



Invitation for Bids (IFB) solicited by the

New York State Office of General Services

for

Truck Leasing Services

Issue Date: January 4, 2010

Bids Due: February 10, 2010 at 2:00 PM

Class Code: 25

Group Number: 40490

Designated Contact:

Tammy Rock

Voice: 518-474-5981

Fax: 518-473-2844

E-mail: tammy.rock@ogs.state.ny.us

Alternate Contact:

Diane Robinson, Senior Purchasing Agent

Same

Same

Email: diane.robinson@ogs.state.ny.us

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1. Introduction

1.1. Overview

The New York State Office of General Services (hereinafter "OGS" or "State"), Division of Printing and Mail Services is responsible for the distribution of interagency mail and freight between State agencies in the State of New York. To accomplish this task, it is necessary to augment our fleet of delivery vans with larger delivery trucks for shipments on a statewide basis.

The intent of this solicitation is to secure the lease of one (1) delivery truck, as specified herein, to be based at P 1 Level, Dock J, Empire State Plaza, Albany, NY. This solicitation will also provide for additional periodic delivery vehicle leasing as required by OGS throughout any contract which results from this solicitation.

1.2. Designated Contact

In compliance with the Procurement Lobbying Law, Tammy Rock, NYS Office of General Services, Division of Financial Administration has been designated the contact for this procurement solicitation and may be reached by email or voice for all inquiries regarding this solicitation.

Tammy Rock
NYS Office of General Services
Financial Administration
Corning Tower, 40th Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Fax: 1-518-473-2844
Email: tammy.rock@ogs.state.ny.us

In the event the designated contact is not available, the alternate designated contact is:

Diane Robinson, Senior Purchasing Agent
NYS Office of General Services
Financial Administration
Corning Tower, 40th Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Fax: 1-518-473-2844
Email: diane.robinson@ogs.state.ny.us

1.3. Minimum Bidder Qualifications

Bidders must maintain an organization with qualified management personnel and sufficient financial resources, which has been in continuous operation for at least the past three (3) years, which is capable of providing the specified trucks, or comparable replacement vehicles throughout the term of the contract resulting from this solicitation.

Additionally, Bidders must maintain adequate facilities or have appropriate contractual arrangements with reliable and responsible sub-contractors to provide the needed maintenance and repair services, including the provision of roadside service and vehicle replacement Statewide within the specified time frames.

The State reserves the right to require the submittal of any documentation or the inspection by State representatives of any of Bidder's or its proposed subcontractor's facilities as it deems necessary in its sole discretion to verify a Bidder's satisfaction of the minimum qualifications

1.4. Key Events

The Table below outlines the schedule for important action dates.

Action	Date
OGS issues Solicitation 1523 for Truck Leasing Services	January 4, 2010
Bidder's questions due to OGS	January 26, 2010
OGS issues responses to questions (Estimated)	February 2, 2010
Bids due / Bid Opening at 2:00 PM EST	February 10, 2010
Contract start date – 40 days from OSC approval or June 1, 2010 whichever occurs first	

1.5. IFB Questions and Clarifications

Questions and requests for clarification regarding this IFB shall only be directed to:

Tammy Rock
NYS Office of General Services
Financial Administration
Corning Tower, 40th Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Fax: 1-518-473-2844
Email: tammy.rock@ogs.state.ny.us

Questions and requests for clarification are only accepted via e-mail or in writing. Official answers to questions will be provided via addendum. Deadline for submission of questions is stated in Section 1.4 Key Events.

2. Bid Submission

2.1. Bid Format and Content

In order for the State to evaluate bids fairly and completely, bidders should follow the format set forth herein and must provide all of the information requested. All items identified in the following list must be addressed as concisely as possible in order for a bid to be considered complete. Failure to conform to the stated requirements and/or provide the requested information may necessitate rejection of the bid.

1. **Cover Letter.** The cover letter must confirm that the **bidder understands all the terms and conditions contained in this IFB and will comply with all the provisions of this IFB.** The cover letter must include the full contact information of the person(s) NYS OGS shall contact regarding the bid. A bidder representative authorized to make contractual obligations must sign the cover letter. The letter must also state whether or not subcontractors will be used.
2. The bidder shall submit with its bid detailed specifications, circulars and all necessary data on the product to be furnished. If the product offered differs from the provisions listed, such differences must be explained in detail. The bidder shall indicate in the spaces provided the manufacturer's name, the address where the proposed product or products will be produced, the catalog references or model number of the product or products offered and all other information requested.
3. A completed Bid Form (Attachment 1)
4. All other required completed forms from Appendices B & C & D

Note: OGS reserves the right to request any additional information deemed necessary to properly evaluate bids, and to ensure that the bidder is able to fulfill the requirements of the contract.

2.2. Instructions for Bid Submission

Submit all required bid documents including bid addenda if any, to the OGS Division of Financial Administration at the following address:

Division of Financial Administration
NYS Office of General Services
Corning Tower, 40th Floor
Empire State Plaza
Albany, NY 12242
Attn: Tammy Rock

E-MAIL OR FAX BID SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.

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

Bids must be received in the above office on or before **2:00 PM EDT on the date indicated in section 1.4 Key Events.**

The received time of bids will be determined by OGS at the clock at the above noted location.

Bids must remain open and valid for 120 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 day period until either tentative award of the contract(s) by issuing Office is made or withdrawal of the bid in writing by Bidder. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing Office to the successful Bidder. This IFB remains the property of the State at all times, and all responses to this IFB, once delivered, become the property of the State.

NO CONSIDERATION WILL BE GIVEN TO BIDS RECEIVED AFTER THE STATED DATE AND TIME.

2.3. Packaging of IFB Response

Please submit four (4) original and one (1) complete copy of all required documents.

1. The bid documents, must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:
 - Bidder's complete name and address
 - Solicitation Number – 1523
 - Bid Due Date and Time: February 10, 2010 @ 2:00 PM EDT
 - Truck Leasing Services

Mailed Bids

Bidders mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid no later than the specified date and time.

Important Security Procedures for Delivered Bids:

Security procedures are in effect at the Corning Tower. Photo identification is required. All visitors must register for building access, for delivering bids. **Vendors are encouraged to pre-register by contacting the OGS Finance Office at 518-474-5981 at least 24 hours prior to the bid opening.** Pre-registered visitors are to report to the visitor desk located at the Concourse level of the Corning Tower. Upon presentation of appropriate photo identification, the visitor will be allowed access to the building.

Upon arrival at the visitor desk, visitors that have not pre-registered will be directed to a designated phone to call the OGS Finance Office. The Finance Office will then enter the visitor's information into the security system. Access will not be allowed until the security system has been updated. Visitors are encouraged to pre-register to ensure timely access to the building. Vendors who intend to deliver bids or conduct business with OGS should allow extra time to comply with the security procedures. These security procedures may change or be modified at any time.

Visitor parking information can be viewed at the following OGS web site:

<http://www.ogs.state.ny.us/parking/forVisitor/visitor.html>

3. Administrative Information

3.1. Issuing Office

This IFB is being released by the New York State Office of General Services Division of Financial Administration on behalf of the Division of Printing and Mail Services.

3.2. Method of Award

Award shall be made to the vendor who has the lowest responsive and responsible bid based on the grand total on Attachment 1, Bid Form.

Upon determination of the lowest responsive and responsible bidder, the Service Agreement found in Appendix D hereto, which appendix is hereby incorporated by reference and made a part hereof as fully as if set forth at length herein, will be completed with the successful bidder's information and appended to this IFB and the successful bidder's bid to form the contract between the parties that will be processed for all necessary State approvals.

3.3. Term of Contract

This contract will commence 40 days from OSC approval or June 1, 2010 whichever occurs first and be in effect for five (5) years.

The State of New York retains the right to cancel this contract for convenience, provided that the Contractor is given at least 30 days written notice of OGS' intent to cancel. Any cancellation by OGS under this section shall in no event constitute or be deemed a breach of any contract resulting from this IFB and no liability shall be incurred by or arise against OGS, its agents and employees therefore for lost profits or any other damages resulting there from. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. See Section 5.13 – Termination.

3.4. Price Adjustment (Escalation / De-escalation)

The Contractor is to submit a bid that will be fixed for **one (1) year** only. On each anniversary date of the contract, the Contractor will be granted an increase or decrease in their bid dependent upon fluctuations in the latest published copy of the Consumer Price Index for all items, for the Northeast Region as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Visit their website at www.bls.gov/ro2/home.htm.

