

SECTION II: PROCUREMENT PROTOCOL AND PROCESS**A. RULES GOVERNING CONDUCT OF COMPETITIVE PROCUREMENT PROCESS****Amended 8-5-10****1. Timeline/Key Events**

The following estimated timeline will be in effect for this RFP:

RFP Release Date	June 30, 2010
Attachment 1 Procurement Lobbying Offeror's Affirmation of Understanding & Agreement Due Date	*
Questions Due Date	July 14, 2010 5:00 p.m. ET
Release Date of Official Responses to Questions	July 22, 2010
Attachment 2 Notice of Bidding Intention Due Date	August 4, 2010
Proposals Due Date	September 8, 2010 3:00 p.m. ET
Anticipated Contract Start Date	**

* Prior to the Offeror's initial contact with the Department, the Offeror must complete and submit Attachment 1 Procurement Lobbying Offeror's Affirmation of Understanding & Agreement to the DSS Procurement Manager.

** Upon approval of the Agreement resultant from this RFP by the NYS Office of the State Comptroller, the Contract Start Date is anticipated to be on or about January 1, 2011.

2. Procurement Lobbying Limitations

- a. Pursuant to State Finance Law §139-j and §139-k, this Procurement imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the Procurement's "Restricted Period" (from the issuance of this RFP until the date of the Contract's final approval by the OSC) to other than designated staff of the Department and the Executive Branch of New York State government, unless the contact falls within certain statutory exceptions ("permissible contacts"). For purposes of this Section II.A.2 of the RFP, "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids (i.e., Proposals) in response to the solicitation document (i.e., RFP or Procurement). Staff is required to obtain certain information from Offerors and others whenever there is a contact about the Procurement during the Restricted Period, and is required to make a determination of the Offeror's responsibility that addresses the Offeror's compliance with the statutes' requirements. Findings of non-responsibility result in rejection for contract award, and if an entity is subject to two non-responsibility

findings within four years the entity also will be determined ineligible to submit a proposal on or be awarded a contract for four years from the date of the second non-responsibility finding. The Department's policy and procedures are attached as **Appendix D "Procurement Lobbying Policy: Restrictions on Contacts During the Procurement Process"** to this RFP. Further information about these requirements can also be found at:

www.ogs.state.ny.us/aboutOGS/regulations/defaultAdvisoryCouncil.html.

- b. In order to ensure public confidence and integrity in the procurement process, the Department will strictly control all communications between any Offeror and participants in the evaluation process from the date the RFP is released until the Contract is approved by OSC. All contacts and inquiries concerning the Procurement must be directed solely to the DSS Procurement Manager, the Department's designated contact for this Procurement. An Offeror's failure to comply with this requirement may result in the Offeror's disqualification from this Procurement.

DSS Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239
Fax: 518-402-2835
E-mail: 2010DSSRFP@cs.state.ny.us

Additionally, prospective Offerors and Offerors are strictly prohibited from making any contacts or inquiries concerning the Procurement with any member, officer or employee of any State governmental entity other than the Department from the date the RFP is released until the Contract is approved by OSC, subject only to the specific exceptions listed below. Further, any prospective Offeror or Offeror shall not attempt to influence this Procurement in any manner that would result in a violation or an attempted violation of Public Officers Law §73(5) or §74.

- c. The following contacts are exempted from the provisions of this section:

(1) The submission of written Proposals in response to this RFP;

- (2) The submission of written questions as set forth in this RFP when all written questions and responses are to be distributed to all prospective Offerors who have expressed an interest in the Procurement;
- (3) Participation in the Pre-Proposal Conference as provided for in this RFP;
- (4) A complaint by a prospective Offeror or an Offeror regarding the failure of the DSS Procurement Manager to respond to an authorized contact, when such complaint is made in writing to the Department's Office of the General Counsel, provided that any such written complaint shall become a part of the procurement record;
- (5) Communications by the selected Offeror who has been tentatively awarded a contract and is engaged in communications with the Department solely for the purpose of negotiating the terms of the agreement after having been notified of the tentative award;
- (6) Contact by an Offeror to request a review of a proposed award when done in accordance with the procedure specified in the RFP;
- (7)
 - (a) Contacts by an Offeror in protests, appeals or other review proceedings (including the apparent selected Offeror and its representatives) before the Department seeking a final administrative determination, or in a subsequent judicial proceeding; or
 - (b) Complaints of alleged improper conduct in the Procurement when such complaints are made to the State Attorney General, Inspector General, District Attorney, or to a court of competent jurisdiction; or
 - (c) Written protests, appeals or complaints to OSC office during the process of contract approval, where the approval of the OSC is required by law, and where

such communications and any responses thereto are made in writing and shall be entered in the procurement record pursuant to State Finance Law §163.

