

SECTION II: PROCUREMENT PROTOCOL AND PROCESS**A. Rules Governing Conduct of Competitive Procurement Process****1. Timeline/Key Events**

RFP Release Date	March 1, 2011
Procurement Lobby Offeror's Affirmation of Understanding & Agreement Due Date (Exhibit I.K)	see * below
Pre-Proposal Conference	March 15, 2011
Questions Due Date	March 22, 2011 5:00 p.m. ET
Release Date of Official Responses to Questions	March 29, 2011
Notice of Bidding Intention Due Date (Exhibit I.J)	April 19, 2011
Proposals Due Date	April 26, 2011, 3:00 p.m. ET
Anticipated Contract Start Date	Upon OSC approval of the Agreement with Program fully implemented by January 1, 2012.

* Prior to the Offeror's initial contact with the Department, the Offeror must complete and submit Exhibit I.K Procurement Lobbying Offeror's Affirmation of Understanding & Agreement to the Vision Plan Services Procurement Manager.

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 Agreement's final approval by the NYS Office of the State Comptroller (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 included as **Exhibit I.L, "Procurement Lobbying Policy: Restrictions on Contacts During the Procurement Process"** to this RFP. Further information about these requirements can 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 Agreement is approved by OSC. All contacts and inquiries concerning the Procurement must be directed solely to the Vision Plan Services 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.

Vision Plan Services 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: 2012VisionPlanRFP@cs.state.ny.us

Additionally, prospective 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 Agreement is approved by OSC, subject only to the specific exceptions listed below. Further, any prospective 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;
 - (3) A complaint by a prospective Offeror regarding the failure of the Vision Plan Services 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;
 - (4) 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;
 - (5) Contact by an Offeror to request a review of a proposed award when done in accordance with the procedure specified in the RFP;
 - (6) (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 the 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 complete **Exhibit I.K, "Procurement Lobbying Offeror's Affirmation of Understanding and 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 **Exhibit I.K** must be

submitted to the Vision Plan Services 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. This certification is included as **Exhibit I.P** of this RFP.

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 a “**Notice of Bidding Intention Form**” (**Exhibit I.J**) and submit it to the Vision Plan Services Procurement Manager by the Notice of Bidding Intention Deadline 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: 2012VisionPlanRFP@cs.state.ny.us.

4. Pre-Proposal Conference

A Pre-Proposal Conference will be held on March 15, 2011, in Room 354 of the Alfred E. Smith Office Building, Albany, NY, at 10:00 a.m. Attendance is **not** mandatory; but is strongly recommended as prospective Offerors will be afforded the opportunity to ask questions concerning the Procurement at the conference.

Prospective Offerors are asked to submit substantive or procedural questions concerning the content of the RFP, bid proposals or the procurement process in writing, by mail, facsimile or email, to the Vision Plan Services Procurement Manager, in accordance with the requirements of RFP, Section II.A.6., at least five days prior to the Pre-Proposal, if practical. Questions may also be raised at the Pre-Proposal Conference and up to the Question Due Date deadline for submission of Offerors' questions set forth in RFP, Section II.A.1. Any oral responses given by the Department at the Pre-Proposal Conference are unofficial and should not be relied upon in the preparation of Proposals. The Department reserves the right to change any oral response

previously given by the Department at the Pre-Proposal Conference in the official written response (See RFP, Section II.A.6.).

Each Offeror is requested to send no more than three (3) representatives to the conference. If your organization plans to attend the Pre-Proposal Conference, please notify the Vision Plan Services Procurement Manager via facsimile or e-mail at the address noted in Section II.A.2.b. at least five (5) business days before the conference with the name and affiliation of each person attending. Please be advised that due to security requirements, all visitors must be registered in the Alfred E. Smith Building's Visitors' Management System in advance of the meeting date. On the date of the conference, visitors may be required to present photo identification. Prospective Offerors are advised to allow sufficient time to go through security.

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 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 Vision Plan Services Procurement Manager at the following address:

Vision Plan Services 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
NYS Vision Plan Services
Request for Proposals"**

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 the Commissioner's 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. Notice of any extension will also be posted to: www.cs.state.ny.us/2012VisionPlanRFP/index.cfm.