The 'base' month for determining adjustments will be the third month prior to the start date of the contract. The base month is fixed and will not be adjusted year to year. The adjustments will be based on the difference in the base month CPI for each applicable year and will become effective in the anniversary month. For example, if the contract is awarded in September 2008, the 'base' month will be June. If the contract allows for an adjustment after the first year, it would be based on the difference between the June 2008 CPI and the June 2009 CPI and become effective in September 2009.

The consumer price index is published around the middle of each month for the prior month (i.e. the January figure is not published until mid February). The Contractor has the sole responsibility to request, in letter form, an adjusted rate and shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease with the request. This request and documentation must be received at the below address within three months of the base month. To ensure timely delivery, certified mail is recommended. As long as the request is submitted and received within the required time frame, the adjustment will be processed using the base month Consumer Price Index. Once approved, the contractor will be notified in writing. **Request and documentation must be sent to the OGS Purchasing Unit, Corning Tower, 40th Floor, Empire State Plaza, Albany, New York 12242.**

Should contractor fail to submit the request and supporting documentation to the proper location within three months of the applicable base month date, contractor shall be deemed to have waived its right to any increase in price, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

3.5. Financial Approach

All Bidders must submit their bid for the required leased vehicles on Attachment 1 – Bid Form.

3.6. Method of Payment

Invoices for payment shall be submitted at the end of each month for vehicles leased during that month to the OGS Claims Unit.

Invoices must be itemized and include the following: the Contract ID number (i.e.: C00XXXX), monthly rate for primary leased vehicle as well as a description of other leased vehicles during the month, dates of use (bill at daily or weekly rate) and miles driven for each.

Invoices without the above stated information will be returned to Contractor to be completed as required in the paragraph above. Payment will not be issued until a corrected invoice is received and approved by OGS.

Invoices will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

All invoices must be submitted for payment to either:

**THE CLAIMS UNIT
DIVISION OF FINANCIAL ADMINISTRATION
OFFICE OF GENERAL SERVICES
EMPIRE STATE PLAZA STATION
P. O. BOX 2117
ALBANY, NEW YORK 12220-0117**

Or

claimsunit@ogs.state.ny.us

3.7. Electronic Payment

The Office of the State Comptroller (OSC) offers an “electronic payment” option in lieu of issuing checks. Contact OSC to obtain an information packet at 1-518-474-4032 or e-mail to epunit@osc.state.ny.us or visit their website at www.osc.state.ny.us.

3.8. Past Practice

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived. No waiver of any breach of the Agreement at any time in the past shall constitute a waiver of subsequent breach.

3.9. Bid Exceptions

The Issuing Office will consider all requests to waive any bid requirement. However, bidders should be aware that failure to obtain a waiver of any bid requirement in advance of bid submission could result in rejection of Bidder's bid and disqualification from the bidding process. Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the

'Questions Due Date' as identified in Key Events (Section 1.4). The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either via addendum (if the response results in a change to the IFB), or directly to the requesting vendor.

3.10. Dispute Resolution

It is the policy of the Office of General Services' Financial Administration to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations or contract awards. OGS Financial Administration encourages vendors to seek resolution of disputes through consultation with OGS Financial Administration staff. (Note: prior to contract Award all disputes must be sent to the Designated Contact) All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the designated contact person identified on the front of the bid document.

3.11. Waiver of Rights

The failure of the Bidder or OGS to seek redress for violation of or strict performance of any condition in this IFB and the resultant contract does not constitute a waiver of remedies. No provision in this document shall be deemed to have been waived by either party unless such a provision is waived in writing.

3.12. Examination of Contract Documents

- Each Bidder is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may select, of the character, quality and extent of the work to be performed and the conditions under which the contract is to be executed.
- Each Bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the state as an excuse for any failure or omission on the part of the Bidder to fulfill every detail of all the requirements of the documents governing the work. The Bidder, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such Bidder might have fully informed itself prior to bidding.
- Any addendum issued prior to the bid due date must be acknowledged by signature, dated and be submitted on or before the bid due date. In awarding a contract any written addenda will become a part thereof.
- Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, shall become a part of the contract.

3.13. Prime Contractor Responsibilities

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the IFB, and the contract resulting from the IFB.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this IFB or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor who carry out any of the provisions of any contract resulting from this IFB.

3.14. Inspection of Books

It is expressly understood and agreed that the Office of General Services and the New York State Comptroller shall have the right to inspect and audit the Contractor's records covered under this Agreement, in accordance with his statutory responsibility to examine the books and accounts of every Agency. The New York State Comptroller requires, and the Contractor agrees to, the retention of all material that is pertinent to an audit of the operations under any contract resulting from this IFB for a full six-year period.

3.15. Rules of Construction

Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms, as used in this IFB, refer to this IFB.

4. Specifications

4.1. Primary Leased Vehicles

Any contract resulting from this solicitation will be for the leasing of one (1) delivery truck to be based at P 1 Level, Dock J, Empire State Plaza, Albany, NY.

This vehicle will be registered and insured by the State of New York for the duration of the lease.

4.1.1. Vehicle Specifications

The Truck must be a 2010 model with a minimum Gross Vehicle Weight Rating (GVWR) of 36,000 lbs. and meet the following minimum specifications:

Engine: Diesel Engine
250 Horsepower
Single Vertical Exhaust
Fuel/Water Separator
1000 Watt Block Heater

Electrical: Three Batteries – 2250 Amps
100 Amp Alternator
Engine Alarm and Tachometer
Battery Isolator

Transmission: Automatic – 4 Speed
Backup alarm
Regulator/governor (to limit speed to 74 mph)

Front Axel: 13,000 lbs. Capacity Front Axel
Power Steering
Stemco Oil Seals
Taper Leaf Suspension, 13,000 lbs.
Front Stabilizer Bar
Synthetic Lubricant

Rear Axel: 23,000 lbs. Two Speed Rear Axel
4.33:1 Rear Axel Ratio
23,000 lbs. Air Ride Automatic, Self Leveling Rear Suspension
Rear Stabilizer Bar

Brakes: Air Brake System
13.2 CFM Air Compressor
Air Dryer w/Heater

Frame: 110,000 lbs., PSI Frame
Front Tow Hooks
Standard Bumper

150 Gallon Fuel Tank Capacity

Cab:

Conventional
Dual Electric Horns Single Air Horn
AM/FM Stereo Cassette Radio
Air Conditioner
High Back Driver Seat – Cloth, Air Ride
High Back Passenger Seat – Cloth, Air Ride, Arm Rest
Vinyl Interior Trim
Air Ride Cab

Tires & Wheels:

22.5 X 8.25 Steel Disk Wheels
285 X 80R 22.5 - 14 Ply Tires (Lo-Profile)
Highway Traction Tread on Rear
Steer Tread on Front

Miscellaneous:

Cab, White
Frame, Black

Body:

26 Foot Aluminum Van Body, 96" width
Overall Height of Truck Not to Exceed 135 Inches
84 Inch Inside Height
Ground to Body Floor Not to Exceed 50 Inches
24 Foot Inside Length
Roll Up Rear Door w/78"H x 85.25"W Opening
1 1/8" Laminated Hardwood Floor
3/8" Plywood Lining on Sides
1/2" Plywood Lining in Nose
Fork truck Package
4" I Beam Longsills Full Length of Body
3" I Beam Cross Members on 12' centers
12" Heavy Duty Dock Bumper
.040 Exterior Aluminum Skins
Translucent Roof
Radius Front w/cast Corners
Stainless Steel Vertical Front Corners
Exterior Lights to FMVSS 108
Fog Lights
2 Dome Lights w/switch in Cab and at Rear of the Van Body
2 Grab Handles at Rear Door
Mud Flaps
"West Coast," Mirrors (remote r/l, heated)
1 Spotlight Mounted Inside Front of Body (w/switch at Rear)
1 Curbside Access Door to be Located 96" From Front Corner

"E" Track to be Mounted (screwed, not riveted) at a Height of 2'6" and 4'6" From the Floor on Front and Both Interior Walls and Running the Entire Length of Box to include front wall of Box

Hydraulic Rail - Type Lift Gate

Waltco Model WDV 55 or Equivalent

80" width x 84" load depth w/16" folding aluminum retention Ramp

Dedicated Batteries

Power up and down, to include dual power units and back-up power System

5500 lb. capacity

Below Bed Height Storage (Maximum Ground to Floor Height to be 42")

12 Inch 3/8 steel kickplate along bottom wall of truck

4.2. Other Leased Vehicles

From time to time OGS requires the short term lease (rental) of other vehicles. Listed below are the size and type of vehicles with an estimate of the number of times these vehicles have been requested in the past. These vehicles will remain registered and insured by the Contractor.