- d. It is ***mandatory*** that all prospective Offerors/offerors complete **Attachment 1 “Procurement Lobbying Offeror’s Affirmation of Understanding & Agreement”**, affirming their understanding of and agreement to comply with the procurement lobbying requirements set forth in State Finance Law §139-k and §139-j. A completed **Attachment 1** must be submitted to the DSS Procurement Manager **prior to a prospective Offeror making its initial contact with the Department** (e.g., attendance at the Pre-Proposal Conference, submission of questions, etc.) or concurrent with an Offeror’s submission of its Proposal, whichever shall occur first.

Additionally, at the time a Proposal is submitted to the Department, the Offeror is required to provide a completed **“Certification of Compliance Pursuant to State Finance Law §139-k”** form (see **Exhibit L**) in its Administrative Proposal.

3. Notice of Bidding Intention Deadline

Filing of this notice is **not** mandatory; however, to assist the Department in better managing the procurement process, prospective Offerors, whether they intend to submit a Proposal in response to this RFP or not, are requested to complete **Attachment 2 “Notice of Bidding Intention Form”** and submit it to the DSS Procurement Manager by the Notice of Bidding Intention Due Date as set forth in Section II.A.1. The completed form may be submitted either in hardcopy, at the address provided in Section II.A.2.b, or electronically at: 2010DSSRFP@cs.state.ny.us or in both formats.

4. Pre-Proposal Conference

There will be no Pre-Proposal Conference held for this RFP.

5. Submission of Errors or Omissions in the RFP Document

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, prospective Offerors and Offerors agree to be bound by its terms, including, but not limited to, this process by which a prospective Offeror may submit errors or omissions for consideration. In the event that a prospective Offeror believes there is an error or omission in the RFP, the prospective Offeror may raise such issue according to the following provisions:

a. Process for Submitting Assertions of Errors or Omissions in RFP Document

- (1) **Time Frame:** Assertions of errors or omissions in the procurement process which are or should have been apparent prior to the Proposal Due Date must be received by the Department, in writing, five (5) Business Days after the Release Date of Official Responses to Questions specified in Section II.A.1.
- (2) **Content:** The submission alleging the error or omission must clearly and fully state the legal and/or factual grounds for the assertion and must include all relevant documentation
- (3) **Format of Submission:** All submissions asserting an error or omission must be in writing and submitted to the DSS Procurement Manager at the following address:

DSS Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

The envelope or package must clearly and prominently display the following statement:

"Submission of Errors or Omissions for the New York State Health Insurance Program Decision Support System Request for Proposal"

Any assertion of an error or omission which does not conform to the requirements set forth in this section shall be deemed waived by the prospective Offeror and the prospective Offeror shall have no further recourse.

b. The Review Process for Assertions of Errors or Omissions in RFP Document

The Department shall conduct the review process for submission of errors or omissions. The Commissioner may appoint a designee who will review the submission and make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the prospective Offeror may be given the opportunity to meet with the Commissioner or his designee, as the case may be, to support its submission. The prospective Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) Business Days after the close of the review process. If additional time for the issuance of the decision is necessary, the prospective Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

The Department reserves the right to determine and to act in the best interests of the State in resolving any assertion of error or omission in the RFP document. As a consequence of reviewing the assertion, the Department may elect to extend the Proposal Due Date as may be appropriate. Notice of any such extension will be provided to all organizations who registered via mail, facsimile or e-mail and those prospective Offerors who attended the pre-proposal conference. Notice of any extension will also be posted to:

www.cs.state.ny.us/2010DSSRFP/index.cfm.

