cost Proposal, labeled "RFP Auditing Services and Accounting, Auditing, Consulting Services Vendor Pool Cost Proposal" per 4.4.4.				<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3.6.5 Proposals with a rate format different from the format provided in ATTACHMENT 13: Cost Proposal Form will be considered non-responsive and will be disqualified.				<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2.4 Instructions for Proposal Submission</b>				
All proposals must be submitted and received by the proposal submission date and time specified in this RFP. Proposals received after the proposal submission deadline shall be rejected.				<input type="checkbox"/> Yes <input type="checkbox"/> No
2.4.1 Packaging of RFP Response				
2.4.1.5 The Offerer must submit their proposal electronically on USB 3.0 Thumb Drives with hard copies of all documents that require original signatures. Each section (administrative, technical, and cost) of the proposal must be submitted on a separate USB 3.0. Offerer's submitting proposals for				<input type="checkbox"/> Yes <input type="checkbox"/> No



## ATTACHMENT 2: Diversity Practices Questionnaire

**Offerer's Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with Non-government entities and governmental units other than the State. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs. OPWDD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Offerers to this procurement is practical, feasible, and appropriate. Accordingly, Offerers are required to provide responses the space provided below each of the following eight (8) questions as part of their technical proposal:

<p><b>Q1:</b> Does your organization have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? If yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.</p>
<p><b>Q2:</b> What percentage of your organization'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-ventures, partners or other similar arrangement for the provision of goods or services to your organization's clients or customers?</p>
<p><b>Q3:</b> What percentage of your organization's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your organization'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?</p>
<p><b>Q4:</b> Does your organization provide technical training to minority- and women-owned business enterprises? 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.</p>
<p><b>Q5:</b> Is your organization participating in a government approved minority- and women-owned business enterprise mentor-protégé program? If yes, identify the governmental mentoring program in which your organization participates and provide evidence demonstrating the extent of your organization's commitment to the governmental mentoring program.</p>
<p><b>Q6:</b> Does your organization include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? 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.</p>

Q7: Does your organization have a formal minority- and women-owned business enterprise supplier diversity program? If yes, provide documentation of program activities and a copy of policy or program materials.

Q8: Does your organization 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? If yes, complete the "MWBE Utilization Plan" included as part of Appendix A Supplement - 2 of this RFP.

**Offerer's Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**ATTACHMENT 3: Procurement Lobbying Law Certification of Compliance  
OFFERER DISCLOSURE/CERTIFICATION FORM**

1. CONTACTS - Contractor affirms that it understands and agrees to comply with the procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law §§ 139-j and 139-k. ☐ I agree

2. BIDDER/OFFERER 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

(c) 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 if necessary):

(d) Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

☐ 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)

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

3. TERMINATION CLAUSE:

Contractor certifies that all information provided to the Agency with respect to State Finance Law §§139 (j) and 139 (k) is complete true and accurate. If found to be in violation of State Finance Law §§139 (j) and 139 (k), the contract will result in termination. ☐ I agree

**Name of Contractor's Firm/Company:**\_\_\_\_\_

**Contractor Address:** \_\_\_\_\_  
\_\_\_\_\_

**Contractor's signature:** \_\_\_\_\_

*I understand that my signature represents that I am signing and responding to  
both certifications listed above*

**Print Name:** \_\_\_\_\_

**Occupation of Person signing this form:**\_\_\_\_\_

**Email Address:** \_\_\_\_\_

**ATTACHEMENT 4: Non-Collusive Bidding Certification  
Required by Section 139-D of the State Finance Law**

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

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

[3] No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

**[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]**

**Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ as the act and deed of said corporation of partnership.**

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS	LEGAL RESIDENCE
_____	_____
_____	_____
_____	_____
_____	_____

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES

LEGAL RESIDENCE

\_\_\_\_\_  
**President**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**Treasurer**

\_\_\_\_\_  
**President**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**Treasurer**

Identifying Data:

**Potential Contractor:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City, Town, etc.** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

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

\_\_\_\_\_  
If applicable, Responsible Corporate Officer Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**Joint or combined bids by companies or firms must be certified on behalf of each participant:**

\_\_\_\_\_

### ATTACHMENT 5: Listing of Proposed Subcontractors

Subcontractor:	Check applicable certification type:	Estimated Contract Amount and Brief Description of Services/Commodity	Location/Address where Services will be Performed
Name:  EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	
Name:  EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	
Name:  EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	
Name:  EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	
Name:  EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	

## **ATTACHMENT 6: Encouraging Use Of New York State Businesses In Contract Performance**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidder/Bidders for this contract for commodities, services, and technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements for the contract. Such partnering may be as subcontractors, suppliers, protégés, or other supporting roles.