- A. Van: 10,000 lbs. Gross Vehicle Weight Rating or less (40 days per year)
- B. Box truck, small, roll up rear door, lift gate, automatic transmission. Box to be 18 feet or less in length. 18,000 lbs. Gross Vehicle Weight Rating or less. (20 days per year)
- C. Box truck, large, roll up rear door, liftgate, automatic transmission, air brakes, CDL license required. Box to be 24-26 feet in length. 32,000 lbs. Gross Vehicle Weight Rating (60 - 120 days per year)
- D. Box truck large, refrigerated, roll up rear door, liftgate, automatic transmission, air brakes, CDL license required. Box to be 24-26 feet in length. 32,000 lbs. Gross Vehicle Weight Rating (20 days per year)
- E. Tractor, non-sleeper, single or double axel, CDL A license required. 80,000 lbs. Gross Vehicle Weight Rating (30 days per year)
- F. Van trailer, dry, air ride suspension, liftgate, two axels. Trailer to be 48 – 53 feet in length. Gross combined weight, including tractor, 80,000 lbs. (20 days per year)
- G. Van trailer, refrigerated, air ride suspension, liftgate, two axels. Trailer to be 48 – 53 feet in length. Gross combined weight, including tractor, 80,000 lbs. (10 days per year)

4.3. Service Requirements

- A. Contractor or contractor's agent must respond anywhere in State to emergency road repair calls within one-hour of oral notification and must make repairs or replace vehicle within two hours of arrival at breakdown location.
- B. Contractor must provide pick-up and delivery of vehicles at the Office of General Services Mail Center at the Empire State Plaza, Albany, New York, when the leased vehicles require service or repair from that point.
- C. Contractor will be responsible for all preventative maintenance and vehicle repairs not deemed to be attributable to driver error.
- D. When a leased truck must be brought in for repairs, contractor must provide a comparable replacement vehicle similar to the leased vehicle and the Office of General Services reserves the right to demand a more suitable replacement be furnished. Comparable replacement vehicles must have a freight space volume capacity equal to or greater than the specified vehicles. Failure

to provide such a comparable replacement vehicle will subject the contractor to the Contractor's damage Liability provisions put forth herein.

- E. Except at the commencement of the contract, when comparable replacement vehicles may be provided for up to five months until the specified vehicles are available (or such additional time as extended by the State in its sole discretion for good cause shown), comparable replacement vehicles are to be in service no more than three consecutive days per incident.
- F. Contractor shall submit, monthly, a preventive maintenance report to the Director, Support Services Operations.

4.4. Contractual Damages Liability

Whenever Contractor is obligated to provide a comparable replacement vehicle hereunder, whether it be for the initial start of the contract, when any vehicle is in the possession of the contractor or its agent for repairs, after the expiration of the specified time for roadside repairs, or any other reason, and Contractor has failed to do so, in addition to a pro rata reduction of the consideration payable to the Contractor for the subject month, Contractor shall be liable to reimburse the State for its expenses incurred in transporting the usual contents of such vehicle to its intended destination in a timely fashion. Without in any way limiting this liability, the State's expenses may include those incurred for the rental of a comparable replacement vehicle from another firm, for mailing through the United States Postal Service, for shipment through an overnight or other common carrier, or for any other appropriate and reasonable method chosen by the State in its discretion.

4.5. Title, Registration and Insurance Of Vehicle

The Agreement resulting from this IFB is for lease only and not a contract for the purchase of vehicles. Contractor is the owner of all leased vehicles and the State understands that it does not acquire any legal or equitable interest in any leased vehicle supplied hereunder other than those outlined herein.

Vehicles shall be titled with Contractor as the legal owner of the leased vehicle throughout the lease term. Pursuant to the New York State Vehicle and Traffic Law, vehicles shall be registered and insured in the name of the State.

Contractor shall bear the costs of titling and registering the vehicles. OGS shall be responsible for costs associated with insuring the vehicles. Contractor shall retain possession of the leased vehicle titles.

4.6. Certificate of Title

Should Contractor require a change in the Certificate of Title, any costs incurred to implement the change, shall be borne by Contractor in accordance with New York State Vehicle & Traffic Law Section 2125 Fees.(a)(2) and Section 2125 Fees. (c).

4.7. Loss or Damage

The State shall be responsible for loss of or damage to:

- (1) leased vehicles, except for (i) normal wear and tear and (ii) loss or damage caused by negligence of the Contractor, its agents, or employees; and (iii) product defects.
- (2) Property of third persons, or the injury or death of third persons, to the extent the State is liable for such loss, damage, injury, or death under the laws of the State of New York.

In the event a leased vehicle becomes lost, stolen and not recovered, damaged or destroyed beyond repair, the State shall pay Contractor the current depreciated value of such vehicle as reasonably established by Contractor to the State's satisfaction, plus any outstanding fees or charges including the monthly lease fee for the applicable month in which a vehicle is rendered unserviceable, minus any

insurance proceeds Contractor receives from the State's insurance carrier. In no event shall the amount due exceed the original retail value of the vehicle.

4.8. Contractor Liability

Contractor shall be liable for, and shall indemnify and hold harmless the state against all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

Before supplying any vehicles under this contract, Contractor shall certify to the State in writing that the required insurance has been obtained. The policies evidencing required insurance, or proof of a self-insurance program, shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interests of the State shall not be effective (1) for such period as the laws of the State of New York prescribes or (2) until 30 days after written notice to the State, whichever period is longer. The policies shall exclude any claim by the insurer for subrogation against the State by reason of any payment under the policies.

Contractor warrants that the contract price includes no cost for insurance or contingency to cover losses, damages, injury, or death for which the State is responsible under this clause.

5. Contract Clauses and Requirements

5.1 Appendix A / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated June 2006, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein.

The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix- A
2. Service Agreement – Appendix D
3. OGS Invitation For Bid Number 1523 (This Document) & any addenda
4. Selected Contractor's Bid

5.2. Procurement Lobbying Requirement

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

5.3. Contractor Insurance Requirements

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, Office of General Services (hereinafter referred to as "OGS"), Certificates of Insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements contained in this Contract. Such Certificates shall be of a form and substance acceptable to OGS.

Certificate acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers acceptable to OGS; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to Office of General Services, Purchasing Unit, Corning Tower, 40th Floor, Empire State Plaza, Albany, New York 12242 and shall name The People of the State of New York, its officers, agents, and employees as additional insureds there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by OGS. Such approval shall not be unreasonably withheld.

The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply to OGS updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a) Commercial General Liability Insurance with a limit of not less than \$5,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
 1. If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.
- b) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- c) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against OGS arising from Contractors work.
 1. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
 2. If the Contract includes disposal of materials from the job site, the Contractor must furnish to OGS, evidence of pollution legal liability insurance in the amount of

\$2,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Contract.

- i) If autos are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.
- d) If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$5,000,000 per loss.
 - 1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
 - 2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
- e) Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of OGS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for OGS' immediate termination of any contract resulting from this RFP, subject only to a five (5) business day cure period. Any termination by OGS under this section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

f) WORKERS' COMPENSATION / DISABILITY INSURANCE:

Workers' Compensation, Employer's Liability, and Disability Benefits meeting all New York State statutory requirements are required. If coverage is obtained from an insurance company through an insurance policy, the policy shall provide coverage for all states of operation that apply to the performance of the contract. In addition, if employees will be working on, near or over navigable waters, coverage provided under the US Longshore and Harbor Workers' Compensation Act must be included. Also, if the contract is for temporary services, or involves renting equipment with operators, the Alternate Employer Endorsement, WC 00 03 01A, must be included on the policy naming the People of the State of New York as the alternate employer.

PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS:

ACORD forms are NOT acceptable proof of workers' compensation coverage.