6. Submission of Questions

In the event a prospective Offeror has any substantive or procedural questions concerning the content of the RFP document, those questions can be submitted in the following manner to:

DSS Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239
Fax: 518-402-2835
E-Mail: 2010DSSRFP@cs.state.ny.us

Prospective Offerors may submit questions to the DSS Procurement Manager, in writing, via e-mail, facsimile or mail, prior to the date of the Pre-Proposal Conference. The Department strongly urges prospective Offerors to submit the questions via e-mail. Written and oral questions also may be submitted at the Pre-Proposal Conference. Each question must cite the particular RFP section, page number and paragraph number to which it refers. Responses to some questions may be deferred until after the conference. All responses will be considered unofficial until issued or confirmed in writing by the Department on the procurement website.

Only those questions received prior to 5:00 p.m. Eastern Time (ET), on the Questions Due Date as shown in Section II.A.1. of this RFP, will be accepted.

To expedite its responses, the Department has provided a question template form which prospective Offerors are requested to use in submitting questions regarding the RFP (see RFP, **Attachment 3 - "Question Template"**).

After the Questions Due Date, the Department will post the Department's Official Responses to all of the questions received. The information will be posted to:

www.cs.state.ny.us/2010DSSRFP/index.cfm

All registered prospective Offerors will be notified of the posting to the website. In responses to questions, the Department will not provide information about processes or information proprietary to any prospective Offeror.

7. Submission of Proposal

a. Submission Requirements

The Offeror's Proposal must be organized in three (3) separate parts: Administrative Proposal; Technical Proposal, and Cost Proposal. To facilitate the evaluation process, Offerors must submit twelve (12) separately bound hard copies (two (2) ORIGINALS and ten (10) copies) and one (1) electronic copy (CD) **of each of the three (3) parts** of the Offeror's Proposal. Electronic submissions must be in Adobe Acrobat, as applicable. These thirty-six (36) documents and three (3) disks are collectively hereafter referred to as "Submissions."

Each ORIGINAL hard copy of each part must be marked "ORIGINAL" and contain original signatures of an official(s) authorized to bind the Offeror to its provisions on all forms submitted that require the Offeror's signature and should be numbered sequentially, i.e. ORIGINAL #1, ORIGINAL #2. The remaining ten (10) hard copies of each part may contain a copy of the official's signature and should be numbered sequentially (e.g. Copy #1, Copy #2, etc). Please note that, for each of the three (3) parts, that hard copy marked "ORIGINAL #1" will be deemed controlling by the Department when viewing the Proposal.

Proposals should be placed and packaged in sealed boxes/envelopes with a label on the outside containing the information below.

**New York State Department of Civil Service
Request for Proposals
"New York State Health Insurance Program
Decision Support System"**

**OFFEROR NAME
OFFEROR ADDRESS**

Indicate content, as applicable:
ADMINISTRATIVE, TECHNICAL or COST PROPOSAL

There must be no cost information included in the Offeror's Administrative Proposal or Technical Proposal.

All Proposals must be mailed or hand-delivered to:

DSS Procurement Manager
ATTN: Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

For those Offerors who plan to have the Proposal hand delivered to the Department, arrangements for acceptance of the package must be made in accordance with Department security procedures. **To make such arrangements, the Department requests that the Offeror notify the DSS Procurement Manager forty-eight (48) hours prior to delivery.**

All Proposals must be received by 3:00 p.m. ET on the Proposal Due Date as set forth in Section II. A.1 of the RFP. No exceptions will be made for late submission or delays in delivery of the Proposal. If the Proposal is delivered by mail or courier, the Department recommends that it be sent "return receipt requested," so the Offeror obtains proof of timely delivery.

All Proposals submitted become the property of the Department. Any proposal received after 3:00 p.m. ET on the Proposal Due Date will not be deemed accepted by the Department and may be returned to the submitting entity at the Department's discretion.

The Department will accept amendments and/or additions to an Offeror's Proposal if the request is received by the Department prior to 3:00 p.m. ET on the Proposal Due Date. Such a request must be submitted in writing, in accordance with the format set forth in Section II.A.7.b(5) of this RFP, and will be included as part of the Offeror's Proposal, if accepted by the Department as provided above.

