



# Parks, Recreation and Historic Preservation

## Request for Proposals C003421 Collections Management System May 26, 2020

### Designated Contact(s)

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### RFP Timeline

| Action                                   | Date/Time                                     |
|--|---|
| RFP Release                              | 05/26/2020                                    |
| 1 <sup>st</sup> Round Questions Deadline | 06/9/2020 3:00 PM ET                          |
| 1 <sup>st</sup> Round Questions Response | Approximately 06/16/2020                      |
| 2 <sup>nd</sup> Round Questions Deadline | 06/23/2020 3:00 PM ET                         |
| 2 <sup>nd</sup> Round Questions Response | Approximately 06/30/2020                      |
| Intent to Bid (optional)                 | 06/23/2020 End of Day                         |
| Bids Due                                 | 07/22/2020 3:00 PM ET                         |
| Demonstrations                           | Week of August 17, 2020                       |
| Tentative Award                          | Approximately 09/8/2020                       |
| Contract Start Date                      | Approximately 01/14/2021                      |
| Implementation                           | Approximately Six Months After Contract Award |

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# 1. Introduction

## 1.1 RFP Key Points

- **Read the RFP in its entirety.**

Note key items such as critical dates, services required, qualifying and mandatory requirements, and proposal submission requirements.

- **Provide complete responses - Bidder proposals must completely address all qualifying and mandatory requirements.**

To ensure your proposal is valid, thoroughly read all proposal requirements and provide complete responses. Ensure all aspects of each requirement are met. Use the forms provided to submit your response. Vague or incomplete responses to desirable requirements may result in a reduced technical score.

- **RFP Glossary**

Definitions for certain terms in this document can be found in *Section 1.9 Definitions*.

- **Note the name and email of the designated contacts listed on the front page of this RFP.**

These are the only individuals that you are permitted to contract regarding this RFP in accordance with Procurement Lobbying Law.

- **All announcements relating to this bid will be disseminated via electronic mail (e-mail).**

It is the Bidder's responsibility to check their e-mail periodically for any updates. All applicable amendment information must be incorporated into the Bidder's proposal. Failure to include any such information in your proposal may result in disqualification or a reduced technical score.

- **Take advantage of the question and answer periods.**

Question and Answer periods are your opportunity to seek clarification. Please utilize this process to understand requirements, as well as raise any questions or concerns with your ability to bid. Submit your questions via e-mail by the dates listed in the RFP Schedule on the front page of this RFP. Responses to the questions will be disseminated to all potential bidders via e-mail. Additional information about Question and Answers can be found in *Section 1.4 Proposal Questions/Inquiries and Response*.

- **File a "Notification of Intent to Bid" by the date listed in the RFP Schedule.**

Additional information about "Attachment 9 - Intent to Bid/No Bid" can be found in *Section 1.6.1 Intent to Bid/Not Bid*.

- **Review the RFP document and your proposal.**

Make sure all requirements are fully addressed and all copies are identical, legible, and complete.

- **Package your proposal as required in the RFP.**

Make sure your proposal conforms to the packaging requirements. Proposals not packaged accordingly may be deemed non-responsive. Additional information about packaging and content can be found in *Section 3.4 Packaging of RFP Proposals*.

- **Submit your proposal on time.**

Except as specified in *Section 5.4 State's Rights to Proposals*, proposals received after the date and time in the RFP Schedule will not be considered for award and may be returned, unopened, to the sender.

## 1.2 Overview

The mission of the New York State Office of Parks, Recreation and Historic Preservation (State Parks/Parks/OPRHP) is to provide safe and enjoyable recreational and interpretive opportunities for all New York State residents and visitors and to be responsible stewards of our valuable natural, historic, and cultural resources.

Fundamental to the successful achievement of our mission is the dedication of our employees and the adherence to a common set of values. These guiding principles serve as a pledge to the people we serve and a commitment to ourselves and to each other.

- **A Commitment to People.** We are committed to serving and protecting the public to the best of our ability, with courtesy and respect. We are committed to our employees and volunteers, encouraging teamwork, self-improvement, and mutual support.
- **A Commitment to Preservation.** State parks and historic sites are unique and irreplaceable public assets. We are committed to wise acquisition, planning, and, where appropriate, development; timely and professional care and maintenance; and a responsibility to future generations in whose trust we manage our resources. We are committed to providing encouragement to all agencies and individuals to identify, evaluate, and protect recreational, natural, historic, and cultural resources.

### 1.3 Purpose

State Parks seeks to obtain a Collections Management System (CMS) that serves both the immediate and anticipated needs of an enhanced and robust digital database system. Components associated with the proposed CMS, are as follows:

- An existing inventory of collections, including archival and archaeological materials, that are under the jurisdiction of State Parks, which is maintained by staff from the agency's Bureau of Historic Site and Park Services (BHS); and
- A system that allows limited public access to the database and digitized materials associated with the collections.

In addition to providing the necessary software and programming to accomplish the enhanced functional goals, the project also includes the successful migration of data from existing software programs (Microsoft Access, Excel, etc.) into the new CMS system, providing the requisite storage capacity to support the database, and providing technical support and licenses as specified to enable the on-going use of the CMS.

OPRHP manages a relatively large assemblage of collections, totaling about one (1) million objects along with approximately 1.5 million archaeological artifacts. The collections are classified into the following categories: historic, archeological, and special collections. The historic collections include but are not limited to paintings and frames; works on paper; sculpture; furniture; textiles; decorative objects; carriages and wagons; canons, rifles and other armaments; agricultural tools and equipment; ethnographic materials; and natural science materials. The archaeological collections include precontact cultural artifacts such as lithics and pottery produced by Native (indigenous) groups, and also include historic-period artifacts (primarily ceramics, glass and metal) produced by European groups. The special collections are those of archival purposes (both paper-based and film) and items fitting an historic library.

The collections are distributed among approximately 55 different State Park facilities as well as at OPRHP's central collections storage and treatment facility (Peebles Island). OPRHP also manages both incoming and outgoing loans with other institutions.

OPRHP seeks to enhance both the content and functionality of the existing collections database through the addition of the following features and/or capabilities:

- Expanding the content of the database for each object or artifact to include digital images along with other associated materials and information;
- Improving the ability to track the physical location of each object or artifact in real time and across multiple facility locations;
- Improving the ability to monitor the progress and status of loans (both incoming and outgoing);
- Improving the ability to manage the care of objects/artifacts through a variety of metrics such as condition, conservation treatment history, special housing or exposure limits, and exhibition history;
- Expanding the ability to access the CMS in real time to include State Parks facility staff;

- Improving the ability to extract and organize information regarding objects/artifacts for a wide variety of purposes including asset management, curation, and conservation; and
- Providing a portal to provide public access to an online collections catalog that draws from data contained within the CMS.

#### 1.4 Proposal Questions/Inquiries and Response

Prospective Bidders will have two opportunities to submit written questions and requests for clarification regarding this RFP. All questions regarding this RFP must be submitted via e-mail to the Designated Contacts and be received by the date and time specified in the RFP Timeline. Questions must reference the relevant page and section of the RFP and must be directed to the designated contact. Questions submitted by Bidders should be in the following format:

| No. | RFP Section | RFP Page | Vendor Name | Question |
|-----|-------------|----------|-------------|----------|
|     |             |          |             |          |
|     |             |          |             |          |

OPRHP will provide a written response to all substantive questions and requests for clarification. Responses to Bidder questions and requests for clarifications will be distributed via e-mail utilizing the Agency-maintained Bidders List.

Prospective Bidders should note that all clarifications and exceptions, including those relating to the terms and conditions of the RFP, are to be resolved prior to the submission of a proposal by utilizing the Question and Answer period. Also, during the Question and Answer period, Bidders should be certain to bring forward terms and conditions in the RFP that would prohibit a Bidder from bidding. Extraneous Terms relating to Contract language in this RFP must be submitted with the Bid Proposal in accordance with **Appendix B, Clause 11**. Bidders entering into a contract with the State are expected to comply with all terms and conditions contained herein.

Contacting individuals other than the Designated Contacts may result in the disqualification of the Bidder's proposal.

#### 1.5 Procurement Lobbying Guidelines

New York State Finance Law §139-j(6)(b) requires that State Agencies seek written affirmation from all Bidders as to the Bidder's understanding of, and agreement to comply with OPRHP's procedures relating to permissible contacts during a Government Procurement. Information related to the Procurement Lobbying Law and guidelines can be found within "Attachment 3 - Lobbying Law Certification."

#### 1.6 Notification of Intent to Bid/Not Bid

##### 1.6.1 Intent to Bid/Not Bid

Please complete "Attachment 9 - Intent to Bid/No Bid", indicating your intent to Bid/Not Bid, and submit to the Designated Contacts via email.

##### 1.6.2 Removal from Bidders List

If you would like to have your organization removed from the mailing list for procurements of this type, please send an e-mail to the Designated Contact as well as an indication of why you would like to be removed.

#### 1.7 Contract Signing and Term

OPRHP intends to award a five-year Contract to the successful Bidder contingent upon New York State Attorney General (AG) and the Office of the State Comptroller (OSC) approval. The Contract may be renewed by mutual agreement of all parties for up to an additional five years, subject to required approvals.

