



Department of
Civil Service

REQUEST FOR PROPOSALS

ENTITLED:

“Language Proficiency Testing”

RELEASE DATE:

February 22, 2021

PROPOSAL DUE DATE:

March 22, 2021, 3:00 p.m. ET

IMPORTANT NOTICE: A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until State Comptroller approval of the resultant contract. During the Restricted Period for this Procurement ALL communications must be directed, in writing, solely to the Designated Contact as listed in Section 2 of this RFP and shall be in compliance with the Procurement Lobbying Law and the NYS Department of Civil Service “*Rules Governing Conduct of Competitive Procurement Process*” (refer to RFP, Section 2: Procurement Protocol and Process).

All inquiries, questions, filings and submission of Proposals must be directed in writing to:

NYS Department of Civil Service
Attn: Language Proficiency Testing Procurement, Floor 17
Agency Building 1, Empire State Plaza
Albany, New York 12239
E-mail: DCSprocurement@cs.ny.gov

Lola W. Brabham
Commissioner
NYS Department of Civil Service

Jessica Rowe
Director
Staffing Services Division

TABLE OF CONTENTS

SECTION 1: INTRODUCTION.....	4
1.1 Purpose	
1.2 Period of Performance	
1.3 Overview of the Staffing Services Division	
1.4 Offeror Eligibility	
1.5 Timeline of Key Events	
SECTION 2: PROTOCOL AND PROCESS.....	7
2.1 Rules Governing Conduct of Competitive Procurement Process	
2.2 Compliance with Applicable Laws, Rules and Regulations, and Executive Orders	
SECTION 3: PROJECT SERVICES.....	24
3.1 Staffing Team	
3.2 Management System	
3.3 Reporting	
SECTION 4: ADMINISTRATIVE PROPOSAL.....	27
4.1 Formal Offer Letter	
4.2 Offeror Attestations Form	
4.3 Subcontractors or Affiliates	
4.4 New York State Standard Vendor Responsibility Questionnaire	
4.5 New York State Tax Law Section 5-a	
4.6 Compliance with New York State Workers Compensation Law	
4.7 Insurance Requirements	
SECTION 5: TECHNICAL PROPOSAL.....	36
5.1 Staffing Team	
5.2 Management System	
SECTION 6: FINANCIAL PROPOSAL.....	38
SECTION 7: METHOD OF EVALUATION.....	39
7.1 Administrative Proposal Evaluation	
7.2 Technical Proposal Evaluation	
7.3 Financial Proposal Evaluation	
7.4 Total Combined Score	
7.5 Best Value Determination	
SECTION 8: LEGAL TERMS AND CONDITIONS.....	42
APPENDIX A	Standard Clauses for New York State Contracts dated October 2019
APPENDIX B	Standard Clauses for All Department Contracts dated April 2020

APPENDIX C	Information Security Requirements dated September 2020
APPENDIX C-1	Glossary for Appendix B and C dated April 2020
APPENDIX D	Participation by Minority and Women-Owned Business Enterprises: Requirements and Procedures
APPENDIX D-1	MWBE Equal Employment Opportunity Policy Statement
APPENDIX E	Participation Opportunities for New York State Certified Service- Disabled Veteran-Owned Businesses
ATTACHMENT 1	Offeror Affirmation of Understanding and Agreement
ATTACHMENT 2	Procurement Lobbying Policy dated 7/2019
ATTACHMENT 3	Formal Offer Letter
ATTACHMENT 4	Questions Template
ATTACHMENT 5	NYS Department of Civil Service Debriefing Guidelines
ATTACHMENT 6	Offeror Attestations Form
ATTACHMENT 7	Compliance with NYS Workers' Compensation Law
ATTACHMENT 8	New York State Required Certifications
ATTACHMENT 9	Subcontractors or Affiliates
ATTACHMENT 10	New York State Subcontractors and Suppliers
ATTACHMENT 11	Non-Material Deviations Template
ATTACHMENT 12	Biographical Sketch Form
ATTACHMENT 13	Fee Form
ATTACHMANT 14	Freedom of Information Law Request for Redaction Chart

SECTION 1: INTRODUCTION

1.1 Purpose

The purpose of this Request for Proposals (RFP), entitled “**Language Proficiency Testing**” is to secure the services of a qualified organization to provide personnel who are proficient in the languages identified to administer language proficiency examinations using materials provided by the NYS Department of Civil Service (Department or DCS); and the resources and support for language proficiency test administration using Department examination materials and following Department-defined processes.

Pursuant to the discretionary purchasing authority granted under State Finance Law §163(6), this procurement opportunity is limited to minority or women owned businesses (MWBES) certified pursuant to Article 15-A of the New York State Executive Law. The Agreement is subject to the approval of the New York State Attorney General’s Office (AG) and the New York State Office of the State Comptroller (OSC). The vendor selected from this RFP will be solely responsible for administering the language proficiency testing in accordance with the specifications in this RFP. This RFP and other relevant information may be reviewed at:

<https://www.cs.ny.gov/LanguageProficiencyTestingRFP/>.

1.2 Period of Performance

It is the Department’s intent to execute an Agreement with one (1) Offeror selected from this RFP for a term consisting of one (1) year with an option to renew for up to four (4) years in any combination that the Department chooses.

1.3 Overview of the Staffing Services Division

The Department’s Staffing Services Division (Division) provides State agencies with personnel recruitment and placement services. The Division coordinates the Department’s response to other State agency personnel operations and develops and administers a variety of tests for State positions, including oral, training and experience and performance assessments.

New York State has over 200 classified titles that require testing of a candidate’s language proficiency. The Department has authorized the State agencies to test language proficiency for these titles (referred to as decentralization). The Department provides materials to State agencies and the vendor for the testing of language proficiency consisting of test monitor’s instructions, candidate’s booklet (containing a passage written in the language being examined), examiner’s booklet, and sample letters/forms.

1.4 Offeror Eligibility

Offeror means any responsible and eligible entity submitting a responsive Proposal to

this RFP. It shall be understood that references in the RFP to “Offeror” shall include said entity’s proposed Subcontractors or Affiliates, if any. The Department requests proposals only from qualified Offerors, as specified below.