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, contractors shall:

- A) Be legally exempt from obtaining workers' compensation insurance coverage;

or

B) Obtain such coverage from insurance carriers;

or

C) Be a Board-approved self-insured employer or participate in an authorized self-insurance plan.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Office of General Services** at the time of bid submission or shortly after the opening of bids:

A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us);

or

B) Certificate of Workers' Compensation Insurance:

1) Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services;

or

2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services;

or

C) Certificate of Workers' Compensation Self-Insurance - Form SI-12, available from the New York State Workers' Compensation Board's Self-Insurance Office;

or

D) Certificate of Participation in Workers' Compensation Group Self-Insurance Form GSI-105.2, available from the contractor's Group Self-Insurance Administrator.

PROOF of COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, contractors shall:

A) Be legally exempt from obtaining disability benefits coverage;

or

B) Obtain such coverage from insurance carriers;

or

C) Be a Board-approved self-insured employer.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Office of General Services** at the time of bid submission or shortly after the opening of bids:

A) Form **CE-200**, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required

which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us);

or

B) Form **DB-120.1**, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services;

or

C) Form **DB-155**, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

All forms must name the Office of General Services – Financial Administration, 40th Floor, Mayor Erastus Corning 2nd Tower, Empire State Plaza, Albany NY 12242, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

5.4. Tax and Finance Clause

TAX LAW § 5-A:

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the 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 contractors' sales delivered into New York State are 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.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this IFB. Form ST-220-TD must be filed with and returned directly to DTF. 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 contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698--2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>

5.5. Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses

Contractors are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. To locate New York State Certified M/WBEs, the directory of Certified Businesses can be viewed at: http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp

Appendix C contains documents for both Equal Employment Opportunity Requirements and Business Participation Opportunities for Minority/Women-Owned Business. At a minimum the Equal Employment Opportunity forms EEO 100 and EEO 101 must be completed and returned with your bid.

5.6. Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid/bid will be held in confidence and details of any bid/bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process.

SHOULD YOU FEEL YOUR FIRM'S BID/BID CONTAINS ANY SUCH TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, **YOU MUST SUBMIT A REQUEST TO EXCEPT SUCH INFORMATION FROM DISCLOSURE.** SUCH REQUEST MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION SHOULD BE EXCEPTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME OF SUBMISSION OF THE SUBJECT INFORMATION.

REQUESTS FOR EXEMPTION OF THE ENTIRE CONTENTS OF A BID/BID FROM DISCLOSURE HAVE GENERALLY NOT BEEN FOUND TO BE MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXEMPTION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR FIRM.

5.7. General Requirements

- A. The Bidder agrees to adhere to all State and Federal laws and regulations in connection with the contract.
- B. The Bidder agrees to notify the Office of General Services of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- C. The Bidder agrees that in any contract resulting from this IFB it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
- D. The Bidder agrees that any contract resulting from this IFB may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Commissioner of General Services.
- E. For reasons of safety and public policy, in any contract resulting from this IFB, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
- F. For purposes of any contract resulting from this IFB, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
- G. The Commissioner's interpretation of specifications shall be final and binding upon the Contractor.
- H. The Commissioner of General Services will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.

- I. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with the Commissioner of General Services.
- J. INSPECTION – For purposes of any contract resulting from this IFB, the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the Commissioner of the Office of General Services may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor and its surety shall be liable to the State of New York for costs incurred on account thereof.
- K. STOP WORK ORDER - The Commissioner of General Services reserves the right to stop the work covered by this IFB and any contract(s) resulting there from at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, the Office of General Services shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Bidder and its surety shall be liable to the State of New York for any such costs on account thereof. In the event that the Office of General Services issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective.
- L. It is the Contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
- M. The Office of General Services reserves the right to reject and bar from the facility any employee hired by the Contractor.

5.8. Contract Terms

All provisions and requirements of, Appendix A Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.

All provisions and requirements, which are attached hereto and form a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.

It is stipulated and agreed by the parties that the law of the State of New York shall solely and in all respects govern with relation to any dispute, litigation, or interpretation arising out of or connected with any contract resulting from this IFB.

Any contract resulting from this IFB shall not be deemed executed, valid or binding unless and until approved in writing by the Comptroller of the State of New York.

5.9. Subcontractors

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the Contract Documents including, but not limited to the General Conditions and Requirements.

5.10. Procurement Rights

The State of New York reserves the right to:

- A. Reject any and all bids received in response to this IFB.

- B. Disqualify a Bidder from receiving the award if the Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- C. Waive or modify minor irregularities in bids received, after prior notification to the Bidder.
- D. Adjust any Bidder's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Bidder will cause the State to incur additional costs.
- E. Utilize any and all ideas submitted in the bids received.
- F. The State may begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected Contractor within 21 days of selection notification.
- G. The State is not liable for any cost incurred by a Bidder in the preparation and production of a bid or for any work performed prior to the issuance of a contract.
- H. Waive any non-material requirement not met by all Bidders.
- I. Not make an award from this IFB.
- J. If two or more offers are found to be substantially equivalent, the Commissioner of OGS, at his sole discretion, will determine award.
- K. The State reserves the right to make multiple contract awards pursuant to the IFB.
- L. OGS retains the right to have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
- M. Seek clarifications of bids.
- N. Make an award under this IFB in whole or in part.

5.11. Extent of Services

OGS reserves the right to re-negotiate at its discretion, to expand or reduce the amount of services provided under any contract resulting from this solicitation. Compensation for these services shall be adjusted accordingly. This expansion or reduction in services shall be effectuated by written amendment to the contract and subject to approval by the Office of the State Comptroller.

5.12. Debriefings

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's bid or bid. After contract award, OGS shall, upon request, provide a debriefing to any bidder that responded to the IFB, regarding the reason that the bid or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder within thirty days of contract approval as posted on the OSC website (web address below).

<http://www1.osc.state.ny.us/transparency/contracts/contractsearch.cfm>

5.13. Termination

The Office of General Services may, upon thirty (30) days notice, terminate the contract resulting from this IFB in the event of the awarded Bidder's failure to comply with any of the bid's requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, OGS may also terminate any contract resulting from this IFB upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of the creditors.

Furthermore, OGS shall have the right, in its sole discretion, at any time to terminate a contract resulting from this IFB, or any unit portion thereof, with or without cause, by giving thirty (30) days written notice of termination to the Contractor.

Any termination by OGS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this IFB and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

5.13.1. Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

5.14. NYS Standard Vendor Responsibility Questionnaire

Contractor agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as part of Attachment A hereto and hereby incorporated by reference and made a part hereof as fully as set forth at length herein (hereinafter the "Questionnaire"). The Contractor acknowledges that the State's execution of any Agreement resulting from this IFB is contingent upon the State's determination that the Contractor is responsible, and that the State will be relying upon the Contractor's responses to the Questionnaire in making that determination. The parties agree that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Agreement resulting from this IFB by providing ten (10) days written notification to the Contractor. In no case shall the State's termination hereunder be deemed a breach of the Agreement resulting from this IFB, 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 a termination.

5.15. Ethics Compliance

All bidders/contractors and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Contract, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

5.16. Indemnification

The Contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, subcontractors or agents, of any contract resulting from this solicitation and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claim, action or proceeding relating to or in any way connected with the performance of this Agreement and covenants and agrees to indemnify and hold harmless the State of New York, its agents, officers and employees, from any and all claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any contract resulting from this solicitation, including negligence, active or passive or improper conduct of the Contractor, its officers, agents, subcontractors or employees, or the failure by the Contractor, its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed.

5.17. Information Security Breach

In accordance with the Information and Security Breach Notification Act (ISBNA) (Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005), a Contractor with OGS shall be responsible for all applicable provisions of the ISBNA and the following terms herein with respect to any private information (as defined in the ISBNA) received by or on behalf of OGS under this Contract.

- Contractor shall supply OGS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as OGS's notification policy.
- Contractor must encrypt any database fields and backup tapes that contain private data elements, as set forth in the ISBNA.
- Contractor must ensure that private data elements are encrypted in transit to / from their systems.
- In general, contractor must ensure that private data elements are not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.
- Contractor must monitor for breaches of security to any of its systems that store or process private data owned by OGS.
- Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from OGS.
- In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify OGS and commence an investigation in cooperation with OGS to determine the scope of the breach.
- Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
- Contractor shall immediately notify OGS following the discovery that OGS's system security has been breached.
- Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from OGS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the State Office of Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General's Office or any consuming reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.
- Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.
- This policy and procedure shall not impair the ability of the Attorney General to bring an action against the Contractor to enforce all provisions of the ISBNA or limit the Contractor's liability for any violations of the ISBNA.