## 1.8 Minimum Proposer Qualifications

Proposers are advised that the State's intent is to ensure that only responsive, responsible, qualified and reliable Contractors enter into a contract to perform the work as defined in this document. Proposers shall comply with the laws of the State of New York and shall possess or obtain any required licenses, permits, or authorizations.

The State considers the following qualifications to be a pre-requisite of the prime contractor in order to be considered as a qualified Proposer for purposes of the solicitation. Proposers not meeting the qualifications below will be disqualified. Proposers may not use a subcontractor's or any other entity's qualifications to meet these requirements.

To be deemed qualified and responsive, the following minimum requirements **must** be met:

### 1.8.1 Experience

Proposing firms must have experience in providing, implementing, and maintaining Collections Management Systems at an enterprise level for a minimum of five consecutive years immediately preceding the issuance of this RFP.

### 1.8.2 Reference Qualifications

Using "Attachment 11 - References," bidders must include at least three Reference Customers where they have provided Collections Management Systems, each of whom has asset totals of at least one (1) TB or three (3) million records. Reference Customers must have been customers within five (5) years immediately preceding the issuance of this RFP and have utilized the proposed system to manage Collections.

### 1.8.3 Reference Check

The Bidders Reference Customers provided on "Attachment 11 – References" will be scored on a pass/fail basis for the highest ranked Bidder after all other evaluation steps. If a reference is not accepted for evaluation, that Reference shall be scored as a fail. If more than three references are provided by a Bidder, Parks will cease reference checks upon the response of the third reference.

## 1.9 Definitions

| Term               | Description   |
|--------------------|---|
| Accession          | (n) A set of one or more artifacts, objects, specimens, etc., added to the collection that have been received from the same source at the same time ; an acquisition that is formally taken ownership of and holds in the public trust by adding it to the collection.<br>(v) The process of legally transferring of ownership of objects, including bequests, into the agency's collection.                                |
| Accession Number   | A unique number assigned to an object, or group of elements that comprise the accession, for purposes of identification and inventory control. This number is sometimes referred to as a Registration Number as well.   |
| Accession Record   | A serial list of agency accessions, including source and description. This is a hand-written or typed document that is physically kept with the accession register, as well as used when creating a digital object record in the database.  |
| Accession Register | The permanent record of all objects which are, or have been, part of the agency's permanent collection.   |
| Acquisition        | (n) Acquisition refers to something obtained by the institution (the Agency in this case), but not necessarily involving the transfer of ownership. It involves the collection of data, assignment of accession (or temporary ID or registration) numbers and recording of procedures relating to object(s) obtained by the agency.<br>(v) The process of obtaining custody (physical transfer) of an object or collection. |
| Agency             | New York State Office of Parks, Recreation and Historic Preservation (OPRHP).   |

| Term                                  | Description   |
|---------------------------------------|---|
| Agency Staff                          | An employee of OPRHP who is an authorized user (Administrative, Facility, Researcher) of the system.  |
| Appraisal                             | The process of determining the (current) monetary value of an object.   |
| Archaeology                           | The study of historic people and their culture by the analysis of their objects and artifacts, especially those objects that were excavated.  |
| Archives                              | The non-current records of the agency's facilities and collections preserved because of their continuing value in supplemental information for other collections, research, and scholarly activity.   |
| Artifact                              | An object made by or modified by a human being. Items include a handmade tool, or the remains of the object such as a shard of pottery, characteristic of an earlier time or cultural stage, especially objects found at an archaeological excavation.  |
| Associated Record or File             | Any documentation providing information about or related to a component of the collection.  |
| Bequest                               | Transfer of property to the agency under the terms of a deceased person's will; the gift of personal property under the terms of a will.  |
| BHS                                   | Bureau of Historic Site and Park Services   |
| Catalog                               | (n) The list of the contents of a collection.<br>(v) To organize detailed information of the accessioned collection elements into categories, for purposes of identification and comparative analysis.  |
| Certificate of Insurance (COI)        | A document, signed by the insurance company or its agent, that is written evidence of insurance in force at the time of issuance in relation to incoming or outgoing loans.   |
| CMS                                   | Collections Management System   |
| Collection                            | An organized accumulation of objects, including but not limited to works of art, artifacts, archival records, archaeological fragments, that the agency holds in trust for the public. Typically, these objects share a common history of ownership, acquisition, exhibition, and/or cultural or geographic significance.   |
| Collections Documentation             | Records pertaining to the provenance, identification, significance, status, and location of the agency's collections, in accordance with accepted standards in the field.   |
| Collections Management                | The activities that relate to the administration of collections, including planning, development, care, conservation, and documentation, and ultimately making them available for use.  |
| Collections Management Policy         | A written document, approved by the agency's governing authority, that specifies how collections will be acquired, accessioned, deaccessioned, stored, used, cared for, and disposed of.  |
| Collections Policy                    | A written document, approved by the governing authority, that details the scope of collections by the agency, and helps inform decisions regarding acquisition and deaccession.   |
| Condition Report/Condition Assessment | An accurate, informative descriptive report of an object's or a document's state of preservation at a moment in time. Sometimes referred to a Condition Assessment.   |
| Conservation                          | Maximizing the endurance and minimizing the deterioration of an object or specimen through time, with as little change to it as possible.   |
| Copyright                             | Legal recognition of special intellectual property rights, distinct from the right of possession that a creator may have for their work. Copyright exists for physical objects as well as digital media and performance works.<br>The exclusive right of the author or creator of a literary or artistic property to print, copy, sell, license, distribute, transform to another medium, translate, record or perform or otherwise use (or not use) and to give it to another by will. |
| Courier                               | An individual, usually a representative of the owner of an object, who travels with the object to ensure its proper care and safe arrival at a venue.   |

| Term                  | Description   |
|-----------------------|---|
| Credit Line           | Information that details the source of an object and may reference the donor or lending institution.  |
| Data                  | Any information, analytic derivatives, formula, algorithms, or other content that OPRHP may provide to the Contractor. Data includes, but is not limited to, any of the foregoing that OPRHP and/or Contractor (i) uploads to the Cloud Service, and/or (ii) creates and/or modifies using the Cloud Solution.  |
| Data Entry Tools      | Functions designed to simplify or enhance data entry tasks.   |
| Data Field Structure  | The form by which data type values are stored and organized in such a way that allows for efficient access and modification.  |
| Data Updates          | Functions designed to preserve and protect the integrity of the information contained within the database.  |
| Data Validation Tools | Predetermined standards designed to enhance consistency and reliability of input data, and confirm referential data integrity.  |
| Deaccessioning        | The formal process of documenting the legal, permanent removal of an accessioned object from the agency's permanent collection. Deaccessioning may include the transfer of the object to another owner or its physical destruction (sometimes referred to as "disposal").   |
| Deed of Gift          | A contract that transfers ownership of an object from a donor to the agency and describes the conditions of the gift.   |
| Desired Functionality | Unless otherwise indicated, requirements which state 'should' or 'can' are desirable and at-option of OPRHP if provided by the Bidder.  |
| Disposal              | The process of physically removing a deaccessioned object from the agency's custody.  |
| Element               | A constituent part of a whole; a member of a set (ex: an artifact, object, or specimen in the agency's collection).   |
| Enterprise Level      | An enterprise-level solution is generally marketed as something that's very knowledge-intensive and a significant investment. These solutions are implemented on a large-scale basis and require the attention of specialized Information Technology (IT) technicians who understand how to implement them properly.  |
| Exhibition            | A display, as in a museum, containing objects found in a collection. Typically the display features a specific theme.   |
| Exhibition Management | The collection of data and recording of procedures relating to an object's exhibition or display, including exhibition history and documentation of research done on an object for an exhibition. It also involves the creation and handling of loans and exhibitions.  |
| Facility Report       | A written report that describes the environmental conditions, physical security and other controls or procedures that exist at an institution during a defined period of time. Lending institutions typically require a facility report before making a determination on whether or not to approve a loan. Facility reports may also be incorporated, by reference, into loan agreements. |
| Gift                  | The voluntary transfer of ownership of property.  |
| Help Features         | Tools designed to assist users with performing data entry and browse/search functions along with generating reports.  |
| Historic Preservation | Management and preservation of buildings, sites, structures, objects, and landscapes that have historical or cultural significance.   |
| Incoming Loan         | Objects, lots, specimens, or archival materials to which the agency does not have legal title but for which it is legally responsible while they are in its possession and used in agency-sponsored activities.   |
| Indefinite Loan       | A loan that has no set duration or termination date.  |