1. The Offeror must, at time of Proposal submission and throughout the term of the Contract, possesses the legal capacity to enter into a contract with the Department.
2. The Offeror, at time of Proposal submission and throughout the term of the Contract, must be authorized to conduct business in New York State, or, if the Offeror is not so authorized at time of Proposal Due Date, then the Offeror must, at time of Proposal Due Date, have filed an application for authority to do business in NYS with the New York State Secretary of State. Such application must be approved prior to Contract Award. (For details concerning this requirement, refer to: http://www.dos.ny.gov/corps/forms_listing.html). To register with the Secretary of State, contact: <https://www.dos.ny.gov/corps/index.html>). The Offeror shall notify the Department immediately in the event that there is any change in the above corporate status.
3. The Offeror must be a certified Minority or Women-owned Business Enterprise (MWBE) pursuant to Article 15-A of the New York State Executive Law. While an Offeror is permitted to subcontract portions of the resulting contract, subcontracting is only permitted to certified MWBE vendors. Subcontracting to non-certified MWBE vendors is prohibited.
4. The Offeror must have previous experience successfully implementing and managing a language proficiency testing program via telephone, including providing similar services for at least one client for twelve (12) months or more.
5. The Offeror must represent and warrant that, at time of Proposal submission, it possesses adequate staffing resources, financial resources and organizational capacity to perform the type, magnitude and quality of work specified in the RFP.

1.5 Timeline of Key Events

EVENT	DATE
RFP Release Date	February 22, 2021
Deadline for Submission of Offeror Affirmation of Understanding	See below*
Deadline for Submission of Offeror Questions	March 8, 2021
Release Date of Official Responses to Offeror Questions	March 12, 2021
Proposal Due Date and Time	March 22, 2021 3:00 PM

Tentative Contract Award	April 5, 2021
Anticipated Contract Start Date	July 5, 2021

*Prior to the Offeror's initial contact with the Department, the Offeror must complete and submit *Offeror Affirmation of Understanding and Agreement* (Attachment 1) to the Designated Contact identified in Section 2 of this RFP.

SECTION 2: PROCUREMENT PROTOCOL AND PROCESS

2.1 Rules Governing Conduct of Competitive Procurement Process

All inquiries, questions, filings and submission of Proposals in regard to the RFP must be directed, in writing to the contact information listed below. Proposals may not be submitted by e-mail or facsimile. Any inquiries, questions, filings or submission of Proposals that are submitted to any other contact or physical address shall not be considered as official, binding or as having been received by the Department.

1. Designated Contact

In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individual is the Designated Contact for this Solicitation. All questions relating to this Solicitation must be addressed to the following Designated Contact.

Brian Bopp
NYS Department of Civil Service
Attn: Procurement, Floor 17
Agency Building 1, Empire State Plaza
Albany, New York 12239
E-mail: DCSprocurement@cs.ny.gov

2. Procurement Lobbying Limitations

Restrictions on Contacts Between Offerors and State Staff During the Procurement Process

- a. Pursuant to State Finance Law sections 139-j and 139-k, this procurement includes and imposes certain restrictions on communications between DCS and an Offeror during the procurement process. An Offeror is restricted from making contacts from the earliest posting, on DCS's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law, of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerors intending to result in a contract with DCS through final award and approval of the contract by DCS and, if applicable, the Office of the State Comptroller ("Restricted Period") to other than the DCS Designated Contact (unless it is a Contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a)). The DCS Designated Contact for this procurement is set forth in section 2.1(1) of this RFP. Staff is required to obtain certain information from an Offeror

whenever contacted 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 statutory requirements. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offeror is debarred from obtaining governmental Procurement Contracts.

The DCS' policy and procedures can be found in the *Procurement Lobbying Policy* (Attachment 2). Further information about these requirements can be found at: <https://www.ogs.ny.gov/ACPL/>.

- b. DCS strictly controls communications between any Offeror and participants in the procurement process. "Offeror" means the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts DCS about a governmental procurement during the restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicate with DCS regarding a governmental procurement in the exercise of its oversight duties shall not be considered an offeror. "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document. All contacts and inquiries concerning this procurement must be made to a Designated Contact.

3. Submission of Errors or Omissions in this RFP Document

By participating in activities related to this RFP, and/or by submitting a Proposal in response to this RFP, an Offeror agrees to be bound by its terms, including, but not limited to, this process by which an Offeror may submit errors or omissions for consideration. If an Offeror believes there is an error or omission in this RFP, the Offeror may raise such issue as follows:

- a. **Process for Submitting Assertions of Errors or Omissions in RFP Document**
 - i. **Time Frame:** Assertions of errors or omissions in the RFP 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 1.4 of this RFP. Business Day(s) means every Monday through Friday, except for days designated as state holidays by the Department.
 - ii. **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.

- iii. *Format of Submission*: All submissions asserting an error or omission must be in writing and submitted to the Designated Contacts in hard copy at the address provided in Section 2 of this RFP.

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
Language Proficiency Testing
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 Offeror and the Offeror shall have no further recourse.

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

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 Offeror may be given the opportunity to meet with the Commissioner or the Commissioner's designee 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 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 this RFP document. 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 provided an email address on the submitted *Offeror Affirmation of Understanding and Agreement* form (Attachment 1). Notice of any extension will also be posted to:
<https://www.cs.ny.gov/LanguageProficiencyTestingRFP/>.

4. Submission of Questions

Using the *Questions Template* (Attachment 4), prospective Offerors may submit questions concerning the content of this RFP via email to the Designated Contact's address specified in Section 2 of this RFP. Only those questions received prior to the Questions Due Date specified in Section 1 of this RFP, will be accepted. After the Questions Due Date, the Department will provide an email notification of the posting of all questions and the Department's official answers to all those individuals who provided an email address on the submitted *Offeror Affirmation of Understanding and Agreement* form (Attachment 1), or the *Questions Template* (Attachment 4). The questions and answers will also be posted to <https://www.cs.ny.gov/LanguageProficiencyTestingRFP/>.

5. Submission of Proposal

- a. The Offeror's Proposal must be organized and separated into (3) separate parts: Administrative Proposal; Technical Proposal; and Financial Proposal. To facilitate the evaluation process, Offeror's must follow the submission requirements described below:
 - i. One ORIGINAL hard copy and two (2) hard copy versions of each of the three (3) parts of the RFP, separated into Administrative, Technical and Financial sections.
 - ii. 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. The remaining hard copies of each part may contain a copy of the official's signature on all forms submitted that require the Offeror's signature and should be numbered sequentially (i.e., Copy #1, Copy #2).
 - iii. A master electronic submission containing all of the ORIGINAL hard copy parts of the proposal must be provided on electronic media. Electronic media shall be included on unprotected Microsoft Windows formatted USB 2.0 or higher storage drives and must be clearly labeled by proposal part and identified as the master electronic submission. In situations where proposal content differs between the ORIGINAL bound hard copies and the master electronic submission, the master electronic

submission is deemed controlling. The master electronic submission should be inserted in the Financial Proposal box.