5.18. Short Term Extension

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

5.19. Mercury-Added Consumer Products

Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of

elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information: <http://www.dec.ny.gov/chemical/8512.html>.

5.20. Diesel Emissions

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

As a contract vendor the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities. Thirty-three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty-six percent (66%) by December 31, 2009 and one-hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State.

The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age,

sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance

of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition,

construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor

hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

Appendix B

Required Forms

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Required Forms

The following required forms are to be submitted with the proposer's proposal. The forms include:

- Contractor Information;
- Standard Vendor Responsibility Questionnaire;
- Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law;
- Offerer Disclosure of Prior Non-Responsibility Determinations;
- Offerer's Certification of Compliance with State Finance Law §139-k(5);
- ST-220 -TD Taxation & Finance Contractor Certification (submitted directly to Tax & Finance)
- ST-220 -CA Taxation and Finance Covered Agency Certification;
- MacBride Principles;
- Non/Collusive Bidding Certification;

Contractor Information

IFB NUMBER 1523

(Authorized Signature)

(Date)

(Print Name)

(Title)

(Company Name)

(Federal I.D. Number)

(Address)

(City, State, Zip)

(County)

(Telephone Number) Ext. _____

(Toll Free Phone) Ext. _____

(Fax Number)

(Toll Free Fax Number)

(E-mail)

New York State Small Business

Circle One: Yes No

New York State Certified Minority Owned Business

Circle One: Yes No

New York State Certified Woman Owned Business

Circle One: Yes No

Do you understand and is your firm capable of meeting
the insurance requirements to enter into a contract with
New York State?

Circle One: Yes No

Does your bid meet all the requirements of this solicitation?

Circle One: Yes No

New York State Standard Vendor Responsibility Questionnaire

Each Contracting Agency conducts a review of prospective contractors (“vendors”) to provide reasonable assurances that the vendor is responsible. This questionnaire is used for all non-construction contracts with a contract value of \$100,000.00 or more and is designed to provide information to assess a vendor’s authorization to do business in New York State, as well as your business integrity, financial and organizational capacity, and performance history. (Review of construction contractors will be based upon the Uniform Contracting Questionnaire developed by the Council of Contracting Agencies.)

Each vendor must answer every question contained in this questionnaire. Where a response requires additional information, the vendor must attach a written response that adequately details the requested information. Please number each response to match the question number. The completed questionnaire and attached responses will become part of the procurement record.

In order to expedite the required review, when providing additional information for a “YES” answer to Questions 14 a-s, or any other response which requires additional explanation, your information and responses should address the relationship of the issue to the proposed contract. Be brief, concise and to the point. Discuss as appropriate the following:

- Provide a description of the issue and identify the actions taken or currently being implemented to ensure that the issue will not occur again.
- State whether the staff and/or organizational component involved in the identified issue(s) will work on the proposed contract. If so, provide information to assure the agency that the issue will not be repeated.
- Identify the relationship (or lack thereof) between the product/services involved in the issue and the type of product/services proposed for this contract.
- State whether the issue will affect your financial or organizational ability to perform under the proposed contract.
- Provide copies of relevant documents or any other information that would assist the agency in its vendor responsibility evaluation.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing vendor’s business and operations, as an owner or officer of the vendor must attest to the questionnaire information. Please be advised that at the end of this questionnaire, you must certify, under oath, all responses given.

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

1. LEGAL BUSINESS NAME: _____

2. FEDERAL EMPLOYER ID NO. (FEIN): _____

3. D/B/A — Doing Business As (if applicable): _____
COUNTY FILED: _____

4. WEBSITE ADDRESS (if applicable): _____

5. PRINCIPAL PLACE OF BUSINESS ADDRESS: _____

6. TELEPHONE NUMBER: _____ 7. FAX NUMBER: _____

8. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE:

Name: _____

Title: _____

Telephone Number: _____ Fax Number: _____

E-mail: _____

9. TYPE OF BUSINESS: (please check appropriate box and provide additional information):

- | | |
|---|---|
| a) <input type="checkbox"/> Corporation | State of Incorporation: _____ |
| b) <input type="checkbox"/> Sole Proprietor | State/County filed in: _____ |
| c) <input type="checkbox"/> General Partnership | State/County filed in: _____ |
| d) <input type="checkbox"/> Not-for-Profit Corporation | Charities Registration Number: _____ |
| e) <input type="checkbox"/> Limited Liability Company (LLC) | Jurisdiction filed: _____ |
| f) <input type="checkbox"/> Limited Partnership | State/County filed in: _____ |
| g) <input type="checkbox"/> Other — Specify: | Jurisdiction Filed (if applicable): _____ |

10. IF NOT INCORPORATED OR FORMED IN NEW YORK STATE, PLEASE PROVIDE A CURRENT CERTIFICATE OF GOOD STANDING FROM YOUR STATE OR APPLICABLE LOCAL JURISDICTION.

11. LIST NAME AND TITLE OF EACH PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), DIRECTOR AND MEMBER, as applicable:

- a) _____
- b) _____
- c) _____
- d) _____
- e) _____
- f) _____
- g) _____
- h) _____

12. AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:

Name: _____

Title: _____

Telephone Number: _____ Fax Number: _____

E-mail: _____

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

13. DOES THE VENDOR USE, OR HAS IT USED IN THE PAST FIVE (5) YEARS, ANY OTHER BUSINESS NAME, FEIN, OR D/B/A OTHER THAN WHAT IS LISTED IN QUESTIONS 1-3 ABOVE?

☐ Yes ☐ No

If yes, provide the name(s), FEIN(s) and d/b/a(s) and the address for each such company and d/b/a on a separate piece of paper and attach to this response.

14. WITHIN THE PAST FIVE (5) YEARS, HAS THE VENDOR, ANY PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), AFFILIATE¹ OR ANY PERSON INVOLVED IN THE BIDDING, CONTRACTING OR LEASING PROCESS BEEN THE SUBJECT OF ANY OF THE FOLLOWING:

(a) a judgment or conviction for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?

☐ Yes ☐ No

(b) a criminal investigation or indictment for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?

☐ Yes ☐ No

(c) an unsatisfied judgment, injunction or lien for any business related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency?

☐ Yes ☐ No

(d) an investigation for a civil or criminal violation for any business related conduct by any federal, state or local agency?

☐ Yes ☐ No

(e) a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?

☐ Yes ☐ No

(f) a federal, state or local government suspension or debarment from the contracting process?

☐ Yes ☐ No

(g) a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract?

☐ Yes ☐ No

¹"Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

STATE OF NEW YORK

Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

- (h) a federal, state or local government denial of a lease or contract award for non-responsibility? ☐ Yes ☐ No
- (i) an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease? ☐ Yes ☐ No
- (j) a federal, state or local determination of a willful violation of any public works or labor law or regulation? ☐ Yes ☐ No
- (k) a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license? ☐ Yes ☐ No
- (l) a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws? ☐ Yes ☐ No
- (m) an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful? ☐ Yes ☐ No
- (n) a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles? ☐ Yes ☐ No
- (o) a citation, violation order, pending administrative hearing or proceeding or determination issued by a federal, state or local government for violations of:
- health laws, rules or regulations ☐ Yes ☐ No
 - unemployment insurance or workers' compensation coverage or claim requirements ☐ Yes ☐ No
 - ERISA (Employee Retirement Income Security Act) ☐ Yes ☐ No
 - human rights laws ☐ Yes ☐ No
 - federal U.S. Citizenship and Immigration Services laws ☐ Yes ☐ No
 - Sherman Act or other federal anti-trust laws ☐ Yes ☐ No
- (p) entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity? ☐ Yes ☐ No
- (q) a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status? ☐ Yes ☐ No
- (r) a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract? ☐ Yes ☐ No
- (s) a finding of non-responsibility by an agency or authority due to a violation of State Finance Law §139-j? ☐ Yes ☐ No

FOR EACH YES ANSWER TO QUESTIONS 14 a-s, PROVIDE DETAILS ON ADDITIONAL SHEETS REGARDING THE FINDING, INCLUDING BUT NOT LIMITED TO CAUSE, CURRENT STATUS, RESOLUTION, ETC.

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

15. DURING THE PAST THREE YEARS, HAS THE VENDOR FAILED TO:

**(a) FILE RETURNS OR PAY ANY APPLICABLE FEDERAL, STATE OR
LOCAL GOVERNMENT TAXES?**

☐ Yes ☐ No

If yes, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability: _____
_____.