| Term                          | Description  |
|-------------------------------|--|
| Inventory                     | (n) An itemized listing of objects, often including current location, for which the agency has a responsibility.<br>(v) The process of physically locating objects (i.e. complete, sectional or spot inventory).   |
| Inventory Control             | Data management and processes that are used to identify objects for which the agency has a legal responsibility, including loaned objects and objects that have not been accessioned, those objects that are temporarily in the agency's custody. Information includes the physical location and status of objects.  |
| Loan                          | A temporary transfer of an object or lot of objects from a lender to a borrower; a loan does not involve a transfer in ownership.  |
| Loan Agreement                | A contract between a lender and a borrower of an object, or group of objects, specifying the object(s) and outlining the conditions of the loan and the respective responsibilities of each party.   |
| Loan Fee                      | A fee charged to a borrowing institution by a lending institution for a loan. It is usually a charge in addition to the actual costs (conservation, packing, shipping, etc.) of handling a loan.   |
| Location and Movement Control | Records of an object's current and past locations within the agency's premises so that it can be located, including dates of movement and authorizations for movement.   |
| Long-term Loan                | A bailment contract of extended duration.  |
| Mandatory Functionality       | Unless otherwise indicated, requirements or statements including the words 'must,' 'shall,' 'will,' and 'required' are mandatory in nature and must be met by the Bidder in order to have a conforming bid.  |
| Metadata                      | Metadata is data that provides information about other data.   |
| Multi-Media File              | Any computer file that plays audio and video, audio only, or video only. Examples include, but are not limited to, .mp3, .mp4, avi, and wmv files.   |
| Object                        | Something placed before the eyes, capable of being seen, touched, or otherwise sensed. For the agency's purposes in this RFP, this term encompasses, but is not limited to, an individual work of art, historical artifact, archival record (including digital record), or archaeological fragment.  |
| Object Lot                    | An assemblage of like or associated objects (i.e. multiple pieces of silverware) that shares the same provenance. For archaeological objects, an object lot includes fragments that share the same provenience (i.e. three-dimensional spatial location from where the fragment was found).  |
| Object Record                 | A file for each acquisition, retrievable in accession number order, incorporating some or all of the information that was gathered during cataloging and is indicated on the accession record. The object record is the basis of any collections management system. Documentation of information and tasks related to the objects entering the agency's facilities, including but not limited to acquisition or loan records, receipts, record of the reason for the deposit of the object, and record of the object's return to its owner. This can also be referred to as an object entry. |
| OPRHP                         | Office of Parks, Recreation and Historic Preservation  |
| Original Order                | The functional filing arrangement imposed on a document collection by its creator. The original order of a collection can provide information not found elsewhere, such as when the creator received a communication, who received a document, or what the sequence of an administrative activity was.   |
| Outgoing Loan                 | An object loaned by the agency to another institution. It is an outgoing loan from the perspective of the lending agent; such a loan would be an incoming loan to the borrowing agent.   |
| Permanent Collection          | Contains accessioned items that have been considered under the criteria established in the Collections Policy for the agency and are maintained at the highest standards and require the   |

| Term                      | Description   |
|---------------------------|---|
|                           | most complete documentation. These objects are to be in the agency's care, held in public trust, for the foreseeable future. These objects are intended for exhibition, research, and preservation purposes. Proposals for other use of objects in the permanent collection will be considered in light of such factors as the object(s)'s condition, rarity or duplication within the collections, level of training received by staff that would be interacting with said object(s), and ability of the staff to provide adequate levels of security for the object(s). |
| Policy                    | A guideline that regulates organizational action. Policies control the conduct of people and thus the activities of systems.  |
| Preventative Conservation | Actions taken to detect, avoid, block, and mitigate agents of deterioration that affect the agency's collections.   |
| Provenance                | The background and history of ownership for an object or collection.  |
| Provenience               | In anthropological and archaeological collections, it is the specific geographic or spatial location where an object or fragment was originally found. For scientific collections, "locality" is the preferred term.  |
| Query                     | A search or series of searches that help retrieve specific data from the system. Queries can be run through various means including search or browse functions.   |
| Records Management        | The process involved in determining the status, value, and disposition of administrative records throughout their lifetime.   |
| Registration              | The process of assigning the components of an accession to a unique place in a serial order list of the contents of a collection.   |
| Report                    | The means by which the results of a query are displayed or printed.   |
| Specimen                  | A representative part of a whole, or a means of discovering or finding out; an experiment, a pattern, or model.   |
| Stewardship               | The careful, sound, and responsible management of that which is entrusted to the agency's care.   |
| Subscription Period       | Annual period of time effective after successful implementation and subsequent OPRHP approval of implementation. OPRHP reserves the right to cause for the first subscription period to be prorated in order to align subscription periods with Contract years of the resultant Contract.   |
| Title                     | The possession of rights of ownership of personal property. Separate rights or possession include copyright interests, trademark rights, and any specific interests that the previous owner may have reserved.  |
| Treatment Proposal        | An informative and descriptive report indicating the suggested conservation work to be completed on a particular object.  |
| Treatment Report          | An informative and descriptive report indicating the conservation work that has been done to a particular object.   |
| Witnessed Destruction     | Disposal through destruction that is witnessed by a person (usually a disinterested third party).   |

## 2. Detailed Scope of Work & Service Requirements

It is the intent of this solicitation to seek a vendor to provide all services necessary to provision, implement, and maintain a turn-key Collections Management System (CMS) and train Agency Staff (User Levels 1–3) in the use of this system. This will include professional services necessary to scope, plan, implement, deploy and configure the system software, software licenses and software subscriptions necessary to operate the system; and maintenance and support needed to deploy, troubleshoot, modify, maintain and enhance the system. Deployment of a turn-key CMS must support migration of approximately one (1) terabyte (TB) of records currently maintained in OPRHP's legacy system.

*Exhibit A Use Cases* is included to help underscore the needs of the user with respect to the following list of mandatory and desired functional requirements. *Exhibit A Use Cases* includes multiple scenarios that are required within the Collections Management System. The intent of *Exhibit A Use Cases* is to provide contractors with multiple scenarios that include a list of actions or steps typically defining the interactions to achieve a goal. Using the information included within each scenario, Bidders will be expected to physically demonstrate each use case scenario task during the demonstration stage of evaluation.

Bidders shall provide proposals which meet mandatory requirements of this RFP. Mandatory Requirements must be met by the Bidder in order to have a conforming bid. Desirable requirements are options that OPRHP prefers, but Bidders are not obligated to propose.

These requirements set forth the functionality that the OPRHP requires of the requested CMS. OPRHP will evaluate proposals against these requirements to understand the extent to which they will meet OPRHP's needs. These requirements are written from OPRHP's point of view and define what the solution must accomplish.

Field-level specifications, detailed business rules, screen layouts, and other technical details will be defined with the Contractor after contract award.

### 2.1 Core Requirements

#### 2.1.1 Collections Management Software

##### Mandatory

- Must be a web-based, vendor-hosted commercially available collections management software that has a proven history (minimum of five (5) years) of successful performance. System is capable of:
  - being available via Internet browsers to include Internet Explorer, Google Chrome, Safari, and Firefox;
  - supporting open Web Application Program Interface (Web API) to allow flexibility and ease of integration to other OPRHP systems;
  - creating records for each object in the Agency's collection;
  - tracking the location, use, conservation treatment and condition of objects;
  - easily searching through records based on user-defined search criteria, and both export or print out query results;
  - importing files and associate these with one or more objects in the collection; and
  - possess a public-facing component that provides web access to selected data fields and files.

#### 2.1.2 Collections Management Categories

##### Mandatory

- Must accommodate the unique data requirements of a museum collection that is comprised of the following broad categories:
  - archives (books, manuscripts, documents, film, etc.);
  - historic objects;
  - works of art;
  - archaeological artifacts; and
  - natural history specimens.

### 2.1.3 Data Storage & Expansion

#### **Mandatory**

- Must accommodate an increase in the number of object records and/or database file size by approximately 15 percent (15%) per year over the contract term, including any contract renewals.
- Must be able to accommodate an expected minimum of three (3) million object records having an expected total database file size of three and one-half (3.5) TB without loss of functionality or performance over the contract term, including any contract renewals.

### 2.1.4 Agency Licenses

#### **Mandatory**

- Must accommodate a minimum of sixty (60) total agency users with fifty percent (50%) of these being concurrent users.
- Must accommodate an increase in the minimum number of total and concurrent agency users.

## 2.2 Collections Management Process

### 2.2.1 Acquisition & Accessioning

#### **Mandatory**

- Must accept an accession numbering format that is based on Agency-defined criteria described in *Exhibit B Accession Numbering and Location Format*.
- Must prevent assigning duplicate accession numbers to an object record.

#### **Desirable**

- Can record that an accession number has been physically applied to an object.
- Can record the date that an accession number was applied to an object.
- Can record the name of the person who performed the task.

### 2.2.2 Cataloging

#### **Mandatory**

- Must support the creation and maintenance of individual object records that capture at minimum the following types of information:
  - Type of object (classification);
  - Name/title of the object;
  - Name of the manufacturer/maker;
  - Date manufactured/created;
  - Materials/composition;
  - Dimensions;
  - Location;
  - History of ownership (provenance) or provenience;
  - Citations of bibliographic references;
  - Exhibition history;
  - Conservation treatment history; and
  - Appraisal history
- Must support the use of the standardized object classification system: Nomenclature for Museum Cataloging (Nomenclature 4.0). See <https://nomenclature.info/index.app>
- Must capture at least three (3) prior accession or registration numbers for an object.
- Must accommodate citations of bibliographic references from a wide range of source material, including books, journals (including e-journals), newspapers and websites.
- Must capture information relating to at least two (2) separate appraisals, including the appraised value, date of the appraisal and name of the appraiser.
- Must capture, as a text field, up to three (3) object labels or captions and associate them with related object record or image file.