- iv. The Offeror must submit four (4) additional USB drives, two (2) of which each contain an electronic copy of the Administrative and Technical Proposal ONLY, and two (2) of which contain the Financial Proposal ONLY. The aforementioned USB drives must conform to the technical specifications outlined in Section 2 of this RFP. Each of the electronic copies should be labeled by section and uniquely designated with a number (e.g. “TECHNICAL & ADMINISTRATIVE COPY 1”, “TECHNICAL & ADMINISTRATIVE COPY 2, etc.”). The USB drives that contain the Financial Proposal should be packaged in the sealed box/envelope labeled Financial Proposal. The USB drives that contain the Administrative and Technical Proposals should be packaged in the sealed box/envelope labeled Administrative Proposal.
 - v. Each Proposal must include a table of contents.
 - vi. Each major section of the Proposal, including attachments, must be labeled with an index tab that completely identifies the title of the section, subsection or attachment as named in the table of contents.
 - vii. Each page of the Proposal, including attachments, must be dated and numbered consecutively.
- b. Proposals should be placed and packaged together, by part, in sealed boxes/envelopes (i.e., all Administrative Proposals in one box, all Technical Proposals in a second box, and all Financial Proposals in a third box). Each sealed box/envelope should contain a label on the outside which contains the information below.

**New York State Department of Civil Service
Request for Proposals
“Language Proficiency Testing”**

**OFFEROR NAME
OFFEROR ADDRESS**

Indicate content, as applicable
ADMINISTRATIVE, TECHNICAL, or FINANCIAL PROPOSAL
**There must be no cost information included in the Offeror’s
Administrative Proposal or Technical Proposal.**

- c. All Proposals must be mailed or hand-delivered to the address provided in Section 2 of this RFP. To make arrangements for hand-delivery, the Offeror must notify the Designated Contact at least twenty-four (24) 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 1.5 of the RFP. Visitors may be required to present photo identification. Prospective Offerors are advised to allow sufficient time to go through security.
- d. Any proposal received after 3:00 p.m. ET on the Proposal Due Date, as specified in Section 1.5, will not be accepted by the Department and may be returned to the submitting entity at the Department's discretion. All Proposals submitted become the property of the Department.
- e. The Department will accept amendments and/or additions to an Offeror's Proposal if the amendment and/or addition is received by the Proposal Due Date. All amendments to an Offeror's Proposal must be submitted in accordance with the format set forth in Section 2 of this RFP and will be included as part of the Offeror's Proposal, if accepted by the Department as provided above.
- f. An Offeror is solely responsible for timely delivery of the Proposal to the Department prior to the stated Proposal Due Date stated in Section 1.5 of this RFP. Delays in United States mail deliveries or any other carrier, including couriers or agents of New York State, shall not excuse late bid submissions. If the Proposals is delivered by mail or courier, the Department recommends that it be sent "Returned Receipt Requested", so the Offeror obtains proof of timely delivery. No phone, facsimile or e-mail submission of Proposals will be accepted for this RFP. In addition, it is the sole responsibility of the Offeror to verify that all elements of the proposal submission are complete, correct and without error.

6. Bid Deviations

- a. The Department will not entertain bid deviations to *Standard Clauses for New York State Contracts* (Appendix A). The Department will also not entertain bid deviations to *Standard Clauses for All Department Contracts* (Appendix B), *Information Security Requirements* (Appendix C) or *Glossary* (Appendix C-1) that are of a material and substantive nature. NYS law precludes awarding a contract based on material deviation(s) from the specifications, terms, and/or conditions set forth in the solicitation. Therefore, proposals containing bid deviations (including additional, inconsistent, conflicting or alternative terms) that are a material and substantive from the specifications, terms, and conditions set forth in the solicitation may render the proposal non-responsive and may result in rejection of the proposal.

- b. If Offeror has an issue or concern regarding provisions in the solicitation and is considering submission of a proposal containing a bid deviation, Offeror is strongly advised to raise such issues and/or concerns during the question and answer period so that the Department may give due consideration to the issue prior to the submission of proposals. Failure to use the question and answer period and instead submitting a proposal containing a bid deviation could render the entire proposal non-responsive and rejected in its entirety.
- c. In general, a material and substantive bid deviation is one that would (i) impair the interests of New York State, (ii) place the successful Offeror in a position of unfair economic advantage, (iii) place other Offerors at a competitive disadvantage, or (iv) which, if it had been included in the original solicitation, could have formed a reasonable basis for an otherwise qualified Offeror to change its determination concerning the submission of a proposal. For example, a deviation that would substantially shift liability (risk) or financial responsibility from the Offeror to New York State would be considered material.
- d. An Offeror is further advised that its standard, pre-printed material (including but not limited to product literature, order forms, manufacturer's license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Offeror's proposal, unless specifically required by the solicitation to be submitted as part of the Offeror's proposal, are not considered as having been submitted with or intended to be incorporated as part of the official offer contained in the proposal. Rather, such material shall be deemed by the Department to have been included by Offeror for informational or promotional purposes only.
- e. To submit a non-material bid deviation, an Offeror must follow the instructions below and submit the proposed the deviation(s) using the *Non-Material Deviations Template* (Attachment 11), as part of the Administrative Proposal. If a non-material bid deviation does not meet these requirements, it shall not be considered by the State and shall be rejected.
 - i. Each proposed deviation (addition, deletion, counter-offer or modification) must be specifically enumerated, in a writing, which is not part of a pre-printed form;
 - ii. The writing must identify the specific Solicitation requirement (if any) the Offeror rejects or proposes to modify by inclusion of deviation; and

- iii. The Offeror must enumerate the proposed deviation (addition, deletion, counter-offer or modification) from the Solicitation, and the reasons.
- f. An Offeror who does not submit the *Non-Material Deviations Template* as part of the Administrative Proposal is presumed to have no bid deviations.

7. Notification of Award

A tentative award 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, the associated procurement process, including but not limited to the bid solicitation, proposal evaluation and award and contract negotiation processes or the Agreement shall be made by any Offeror or its agent without the prior written approval of the Department.