Bidder/Bidders need to be aware that all OPWDDs of their contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidder/Bidders are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under

the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

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

Bidder/Bidders can demonstrate their commitment to the use of New York state businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?

☐ YES ☐ NO

If yes, identify New York State businesses that will be used and attach identifying information.

## **ATTACHMENT 7: Mandatory Offerer Assurance of NO Conflict of Interest or Detrimental Effect**

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

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

- 1.The fulfillment of obligations by the Offerer, as proposed in the response, does not violate any existing contracts or agreements between the Offerer and the State;
- 2.The fulfillment of obligations by the Offerer, 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 Offerer has with regard to any existing contracts or agreements between the Offerer and the State;
- 3.The fulfillment of obligations by the Offerer, as proposed in the response, does not and will not compromise the Offerer's ability to carry out its obligations under any existing contracts between the Offerer and the State;
- 4.The fulfillment of any other contractual obligations that the Offerer has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
- 5.During the negotiation and execution of any contract resulting from this RFP, the Offerer 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;
- 6.In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Offerer 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;
- 7.No former officer or employee of the State who is now employed by the Offerer, nor any former officer or employee of the Offerer 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
- 8.The Offerer 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.

Offerers responding to this RFP/Contract should note that the State recognizes that conflicts may occur in the future because an Offerer may have existing or new relationships. The State 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 and Title: \_\_\_\_\_

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

This form must be signed by an authorized signatory.

## ATTACHMENT 8: Sexual Harassment Policy Certification

State Finance Law §139-I requires bidders on state procurements to certify that they have a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment training to all its employees and that such policy, at a minimum, meets the requirements of State Labor Law §201-g.

By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.

Please mark the applicable box below and complete the following sections, as required.

☐ The Bidder certifies its compliance with State Finance Law §139-I.

☐ The Bidder cannot certify its compliance with State Finance Law §139-I.

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

Offerer: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name (please print): \_\_\_\_\_

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

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

If the Bidder cannot make the above certification, the Bidder must provide a statement detailing the reasons:

## ATTACHMENT 9: Executive Order 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment on the basis of age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status, or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

all employers of four or more people, employment agencies, labor organizations, and apprenticeship training programs in all instances of discrimination or harassment;

employers with fewer than four employees in all cases involving sexual harassment; and

any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion, or national origin.

In accordance with Executive Order No. 177, the Offerer hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1 Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Vendor Name:  
(legal entity) \_\_\_\_\_

By:  
(signature) \_\_\_\_\_

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

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

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

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

**ATTACHMENT 10: Certification Under Executive Order No. 16  
Prohibiting State Agencies and Authorities from Contracting with  
Businesses Conducting Business in Russia**

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found at <https://www.governor.ny.gov/executive-order/no-16-prohibiting-state-agencies-and-authorities-contracting-businesses-conducting>

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

- ☐ 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- ☐ 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- ☐ 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- ☐ 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name:  
(legal entity) \_\_\_\_\_

By: \_\_\_\_\_  
(signature)

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

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

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

### ATTACHMENT 11: REFERENCE FORM

Offerers are encouraged to provide more than the required three (3) references, with an indication of the preferred order in which to use them.