(b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE?

☐ Yes ☐ No

If yes, indicate the years the company failed to file/pay the insurance and the current status of the liability: _____
_____.

**16. HAVE ANY BANKRUPTCY PROCEEDINGS BEEN INITIATED BY OR AGAINST THE
VENDOR OR ITS AFFILIATES WITHIN THE PAST SEVEN YEARS (WHETHER OR NOT CLOSED)
OR IS ANY BANKRUPTCY PROCEEDING PENDING BY OR AGAINST THE VENDOR
OR ITS AFFILIATES, REGARDLESS OF THE DATE OF FILING?**

☐ Yes ☐ No

If yes, indicate if this is applicable to the submitting vendor or one of its affiliates: _____

If it is an affiliate, include the affiliate's name and FEIN: _____

Provide the court name, address and docket number: _____

Indicate if the proceedings have been initiated, remain pending or have been closed: _____

If closed, provide the date closed: _____

**17. DOES VENDOR HAVE THE FINANCIAL RESOURCES NECESSARY TO
FULFILL THE REQUIREMENTS OF THE PROPOSED CONTRACT?**

☐ Yes ☐ No

Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b)

New York State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form:

Contract Procurement Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No ____

Yes ____

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No ____

Yes ____

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No ____

Yes ____

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No ____

Yes ____

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____
Signature

**Offerer's Certification of Compliance
with State Finance Law §139-k(5)**

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.

Offerer Certification:

I certify that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

New York State Department of Taxation and Finance

Contractor Certification (ST-220-TD)

Contractor Certification to Covered Agency (ST-220-CA)



New York State Department of Taxation and Finance

Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a* (see *Need help? below*).

Contractor name

Contractor's principal place of business

City

State

ZIP code

Contractor's mailing address (if different than above)

Contractor's federal employer identification number (EIN)

Contractor's sales tax ID number (if different from contractor's EIN)

Contractor's telephone number

Covered agency name

Contract number or description

Estimated contract value over the full term of the contract
(but not including renewals) \$

Covered agency address

Covered agency telephone number

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at www.nystax.gov. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need Help?

Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from
8:00 A.M. to 5:00 P.M. (eastern time),
Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Make only one entry in each section below.

Section 1 - Contractor registration status

- ☐ The contractor has 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- ☐ The contractor has not 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 - Affiliate registration status

- ☐ The contractor does not have any affiliates.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 - Subcontractor registration status

- ☐ The contractor does not have any subcontractors.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this _____ day of _____, 20 _____

(sign before a notary public)

(title)

Schedule A - Listing of each person (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such person exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to Contractor	B Name	C Address	D Federal ID Number	E Sales Tax ID Number	F Registration In Progress

Column A - Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.

Column B - Name - If person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If person is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If person has a different DBA (doing business as) name, enter that name as well.

Column C - Address - Enter the street address of person's principal place of business. Do not enter a PO box.

Column D - ID number - Enter the federal employer identification number (EIN) assigned to the person or person's business, as applicable. If the person is an individual, enter the social security number of that person.

Column E - Sales tax ID number - Enter only if different from federal EIN in column D.

Column F - If applicable, enter an X if the person has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
: _____ SS.:
COUNTY OF _____ }

On the _____ day of _____ in the year 20____, before me personally appeared _____
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and
say that

_____ he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

- ☐ (If an individual): _____ he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): _____ he is the _____
of _____, the corporation described in said instrument; that, by authority of the Board
of Directors of said corporation, _____ he is authorized to execute the foregoing instrument on behalf of the corporation
for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the
name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): _____ he is a _____
of _____, the partnership described in said instrument; that, by the terms of said
partnership, _____ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set
forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on
behalf of said partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): _____ he is a duly authorized member of _____
LLC, the limited liability company described in said instrument; that _____ he is authorized to execute the foregoing
instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that
authority, _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as
the act and deed of said limited liability company.

Notary Public

Registration No. _____



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a* (see *Need Help? on back*).

Contractor name				For covered agency use only Contract number or description
Contractor's principal place of business		City	State	
Contractor's mailing address (if different than above)				Estimated contract value over the full term of contract (but not including renewals)
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number ()		Covered agency name		\$
Covered agency address				Covered agency telephone number

I, _____, hereby affirm, under penalty of perjury, that I am _____
 (name) (title)
 of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:
 (Mark an X in only one box)

- ☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- ☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
 (insert contract number or description)
 and, to the best of the contractor's knowledge, the information provided on that previously filed Form T-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this _____ day of _____, 20 ____

 (sign before a notary public)_____
 (title)**Instructions****General Information**

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities or services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
 :
 COUNTY OF _____ } SS.:

On the day _____ of _____ in the year 20____, before me personally appeared _____
 known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

- ☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): _he is the _____
 of _____, the corporation described in said instrument; that, by authority of the Board of Directors
 of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth
 therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said
 corporation as the act and deed of said corporation.
- ☐ (If a partnership): _he is the _____
 of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is
 authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to
 that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of
 said partnership.
- ☐ (If a limited liability company): _he is a duly authorized member of _____ LLC, the
 limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of
 the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing
 instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

 Notary Public

 Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

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Need Help?



Internet access: www.nystax.gov
 (for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from
 8:00 A.M. to 5:00 P.M. (eastern time),
 Monday through Friday.

To order forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the
 deaf (TDD) callers only): 1 800 634-2110



Persons with disabilities: In compliance with the Americans
 with Disabilities Act, we will ensure that our lobbies, offices,
 meeting rooms, and other facilities are accessible to persons with
 disabilities. If you have questions about special accommodations
 for persons with disabilities, please call 1 800 972-1233.

Bidder is required to sign both sections on this page.

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either: (answer yes or no to one or both of the following, as applicable:

1. Have business operations in Northern Ireland,

☐ Yes ☐ No

If yes:

2. Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment 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.

☐ Yes ☐ No

(Contractor's Signature)

(Name of Business)

NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief: 1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and 3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(Contractor's Signature)

(Name of Business)

APPENDIX C

MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES (M/WBE)

APPENDIX C

Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and Certified Minority/Women-Owned Businesses on OGS Contracts

In accordance with Article 15-A of the Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Offeror/Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered OGS contracts.

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 Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The contractor is required to ensure that the provisions of Appendix A clause 12 - Equal Employment Opportunities for minorities and women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each subcontractor as to work in connection with the State contract.

The following forms are required to ensure offeror compliance with the Equal Employment Opportunity requirements:

1. Staffing Plan (Form EEO 100)

To ensure compliance with the foregoing section, the Offeror shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this contract broken down by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Offerors shall complete the Staffing Plan form and submit it as part of their bid or proposal or within a reasonable time thereafter, but no later than the time of award of the contract.

A contractor's failure to submit a Staffing Plan prior to the time required shall result in the rejection of the bid or proposal.

2. Workforce Employment Utilization/Compliance Report (Form EEO 101).

Once a contract has been awarded, the Contractor is responsible to update OGS on any changes to the Staffing Plan submitted. This information is to be submitted on a quarterly basis during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Employment Utilization/Compliance Report (Utilization/Compliance Report) must be submitted to report this information. Separate forms are to be completed for the contractor and any subcontractor performing work on the contract.

Please note that in all instances, the Contractor may not be able to separate out the workforce utilized in the performance of the contract from the Contractor's and/or sub contractor's total workforce. When a separation can be made, the Contractor shall submit the Utilization/Compliance Report and indicate that the information provided relates to the actual workforce utilized on the subject contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or

subcontractor's total workforce, the Contractor shall submit the Utilization/Compliance Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

The Utilization/Compliance Report is to be completed for the quarters ending on 3/31, 6/30, 9/30 and 12/31 and submitted to the OGS Office of Minority/Women-owned Business Enterprise Program Operations (OM/WBEPO) within 15 days of the end of each quarter. If there are no changes to the workforce utilized on the contract during the reporting period, the Contractor can submit a copy of the previously submitted report with the date and reporting period updated, indicating no change.