8. Debriefing

Unsuccessful Offerors will be advised of the opportunity to request a Debriefing and the timeframe by which such requests must be made. Debriefings are subject to the *NYS Department of Civil Service Debriefing Guidelines* (Attachment 5). An unsuccessful Offeror's written request for a debriefing shall be submitted to the address provided in Section 2 of this RFP.

9. Submission of a Protest

By participating in activities related to this Procurement, or by submitting a Proposal in response to this RFP, an Offeror agrees to be bound by its terms including, but not limited to, the process by which an Offeror may submit a protest of a non-responsive determination or the selection award for consideration. In the event the Offeror elects to submit a protest of a non-responsive determination, the Offeror agrees it shall not be permitted to also submit a protest on the selection decision. In the event that an Offeror decides to submit a protest, the Offeror may raise such issue according to the following provisions.

- a. **Process for Submitting a Protest of a Non-Responsive Determination or a Selection Decision**
 - i. Time Frame: Any protest must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of a non-responsive determination or conditional award.

- ii. Content: The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- iii. Format of Submission: The protest must be in writing and submitted to the Designated Contact at the address provided in Section 2 of this RFP.
- iv. A protest of either a non-responsive determination, or a selection decision must have one of the following statements clearly and prominently displayed on the envelope or package:

**“Submission of Non-Responsive Determination Protest for
Request for Proposals
Language Proficiency Testing”**

Or

**“Submission of Tentative Award Protest for
Request for Proposals
Language Proficiency Testing”**

- v. 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. Review of Submitted Protests

- i. The Department shall conduct the review process of submitted protests. The Department’s 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, the determination of non-responsiveness, 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, to support its submission. The Offeror may, but need not, be represented by counsel at such a meeting. The Department shall be represented by counsel at such meeting. Any issues concerning the way the review process is conducted shall be determined solely by the

Commissioner, or the Commissioner's designee.

- ii. The Commissioner, or the Commissioner's designee, shall review the matter, and shall issue a written decision within twenty (20) Business Days after the close of the review process. If additional time is necessary for the issuance of the decision, the Offeror shall be advised 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 Department's final determination in the matter.
- iii. If an Offeror protests the selection decision or a non-responsive determination, the Department shall continue contract negotiations regarding the terms and conditions of the agreement with the selected Offeror.

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 or not make an award under the RFP, either in whole or in part.
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of this RFP, such amendments will also be posted to: <https://www.cs.ny.gov/LanguageProficiencyTestingRFP/>.
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments.
- d. Withdraw this RFP, at any time, in whole or in part, prior to OSC approval of award of the contract.
- e. Waive any requirements that are not material.
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any of the mandatory requirements of this RFP.
- g. Require clarification at any time during the Procurement process and/or require correction of 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.
- 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 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, 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, if any, in the course of evaluation and selection under this RFP;
- o. Negotiate with the successful Offeror within the scope of this RFP in the best interests of the Department;
- p. Utilize any and all ideas submitted in the Proposal(s) received;
- q. If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing a contract. Prior to negotiating with the Offeror with the next highest Total Combined Score, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Scores will not be recalculated for any remaining Offerors should contract negotiations between the Department and the selected Offeror be unsuccessful because of material differences in key provision(s);
- r. Unless otherwise specified in this RFP, every offer is firm and not revocable for a minimum period of one hundred and eighty (180) days from the Proposal Due Date as set forth in the RFP; and
- s. 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 its Proposal shall remain valid.

11. Disclaimer

The Department is not liable for any cost incurred by any Offeror prior to approval of the Agreement by OSC. 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 (such as hard copy attachments, website attachments, and sample document attachments). However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in hardcopy attachments, website attachments, and sample document attachments referenced throughout this RFP which 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.

2.2 Compliance with Applicable Laws, Rules and Regulations, and Executive Orders

This Procurement is subject to the New York State competitive bidding laws and also governed by, at a minimum, the legal authorities referenced below. An Offeror must fully comply with the provisions set forth in this section of the RFP, as well as the provisions of the *Standard Clauses for New York State Contracts* (Appendix A), the *Standard Clauses for All Department Contracts* (Appendix B), *Information Security Requirements* (Appendix C) and *Glossary* (Appendix C-1), which will become a part of the resulting contract. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provisions and whose proposal contains the submission required hereunder.

1. Contractor Requirements and Procedures For Participation By New York State-Certified Minority And Women-Owned Business Enterprises And Equal Employment Opportunities For Minority Group Members And Women

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (NYCRR), the Department is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (MWBES) and the employment of minority group members and women in the performance of the Department contracts.

a. Business Participation Opportunities for MWBEs

The Department is exercising its discretionary purchasing authority pursuant to New York State Finance Law section 163(6) to award this contract to either a New York State-certified Minority-owned Business Enterprise (MBE) or a New York State-certified Women-owned Business Enterprise (WBE).

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offeror agrees with all of the terms and conditions of *Standard Clauses for New York State Contracts* (Appendix A) including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Offeror is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Offeror, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Offeror will be required to submit a *MWBE - Equal Employment Opportunity Policy Statement* (Appendix D-1) to the Department with its bid or proposal.

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

2. **Participation Opportunities For New York State Certified Service-Disabled Veteran-Owned Businesses**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Department recognizes the need to promote the employment of service-disabled veterans and to ensure that SDVOBs have opportunities for maximum feasible participation in the performance of the Department’s contracts.

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

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

The Offeror/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

a. NOTICE TO OFFEROR AND ITS LEGAL COUNSEL

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 New York State agencies interested in the provision of the subject services, 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 supplemental submission(s) 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 a *Freedom of Information Law Request for Redaction Chart* (Attachment 14). 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 Attachment 14 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.

The completed Attachment 14 must be submitted to the Department at the time of its Proposal submission; it should be included with the Requested Redactions (USB storage drive and Hard Copy), described below. It should not be included in the Offeror's Proposal. If the Offeror chooses not to assert that any Proposal material and/or supplemental submission should be protected from FOIL disclosure, the Offeror should so advise the Department by checking the applicable box on Attachment 14 and submitting it to the Department at the time of its Proposal submission, but separately from its Proposal. If a completed Attachment 14 form is not submitted, the Department will assume that the Offeror chooses not to assert that any proposal material or supplemental submission, as applicable, should be protected from FOIL disclosure.