- Must accommodate up to five (5) different photographic images per object record, including but not limited to the following attributes:
  - The name of the photographer;
  - Type of medium;
  - Resolution and/or size of image;
  - Date taken; and
  - Copyright ownership or status.

### **Desirable**

- Can prompt usage of classification-specific fields to capture information unique to an object, such as materials and dimensions.

## **2.2.3 Inventory Control**

### **Mandatory**

- Must record the physical location of an object, or object lot, using Agency-defined criteria included in *Exhibit B Accession Numbering and Location Format*.
- Must accommodate at least four (4) separate location fields (or field sets) as follows:
  - Permanently assigned location;
  - Current location; and
  - Minimum of two (2) prior location(s).
- Must require an entry in the location data field (or field set); a null value is not permitted.
- Must record the reason for the relocation of an object from among a list of at least five (5) OPRHP defined options.
- Must record the current status of an object based on Administration user-defined options, including but not limited to:
  - On display;
  - On loan;
  - In storage;
  - Undergoing treatment; or
  - Preparing for exhibition.

### **Desirable**

- Can **both** 1) provide a shortcut that enables an Agency user to reset the “current location” field to the data provided in the “permanently assigned location” field, **AND** 2) capture the data from the “current location” into the most recent “prior location” field.
- Can provide a shortcut that enables an Agency user to change or update the current location of a group of objects.
- Can display a floor plan from a searchable list of OPRHP floor plans .

## **2.2.4 Deaccessioning**

### **Mandatory**

- Must preserve, without loss of data, the entire catalog record of an object that has been deaccessioned.
- Must allow deaccessioning of part of an object, a portion of an object lot or assembled collection without affecting the other parts.
- Must allow the ability to tag an object as selected for deaccessioning.
- Must capture detailed information regarding each step in the process of deaccessioning an object or group of objects (refer to *Exhibit C Deaccessioning* for a description of deaccessioning process). This information includes the notification and response of up to five (5) state agencies.

## **2.2.5 Exhibition Management**

### **Mandatory**

- Must capture, at minimum, the following types of information related to an individual exhibition:

- Title of the Exhibition;
- Name and Address off the Sponsoring Organization;
- Exhibition Venues (Minimum of Four (4) Venues Per Exhibition);
- Exhibition Start and End Dates;
- Status of the Loan and Exhibition Agreement(s);
- Packing and Transportation Arrangements;
- Object Condition Reports;
- Insurance Requirements and Status;
- Courier Requirements;
- Storage and Display Requirements;
- Exhibition Photography Requirements; and
- Exhibition limitations on an object basis, including but not limited to, reduced number of venues or exhibition period.
- Must be able to tag an object record as reserved for a future exhibition(s)
- Must be able to support the creation and maintenance of individual object records for items that are received on loan, and identify them separately from the agency's permanent collection capturing, at a minimum, the following types of information related to such an object(s)
  - Registration or identification number;
  - Type (classification);
  - Name/Title;
  - Manufacturer/Maker;
  - Date of creation;
  - Material(s);
  - Dimensions;
  - Location;
  - Insurance value; and
  - Owner information.
- Must be able to identify an object as subject to loan renewal **AND** capture the renewal date.
- Must be able to identify an object on loan as subject to a pending bequest.
- Must capture an itemized accounting of, at a minimum, each of the following types (or categories) of expenses associated with an exhibit:
  - Appraisal Fees;
  - Photography Expenses;
  - Object Preparation and Packing;
  - Transportation Expenses;
  - Courier Expenses; and
  - Insurance Expenses.
- The information captured for each expense must include, at a minimum, the amount (in U.S. dollars), vendor data, date of invoice, and date payment was received.

## **2.2.6 Object Conservation**

### **Mandatory**

- Must capture and preserve the following information relating to Condition Assessments for each object as part of an associated data set displayed hierarchically by date of analysis:
  - Date of examination;
  - Name (and title) of examiner;
  - Overall object condition assessment or rating, such as excellent, good, fair, and poor; and
  - Summary list of remedial work required.
- Must capture and preserve the following information relating to Materials Analyses as part of an associated data set displayed hierarchically by date of analysis:
  - Type of analysis (FTIR, SEM, X-ray, etc.);
  - Purpose of the analysis;
  - Name and date of the analyst; and
  - Brief (narrative) summary of the findings.

- Must capture and preserve the following information relating to Treatment Reports as part of an associated data set displayed hierarchically by date of treatment:
  - Date that treatment was completed;
  - Name (and title) of conservator or technician;
  - Purpose of the conservation treatment; and
  - Brief (narrative) summary of the work completed.
- Must capture information pertaining to the handling, storage, and display requirements for each object in the Agency's permanent collection:
  - Temperature requirements (expressed as a range in degrees Fahrenheit);
  - Humidity requirements (expressed as a range in percent relative humidity);
  - Light exposure (expressed as a maximum limit of illuminance in lux); and
  - UV exposure (expressed as a maximum limit of microwatts per lumen).

### **Desirable**

- Can capture the duration of a required rest period (expressed in months) for an individual object or group of objects in the Agency's permanent collection.
- Can express the required rest period as a fixed end date based on the duration and start date (using a calendar picker or other tool).

## **2.2.7 Online Catalog**

### **Mandatory**

- Must be a public-facing web-supported interface that enables public users to view, browse, and search the Agency's permanent collections database.
- Public must be able to access the online catalog from the Agency's website.
- Welcome screen must be customizable.
- Public must be able to view, browse, or search permanent agency objects by, at a minimum, facility, object type, name of maker or manufacturer and date of manufacture or creation.
- Must allow an administrative user to select which data fields are accessible for viewing by the public.
- Must be able to apply a watermark to images published to the online platform.

### **Desirable**

- Can capture the following types of non-personally identifiable data associated with public use of the online catalog:
  - Number of discrete logins (initial sessions beginning with the welcome screen);
  - Length of online session (including minimum, maximum and average viewing times); and
  - Number of hits (views) received by each object catalog record in the database.
- Captured data can be preserved for up to one (1) calendar year and available for export.
- Can enable automatic translation programs to convert text data into other languages.

## **2.3 Data Management**

### **2.3.1 Multi-Media Files**

#### **Mandatory**

- Must accept uploading media and document files directly to the database.
- Must accept, at a minimum, the following media file types: tiff, jpeg, dng, mov, wmv, wav, mp3 and mp4.
- Must accept, at a minimum, the following document file types: pdf, doc/docx and xls/xsls.
- Must capture and preserve the metadata of uploaded files.
- Must associate (or index) uploaded image(s) and document file(s) with an individual object record.
- Must capture and maintain the original order of individually uploaded graphic/image files.
- Must associate and display captions along with their respective image file.
- Must associate and display transcriptions along with their respective audio and video files.
- Must display text and associated images on the same page.

**Desirable**

- Can display multiple images in a variety of configurations (for example, singly or tiled format).

**2.3.2 Data Validation Tools****Mandatory**

- Must support the designation of specified date formats for selected user defined date fields. Date formats include fixed dates, flexible dates (e.g. “circa”) and date ranges (e.g. 18th century or 1930-1950).
- Must support an Administration-level user to designate selected fields as requiring a value.
- The system must prescribe or restrict the type or format of data that the system will accept for certain fields.
- Must be able to perform spelling checks for text fields using standard English language dictionaries.
- Must set the default format of monetary values to U.S dollars and display to the hundredth of a dollar.
- Must be capable of setting the default format for dimensional values to display in US imperial units.

**2.3.3 Vocabulary Control****Mandatory**

- Must support the creation of customized (administrative user defined) authority lists for use during data entry and query/search functions.

**2.3.4 Data Field Structure****Mandatory**

- Must allow for the ability to create sub-fields (or subsets) within a data field to capture a series of related entries individually and separately.
- Must allow for the ability to set or expand the length of text fields or areas, up to 1000 characters, providing the ability to display text on multiple lines.
- Must allow for administrative users to change the name (label) of a data field.
- Must allow for administrative users to select individual fields as “hidden” from view by other agency users and/or public users.

**2.4 User Interface****2.4.1 Data Entry Tools****Mandatory**

- Must have the ability to automatically save any new additions or edits entered into or made to the database.

**Desirable**

- Supports the creation and use of dialog boxes to guide data entry.
- Supports automatic data entry when used in conjunction with authority lists or dialog boxes.
- Supports the use of copy/paste and cut/paste functions both within and between object catalog records.
- Supports the use of default values for selected fields, such as the current date for a “date completed” field. Default values can be over-ridden.
- Includes an “undo/reset” button to clear (delete) a previous entry in a field or to reset a form prior to saving.

**2.4.2 Data Updates****Mandatory**

- Must automatically update the database to capture any changes (additions, edits or deletions) in real time.

- Must automatically create a record of any changes (additions, edits or deletions) made to an object catalog record AND capture the username and date.
- Must automatically create an archive (backup) copy of the database at least once every 24 hours.

### 2.4.3 Help Features

#### Mandatory

- Must provide a searchable list of help topics that explain data entry conventions.

#### Desirable

- Includes the use of dialog boxes that explain the purpose or requirements for a specific field.