6. Submission of Questions

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

Vision Plan Services 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: 2012VisionPlanRFP@cs.state.ny.us

Prospective Offerors may submit questions to the Vision Plan Services Procurement Manager, in writing, via e-mail, facsimile or mail up until the Question Due Date deadline as set forth in RFP, Section II.A.1. The Department strongly urges prospective Offerors to submit the questions via e-mail. Each question must cite the particular RFP section, page number and paragraph number to which it refers. Only those responses provided in writing by the Department as posted on the procurement website at:

www.cs.state.ny.us/2012VisionPlanRFP/index.cfm shall be considered official responses.

Those written responses as posted on the procurement website (Official Responses) are the official record for the Procurement. 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, [Exhibit I.R] "Question Template").

After the Questions Due Date, the Department will provide to all organizations who have registered, e-mail notification of the posting of all questions received and the Department's Official Responses to said questions. Said information will be posted to: www.cs.state.ny.us/2012VisionPlanRFP/index.cfm and all registered potential Offerors will be notified of the posting to this site. In response 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 and separated into 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) CDs are collectively hereafter referred to as "Submissions."

Each ORIGINAL hard copy of each part must be marked "ORIGINAL," 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 Vision Plan Services”**

**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:

Vision Plan Services 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 their 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 Vision Plan Services 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 accepted by the Department and may be returned to the submitting entity at the Department's discretion. Offeror assumes all risk of late delivery associated with the Submissions not being identified, packaged or labeled in accordance with the foregoing requirements. In the

event that the Offeror fails to provide such information on the cover of the sealed packages, the State reserves the right to open the package to determine its contents. Offeror shall have no claim against the State arising from such opening and such opening shall not affect the validity of the Procurement. Notwithstanding the State's right to open the package to ascertain the contents, Offeror assumes all risk of late delivery associated with the Proposal not being identified, packaged or labeled in accordance with the foregoing requirements.

The Department will accept amendments and/or additions to an Offeror's Proposal if received by the Department prior to 3:00 p.m. ET on the Proposal Due Date. Such amendments and/or additions must be submitted in writing, in accordance with the format set forth in Section II.A.7. 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 submit the Proposal Submission Checklist (**Exhibit I.A**) 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 "NYS Vision Plan Services" must appear on the outside front cover of each copy of the Offeror's Administrative, Technical and Cost Proposal. If the Submissions are submitted in loose-leaf binders, the official name(s) of the organization(s) and "NYS Vision Plan Services" also must appear on the spine of the binders;

- (2) **Table of Contents:** Each Submission must include a table of contents;

- (3) **Index Tabs:** Each major Section of the Submission 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 each Submission, including its Exhibits, must be labeled on the upper right with the Section or Exhibit title and Section or Exhibit reference, page number, and date. Pages within each Section and each Exhibit must be numbered consecutively;

- (5) **Proposal Updates/Corrections:** Each Offeror must submit its Administrative, Technical and Cost 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. No public discussion or news releases relating to this RFP or the Agreement shall be made by any Offeror or their agent without the prior approval of the Department.

9. **Debriefing**

A debriefing is available to any Offeror that submitted a proposal in response to this RFP. An Offeror will be accorded fair and equal treatment with respect to its opportunity for debriefing. Debriefing shall be requested in writing by the unsuccessful Offeror within ten (10) business days of the Department's letter to the unsuccessful Offerors that another vendor was selected. An unsuccessful Offeror's written request for a debriefing shall be submitted to:

Vision Plan Services 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: 2012VisionPlanRFP@cs.state.ny.us

The debriefing shall be scheduled within ten (10) business days of receipt of written request by the Department or as soon after that time as practicable under the circumstances.

10. **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 Vision Plan Services Procurement Manager at the following address:

Vision Plan Services 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
NYS Vision Plan Services”**

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 the Commissioner's 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 whose 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.

11. 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 specifications to correct errors or oversights, or to supply additional information, as it becomes available. 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 (**Exhibit I.J**) via e-mail, facsimile or mail. Any amendments will also be posted to:
www.cs.state.ny.us/2012VisionPlanRFP/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. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Offerors;
- l. 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;
- m. Use the Proposal, information obtained through any site visits, management interviews, and the Department's own investigation of an Offeror's qualifications, experience, ability 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;
- n. Negotiate with the successful bidder within the scope of the RFP in the best interests of the State;
- o. Utilize any and all ideas submitted in the Proposal(s) received;

- p. 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 Total Combined Score to enter into negotiations for purposes of executing an agreement;
- q. 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 Total Combined Score to enter into negotiations for purposes of executing an agreement.