The FOIL-related materials described herein will not be considered part of the Offeror's Proposal and will not be reviewed as a part of the Procurement's evaluation process.

b. Requested Redactions (USB Storage Drive and Hard Copy):

At the time of Proposal submission, the Offeror is required to identify the portions of its Proposal that it is requesting to be redacted, in accordance with the instructions below, to be used in the event that its Proposal is the

subject of a FOIL request received by the Department:

The Offeror must provide an electronic copy of the Administrative Proposal, the Technical Proposal, and the Financial Proposal on a separate USB storage drive of the type outlined in RFP Section 2, which reflect the Offeror's requested redactions. Additionally, the Offeror must provide a separately bound hardcopy of each of the three (3) Proposal documents with redactions marked that are included on the USB storage drives. The electronic documents must be prepared in PDF format using the Redaction Function in Adobe Acrobat Professional software, version 8 or higher. Each specific portion of the Proposal documents requested to be protected from FOIL disclosure must be identified using the Adobe "Mark for Redaction" function; do not use the "Apply Redactions" function. The resulting documents must show the Offeror's requested redactions as outlined, while the content remains visible. This will allow the Department to either apply or remove requested redactions when responding to FOIL requests. The documents included on the USB storage drives and in hard copy must be complete Proposals, including all Attachments. No section may be omitted from the USB storage drive or hard copy even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, attachments and charts please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page.

During the Proposal evaluation process, the Department may request additional information through clarifying letters. Any requested redactions for additional written material provided by the Offeror in response to the Department's requests also must be submitted following the instructions, above.

4. 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 NYS 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. An Offeror 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 Attachment 8, in the Offeror's Administrative Proposal.

5. **New York State Required Certifications**

An Offeror is required to submit the signed *New York State Required Certifications* (Attachment 8) with its Administrative Proposal. This attachment sets forth the Offeror's required statements on the MacBride Fair Employment Principles and Non-Collusive Bidding Certification. It also sets forth the certifications regarding compliance with the Federal Americans with Disabilities Act, compliance with the NYS Public Officers Law, certification required under NYS Procurement Lobbying Law, certification required under Executive Order No. 177 and certification required by New York State Finance Law section 139-l regarding written sexual harassment policies.

6. **New York State Subcontractors and Suppliers**

An Offeror is required to complete *New York State Subcontractors and Suppliers* (Attachment 10). New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in NYS, Offerors for this contract for language proficiency testing services are strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Offerors are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing NYS businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its NYS business partners. NYS businesses will promote the Contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of NYS by its contractors. The State therefore expects Offerors to provide maximum assistance to NYS businesses in their use of the contract. The potential participation by all kinds of NYS businesses will deliver great value to the State and its taxpayers.

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SECTION 3: PROJECT SERVICES

For purpose of submitting a Proposal, an Offeror must be capable of providing:

- Examiners who are proficient in the languages identified to administer language proficiency examinations based on provided materials; and
- The resources and support for language proficiency test administration using Department-defined processes.

3.1 Staffing Team

The staff assigned to perform project services under the Contract must be properly trained; and competent to perform the required language proficiency testing. The Department will provide the Offeror with test monitor's instructions, candidate's test booklet (containing a passage written in the language being examined), examiner's booklet, and sample letters/forms. In addition, the Department will provide a training session to the Offeror that will enable the Offeror to administer the examinations consistently.

1. Duties and Responsibilities

- a. The Offeror must be capable of providing individuals to administer language proficiency examinations who are fluent in the following languages: Bengali, Chinese (Cantonese), Chinese (Mandarin), Farsi, French, Haitian Creole, Italian, Korean, Polish, Russian, and Spanish. The Department reserves the right to add languages in the future. Therefore, the Offeror must be capable of providing the same required service for additional languages upon request.
- b. The Offeror must designate an examiner or trainer to receive training from the Department on the language proficiency testing process and the associated administrative duties. Unless otherwise agreed to by the parties, the Department will provide the Offeror with two weeks' notice to schedule the training.
- c. The Offeror must attend quarterly monitoring meetings with the Department to review activities and ensure consistency of program administration. Meetings will be no longer than one (1) hour and will only be once per quarter unless requested by either party. The Department will provide the Offeror with two weeks' notice to schedule monitoring meetings. These meetings will be conducted remotely via WebEx or other virtual platform, as such, in-person attendance is not required.

- d. The Offeror must be capable of administering language proficiency examinations over the telephone.

3.2 Management System

The Offeror must provide an online scheduling system for State Agency representatives to use when scheduling examinations.

1. Duties and Responsibilities

- a. The online scheduling system must have information to assist requestors with identifying the appropriate New York State Civil Service examination to be given.
- b. The online scheduling system must record the name of the State Agency requesting each examination.
- c. The online scheduling system must provide a means for the Offeror to ensure that the Department shall be billed for services, not the State Agency requesting an examination.
- d. The Offeror must be capable of testing a candidate within two weeks of the request from a State Agency
- e. The Offeror must consistently score examinations using standardized New York State rating scales for language proficiency.

3.3 Reporting

Any individual who provides services to the Department must agree to abide by the following guidelines for Department information security prior to any access or use of the Department's Proprietary Information or Confidential Information.

1. Duties and Responsibilities

- a. The Offeror must report examination results to the Department and the applicable State Agency within five business days of test administration.
- b. The Offeror's must adhere, to the extent applicable, to the Information Security Requirements (Appendix C).
- c. In addition to requirements cited in Appendices B and C, any individual who provides services to the Department as an officer, employee, subcontractor or agent (workforce members) of the Offeror must agree to abide by the Department's information security guidelines prior to any

access or use of the Department's Proprietary or Confidential Information. Proprietary Information includes examination materials, computer programs and code, business plans, financial records, documents, statistical information, and any other information which may be commercially valuable, proprietary, or trade secret in nature, or otherwise sensitive in nature. Confidential Information includes all other information provided by the Department related to the delivery of services.

- d. The Offeror's employees and other workforce members must not divulge or provide access to third parties of any Proprietary Information or Confidential Information acquired during their performance of services. All individuals who work on this Contract must execute a Contractor non-disclosure agreement that will remain in effect during and up to 12 months after employment with Contractor.