Reference Preference #1	
Reference Company Name	
Type of Business	
Primary Contact Person's Name	
Title	
Mailing Address	
Phone	
E-Mail	
Term of Engagement	
Name of Engagement	
Scope of Engagement	

Reference Preference #2	
Reference Company Name	
Type of Business	
Primary Contact Person's Name	
Title	
Mailing Address	
Phone	
E-Mail	
Term of Engagement	
Name of Engagement	
Scope of Engagement	

<b>Reference Preference #3</b>	
Reference Company Name	
Type of Business	
Primary Contact Person's Name	
Title	
Mailing Address	
Phone	
E-Mail	
Term of Engagement	
Name of Engagement	
Scope of Engagement	

<b>Reference Preference #4</b>	
Reference Company Name	
Type of Business	
Primary Contact Person's Name	
Title	
Mailing Address	
Phone	
E-Mail	
Term of Engagement	
Name of Engagement	
Scope of Engagement	

Reference Preference #5	
Reference Company Name	
Type of Business	
Primary Contact Person's Name	
Title	
Mailing Address	
Phone	
E-Mail	
Term of Engagement	
Name of Engagement	
Scope of Engagement	

## ATTACHMENT 12: COST PROPOSAL INSTRUCTIONS

The Cost Proposal Form must be signed and dated by an authorized signatory qualified to bind the firm. Offerers must submit 2 USB 3.0 Thumb Drives plus 2 hard copies containing signatures (signature is not required on electronic versions). The excel version of the Cost Proposal is provided with the mailing of this RFP and as a separate attachment wherever this RFP is posted.

1. Place a checkmark in the box above each lot the Offerer would like to be considered for an award in. If a firm is awarded a contract in LOT ONE, awards cannot be made in one of the other Lots.
2. Enter Not-to-Exceed Hourly Rates for each Engagement Title in the green-shaded column
  - Do not carry rates out over 2 decimal points (i.e. \$15.50)
  - Engagement Title Rates must be consistent for all three LOTS
  - Rates must include personnel, support staff, overhead, travel, and all other direct and indirect expenses related to the provision of audit services as detailed in section 5 of this RFP's "Scope of Work" for each LOT. Any Data related expenses not considered in the Offerer's rates, including data return or destruction services, shall otherwise be provided at no charge to OPWDD.

### 3 – 5. Calculating Contract Totals

Enter the proposed hours for each title required to complete one engagement. Enter 0 hours for titles the Offerer will not be assigning in each LOT.

- All Contract sub-totals and totals will automatically be calculated on the cost proposal labeled "Auditing Services and Accounting, Auditing, Consulting Services Vendor Pool"
- The Cost Proposal is provided as a separate attachment (ATTACHMENT 13) with the mailing of this RFP and at the links provided in ATTACHMENT 13 of this RFP.
- Manually, Annual sub-totals and Contract Totals must be calculated as follows (x symbolizes multiplied by):

#### **Year One Position Total for each Engagement Title:**

Hourly Rate x Hours Per Engagement x Estimated Annual Number of Engagements

#### **Contract Position Total:**

Year Two = Year One Amount + (Year One Amount x 3% CPI)

Year Three = Year Two Amount + (Year Two Amount x 3% CPI)

Year Four = Year Three Amount + (Year Three Amount x 3% CPI)

Year Five = Year Four Amount + (Year Four Amount x 3% CPI)

**Contract Total** is the total of Year One through Year Five Subtotals

**Engagement Rates** are the sum of the Year One Total divided by the number of annual engagements.

\*Amounts must be carried out no more than 2 decimal points

Deliverables and Outcomes must reflect the deliverables described in the Offerer's Proposal as required in sections 5.1.8, 5.2.3 and 5.3.2 of this RFP. The Cost Proposal must reflect associated costs with each desired outcome included in the Offerer's Work Plan.

Offerer must consider personnel, support staff, overhead, travel and all other cost related to the provision of services as detailed in section 5 of this RFP's Scope of Work. Offerer acknowledges the costs set forth in the Cost Proposal are firm costs that are binding and irrevocable for a period of not less than 270 days from the date of proposal submission.