Requirements and Procedures Regarding Business Participation Opportunities for Certified Minorities and Women on OGS Contracts

In accordance with Article 15-A of the Executive Law and regulations adopted pursuant thereto, the following forms are required to ensure compliance with the Minority and Women-owned Business participation requirements. In accordance with these requirements, the Offeror agrees to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. The directory of New York State Certified Businesses can be viewed at: <http://www.nylovesmwbe.ny.gov/>

In addition, the Offeror agrees to submit the following documents as evidence of compliance with the foregoing:

1. M/WBE Utilization Plan (Form M/WBE 100).

- A. Offerors are required to submit a Utilization Plan on **Form M/WBE 100** with this bid or proposal. The Utilization Plan shall list NYS Certified minority or women-owned business enterprises which the contractor intends to use to perform the State contract and a description of the contract scope of work which the contractor intends to structure to increase the participation by NYS Certified minority or women-owned enterprises on the State contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the contractor intends to be performed by a NYS Certified minority or woman-owned business. Any modifications or changes to the agreed participation by NYS Certified M/WBEs after the Contract Award and during the term of the contract must be reported on a revised M/WBE Utilization Plan and submitted to the OGS OM/WBEPO.
- B. The OGS OM/WBEPO will review the M/WBE Utilization Plan and will issue to the Offeror a written notice of acceptance or deficiency within twenty (20) days of its receipt. A notice of deficiency shall include (i) the name of any M/WBE which is not acceptable for the purpose of complying with the M/WBE participation goals and the reasons why it is not acceptable; (ii) elements of the Contract scope of work which OGS has determined can be reasonably structured by the Offeror to increase the likelihood of participation in the Contract by M/WBEs; and (iii) other information which OGS determines to be relevant to the M/WBE Utilization Plan.
- C. The Offeror shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to OGS OM/WBEPO a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS OM/WBEPO to be inadequate, OGS OM/WBEPO shall notify the Offeror and direct the Offeror to submit, within five (5) business days, a request for a partial or total waiver of M/WBE participation goals on forms

provided by OGS OM/WBEPO. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- D. OGS may disqualify an Offeror as being non-responsive under the following circumstances:
- a) If an Offeror fails to submit a M/WBE Utilization Plan;
 - b) If an Offeror fails to submit a written remedy to a notice of deficiency in a M/WBE Utilization Plan;
 - c) If an Offeror fails to submit a request for waiver; or
 - d) If the OGS OM/WBEPO determines that the Offeror has failed to document good faith efforts.

2. Request for Waiver Form (if applicable) (Form M/WBE 101). An Offeror who documents good faith efforts to meet the goal requirements may submit a request for a partial or total waiver at the same time it submits its M/WBE Utilization Plan. If a request for waiver is submitted with the M/WBE Utilization plan and is not accepted by the OGS OM/WBEPO at that time, the provisions of clauses 1 (B & C), regarding the notice of deficiency and written remedy will apply.

The Awarded Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its M/WBE Utilization Plan, during the performance of the contract. Requests for a partial or total waiver of established goal requirements made subsequent to award of a Contract may be made at any time during the term of the Contract to the OGS OM/WBEPO but prior to the submission of a request for final payment on the Contract.

3. Monthly M/WBE Contractor Compliance Report (Form M/WBE 102). Contractors are required to submit a Monthly M/WBE Contractor Compliance Report to OGS OM/WBEPO by the 10th day of each month over the term of the contract documenting the progress made towards achievement of the M/WBE goals of the Contract.

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

Copies of all referenced forms can be found on the OGS Website at: <http://www.ogs.state.ny.us/mwbe/forms.html>

If you have any questions regarding the foregoing requirements or the requirements of Article 15-A of the Executive Law and 5 NYCRR Parts 140-144, please contact the identified Designated Contact(s) for this solicitation.

EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN **Submit with Bid or Proposal – Instructions on page 2**

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

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

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification													
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)	
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	

PREPARED BY (Signature):	TELEPHONE NO.: EMAIL ADDRESS:	DATE:
NAME AND TITLE OF PREPARER (Print or Type):		Submit completed plan with bid or proposal EEO 100 (Rev 6-08)

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form for the contractor's or subcontractor's total work force.

Instructions for completing:

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

RACE/ETHNIC IDENTIFICATION

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

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

OTHER CATEGORIES

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

EQUAL EMPLOYMENT OPPORTUNITY WORK FORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT

Contract No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Reporting Period: <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
Offeror's Name:		Report includes: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
Offeror's Address:		

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

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification													
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)					
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	

PREPARED BY (Signature):	TELEPHONE NO.: EMAIL ADDRESS:	DATE:
NAME AND TITLE OF PREPARER (Print or Type):		Submit completed form for OGS contract to: NYS Office of General Services Office of Minority/Woman-owned Business Enterprise Program Operations Corning Tower, 41ST Floor Empire State Plaza, Albany NY, 12242

General Instructions: The work force utilization/compliance report (**EEO 101**) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's or subcontractor's total work force, the contractor or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's or subcontractor's total work force, information on the contractor's total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to OGS within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a written statement of no change or submit a copy of the previously submitted report with the date and reporting period updated.

Instructions for completing:

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OGS Office of Minority/Woman-Owned Business Enterprise Programs at (518) 473-5212 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

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

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

OTHER CATEGORIES

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

OFFICE OF MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM OPERATIONS M/WBE UTILIZATION PLAN

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award, for an OGS contract. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name:

Federal Identification Number:

Address:

Solicitation Number:

City, State, Zip Code:

Telephone Number:

Region/Location of Work:

M/WBE Goals in the Contract: MBE % WBE %

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
A.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

PREPARED BY:

Signature; _____

DATE:

TELEPHONE NO:

EMAIL ADDRESS:

NAME AND TITLE OF PREPARER (Print or Type):

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION.

FOR OGS USE ONLY

REVIEWED BY:

DATE:

UTILIZATION PLAN APPROVED: ☐ YES ☐ NO Date:

Contract No:

Contract Award Date:

Estimated Date of Completion:

Amount Obligated Under the Contract:

NOTICE OF DEFICIENCY ISSUED: ☐ YES ☐ NO Date: _____

NOTICE OF ACCEPTANCE ISSUED: ☐ YES ☐ NO Date: _____

OFFICE OF MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM OPERATIONS

REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.		
Offeror/Contractor Name:	Federal Identification No.:	
Address:	Solicitation/Contract No.:	
City, State, Zip Code:	M/WBE Goals: MBE % WBE %	
<p align="center">By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</p>		
<p>Contractor is requesting a:</p> <p>1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development: _____</p>		
<p>PREPARED BY (Signature):</p> <p><small>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</small></p>	<p>Date:</p> 	
Name and Title of Preparer (Printed or Typed):	Telephone Number:	Email Address:
<p>Submit with the bid or proposal or if submitting after award, for an OGS contract, submit to:</p> <p>NYS Office of General Services Office of Minority/Woman-owned Business Enterprise Program Operations Corning Tower, 41ST Floor Empire State Plaza Albany, NY 12242</p> <p>M/WBE 101 (Revised 6-08)</p>	<p align="center">***** FOR OGS USE ONLY *****</p>	
	REVIEWED BY:	DATE:
	<p>Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____</p> <p>*Comments:</p> 	

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

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

Note:

Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by OGS, to determine M/WBE compliance.

**OFFICE OF MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM OPERATIONS
MONTHLY M/WBE CONTRACTOR COMPLIANCE REPORT****INSTRUCTIONS: BEGINNING THIRTY (30) DAYS AFTER A CONTRACT IS AWARDED; MONTHLY COMPLIANCE REPORTS ARE DUE ON THE TENTH DAY OF EACH MONTH FOR THE PRECEDING MONTH'S ACTIVITY.**

Contractor's Name:

Federal Identification No.:

Address:

Contract No.:

City, State, Zip Code:

Telephone No:

AS EVIDENCE OF THE PROGRESS MADE TOWARDS ACHIEVEMENT OF THE MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) GOAL(S), CONTRACTOR IS REQUIRED TO COMPLETE AND SUBMIT THE FOLLOWING FOR EACH MBE OR WBE (PLEASE USE A SEPARATE FORM FOR EACH MBE OR WBE.):

- Copy (ies) of the written agreement with certified M/WBEs (submit with first monthly report).
- List below the name, address and telephone number(s) of the certified M/WBE(s) utilized during the preceding month.