SECTION 4: ADMINISTRATIVE PROPOSAL

This section of the RFP sets forth the requirements for the Offeror's Administrative Proposal. The Department will consider for evaluation and selection purposes only those Proposals the Department determines to be in compliance with the requirements set forth in this section of the RFP. Any Offeror which fails to satisfy any of these requirements shall be eliminated from further consideration.

The Offeror's *Administrative Proposal* must respond to all of the following items as set forth below in the order and format specified and using the forms set forth in this RFP. Additional details pertaining to the required forms are found in Section 2 of this RFP.

4.1 Formal Offer Letter

The Offeror must submit a formal offer in the form of the *Formal Offer Letter* (Attachment 3). The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the State. The hard copy of the Offeror's Administrative Proposal marked "ORIGINAL" requires a letter with an original signature; the remaining copies of the Offeror's Administrative Proposal may contain photocopies of the signature. Except as otherwise permitted under Section 2.6, Bid Deviations, the Offeror must accept the terms and conditions as set forth in this RFP, and *Standard Clauses for New York State Contracts* (Appendix A), *Standard Clauses for All Department Contracts* (Appendix B), *Information Security Requirements* (Appendix C), and *Glossary for Appendix B and C* (Appendix C-1), and agree to enter into a contractual Agreement with the Department containing, at a minimum, the terms and conditions identified in this RFP and appendices as cited herein. If an Offeror proposes to include the services of Subcontractor(s) or Affiliate(s), the Offeror must be required to assume responsibility for those services as "Prime Contractor". The Department will consider the Prime Contractor solely responsible for contractual matters. The Offeror is permitted to subcontract with a New York State-certified Minority-owned Business Enterprise (MBE) or a New York State-certified Women-owned Business Enterprise (WBE), but is prohibited from subcontracting work to a non-certified MWBE entity.

4.2 Offeror Attestations Form

The Offeror must complete and submit an executed copy of the *Offeror Attestations Form* (Attachment 6) demonstrating that it meets or exceeds the criteria for eligibility to bid as set forth in Section 1 of this RFP. A person legally authorized to represent the Offeror must execute this certification.

4.3 Subcontractors or Affiliates

The Offeror must complete the *Subcontractors or Affiliates* form (Attachment 9) to identify all Subcontractors or Affiliates. For purposes of reporting in the *Subcontractors or Affiliates* form (Attachment 9), Subcontractors include all vendors who will provide

\$100,000 or more in Project Services over the term of the Agreement that results from this RFP. For each Subcontractor identified, the Offeror must complete and submit the *Subcontractors or Affiliates* form and indicate whether or not, as of the date of the Offeror's Proposal, a subcontract has been executed between the Offeror and the Subcontractor for services to be provided by such subcontractor relating to the RFP. For the purpose of this RFP, Affiliate is defined as 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. On the *Subcontractors or Affiliates* form, the Offeror must:

1. Provide a brief description of the services to be provided by the Subcontractor or Affiliate.
2. Provide a description of any current relationships with such Subcontractor or Affiliate and the clients/projects that the Offeror and Subcontractor or Affiliate are currently servicing under a formal legal agreement or arrangement, the date when such services began and the status of the Project.
3. Indicate whether or not, as of the date of the Offeror's Proposal, a subcontract (or shared services agreement) has been executed between the Offeror and the Subcontractor or Affiliate for services to be provided by the Subcontractor or Affiliate relating to this RFP.
4. Mark in the applicable box in Attachment 9 if the Offeror will not be subcontracting with any Subcontractor(s) or Affiliate(s) to provide Project Services.

4.4 New York State Standard Vendor Responsibility Questionnaire

The Offeror must complete and submit a current executed copy of the New York State Vendor Responsibility Questionnaire. A Questionnaire is considered current if it has been certified within six months of the Proposal Due Date. The Department recommends each Offeror file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the OSC website at <https://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

A person legally authorized to represent the Offeror must execute the questionnaire. To the extent that the Offeror is proposing the use of Subcontractors or Affiliates, the Offeror must submit a completed questionnaire for each Subcontractor expected to receive more than \$100,000 in payments during the terms of the Contract. By submitting a Proposal, the Offeror agrees to fully and accurately complete the Questionnaire. The Offeror acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Offeror is responsible, and that the State will be relying upon the Offeror's responses to the Questionnaire when making

its responsibility determination. The Offeror agrees that if it is found by the State that the Offeror's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

4.5 New York State Tax Law Section 5-a

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

An Offeror is required to file the completed and notarized Form ST-220-CA with the Department certifying that the Offeror filed the ST-220-TD with DTF. The Offeror should complete and return the certification forms within five (5) Business Days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render an Offeror non-responsive and non-responsible. The Offeror must take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

[Note: DTF receives the completed Form ST-220-TD, not the Department. The Department ONLY receives the Form ST-220-CA.]

Website links to the Offeror certification forms and instructions are provided below.

1. Form ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Offeror, its affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.
2. Form ST-220-CA must be submitted to the Department. This form provides the required certification that the Offeror filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

4.6 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 and Subcontractor(s) or Affiliates, with more than \$100,000 in expected expenses over the life of the contract, if any, 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 *Compliance with NYS Workers' Compensation Law* (Attachment 7). Any questions relating to either workers' compensation or disability benefits coverage should be directed to the New York State Workers' Compensation Board, Bureau of Compliance at 518-486-6307. You may also find useful information at their website: <http://www.wcb.ny.gov>.

Submission of the proof of workers' compensation and disability benefits insurance coverage is required at the time of Proposal submission. Failure to provide verification of either of these types of insurance coverage with the Offeror's Administrative Proposal may be grounds for disqualification of an otherwise successful Proposal.

To the extent that the Offeror is proposing the use of Subcontractors or Affiliates (i.e., part of the Offeror's proposed Program Team), the Offeror must verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that the Subcontractors or Affiliates are properly insured or are otherwise in compliance with the insurance provisions of the WCL.