## 2.5 Queries and Reports

### 2.5.1 Search/Browse

#### Mandatory

- Must provide search type options including, at a minimum, es Boolean, range and wildcard searches and the use of search operators.
- Allows a user to view/browse an entire object record based on the results of a query search.
- Query/search results can be displayed on screen, printed, or be exported as: csv, or xls/xlsx files.
- Can identify the total number of records (hits) that meet the query criteria and provide the option to proceed with displaying the results (i.e. each record).
- Allows a query to be saved for future use (saving the query form, not the results).
- Allows a query, once it has been executed, to be modified and re-executed.
- When the information in an object record cannot be displayed on one screen, the system automatically includes (carries forward) key data that identifies the object (e.g.: title/description of the object and accession number).
- Retrieves and display the records of associated objects (i.e.: whole/part relationships) that meet query criteria.

#### Desirable

- When the information in an object record cannot be displayed on one screen, the system can automatically display the relative position of the current screen (or page) number within the set (e.g., displaying screen X of N).

### 2.5.2 Reports

#### Mandatory

- Must support the creation of pre-defined and/or customized report templates.
- Must allow for modifying the appearance, sort order and/or format of a predefined report template and save it for reuse.

## 2.6 System Administration

### 2.6.1 Credentialing

#### Mandatory

- Requires entering a unique username and password to access the system as an Agency user.

### 2.6.2 Authority / User Levels

#### Mandatory

- Must allow at least four (4) different role-based User Levels as outlined below. OPRHP reserves the right to modify specific permissions within each User Level.
  - Level 1 Administrative User
    - Ability to add/remove Agency users (or change their authority level)

- Ability to designate individual data fields as hidden
- Full access to all user functions and features
- Full authority to access, create, edit and delete data in the database
- Level 2 Facility User
  - Ability to enter and edit data using pre-existing forms/fields
  - Ability to import image and document files
  - Ability to create and print reports using pre-existing templates
  - No access to any data field designated as hidden
- Level 3 Researcher
  - Full search/query capabilities (without export)
  - No access to any data field designated as hidden
- Level 4 Guest (Public)
  - Read-only access for OPRHP defined fields, records.

### **Desirable**

- The ability to apply additional granular permissions (e.g., the ability to allow a specific Level 3 Researcher to import image and document files, but none of the other Level 2 abilities).
- The capability to require Agency users to change their password at a specified interval, such as every 60 days.

### **2.6.3 Editing Controls**

#### **Mandatory**

- Must indicate that a record is locked when a user is editing or importing data **AND** display the name of the Agency user.
- Locked records must remain available to view as read-only.

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## 3. Proposal and Submission Requirements

### 3.1 General Proposal Requirements

This RFP is framed to present the business needs of OPRHP. OPRHP expects that respondents will demonstrate their competency and the breadth and depth of knowledge in this area by helping OPRHP understand how the Bidder's Proposal will meet OPRHP's needs.

Proposals containing false or misleading statements, or which provide unverifiable details, may be rejected. If in the opinion of OPRHP such statements are intended to mislead OPRHP in their evaluation of the Bidder's Proposal, OPRHP reserves the right to reject said Proposal.

Administrative requirements can be found in *Section 3.2.3 Administrative Proposal Information* regarding MWBE goals can be found in *Section 7.7 Equal Employment Opportunities*.

### 3.2 Proposal Format and Content

The Bidder must provide a response that clearly and precisely provides all required information. Emphasis should be placed on conformance with RFP instructions, responsiveness to the RFP requirements and clarity of the intent. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive. OPRHP does not require, nor desire, any excessive promotional material which does not specifically address the response requirements of this RFP.

For OPRHP to evaluate bids fairly and completely, Proposers are strongly encouraged to follow the format set forth herein and should provide all of the information requested. All items identified below should be addressed as concisely as possible for a bid to be considered complete. Failure to conform to the stated requirements may necessitate rejection of the bid.

Proposers are encouraged to include all information that may be deemed pertinent to their proposal. Proposers may be requested to provide clarification based on the State's evaluation procedure. Any clarification will be considered a formal part of the Proposer's original proposal. If further clarification is needed during the evaluation period, OPRHP will contact the Proposer.

#### 3.2.1 Technical Proposal

The Bidder's Technical Proposal should include detailed written responses that demonstrate an understanding of the proposed work and should include all the following. Only information included in the proposal will be evaluated. Web links that are provided with a Proposal will not be accessed and information within such links will not be considered for evaluation.

##### 3.2.1.1 Cover Letter

The cover letter should confirm that the Proposer understands all the terms and conditions contained in this RFP and will comply with all the provisions of this RFP. Further, should the contract be awarded to your company, you would be prepared to begin services as illustrated in the RFP Schedule. The cover letter should include the full contact information of the person(s) OPRHP shall contact regarding the proposal and must also include the name(s) of principal(s) of the company responsible for this contract, their function, and title. A Proposer Representative authorized to make contractual obligations should sign the cover letter.

##### 3.2.1.2 Minimum Requirements

Proposers must submit information to confirm their ability to meet the minimum qualifications to provide services requested in this RFP as set forth in *Section 1.8 Minimum Proposer Qualifications*. Information provided should include:

- **Part 1 Narrative:** Description of how long the contractor has been providing, implementing, and maintaining Collections Management Systems. Narrative must include the details that meets *Section 1.8.1 Experience* and complete "Attachment 11 - References."

- **Part 2 References:** Three client/project reference including contact information that can confirm the Proposer meets *Section 1.8.2 Reference Qualifications* of the minimum requirements within *Section 1.8 Minimum Proposer Qualifications*. "Attachment 11 - References" must include each Reference. Be sure to include the number of TB and records each reference has. If applicable, the Reference provided in Part 1 may also be used to meet this requirement as well.

#### 3.2.1.3 Proposal Response Form

Using Attachment 2 – Proposal Response Form, Bidder's must select the appropriate affirmative statement indicating whether their Proposal and thereby System will meet the requirement.

#### 3.2.1.4 Diversity Practices

Bidder must provide their Diversity Practices on the form provided in this RFP as "Attachment 9 - Diversity Practices Questionnaire." Additional sheets should be attached as necessary to fully describe your company's Diversity Practices.

### 3.2.2 Bidder's Financial Proposal

Proposer shall submit a completed "Attachment 1 –Financial Proposal" in a separately sealed package within the proposal submission and must be clearly identified as the Financial Proposal as indicated in *Section 3.4 Packaging of RFP Proposals*. Each item must be completed with no lines omitted.

Proposer shall not modify or change the form, provide alternative pricing or deviate from the Financial Proposal form; doing so may render the bid non-responsive and may result in it being eliminated from further evaluation. Add-on costs that do not conform with "Attachment 1 – Financial Proposal" will not be evaluated, will be disregarded as extraneous and will not be considered. Alternative pricing methodologies will not be considered and may result in the rejection of the proposal.

### 3.2.3 Administrative Proposal

Cover Letter

- Extraneous terms, if applicable
- Request for exemption from Disclosure, if applicable

Tab 2 - Forms

- Attachment 3 – Lobbying Law Certification
- Attachment 4 - Non-Collusive/Procurement Lobbying Bidding Certification
- Attachment 5 - Public Officers Law Form
- Attachment 6 - Encouraging Use of New York State Businesses in Contract Performance
- Attachment 7 - NYS Finance Law §139-I and Executive Order No. 177 Certification
- Form A: State Consultation Services - Contractor's Planned Employment
- Attachment 8 - Vendor Responsibility Attestation
- ST-220-CA: Contractor Certification to Covered Agency

### 3.3 Proposal Preparation

- Where signatures are required, the proposals designated as originals shall have a handwritten signature and be signed in ink.
- OPRHP discourages overly lengthy proposals. Therefore, marketing brochures, user manuals, or other materials beyond those sufficient to present a complete and effective proposal are not desired. In order for OPRHP to evaluate proposals fairly and completely, proposals should follow the format set out herein to provide all requested information. The Bidder should not repeat information in more than one section of the proposal. If information in one section of the proposal is relevant to a discussion in another section, the Bidder should make specific reference to the other section, rather than repeating the information.
- Audio and/or videotapes are not allowed. Any submitted audio or videotapes will be ignored by the evaluation team.

- If a discrepancy is found between the electronic and hardcopy proposal, the original hardcopy will prevail.
- All volumes must be packaged separately, be clearly identified and should contain page numbers.
- Financial Proposals must be submitted in a separate, sealed envelope containing only the Financial Proposal.
- Proposals must be received by the date and time specified in the RFP Timeline. Please note that the deadline in the RFP Timeline is for receipt of the bid at the address listed below, not for mailing or entrusting to a delivery service. OPRHP is not responsible for lost or late mailings. Late bids will be returned unopened. Late proposals may only be considered if no proposals are received on time.