NAME	TELEPHONE NO.
ADDRESS	LOCATION OF WORK PERFORMED
CITY, STATE, ZIP	
- Description of the work performed by the certified M/WBE in the reporting period (attach separate sheet if needed))
- Dates of performance of the work by the certified M/WBE
- Actual payments made to the certified M/WBE in the reporting period \$
- Actual total amount(s) of all payments made over the life of the contract by the Contractor to the certified M/WBE as of the date the compliance report is being submitted \$

PREPARED BY (Signature):**DATE:****SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT****NAME AND TITLE OF PREPARER (Print or Type):****TELEPHONE NO.:****EMAIL ADDRESS:****Monthly reports for OGS contracts should be submitted by the 10th day of each month to:****Financial Administration
New York State - Office of General Services
40th Floor, Mayor Erastus Corning 2nd Tower
The Governor Nelson A. Rockefeller
Empire State Plaza
Albany, NY 12242****FOR OGS USE ONLY****REVIEWED BY:****DATE:**

APPENDIX D

SERVICE AGREEMENT



DAVID A. PATERSON
GOVERNOR

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

JOHN C. EGAN
COMMISSIONER

SERVICE AGREEMENT

Contract No. C00XXXX
IFB # 1523

This agreement made this ____ day of _____ 2009 by and between THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "STATE", acting by and through John C. Egan, Commissioner of General Services, thereinafter referred to as "Commissioner", whose office is in the Mayor Erastus Corning II Tower, Empire State Plaza, the City and County of Albany, State of New York and; _____ hereinafter referred to as "Contractor."

WHEREAS, the State has formally requested contractors for proposals for the following described PROJECT: provide truck leasing services for the New York State - Office of General Services Division of Printing and Mail Services in Albany, NY, a copy of which is hereto annexed and made a part thereof, hereinafter referred to as the "Invitation for Bids" or "IFB", and;

WHEREAS, the Commissioner has determined that the contractor is the successful bidder, and the contractor is willing to undertake the services and to provide the necessary materials, labor, and equipment in connection therewith.

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

- 1) The Contractor agrees to perform this contract and to furnish the services, labor and materials required in connection therewith, in accordance with all of the conditions, covenants and representations contained in the proposal and specifications which are hereto annexed and incorporated herein and which are deemed to be a part of this contract with the same force and effect as herein set forth separately, specifically and at length, and the State agrees to pay to the Contractor therefore those rates specified in the bid.
- 2) It is understood by and between the parties hereto that this agreement shall be deemed executory to the extent of the monies available to the State and no liability on account thereof shall be incurred by the State beyond monies available for the purpose thereof.

3) Inconsistencies:

In the event of any discrepancy, disagreement or ambiguity between this contract agreement and its Appendices, or between any Appendices, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

- (i) Appendix A
- (ii) This Contract Agreement
- (iii) Invitation for Bid #1523 including any Addenda
- (iv) The Contractor's Bid

4) Termination:

A.) Termination

The Office of General Services may, upon thirty (30) days notice, terminate this Agreement in the event of the Contractor's failure to comply with any of the bid's requirements unless the Contractor obtained a waiver of the requirement. In addition, OGS may also terminate this Agreement upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of creditors. Furthermore, OGS shall have the right, in its sole discretion, at any time to terminate this Agreement, or any unit portion thereof, with or without cause, by giving thirty (30) days written notice of termination to the Contractor. Any termination by OGS under this Section shall in no event constitute or be deemed a breach of this Agreement and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

B.) Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

CONTRACT NO. _____
(To be completed by Agency)

AGENCY CERTIFICATION

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

AGENCY SIGNATURE

SIGNATURE

PRINT NAME

TITLE

DATED _____

CONTRACTOR'S SIGNATURE

SIGNATURE

PRINT NAME

TITLE

DATED _____

COMPANY

ADDRESS

CITY STATE / ZIP

TELEPHONE NUMBER

FEDERAL I.D. NUMBER

ATTORNEY GENERAL'S SIGNATURE
Approved:

COMPTROLLER'S SIGNATURE
Approved:

Attachment 1

Bid Proposal Form

CONTRACT NO. _____
(To be completed by Agency)

Office of General Services
Division of Financial Administration
Corning Tower - 40th Floor
The Governor Nelson A. Rockefeller
Empire State Plaza
Albany, New York 12242

BID PROPOSAL FORM

Gentlemen:

_____ agrees to provide all requested vehicles in accordance with the specifications in this solicitation for the rates as bid below:

1.) Primary Leased Vehicle – 26 foot box van per section 4.1 of the solicitation:

Monthly rate: \$ _____ x 12 months = \$ _____
Mileage rate \$ _____ per mile x est. 120,000 miles = \$ _____
Total for item 1: \$ _____

2.) Other Leased Vehicles as listed in section 4.2 of the solicitation:

2A. Van 10,000 lbs. GVRW or less

Daily Rate: \$ _____ x 30 days (estimated only) = \$ _____
Weekly Rate: \$ _____ x 1 week (estimated only) = \$ _____
Mileage Rate: \$ _____ per mile x est. 5,000 miles total = \$ _____
Total for Item 2A: \$ _____

2B. Small box truck 18,000 lbs. GVWR

Daily Rate: \$ _____ x 13 days (estimated only) = \$ _____
Weekly Rate: \$ _____ x 1 week (estimated only) = \$ _____
Mileage Rate: \$ _____ per mile x est. 8,000 miles total = \$ _____
Total for Item 2B: \$ _____

2C. Large box truck 32,000 lbs. GVWR

Daily Rate: \$_____ x 50 days (estimated only) = \$_____

Weekly Rate: \$_____ x 10 week (estimated only) = \$_____

Mileage Rate: \$_____ per mile x est. 36,000 miles total = \$_____

Total for Item 2C: \$_____

2D. Large box truck 32,000 lbs. GVWR refrigerated

Daily Rate: \$_____ x 13 days (estimated only) = \$_____

Weekly Rate: \$_____ x 1 week (estimated only) = \$_____

Mileage Rate: \$_____ per mile x est. 8,000 miles total = \$_____

Total for Item 2D: \$_____

2E. Tractor, non-sleeper, 80,000 lbs. GVWR, single axel

Daily Rate: \$_____ x 12 days (estimated only) = \$_____

Weekly Rate: \$_____ x 1 week (estimated only) = \$_____

Mileage Rate: \$_____ per mile x est. 9,000 miles total = \$_____

Total for Item 2E: \$_____

2E-1. Tractor, non-sleeper, 80,000 lbs. GVWR, double axel

Daily Rate: \$_____ x 12 days (estimated only) = \$_____

Weekly Rate: \$_____ x 1 week (estimated only) = \$_____

Mileage Rate: \$_____ per mile x est. 9,000 miles total = \$_____

Total for Item 2E-1: \$_____

2F. Van trailer dry, 80,000 lbs. GVWR (including tractor) 48 feet in length

Daily Rate: \$_____ x 13 days (estimated only) = \$_____

Weekly Rate: \$_____ x 1 week (estimated only) = \$_____

Mileage Rate: \$_____ per mile x est. 6,000 miles total = \$_____

Total for Item 2F: \$_____

2F-1. Van trailer dry, 80,000 lbs. GVWR (including tractor) 53 feet in length

Daily Rate: \$_____ x 13 days (estimated only) = \$_____

Weekly Rate: \$_____ x 1 week (estimated only)= \$_____

Mileage Rate: \$_____ per mile x est. 6,000 miles total = \$_____

Total for Item 2F-1: \$_____

2G. Van trailer refrigerated, 80,000 lbs. GVWR (including tractor) 48 feet in length

Daily Rate: \$ _____ x 3 days (estimated only) = \$ _____

Weekly Rate: \$ _____ x 1 week (estimated only) = \$ _____

Mileage Rate: \$ _____ per mile x est. 3,000 miles total = \$ _____

Total for Item 2G: \$ _____

2G-1. Van trailer refrigerated, 80,000 lbs. GVWR (including tractor) 53 feet in length

Daily Rate: \$ _____ x 3 days (estimated only) = \$ _____

Weekly Rate: \$ _____ x 1 week (estimated only) = \$ _____

Mileage Rate: \$ _____ per mile x est. 3,000 miles total = \$ _____

Total for Item 2G-1: \$ _____

Grand Total for all items 1 – 2G-1 (11 items in total): \$ _____

Note: The number of days and total miles for each of the "Other Leased Vehicles", items 2A-2G-1, are only estimates based on prior usage per year and are to be used for evaluation purposes only. If "Other Leased Vehicles" are required by OGS during the course of any contract that results from this solicitation, the rates bid will apply for the duration of each rental. Rates may be adjusted annually per section 3.4 of the solicitation.

Signature

Date