4.7 Insurance Requirements

Prior to the start of work the Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this contract, policies of insurance as herein below set forth, written by companies licensed or authorized by the NYS Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" or better or as acceptable to the Department. The Department may, at its sole discretion, only when coverage cannot be secured from an authorized carrier, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to the Department evidence of such policies in a form acceptable to the Department. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

1. General Conditions

- a. Conditions Applicable to Insurance: All policies of insurance required by this contract must meet the following requirements:

- i. Coverage Types and Policy Limits. The types of coverage and policy limits required from the selected Offeror are specified in paragraph 6. Specific Coverages and Limits below.
- ii. Policy Forms. Except as may be otherwise specifically provided herein or agreed to in writing by the Department, policies must be written on an occurrence basis. Under certain circumstances, the Department may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the contract. If the policy is cancelled or not renewed during that time, the selected Offeror must purchase, at its sole expense, Discovery Clause or "Tail" coverage sufficient to cover the 3-year period after completion of the contract. Written proof of this extended reporting period must be provided to the Department prior to the policy's expiration or cancellation.
- iii. Certificates of Insurance/Notices. The selected Offeror shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Department, before commencing any work under this contract. Certificates shall reference the contract number. Certificates shall be mailed to:

Brian Bopp
NYS Department of Civil Service
Attn: Procurement, Floor 17
Agency Building 1, Empire State Plaza
Albany, New York 12239
E-mail: DCSprocurement@cs.ny.gov

- iv. Unless otherwise agreed upon, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days' prior, written notice except for non-payment, in which case notice shall be provided as required by law to:

Brian Bopp
NYS Department of Civil Service
Attn: Procurement, Floor 17
Agency Building 1, Empire State Plaza
Albany, New York 12239
E-mail: DCSprocurement@cs.ny.gov

- v. In addition, if required by the Department, the Offeror shall deliver to the Department within forty-five (45) days of such request a copy

of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

- b. Certificates of Insurance shall:
 - i. Be in the form approved by the Department;
 - ii. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to;
 - iii. Indicate the policy that materially changes the coverage required by the contract;
 - iv. Specify the Additional Insureds and Named Insureds as required herein;
 - v. Refer to this contract by number and any other attachments on the face of the certificate;
 - vi. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit; and
 - vii. Be signed by an authorized representative of the insurance carrier or producer.
- c. Only original documents (Certificates of Insurance and other attachments) will be accepted. The Department will accept electronic forms as original documents when the document can be directly traced back to the insurance carrier, agent, or broker via e-mail distribution or similar means.

2. Primary Coverage

The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the Department for any claim arising from the selected Offeror's Work under this contract, or as a result of the selected Offeror's activities. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition so as to limit coverage against claims that arise out of the work, or that remove or modify the "insured contract" exception to the employer's liability exclusion, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable. Insured Contract is defined to mean that part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a

third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

3. **Policy Renewal/Expiration**

At least two weeks prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in Paragraph (1)(a)(iii). Certificates of Insurance/Notices above. If, at any time during the term of this contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the contract or proof thereof is not provided to the Department, the Contractor shall immediately cease work under the contract. The Contractor shall not resume work under the contract until authorized to do so by the Department. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the contract or not providing proof of the same in a form acceptable to the Department, shall not give rise to a delay claim or any other claim against the Department. Should the Contractor fail to provide or maintain any insurance required by this contract, or proof thereof is not provided to the Department, the Department may withhold further contract payments, treat such failure as a breach or default of the contract, and/or, after providing written notice to the Contractor, require the Surety "if any" to secure appropriate coverage and/or purchase insurance complying with the contract and charge back such purchase to the Contractor.

4. **Self-Insured Retention/Deductibles**

Certificates must indicate deductibles or self-insured retentions above \$100,000.00, which are subject to approval from the Department. Additional surety/security may be required in certain circumstances. The selected Offeror shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

5. **Subcontractors**

Should the selected Offeror engage a Subcontractor, the selected Offeror shall endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to the Department.

6. **Specific Coverage and Limits**

- a. Commercial General Liability

Commercial General Liability Insurance, (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract, using form CG 00 01 12 07 or a policy providing equivalent coverage. The limits under such policy shall not be less than the following:

- i. Each Occurrence limit – \$1,000,000.00
- ii. General Aggregate – \$2,000,000.00
- iii. Products/Completed Operations – \$2,000,000.00
- iv. Personal Advertising Injury – \$1,000,000.00
- v. Damage to Rented Premises – \$50,000.00
- vi. Medical Expense – \$5,000.00

Coverage shall include, but not be limited to, the following:

- i. Premises liability;
- ii. Independent contractors/subcontractors;
- iii. Blanket contractual liability, including tort liability of another assumed in a contract;
- iv. Defense and/or indemnification obligations, including obligations assumed under this contract;
- v. Cross liability for additional insureds;
- vi. Products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract;
- vii. Explosion, collapse, and underground hazards;
- viii. Contractor means and methods; and
- ix. Liability resulting from Section 240 or Section 241 of the New York State Labor Law, if applicable.

The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such

policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Department. Any other insurance maintained by the Department shall be excess of and shall not contribute with the Contractor's or Subcontractor's insurance, regardless of the "Other Insurance" clause contained in either party's policy(ies) of insurance, if applicable.

SECTION 5: TECHNICAL PROPOSAL REQUIREMENTS

The purpose of Section 5 of the RFP is to set forth the technical proposal submissions required of the Offeror. The Offeror's Technical Proposal must contain responses to all required submissions from the Offeror in the format requested. Each Offeror may submit only one Technical Proposal. Each Offeror's Technical Proposal will be evaluated based on the responses to the required submissions contained in Section 5 of this RFP. An Offeror must not include any cost information in the Technical Proposal, including attachments.

5.1 Staffing Team

The Offeror must submit an Executive Summary outlining its capacity to administer a language proficiency testing program. The Executive Summary must include:

1. The name and address of the Offeror's main office and the name of the senior officer(s) including the Project Manager who will be responsible for this account;
2. A statement outlining previous experience successfully implementing and managing a language proficiency testing program. Explain how this experience qualifies the Offeror and, if applicable, its Subcontractors, to undertake the functions and activities required by this RFP. The Offeror's response must state if the testing program has been in operation providing similar services for at least one client for twelve (12) months or more;
3. An organizational plan that includes the roles and responsibilities of each individual involved in administering the language proficiency testing, their planned level of effort and level of involvement. The organizational plan must also include how the Offeror's personnel will be able to accommodate the training and quarterly meeting requirements specified in Section 3.1(1)(b) and Section 3.1(1)(c) of this RFP. It must also list the number of examiners who are able to test proficiency in each of the languages listed in Section 3.1(1)(a) of this RFP. An organizational chart must also be included, demonstrating the Offeror's staff and staff from any Subcontractor to be used. The plan should specifically explain and detail how the Offeror will perform the following administrative and operational functions:
 - a. Scoring exams;
 - b. Reporting; and
 - c. Quality control.
4. The Offeror must complete the *Biographical Sketch Form* (Attachment 12) for all

individuals who will be providing Project Services, including subcontractor provided individuals, if any, of the proposed Staffing Team. The Biographical Sketch forms should identify which personnel have the required languages, as specified in Section 3.1(1)(a) of this RFP. The description of the individual who will assume the role of Project Manager for the language proficiency testing must include a description of the individual's experience with clients whose needs were of similar size and scope as those of the Department, including the ability to conduct over the phone.