### 3.4 Packaging of RFP Proposals

The Technical, Financial and Administrative proposal (*Section 3.2 Proposal Format and Content*) should be separated and identified within the submission package as follows:

|                         | <b>Electronic Submission</b>  | <b>Original</b>             | <b>Copies</b>      |
|-------------------------|---|-----------------------------|--------------------|
| Administrative Proposal | One (1) Copy in a standard, searchable PDF format on a flash drive. | Two (2) Original hardcopies | Two (2) Hardcopies |
| Technical Proposal      | One (1) Copy in a standard, searchable PDF format on a flash drive. | Two (2) Original hardcopies | Two (2) Hardcopies |
| Financial Proposal      | One (1) Copy in a standard, searchable PDF format on a flash drive. | Two (2) Original hardcopies | Two (2) Hardcopies |

### 3.5 Instructions for Proposal Submission

All proposals must have a label on the outside of the package or shipping container outlining the following information:

PROPOSAL ENCLOSED  
RFP C003421  
Collections Management System  
Proposal Submission Due July 22, 2020, 3:00 PM Eastern Time

### 3.6 List of Exhibits, Attachments, Appendices and Forms

#### Appendices

Appendix A - Standard Clauses for New York State Contracts

Appendix B - General Specifications for OPRHP Contracts

Appendix C - Participation by Minority Group Members and Women with Respect to State Contracts

Appendix D - Bid Protest Procedures

Appendix E - OSC Consultant Disclosure Reporting Requirements

#### Attachments

Attachment 1 – Financial Proposal

Attachment 2 – Proposal Response Form

Attachment 3 – Lobbying Law Certification

Attachment 4 - Non-Collusive/Procurement Lobbying Bidding Certification 90

Attachment 5 - Public Officers Law 91

Attachment 6 - Encouraging Use of New York State Businesses in Contract Performance

Attachment 7 - NYS Finance Law §139-I and Executive Order No. 177 Certification

Attachment 8 – Vendor Responsibility Attestation

Attachment 9 – Diversity Practice Questionnaire

Attachment 10 – Intent to Bid / No Bid

Attachment 11 – References

FORM A State Consultation Services - Contractor's Planned Employment

FORM B State Consultation Services - Contractor's Annual Employment Report

ST-220-CA Contractor Certification to Covered Agency

ST-220-TD Contractor Certification

**Exhibits**

Exhibit A – Uses Cases

Exhibit A.1 – Use Cases Object List

Exhibit B – Accession Numbering and Location Format

Exhibit C – Deaccessioning

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## 4. Proposal Evaluation

Pursuant to State Finance Law, the basis for contract award under this RFP will be “best value,” optimizing quality, cost, and efficiency among responsive and responsible Bidders.

### 4.1 Proposal Clarification

OPRHP reserves the right to require a Bidder to provide clarification and validation of its proposal through any means OPRHP deems necessary. Failure of a Bidder to cooperate with OPRHP’s efforts to clarify or validate proposal information may result in the proposal being labeled as non-responsive and given no further consideration.

### 4.2 Evaluation Process Overview

There will be four phases to the evaluation process. Proposals which pass Phase One of the evaluation will be further evaluated in Phase Two. Proposals that pass Phase Two and are eligible to demonstrate as outlined within 5.2.2 will be invited to Phase Three. The apparent awardee will be evaluated as outlined within Phase Four.

#### 4.2.1 Phase One Evaluation – Proposal Screening

All timely submitted proposals will be evaluated in Phase One. Each proposal will be screened for completeness and conformance with OPRHP’s requirements for proposal submission as specified in this RFP. Proposals which do not meet the requirements may be labeled as non-responsive and may not be given further consideration. All proposals that pass this stage of the evaluation process will be further evaluated in Phase Two.

#### 4.2.2 Phase Two Evaluation – Technical and Financial Evaluation (50 points)

##### 4.2.2.1 Technical Evaluation (19 Points)

Bidders who pass Phase One of the evaluation will receive Technical Evaluation. Scoring will be based on Bidder’s responses as submitted in their Technical Proposal.

##### 4.2.2.2 Diversity Practices (1 Point)

Bidder must provide their Diversity Practices on the form provided in this RFP as “Attachment 9 - Diversity Practices Questionnaire.” Additional sheets should be attached as necessary to fully describe your company’s Diversity Practices. All available points will be awarded based upon the answers provided on the “Attachment 9 - Diversity Practices Questionnaire.” Points will not be awarded based on a company’s status as a certified MWBE firm. Pursuant to §310(22) of Article 15A of New York State Executive Law, “Diversity Practices” shall mean the Contractor’s practices and policies with respect to:

1. Utilizing certified minority and women-owned business enterprises in contracts awarded by a state agency or other public corporation, as subcontractors and suppliers; and
2. Entering into partnerships, joint ventures or other similar arrangements with certified minority and women-owned business enterprises as defined in this article or other applicable statute or regulation governing an entity’s utilization of minority and women-owned business enterprises.

##### 4.2.2.3 Financial Evaluation (30 points)

Bidder’s Financial proposal will be scored concurrently and separately from the Technical Evaluation. Scoring will be based on Bidder’s response as submitted in their Financial Proposal. Bidders who submit Financial proposals with blank bid line items grant OPRHP the right to interpret such line items to have zero associated charge.

#### 4.2.3 Phase Three Evaluation – Demonstration Evaluation (50 points)

Bidders who pass Phase Two Evaluation will be invited to present a demonstration of the System proposed in their RFP. The purpose of this evaluation will be for the Bidder demonstrate its System’s performance of the provided Scenarios within *Exhibit A Use Cases*. If a Scenario within Exhibit A involves

a function labeled Desirable by OPRHP and the Bidder's proposal does not include that provided functionality, then the Bidder will not be required to demonstrate that specific Desirable functionality.

#### **4.2.4 Phase Four Evaluation – Reference Qualification Evaluation (Pass/Fail)**

References provided on "Attachment 11 – References" will be checked on a pass/fail basis for the top ranked, apparent awardee only.

### **4.3 Final Ranking/Contract Tentative Award**

The contract will be awarded to the Bidder whose proposal obtains the highest aggregate score. The table below summarizes the evaluation point distribution:

| <b>Evaluation Component</b> | <b>Points</b> |
|-----------------------------|---------------|
| Financial Evaluation        | 30            |
| Technical Evaluation        | 20            |
| Demonstration Evaluation    | 50            |
| <b>TOTAL</b>                | <b>100</b>    |

If Bidders receive the same final score, OPRHP will use the following tie breaking mechanisms, in the order listed, to determine the final ranking:

1. The Bidder's Financial Score
2. Demonstration Evaluation Score
3. Determination by the Commissioner of OPRHP

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## **5. Administrative Requirements**

With the submission of a response to this Request for Proposals, the Bidder agrees to the proposal conditionals outlined in this section.

### **5.1 General Requirements**

By submission of a Proposal, Bidder affirms acceptance of and compliance with all requirements and specifications outlined in this RFP. If any part of the work required by this RFP is subcontracted, the Contractor is responsible for all requirements identified in this document.

### **5.2 Solicitation**

This RFP is a solicitation for proposals, not an offer for a contract.

### **5.3 Liability**

Neither OPRHP nor the State of New York shall be liable for any costs incurred by a Bidder in the preparation and production of any proposal, or for any work performed prior to the award of a formal contract.

### **5.4 State's Rights to Proposals**

By submitting a proposal, the Bidder agrees not to make any claim for, or have any right to damages because of any misinterpretation or misunderstanding of the specifications, or because of any misinformation or lack of information. OPRHP reserves the right to exercise the following:

- Change any of the scheduled dates herein;
- Amend RFP Requirement(s) after their release to correct errors or oversights, or to supply additional information as it becomes available and if so notify all potential Bidders on the Agency-maintained Bidders List;
- Withdraw the RFP, at its sole discretion without any obligation or liability to any vendor;
- Eliminate any mandatory, non-material requirement that cannot be complied with by all of the prospective Bidders;
- Evaluate, accept and/or reject any and all proposals, in whole or in part, and waive technicalities, irregularities, and omissions if, in OPRHP's judgement, the best interests of OPRHP will be served. In the event compliant bids are not received, OPRHP reserves the right to consider late or non-conforming bids as offers;
- Require the Bidder to demonstrate, to the satisfaction of OPRHP, any information presented as part of their proposal;
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an Offeror's proposal and/or to determine an Offeror's compliance with the requirements of this solicitation;
- Disqualify any Bidder whose conduct and/or bid fails to conform to the requirements of the solicitation;
- Use proposal information obtained through OPRHP's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to OPRHP's request for clarifying information in the course of evaluation and selection under this RFP;
- Prior to the bid opening, determine a tie-breaking mechanism for award of the Contract to serve the best interests of OPRHP and the State of New York;
- Negotiate with the successful Bidder within the scope of the RFP to serve the best interests of OPRHP and the State of New York;
- Conduct Contract negotiations with the next ranked responsible Bidder should OPRHP be unsuccessful in negotiating an Agreement with the selected Bidder;
- Conduct negotiations with the next ranked responsible Bidder should the awarded Contractor fail to implement these Services upon approval of the Contract;
- If OPRHP must terminate the Contract for non-performance or the Contractor is unable to maintain the support required, OPRHP reserves the right, with the approval of the Attorney General and the Office of the State Comptroller, to award a contract to the next highest ranked Bidder of the original bid submission within the first twelve (12) months of the contract start date;

- Utilize any or all ideas submitted in the proposals received;
- Make an award under the RFP in whole or in part; and
- Seek revisions of proposals.

Bids containing false or misleading statements, or which provide project contacts that do not support an attribute or condition claimed by a Bidder, may be disqualified from consideration. If, in the opinion of OPRHP, a statement is intended to mislead OPRHP in its evaluation of the bid, and the attribute, condition, or capability is a requirement of the RFP, the bid shall be disqualified from consideration.