12. Limitation of Liability

The Department is not liable for any cost incurred by any Offeror for any work performed prior to the execution of and approval by OSC of the Agreement. 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 sample document Exhibits referenced throughout this RFP). However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in such hardcopy Exhibits, website Exhibits, and sample document Exhibits. Such data; numbers and/or statistics 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 data, numbers and/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 provisions whose Proposal contains 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 Agreement 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.M** 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 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.org/pub_omnibus.aspx

A completed **Exhibit I.O** “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 Agreement 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 not established a goal for the participation of the Minority and Women-Owned Business Enterprises (MWBEs) in the performance of services under the Agreement. The Offeror is encouraged to use its best efforts to solicit and obtain the participation of MWBEs on the Agreement. A completed **Exhibit I.Q** entitled, “Article 15-A of the Executive Law” must be submitted as part of the Offeror’s Administrative Proposal.

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 I.G**. During the performance of the Agreement, 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 Agreement. Offerors must affirm their ability to comply with this requirement by submitting a completed EEO Obligations – Offeror Certification of Compliance form (**Exhibit I.G**) in the Offeror's Administrative Proposal.
- (2) As part of its Administrative Proposal, the Offeror shall submit a Workforce Employment Utilization Report (see **Exhibit I.H** to this RFP) to be utilized on the Agreement 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 Agreement, 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 Agreement.

4. Americans with Disabilities Act

The Offeror 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 Agreement 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 Compliance with Americans with Disabilities Act form (**Exhibit I.N**) 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 the combined MacBride Act statement form and Non-collusive Bidding Certification (**Exhibit I.D**) 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 Offeror prior to making an award.

To assist the Department in evaluating the responsibility of Offerors, a completed “**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 “New York State Vendor Responsibility Questionnaire” for each Key Subcontractor completed by a person legally authorized to represent the subcontractor.

The Department recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. However, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see VendRep System Instructions available at: http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at: <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Office of the State Comptroller’s Help Desk for a copy of the paper form. The paper form is also included in the RFP as **Exhibit I.I** “**New York State Vendor Responsibility Questionnaire.**”

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 Agreement exceeds \$100,000, the Contractor must file a properly completed Form ST-220-CA (**Exhibit I.E**) with the Department and a properly completed Form ST-220-TD (**Exhibit I.F**) with the Department of Taxation & Finance before the Agreement may take effect. In addition, after the Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Agreement’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. 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, GOER and DOB, 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 I.C “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 I.C 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 I.C, as a component part of the Offeror’s Proposal is subject to disclosure under FOIL. Offerors should also highlight any parts of Exhibit I.C which the Offeror wishes to protect from FOIL disclosure.

The completed **Exhibit I.C** must be submitted in the Offeror’s Administrative Proposal. In addition, at the time of Proposal submission the Offeror must submit both a hardcopy and an electronic copy (on CD in Adobe Acrobat format) of the complete Proposal noting the specific portions of each item requested to be protected from FOIL disclosure by highlighting in yellow (the Department’s preference), underlining, or otherwise marking such sections in a manner such that the material remains visible. The electronic copy should contain no more than three pdf files; one for each part of the Proposal (Administrative Proposal, Technical Proposal, and Cost Proposal). No security should be applied to the Adobe Acrobat files. 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.

The Offeror must also submit an additional electronic copy (on CD in Adobe Acrobat format) with the requested redactions electronically highlighted in black (“blacked out”) for posting to the procurement website upon completion of the procurement process. The electronic copy should contain no more than three pdf files; one for each part of the Proposal (Administrative Proposal, Technical Proposal, and Cost Proposal). A copy of the redacted Agreement will also be posted to the website at that time.

If, after the Proposal Due Date, if 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 I.C** in hardcopy and on CD in Adobe Acrobat format noting the specific portions of each item requested to be protected from FOIL disclosure by highlighting in yellow (the Department’s preference), underlining or otherwise marking such sections in a manner such that the material remains visible. The Offeror must also submit an additional electronic copy (on CD in Adobe Acrobat format with the requested redactions electronically highlighted in black (“blacked out”). 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.

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 I.C** and including the completed form in the Offeror’s Administrative 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.

9. Compliance with New York State 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 Offeror will be required to verify for the Department, on

forms authorized by the New York State Workers' Compensation Board, the fact that it is 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 **Exhibit I.W – 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 Agreement 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 Proposal, if possible, with the understanding that an updated submission may be required of the selected Offeror at time of award.