Offerors are cautioned to verify the content of their Proposal before submission. Except for material received from an Offeror in response to a request by the Department, the Department will not accept amendments or additions to a Proposal if such material is received after 3:00 p.m. ET on the Proposal Due Date. Offerors are encouraged to complete and submit **Exhibit C “Proposal Submission Requirements Checklist”** in its Administrative Proposal submission to facilitate verification of Proposal contents. An Offeror's request to withdraw a Proposal after the Proposal Due Date may be considered at the sole discretion of the Department.

b. Formatting Requirements

The Administrative Proposal, Technical Proposal and Cost Proposal each must comply with the following formatting requirements:

- (1) ***Binding of Proposal:*** The Administrative, Technical and Cost Proposals must be separately bound. The official name of the organization(s) and “New York State Health Insurance Program Decision Support System” must appear on the outside front cover of each copy of the Offeror's Administrative, Technical and Cost Proposal. If the Proposals are submitted in loose-leaf binders, the official name(s) of the organization(s) and “New York State Health Insurance Program Decision Support System” also must appear on the spine of the binders;
- (2) ***Table of Contents:*** Each Proposal must include a table of contents;
- (3) ***Index Tabs:*** Each major Section of the Proposal and each Exhibit must be labeled with an index tab that completely identifies the title of the Section or Exhibit as named in the table of contents;
- (4) ***Pagination:*** Each page of the Proposal, including Exhibits, must be labeled on the upper right with the Section title and Section reference, page number, and date. Pages within each Section and Exhibit must be numbered consecutively;

- (5) ***Proposal Updates/Corrections:*** Each Offeror must submit its Proposal so that any update pages required by the Department can be easily incorporated into the Proposal. Should it be necessary for an Offeror to submit additional information in support of its Proposal, it must be submitted in accordance with the following: upon written notification by the Offeror and agreement by the Department, new or replacement pages may be placed in the Proposal. All new or replacement pages will show the date of the revision and indicate the portion of the page being changed. This latter requirement will be fulfilled by drawing vertical lines down both margins of all affected passages. All new/ replacement pages will be noted by the Department on the errata sheet to be placed at the front of the Proposal copy; and,
- (6) ***Required Content of Proposals:*** The Proposal shall consist of three parts: 1) the Administrative Proposal, which must respond to the requirements set forth in Section III of this RFP; 2) the Technical Proposal, which must respond to the requirements set forth in Section IV of this RFP; and 3) the Cost Proposal, which must respond to the requirements set forth in Section V of this RFP.

8. Notification of Award

A proposed award notification letter will be sent to the selected Offeror indicating a conditional award subject to successful contract negotiations. The remaining Offerors will be notified of the conditional award and the possibility that failed negotiations could result in an alternative award. At that time, Offerors will be advised of the opportunity for a debriefing by the Department of the evaluation of that Offeror's Proposal. No public discussion or news releases relating to this RFP or the Contract shall be made by any Offeror or their agent without the prior approval of the Department.

9. Submission of Award Protests

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, all Offerors agree to be bound by its terms including, but not limited to, the process by which an Offeror may submit protests of the selection award for consideration. In the event that an Offeror decides to protest the selection decision, the Offeror may raise such issue according to the following provisions.

a. Process for Submitting Post Award Protests of the Selection Decision

- (1) **Time Frame:** Any protest of the selection decision must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of a conditional award.
- (2) **Content:** The submission of the protest must clearly and fully state the legal and/or factual grounds for the protest and must include all relevant documentation.
- (3) **Format of Submission:** All submissions of protest must be in writing and submitted to the DSS Procurement Manager at the following address:

DSS Procurement Manager
ATTN: Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

A protest of the selection decision must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Selection Protest for the
New York State Health Insurance Program
Decision Support System”**

Any assertion of protest which does not conform to the requirements set forth in this section shall be deemed waived by the Offeror, and the Offeror shall have no further recourse.

b. The Review Process for Submission of Protests

The Department shall conduct the review process of submitted protests. The Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the

opportunity to meet with the Commissioner or his designee, as the case may be, to support its submission. The Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner, or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) Business Days after the close of the review process. If additional time for the issuance of the decision is necessary, the Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

In the event that an Offeror protests the selection decision, the Department shall continue working with the selected Offeror pending the outcome of the protest. Any Offeror who's Proposal might become eligible for a conditional award in the event that the intended selection is disqualified may be asked to extend the time for which their Proposal shall remain valid.