5. In addition, the Offeror must describe the Project Manager's previous experience in satisfactorily mitigating problem areas identified by the clients.

5.2 Management System

1. The Offeror must provide a detailed narrative on how it will meet the requirements of Section 3.2 of this RFP, specifically
 - a. A description of how the online scheduling system has information to assist requestors with identifying the appropriate New York State Civil Service exam to be given.
 - b. A description of how the online scheduling system records the name of the State Agency requesting each exam.
 - c. A description of how the online scheduling system provides a means for the Offeror to determine that the Department must be billed for services, not the State Agency requesting an exam.
 - d. A website address and User I.D./password for the Department to test the Offeror's existing online system.
 - e. A description of Offeror's procedural workflow that describes how the Offeror currently conducts an exam.

SECTION 6: FINANCIAL PROPOSAL

This section of the RFP sets forth the requirements for the Offeror's Financial Proposal submission and the cost structure required by the Department for Offerors to use in developing their submission.

The Offeror's Financial Proposal must contain a completed *Fee Form* (Attachment 13). The Offeror must quote a total fee per examination that is valid for each year of the potential five-year term of the Contract. The Offeror's quoted fee per examination must include all direct and indirect costs, overhead, travel expenses, fees, and profit.

The sole compensation for the Offeror under the Contract will be payments based on an Offeror's quoted fee per examination as per the Offeror's Financial Proposal. The Department anticipates that 116 examinations will be administered per year for the potential five-year duration of the Contract. During the term of the Contract, amounts paid for which it is subsequently determined that the Offeror was not entitled, if any, must be refunded to the Department. Submission of an invoice and payment thereof shall not preclude the Department from recovery or offset of payment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Contract.

Evaluation of Financial Proposals will be performed in accordance with the provisions presented in Section 7 of the RFP.

SECTION 7: EVALUATION AND SELECTION CRITERIA

The Department seeks to contract with a single Offeror to provide and administer the language proficiency testing. To this end, the Department intends to select the responsive and responsible Offeror whose Proposal offers the “Best Value”. Best value will be determined by a weighed point system, with 60 percent allocated to the Technical Proposal and 40 percent allocated to the Financial Proposal.

Proposals determined by the Department to satisfy the submission requirements set forth in Section 4 of this RFP will be evaluated by an evaluation team composed of staff from the Department.

7.1 Administrative Proposal Evaluation

An Offeror’s Proposal shall be removed from the evaluation process and not be considered for award if the Offeror does not submit a *Formal Offer Letter* (Attachment 3) and an *Offeror Attestations Form* (Attachment 6). If the Offeror’s proposal meets these requirements, it will be advanced for technical proposal evaluation.

7.2 Technical Proposal Evaluation

The evaluation of the Offeror’s Technical Proposal will be based on that Offeror’s written Technical Proposal and responses to clarifying questions if any.

1. Technical Score Ratings

Each Offeror’s Technical Proposal will be evaluated based on the following rating scale and criteria as applied to each response as required in Section 5 of this RFP. A rating of “excellent” equates to a score of 5 for each evaluated response. A rating of “Meets Criteria” equates to a score of 3. A rating of “poor” equates to a score of 0.

a. Excellent (5)

The Offeror far exceeds the criteria.

b. Meets Criteria (3)

The Offeror meets but does not exceed the criteria.

c. Poor (0)

The Offeror does not meet the criteria.

2. Allocation of Technical Score Points

The scores referenced above shall be applied to weighted point values associated with each evaluated Submission response. The relative point value for each section of the Technical Proposal is as follows:

Section	Title	% of Technical Score
5.1	Staffing Team	50%
5.2.	Management System	50%
Total		100.0%

3. Technical Proposal Scoring

The Technical Proposal evaluation will be based on 600 total available points. The average score of all evaluators for each section of the Technical Proposal will be applied against the weights depicted in the chart above.

7.3 Financial Proposal Evaluation

The Financial Proposal of any Offeror meeting requirements set forth in Section 4 of this RFP will be evaluated by the Department.

1. Financial Proposal Scoring

- a. The Department will calculate a Total Projected Language Proficiency Testing Cost for each Offeror as the sum of the product of the Offeror’s per examination fee from Attachment 13 for each year multiplied by the 116 examinations that are anticipated to be administered per year for five (5) years.
- b. The Offeror’s Proposal with the lowest Total Projected Language Proficiency Testing Cost will be awarded 400 points. A Financial Proposal score for each remaining Offeror will be determined based on the following formula:

$$\frac{\text{Cost Score of Evaluated Proposal}}{400 * \text{Lowest Evaluated Cost}}$$

divided by

$$\text{Total Cost of Proposal being evaluated}$$

7.4 Total Combined Score

The Total Combined Score assigned to each Offeror will be the sum of the Offeror's Technical Score and Financial Score.

7.5 Best Value Determination

The Department shall select and enter into negotiations for the purpose of executing a contract with the responsive and responsible Offeror that has accumulated the highest Total Combined Score. If an Offeror's Total Combined Score is equal to or less than one (1) point below the highest Total Combined Score, that Offeror's proposal will be determined to be substantially equivalent to the Offeror holding the highest Total Combined Score.

Among any Offeror proposals with the same or substantially equivalent Total Combined Scores, the Department shall select the Offeror with the highest Financial Proposal Score, as calculated pursuant to Section 7.3 of this RFP, to enter into negotiations for the purpose of executing a contract.

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SECTION 8: LEGAL TERMS AND CONDITIONS

The Offeror that is determined to provide the best value to the Department shall be notified of its conditional award of contract subject to the successful development of a contract. The resulting contract shall incorporate the requirements set forth in the RFP. Additional terms and conditions not already addressed in the RFP are set forth below.

1. Entire Agreement

This Agreement, including all appendices, constitutes the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, except as otherwise provided herein. The Contract is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the New York State Attorney General and the Office of the State Comptroller of the State of New York and subject to the termination provisions contained herein.