## **5.5 Freedom of Information Law**

Your proposal to OPRHP, including accompanying documents, is subject to the Freedom of Information Law (FOIL) found in Article 6 of the N.Y. Public Officer Law. FOIL provides that certain records are exempt from disclosure, including those that contain (1) trade secrets, (2) information that, if disclosed, would cause substantial injury to the competitive position of your organization, or (3) critical infrastructure information. Records may be redacted to protect only the portions of documents that fall within a FOIL exemption. An entire document may not be withheld if only a portion of the document is exempt from disclosure. Blanket assertions that information is a trade secret, confidential, or proprietary are insufficient to justify withholding information under FOIL. If you identify information seeking an exemption from public disclosure due to the above-mentioned reasons such request will be reviewed, and a determination will be made as to whether the information is exempt from disclosure under FOIL. However, such submissions seeking non-disclosure will not be considered unless it is accompanied with an explanation justifying the privilege. The State's determination may be appealed pursuant to POL §89(5)(c). Pursuant to POL §87(2)(b), the State, without having to request it, will redact information that "if disclosed would constitute an unwarranted invasion of personal privacy."

## **5.6 Bid Security**

OPRHP reserves the right to use any and all information contained in a bid to the extent permitted by law. If the Bidder asserts that any portion of the bid contains copyrighted material, trade secrets, or any other information in which the Bidder asserts a proprietary interest, such assertion must be explicitly stated in the bid, as provided in the Appendix B, clause 11. Each Bidder's proposal will be held in strict confidence by OPRHP /State of New York staff and will not be disclosed except as expressly provided herein and to the Office of the Attorney General and the Office of the State Comptroller as may be necessary to obtain approval for the final Contract and except as required by law.

## **5.7 Timely Submission**

The Bidders are solely responsible for timely delivery of their bid to the location set forth by the stated bid due date/time and are solely responsible for delays in receipt, including but not limited to those due to third-party carriers.

## **5.8 Bid Effective Period**

The Bidder's bid must be firm and binding for a period of at least 180 days following the proposal due date.

## **5.9 Bid Opening**

Bids will not be opened publicly. OPRHP reserves the right at any time to postpone or cancel a scheduled bid opening.

## **5.10 Bidder Proposal Clarification**

Prior to award, OPRHP reserves the right to seek clarifications, request proposal revisions, or to request any information deemed necessary for proper evaluation of proposals from all Bidders deemed to be eligible for Contract award. Failure of a bidder to cooperate with OPRHP's effort to clarify a proposal may result in the proposal being labeled as non-responsive and be given no further consideration.

Additionally, OPRHP reserves the right to use information submitted by the Bidder in response to OPRHP's request for clarifying information in the course of evaluation and selection under this RFP.

## 5.11 Bid Evaluation and Selection

See *Section 4.3 Final Ranking/Contract Tentative Award*, regarding bid selection and point allocation. Submitted bids may be reviewed and evaluated by any personnel or agents of OPRHP, other than those associated with a competing Bidder.

## 5.12 Contract Negotiations and Authorized Negotiators

During contract negotiations, OPRHP must have direct access to Bidder personnel who have full authority to make commitments on behalf of the Bidder. Bidders must include, as part of their proposal, any restrictions under which their primary negotiators will operate.

## 5.13 Bid Review and Contract Approval

The Contract resulting from this RFP will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller.

## 5.14 Debriefing Sessions

A debriefing is available to any entity that submitted a proposal or bid in response to a solicitation ("Bidder"). A Bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing. Debriefing must be requested in writing by any bidder within fifteen (15) calendar days of OPRHP notifying the unsuccessful bidders that another vendor was selected. A bidder's written request for a debriefing must be submitted to the Designated Contact. The debriefing will be scheduled within ten (10) business days of receipt of written request by State Parks or as soon after that time as practicable under the circumstances.

## 5.15 Bid Protest Procedure

OPRHP procedures for handling protests of bid awards are set forth in *Appendix D - Bid Protest Procedures*.

## 5.16 Conflict of Interest

### 5.16.1 Organizational Conflict of Interest

To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to OPRHP.

1. An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for OPRHP.
2. The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to OPRHP. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with OPRHP, to avoid, mitigate, or minimize the actual or potential conflict.
3. To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

### 5.16.2 Personal Conflict of Interest

The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

1. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify OPRHP immediately of any actual or potential personal conflict of interest with regard to any

such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. OPRHP will notify the Contractor of the appropriate action to be taken.

2. The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise OPRHP which will advise the Contractor of the appropriate action to be taken.
3. Unless waived by OPRHP, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to OPRHP. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by OPRHP. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.
4. In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by OPRHP or first generated during contract performance, of a sensitive nature which should not be released without OPRHP's approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to OPRHP, Department of Health or the New York State Department of Law, any information or data provided by OPRHP or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of OPRHP. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to OPRHP so that OPRHP can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

### **5.16.3 Remedies**

1. OPRHP may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to OPRHP, OPRHP may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.
2. The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package
3. The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by OPRHP.

### **5.17 Litigation Support**

If OPRHP becomes involved in litigation related to the subject matter of the resulting contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation may be negotiated.

## 6. Contractor Requirements

### 6.1 Project Implementation

The Contractor shall work in close consultation with OPRHP Project Manager during the implementation phase. The Contractor shall provide formal mechanisms for OPRHP input throughout the implementation and shall work closely and cooperatively with OPRHP throughout deployment.

The Contractor shall, at all times, employ, maintain, and assign to the Contract a sufficient number of competent and qualified personnel to meet the requirements for the Scope of Work, including at least one Project Manager. The Project Manager shall:

- Report to and take direction from the OPRHP's Project Manager or their designee;
- Coordinate work efforts and collaborate with the project team;
- Manage the work of the Contractor Staff;
- Keep OPRHP fully informed as to the Contractor's progress and performance of the Scope of Work;
- Participate in person, or remotely with OPRHP's consent, in regularly scheduled and any unscheduled meetings;
- Issue reports as reasonably requested by OPRHP or as otherwise required by the Contract;
- Ensure that all deliverables are validated and verified.

OPRHP anticipates the implementation of the CMS to take approximately nine (9) months. For this turn-key "COTS" CMS deployment, OPRHP anticipates, at a minimum, the following consecutive steps to occur as a part of the implementation phase. Upon successful completion of the implementation phase, the project will enter into the post-implementation support and warranty period that will continue for the remaining term of the Contract:

1. **Technical Implementation** – Configuration of the Contractor's COTS software program, as needed, to support the Service Requirements, which indicates all mandatory and all proposed desirable requirements.
2. **Data Review and Validation** – Evaluation and confirmation that OPRHP's existing data can be successfully migrated into the new CMS without loss of information or functionality. Any issues in steps 1 & 2 must be resolved prior to advancing to step 3.
3. **Pilot Testing** – Functional testing, proofing, and acceptance of the turn-key system. Testing must be performed for each Service Requirement listed in *Section 2 Detailed Scope of Work & Service Requirements* using OPRHP data assets. Testing must be repeated for each service requirement until there are zero (0) errors. OPRHP final written acceptance must be obtained prior to advancing to step 4.
4. **Data Migration** – After final written acceptance of Pilot Testing by OPRHP, batch processing and organization of OPRHP data may begin. Once initiated, data migration must be executed as quickly as possible, but must not to exceed two (2) months.
5. **Final System Audit** – Upon completion of migration, additional testing must be conducted across the entire system to ensure accuracy of the migrated data. Post migration audits must return zero (0) errors due to system configuration and migration process.
6. **Training and Documentation** – In accordance with 6.3.7.

### 6.2 Deliverable Approval by OPRHP and Corrective Action

During the project, Contractor must obtain written approval from OPRHP for all project plans/deliverables where "Written Approval from OPRHP" is indicated. Approval will be provided by OPRHP's Project Manager or their designee.

If requested by OPRHP, Contractor must provide deliverable revisions until OPRHP provides final acceptance. OPRHP reserves the right to terminate this contract, if the Contractor is unable to provide acceptable deliverables within a reasonable number of attempts.