The Department reserves the right to determine and to act in the best interests of the State in resolving any post award selection protest.

10. Department of Civil Service Reservation of Rights

In addition to any rights articulated elsewhere in this RFP, the Department reserves the right to:

- a. Make the award under the RFP in whole or in part;
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of the RFP, notification of the amendment will be provided to all organizations who submitted a Notice of Bidding Intention Form (**Attachment 2**) via e-mail, facsimile or mail. Any amendments will also be posted to:
www.cs.state.ny.us/2010DSSRFP/index.cfm.
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments;

- d. Withdraw the RFP, at any time, in whole or in part, at its sole discretion;
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any mandatory requirements of the RFP;
- g. Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an Offeror's Proposal and/or to determine an Offeror's compliance with the requirements of this RFP;
- h. Reject any or all Proposals received in response to this RFP, at its sole discretion;
- i. Change any of the scheduled dates stated in this RFP;
- j. Seek clarifications and revisions of Proposals;
- k. Establish programmatic and legal requirements to meet the Department's needs, and to modify, correct, and/or clarify such requirements at any time during the Procurement, provided that any such modifications would not materially benefit or disadvantage any particular Offeror;
- l. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Offerors;
- m. For the purposes of ensuring completeness and comparability of the Proposals, analyze submissions and make adjustments or normalize submissions in the Proposal(s), including the Offeror's technical assumptions, and underlying calculations and assumptions used to support the Offeror's computation of costs, or to apply such other methods it deems necessary to make level comparisons across Proposals;
- n. Use the Proposal, information obtained through any site visits, management interviews, and the Department's own investigation of an Offeror's qualifications, experience, ability

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- or financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information in the course of evaluation and selection under this RFP;
- o. Negotiate with the successful bidder within the scope of the RFP in the best interests of the State;
 - p. Utilize any and all ideas submitted in the Proposal(s) received;
 - q. Set aside the original selected Offeror if it is subsequently determined by the Department that the Offeror is non-responsive or not responsible. The Department may then invite the Offeror with the next Highest Combined Total Score to enter into negotiations for purposes of executing an agreement;
 - r. Set aside the conditional award to the selected Offeror should the Department be unsuccessful in negotiating an agreement with that Offeror within a time frame acceptable to the Department; such time frame is to be determined solely by the Department based on the best interest of the Department and the State. If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may then invite the Offeror with the next Highest Combined Total Score to enter into negotiations for purposes of executing an agreement.

11. Limitation of Liability

The Department is not liable for any cost incurred by any Offeror prior to approval by OSC of the Contract. Additionally, no cost will be incurred by the Department for any prospective Offeror or Offeror's participation in any procurement related activities.

The Department has taken care in preparing the data accompanying this RFP (hard copy Exhibits, website Exhibits, and those contained on CD) and sample document exhibits. However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in (hardcopy Exhibits, website Exhibits, and those contained on CD) and sample document exhibits referenced throughout this RFP are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future

performance or participation. Accordingly, prospective Offerors should rely upon and use such numbers or statistics in preparing their Proposals at their own discretion.

B. COMPLIANCE WITH APPLICABLE RULES, LAWS, REGULATIONS & EXECUTIVE ORDERS

This Procurement is governed by the legal authorities referenced below. All Offerors must fully comply with the provisions set forth in this Section II.B of the RFP. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provision whose Proposal contain the Statements, Formal Certifications and Exhibits submissions required hereunder.

1. Public Officers Law

All Offerors and Offerors' employees and agents must be aware of and comply with the requirements of the New York State Public Officers Law ("POL"), particularly POL Sections 73 and 74, as well as all other provisions of New York State law, rules and regulations, and policy establishing ethical standards for current and former State employees. In signing its Proposal, each Offeror guarantees knowledge and full compliance with such provisions for purposes of this RFP and any other activities including, but not limited to, contracts, bids, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the procurement process, termination, suspension or cancellation of the Contract, and criminal proceedings as may be required by law.