## **ATTACHMENT 13: COST PROPOSAL**

The “RFP Auditing Services and Accounting, Auditing, Consulting Services Vendor Pool Cost Proposal” is provided with the mailing of this RFP as a separate attachment (Attachment 13)

and is also posted on the following websites:

OPWDD’s Procurement Opportunities:

<https://opwdd.ny.gov/procurement-opportunities>

New York State Contract Reporter website:

<https://www.nyscr.ny.gov/contracts.cfm>

## EXHIBIT I: OPWDD VOLUNTARY AGENCY LISTING

The OPWDD Voluntary Agency Listing is provided with the mailing of this RFP as a separate attachment (Exhibit I) and is also posted on the following websites:

OPWDD's Procurement Opportunities:

<https://opwdd.ny.gov/procurement-opportunities>

New York State Contract Reporter website:

<https://www.nyscr.ny.gov/contracts.cfm>

## **EXHIBIT II: LOT TWO Template Billing and Claiming Draft Audit Report**

The LOT TWO Template Billing and Claiming Draft Audit Report is provided with the mailing of this RFP as a separate attachment (Exhibit II)

and is also posted on the following websites:

OPWDD's Procurement Opportunities:

<https://opwdd.ny.gov/procurement-opportunities>

New York State Contract Reporter website:

<https://www.nyscr.ny.gov/contracts.cfm>

### EXHIBIT III: Sample Ad Hoc Services Solicitation

**OPWDD**

**Mini-Bid**

Engagement Name

Primary Contact:			
E-mail address:			
Procurement Lobbying Law/Restricted Period is in effect:	__YES	__NO	/ Date:

Please return the signed and notarized original of this document and all completed Attachments(s) to:

Attention:			
AGENCY:			
Address:			
Term of Contract	Tentative Start Date _____ through _____		
<b>MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT</b>			
For purposes of this procurement, OPWDD hereby establishes an overall goal of __% for MWBE participation, __% for Minority-Owned Business Enterprises (“MBE”) participation and __% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).			
<b>Award Methodology</b>			
<input type="checkbox"/>	Best Value	Evaluation Weights: __% Technical __% Cost	
<input type="checkbox"/>	Lowest Price with Pass/Fail Technical Requirements (Proposal must not exceed Hourly Rate proposed for Audit Services RFP)		
	Proposal Validity	_____ days	
<b>Purpose of Mini-Bid Solicitation</b>			
<b>Procurement Rights in addition to those included in the Audit Services RFP</b>			
<b>Key Events and Dates</b>		<b>Date</b>	<b>Time</b>
Mini-Bid Release			
Pre-Bid Conference			
Questions Due			
Responses to Questions			
Intent to Bid			
Mini-Bid Response Due Date/Bid Opening			
Please Note: Mini-Bid Responses received after the Response Due Date, will not be accepted.			

SCOPE OF WORK	
Background/Description/Need	
Engagement Objective	
Specific Requirements	
1	
2	
3	
4	
5	
6	
Proposed Segmentation/Engagement Titles, Hours/Sampling Techniques/Performance Guarantees/Similar Engagements	
Deliverable	Notes (acceptance requirements included)

Retainage/Withhold
Security Requirements
Insurance Requirements
General Terms and Conditions
List of Attachments
Additional Terms and Conditions (Delivery Timeframes, requirements imposed by new laws, regulations, etc.)
Responsibilities, resources, management involvement, Contractor's performance, compliance with State Agency policies, regulation and/or laws, consents necessary, etc.
Independence Provisions

#### **EXHIBIT IV: Consolidated Fiscal Report (CFR)**

OPWDD's 2019-20 Certified Consolidated Fiscal Report is provided with the mailing of this RFP as a separate attachment (Exhibit IV)

and is also posted on the following websites:

OPWDD's Procurement Opportunities:

<https://opwdd.ny.gov/procurement-opportunities>

New York State Contract Reporter website:

<https://www.nyscr.ny.gov/contracts.cfm>

## **EXHIBIT V: Consultant Disclosure Reporting Requirements**

The Consultant Disclosure Reporting Requirements and Forms are provided with the mailing of this RFP as a separate attachment (Exhibit V)

and is also posted on the following websites:

OPWDD's Procurement Opportunities:

<https://opwdd.ny.gov/procurement-opportunities>

New York State Contract Reporter website:

<https://www.nyscr.ny.gov/contracts.cfm>