Offerors must submit an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed contracts, engagements, or affiliations, by submitting a completed **Exhibit I “Compliance with Public Officers Law Requirements”** in the Offeror’s Administrative Proposal.

2. Omnibus Procurement Act

Offerors are hereby notified that, if their principal place of business is located in a foreign or domestic jurisdiction that penalizes New York State vendors, and if the goods or services they offer would be produced or performed substantially outside New York State, the Omnibus Procurement

Act of 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain.

A current list of jurisdictions subject to this provision is available from the NYS Department of Economic Development, or on-line at www.nyscr.com/pub_omnibus.aspx.

A completed **Exhibit K “Omnibus Procurement Act Statement of Acceptance”** form must be submitted in the Offeror’s Administrative Proposal.

3. **Minority and Women-Owned Business Enterprises (MWBE) Act and Federal Equal Employment Opportunities Act (EEO)**

a. General Obligations

The State of New York and the Department actively support and encourage the participation of certified minority and women-owned business enterprises and equal employment opportunities for minorities and women on State contracts. The Contract will contain provisions regarding the participation of MWBEs in the performance of the Contract. Those provisions are set forth below. Generally, the provisions state the Contractor's obligations under Article 15-A of the Executive Law and its implementing regulations, including clauses dealing with equal employment opportunities, organized labor cooperation and advertisements for employees.

b. Minority and Women-Owned Business Enterprises (MWBEs)

The Department has established a zero percent (0%) goal for the participation of the Minority-Owned Business Enterprises and a zero percent (0%) goal for the participation of Women-Owned Business Enterprises in the performance of services under the Contract. The Offeror is encouraged to use its best efforts to solicit and obtain the participation of MBE’s and WBEs on the Contract. In furtherance of this goal, Offerors shall submit **Exhibit M “Article 15-A of the Executive Law”** in the Offeror’s Administrative Section.

c. Equal Employment Opportunity Obligations

The Offeror shall undertake or continue existing programs of affirmative action 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, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotions, upgradings, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation.

The Offeror's EEO Policy Requirements under this RFP shall contain, but not necessarily be limited to, the following:

- (1) The Offeror must demonstrate its compliance with the Equal Employment Opportunity (EEO) Act by affirming to the Department that the Offeror's EEO Policy Statement contains, at a minimum, language consistent with the provisions set forth in **Exhibit F "Equal Employment Opportunity (EEO) Obligations – Offeror Certification of Compliance"**. During the performance of the Contract, the Contractor shall agree to comply with such EEO Policy Statement. The Offeror's EEO Policy Statement shall contain, but not necessarily be limited to, the services under the Contract. However, the Offeror is encouraged to use its best efforts to solicit and obtain the participation of MWBEs on the Contract. Offerors must affirm their ability to comply with this requirement by submitting a completed **Exhibit F** in the Offeror's Administrative Proposal.
- (2) As part of its Administrative Proposal, the Offeror shall submit a completed **Exhibit G "Workforce Employment Utilization Report"** to be utilized on the Contract or, where required, information on the Offeror's total workforce, including apprentices, broken down by specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories specified by the Department.
- (3) On a periodic schedule to be provided by the Department, the Contractor shall submit to the Department a workforce utilization report, on a form to be supplied by the Department, of the workforce actually utilized on the Agreement, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the Department.
- (4) The Offeror shall include in every subcontract in connection with the Contract, if any, the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and, when requested, provide to the

Contractor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on the Contract.

4. **Americans with Disabilities Act**

The Contractor will be required to assure its compliance with the Americans With Disabilities Act (42 USC§12101 et. seq.), in that any services and programs provided during the course of performance of the Contract shall be accessible under Title II of the Americans With Disabilities Act, and as otherwise may be required under the Americans With Disabilities Act by submitting a completed **Exhibit J “Compliance with Americans with Disabilities Act”** form in the Offeror’s Administrative Proposal.

5. **MacBride Fair Employment Principles Act & Non-Collusive Bidding Certification**

In accordance with Chapter 807 of the Laws of 1992, Offerors must certify whether they or any individual or legal entity in which the Offeror holds a ten percent (10%) or greater ownership interest, or any individual or legal entity that holds a ten percent (10%) or greater ownership in the Offeror have business operations in Northern Ireland. If an Offeror does have business operations in Northern Ireland, they must certify that they are taking lawful steps in good faith to conduct such business operations in accordance with the MacBride Fair Employment Opportunity Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such principles.

The Department also requires that Offerors certify that prices in their Proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition with any other Offeror or competitor. In addition, that unless required by law, the prices quoted in the Offeror’s Proposal have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly, indirectly, to any other Offeror or to any competitor. Offerors must also certify that no attempt has been made or will be made by the Offeror to induce any person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition. An executed copy of **Exhibit E “MacBride Statement and Non-Collusive Bidding Certification”** form is required to be submitted in the Offeror’s Administrative Proposal.

6. Vendor Responsibility Requirements – State Finance Law §163

New York State Finance Law §163 requires contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible Offeror.” Furthermore, §163(9)f requires the Department to make a determination of responsibility of the proposed contractor prior to making an award.

“Responsibility” encompasses factors including, but not limited to, financial ability to complete the contract, accountability, reliability, skill, sufficiency of capital resources, judgment, integrity, and “moral worth.” *Does the Offeror possess the integrity to perform the contract?* Factors to be considered may include, but not be limited to, criminal indictments, criminal convictions, civil fines and injunctions imposed by governmental agencies, anti-trust and any other investigations, ethical violations, tax delinquencies, debarment by the Federal government, or prior determinations of integrity-related non-responsibility of the Offeror. In addition, any litigation, investigation or subpoena in which the Offeror is presently involved in regardless of the venue or whether or not the State of New York is a party, which may materially affect the Offeror’s ability to effectively perform, and any present litigation concerning a contract for services similar to that as set forth in this RFP may be considered in this determination. *Has the Offeror performed at acceptable levels on other governmental contracts?* Factors to be considered include, but not limited to, reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc. *Is the Offeror legally capable of performing the contract?* Factors to be considered include, but not limited to, authority to do business in New York State (under the Business Corporation Law or Not-For-Profit Corporation Law), licensing (i.e., with the Education Department or Department of State), debarment by the State Labor Department due to a prevailing wage violation, etc. *Is the contractor financially and organizationally capable of performing the contract?* Factors to be considered include, but not limited to, assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, existence of appropriate accounting and auditing procedures for control of property and funds, etc.

To assist the Department in evaluating the responsibility of Offerors, a completed **Exhibit H “New York State Vendor Responsibility Questionnaire”** must be submitted in the Offeror’s

Administrative Proposal. A person legally authorized to represent the Offeror must execute the questionnaire. To the extent that the Contractor is proposing the use of “key subcontractors” (i.e., part of the Offeror’s proposed Project Team), the Offeror must submit a completed **Exhibit H** for each key subcontractor completed by a person legally authorized to represent the subcontractor.

Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at: www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

7. Tax Law Section 5-a Certification Regarding Sales and Compensating Use Taxes

Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State agency shall not be valid, effective, or binding against the agency unless the Contractor certifies to the Tax Department that it is registered to collect New York State and local sales and compensating use taxes, if the contractor 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, measured over a specified period. In addition, the contractor must certify to the Tax Department that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, “affiliate” means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The contractor also must certify to the procuring state entity that it filed the certification with the Tax Department and that the certification is correct and complete. Accordingly, in the event the value of the Contract exceeds \$100,000, the Contractor must file a properly completed **Appendix E “Form ST-220-CA”** with the Department and a properly completed **Appendix F “Form ST-220-TD”** with the Department of Taxation & Finance before the Contract may take effect. In addition, after the Contract has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Contract’s term is renewed. Further, a

new Form ST-220-TD must be filed with the Department of Taxation & Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete.

Submission of these forms (ST-220CA and ST-220TD) is **not** required at time of Proposal submission however, the selected Offeror will be required to complete and submit these forms as a condition of contract award. These forms may also be found at:

www.tax.state.ny.us/forms/sales_cur_forms.htm#Other%20Sales%20Tax%20Forms

8. Consultant Disclosure Requirements

Chapter 10 of the Laws of 2006 requires State contractors 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 those employees. This includes information on any persons working under any subcontracts with the Contractor. The law defines contracts for consulting services to include 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. For further information about this requirement, please refer to OSC Bulletin No. G-226 (Issued 6/19/2006). This Bulletin can be found at: <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>

The Contractor will be required to provide a completed **Appendix G “State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term – Form A”**(hereinafter “Form A”) at the time the Contract is executed. The completed form must include information for all employees providing such services 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.

Further, the Contractor will be required to report annually to the Department and to OSC the employment information described above, including work performed by subcontractors. The Contractor shall submit a completed **Appendix H “State Consultant Services - Contractor’s**

Annual Employment Report – Form B” (hereinafter “Form B”) for each State Fiscal Year during the term of the Contract. During the term of the Contract, such report shall be due no later than May 15 of each year following the end of the State Fiscal Year being reported.

9. Disclosure of Proposal Contents – Freedom of Information Law (FOIL)

All materials submitted by an Offeror in response to this RFP shall become the property of the Department and may be returned to the Offeror at the sole discretion of the Department. Proposals may be reviewed or evaluated by any person, other than one associated with a competing Offeror, designated by the Department. Offerors may anticipate that Proposals will be evaluated by staff and consultants retained by the Department and may also be evaluated by staff of other State agencies interested in the provision of the subject services including, but not limited to, the Division of the Budget, unless otherwise expressly indicated in this RFP. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this RFP.

To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding the New York State Freedom of Information Law (FOIL). If an Offeror believes that any information in its Proposal or subsequent communication constitutes proprietary and/or trade secret information and desires that such information not be disclosed if requested pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing **Exhibit D “Freedom of Information Law – Request for Redaction Chart.”** The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of Exhibit D contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, summary allegations that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

Note: Offerors are advised that **Exhibit D**, as a part of the Offeror’s Proposal, is subject to disclosure under FOIL. Offerors should also highlight any parts of **Exhibit D** which the Offeror wishes to protect from FOIL disclosure.

The completed **Exhibit D** must be submitted in the Offeror's Administrative Proposal. In addition, at the time of Proposal submission, the Offeror must submit a hard copy and one consolidated file of their entire proposal on CD in Adobe Acrobat noting the specific portions of each item requested to be protected from FOIL disclosure by highlighting in yellow such sections in a manner such that the material remains visible. No security should be applied to the consolidated Adobe Acrobat file. The hardcopy shall be separately bound and clearly labeled "Requested Redactions." These materials will not be considered part of the Offeror's Proposal and will not be reviewed as a part of the Procurement's evaluation process.

If, after the Proposal Due Date, the Offeror makes any submissions during the procurement process that it wishes to protect from FOIL disclosure, the Offeror must submit such submissions with a completed **Exhibit D** in hardcopy and on a CD in Adobe Acrobat noting the specific portions of each item requested to be protected from FOIL disclosure by highlighting in yellow such sections in a manner such that the material remains visible. These FOIL-related materials will not be considered part of the Offeror's proposal and will not be reviewed as a part of the procurement's evaluation process.

Upon completion of the procurement process, a copy of the redacted contract and a copy of each Offeror's proposal with approved redactions permanently blacked out will be posted to the procurement website.

If the Offeror chooses not to assert that any proposal material or subsequent correspondence should be protected from FOIL disclosure, the Offeror must so advise the Department by checking the applicable box on **Exhibit D** and including the completed form in the Offeror's Administrative Proposal. You must however provide the Department with a CD in Adobe Acrobat with one consolidated file of the entire Proposal.

In the event any material is requested pursuant to FOIL, the Department will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

10. Workers' Compensation Law

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Department shall not enter into any contract unless proof of workers' compensation and disability

benefits insurance coverage is produced. Prior to entering into a contract with the Department, the selected Offerors will be required to verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed in **Appendix V** – Compliance with NYS Workers' Compensation Law. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at 518-486-6307. You may also find useful information at their website <http://www.wcb.state.ny.us/>.

Failure to provide verification of either of these types of insurance coverage by the time the winning Offeror is selected and the Contract is ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

Submission of the insurance verification information is **not** required at the time of submission; however, the Department would prefer the Offeror submit this insurance verification information with the Administrative Section, if possible.