### 6.3 Documented Deliverables

Once a contract is signed and approved by the NYS Office of the State Comptroller, the Contractor shall be responsible for supplying all documentation deliverables in a mutually agreed-upon format. Required deliverables shall be provided by the Contractor for the System. The Documentation Deliverables requirements are shown in the following table:

| No. | Name  | Description and/or Tasks   | Due Date  | Acceptance                  |
|-----|---|--|---|-----------------------------|
| D1  | Kickoff Meeting   | <ul style="list-style-type: none"> <li>Designation of Contractor Project Manager</li> <li>List of contractor's principle team members with contact information and description of role within scope of project</li> <li>Proposed Project Schedule</li> </ul> | Within 10 Business Days of Approved Contract Transmission to Contractor | Upon Completion of Meeting  |
| D2  | Ongoing, Bi-Weekly Progress Meetings                              | <ul style="list-style-type: none"> <li>Meeting Minutes</li> <li>Revisions to Project Schedule, As Needed</li> </ul>  | Within 10 Business Days of Kickoff Meeting                              | N/A                         |
| D3  | Pilot System Test Plan and Acceptance                             | <ul style="list-style-type: none"> <li>Test plan, as described in Section 6.3.3</li> <li>OPRHP access to non-production environment (demo version), as described in Section 6.3.3</li> </ul>   | Within 15 Business Days of Kickoff Meeting                              | Written Approval from OPRHP |
|     |   | <ul style="list-style-type: none"> <li>Test and Audit reports</li> </ul>   | Within 3 Business Days of each test                                     | N/A                         |
|     |   | <ul style="list-style-type: none"> <li>Acceptance test plan, as described in Section 6.3.3</li> <li>OPRHP access to CMS, as described in Section 6.3.3</li> </ul>  | Within 10 Business Days of Approved Systems Test Plan                   | Written Approval from OPRHP |
|     |   | <ul style="list-style-type: none"> <li>Acceptance test reports and audit reports</li> </ul>  | Within 3 Business Days of each report submitted to OPRHP                | Written Approval from OPRHP |
| D4  | Transition Data Management and Data Migration Plan and Acceptance | <ul style="list-style-type: none"> <li>Plan, as described in Section 6.3.4</li> <li>Transition Audit Plan</li> <li>Data Recovery Plan</li> </ul>   | Within 10 Business Days of Approved System Acceptance Plan              | Written Approval from OPRHP |
|     |   | <ul style="list-style-type: none"> <li>Data Migration Acceptance, as described in Section 6.3.4</li> <li>OPRHP access to CMS, as described in Section 6.3.4</li> </ul>   | Within 5 Business Days of Migration                                     | Written Approval from OPRHP |
| D5  | Training and Documentation  | <ul style="list-style-type: none"> <li>User Manual</li> <li>Scheduling of two (2) live training sessions</li> </ul>  | Within 5 Business Days of Migration Acceptance                          | Written Approval from OPRHP |
| D6  | Disaster Recovery and Business Continuity Plan                    | <ul style="list-style-type: none"> <li>Recovery Plan</li> </ul>  | Within 2 Business Days of Migration Acceptance                          | Written Approval from OPRHP |
|     |   | <ul style="list-style-type: none"> <li>Annual test results</li> </ul>  | Within 5 Business Days of each test                                     | N/A                         |
| D7  | Ongoing System Support  | Years 1 and 2  | Monthly   | N/A                         |
|     |   | Years 3, 4, 5  | Quarterly   |                             |
|     |   | <ul style="list-style-type: none"> <li>Webinar access</li> <li>FAQ access</li> </ul>   | Within 2 Business Days of Migration Acceptance                          | N/A                         |

### 6.3.1 Kickoff Meeting

After contract award, the Contractor must schedule and attend a kickoff meeting within ten (10) business days of receipt of approved contract. This kickoff meeting will be held in a mutually agreeable format (e.g. WebEx, in person, etc.) and on a mutually agreeable date. At the kickoff meeting, the contractor's designated Project Manager must be present along with any additional staff who will be fulfilling critical project roles. Contractor must present, at a minimum, a proposed schedule for the project and descriptions of each staff member's roles within the scope of the project.

Within five (5) business days after the Kickoff Meeting, Contractor shall distribute Meeting Minutes, the working project schedule (Gantt chart), and any additional documentation deemed necessary during Kickoff Meeting. Upon receipt, OPRHP will be allowed 5 business days to review and provide comments/corrections.

### 6.3.2 Ongoing, Bi-Weekly Progress Meetings

The Contractor must schedule and attend periodic progress meetings. The first progress meeting must occur within ten (10) business days after the kickoff meeting. Following this, these would occur on a bi-weekly basis at a minimum, unless OPRHP determines them needed less frequently as the project progresses. It is anticipated most of these meetings will occur via web conferencing, e.g., through WebEx or equivalent. However, the Contractor should anticipate attending on-site meetings at the OPRHP offices on a mutually agreeable frequency until system is fully accepted. These meetings are intended to keep all parties apprised of overall project status, and to facilitate orderly project execution in the designated implementation period.

Contractor shall prepare Meeting Minutes and circulate to the project team. Upon receipt, OPRHP will be allowed five (5) business days to review and provide comments/corrections. If changes are needed, the Contractor is responsible for revising and recirculating Meeting Minutes. This expectation will remain unless OPRHP determines such minutes no longer necessary.

Additionally, Contractor is responsible for circulating any updated planning documents, such as project schedule, to the project team in advance of the next scheduled meeting.

### 6.3.3 Pilot System

#### 6.3.3.1 Test Plan

The Contractor shall provide a Pilot System test plan that will provide OPRHP staff with the following:

- A listing of all software products including, but not limited to, Contractor products, third-party software, custom software, and software configurations. Listing must include the intended usage of specified products;
- Data schema or map for planned system;
- Pilot testing program: written procedures for all planned tests and audits (testing must include load and performance testing), and available demoing (non-production environment);
- Contractor requirements for receiving OPRHP data set for executing the test procedures; and
- Written procedure for recovering data during testing phase, for example: lost or corrupted data.

Pilot System tests must use OPRHP collections data. OPRHP will not accept generic or Contractor-defined assets as a substitute. Contractor will need to provide technical support regarding how to use the software. OPRHP will provide written approval of the software system configuration, in accordance with *Section 6.3.3.2 Acceptance*, at the conclusion of this testing – and after ALL issues are resolved. This results in a finalized database configuration with any customized field names, drop-down menus, etc.

Data migration does NOT occur until the final database configuration is approved by OPRHP.

The Contractor shall provide OPRHP with access to non-production environment (demo version) that mirrors the structure, data, and functions of the approved production environment (CMS), including technical support. The non-production version may be a separate CMS version from test system. Contractor shall refresh the non-production environment data upon request of OPRHP.

### 6.3.3.2 Acceptance

Contractor will notify OPRHP Project Manager when the technical and functional implementation steps of the pilot test data system are completed so that the project can move to an acceptance phase.

The Contractor shall provide a Pilot System acceptance document that will provide Agency staff with the following:

- written certification that the Pilot System testing meets the System requirements in *Section 2 Detailed Scope of Work & Service Requirements*;
- a demonstration of system with the migrated test data set (either in person or via WebEx or equivalent), highlighting, at a minimum, primary functions, any customized area(s), and area(s) that required correcting as a result of test phase and audit(s); and
- written report(s) of test results, indicating pass/fail of individual functionality and user workflow stories signed by Contractor.

Following migration of test data set, Contractor will provide OPRHP with full access to the CMS for purposes of OPRHP independent audit. OPRHP will not accept a system where the functionality is demonstrated or performed only by the Contractor. OPRHP staff will test all required and all desired system functionality. Testing will emphasize end-to-end workflows, user experience (UX), the impact of user workflows on other features, and overall performance. Contractor is expected to have staff available to support OPRHP users as they test the system.

OPRHP acceptance of individual points of functionality or user stories shall not be deemed as acceptance of the system by OPRHP. Only after all user workflows and functionality is fully operational to the satisfaction of OPRHP will final pilot test system acceptance be given by OPRHP.

## 6.3.4 Transition Data Management and Data Migration

### 6.3.4.1 Plan

Upon written approval of Pilot System Test and Audit Reports, the project will move toward a full migration of all OPRHP Data into the approved CMS.

The Contractor shall provide a formal Data Migration Plan that outlines the steps, means, and target dates for activities related to meeting the goal of ensuring a smooth transition to the new System. Contractor should account for any necessary follow-up or maintenance planning due to migration errors and any necessary troubleshooting. The migration should take no more than two (2) months.

In advance of migration, Contractor shall provide an audit plan to accompany the overall formal transition management and Data population plan that outlines the steps, means, and target dates to investigate the success of the transition. This plan should account for any necessary restructuring of the initial plan, troubleshooting, or the like to ensure a smooth transition.

The Contractor shall provide a full data recovery plan to accompany the overall formal transition management in accordance with **Section 6.3.8.**

### 6.3.4.2 Data Migration Acceptance

The Contractor shall provide a System acceptance document upon migration of complete OPRHP data that will provide Agency staff with the following:

- written certification that the data migrated successfully into CMS;
- written certification that the System meets the System requirements in *Section 2 Detailed Scope of Work & Service Requirements*;
- a demonstration of the system following migration of complete OPRHP data (either in person or via WebEx or equivalent), highlighting, at a minimum, primary functions, any customized area(s), and area(s) that required correcting as a result of test phase and audit(s). Demonstration must include a series of comprehensive searches to ensure the data has migrated successfully; and

- written report(s) of test results, indicating pass/fail of individual functionality and user workflow stories signed by Contractor.

Following migration of complete data, Contractor will provide OPRHP with full access to the CMS for purposes of OPRHP independent audit. OPRHP will not accept a system where the functionality is demonstrated or performed only by the Contractor. OPRHP staff will test all required and all desired system functionality. Testing will emphasize end-to-end workflows, user experience (UX), the impact of user workflows on other features, and overall performance. Contractor is expected to have staff available to support OPRHP users as they test the system.

### **6.3.5 Training and Documentation**

The Contractor must provide NYS-specific training and end-user documentation to OPRHP administrative and technical users. All training documentation must be approved by OPRHP.

- Must provide a user manual that contains descriptions of the system's principle features and detailed instructions on all customization options. Any updates to user manual must be supplied to OPRHP upon their release.
- The user manual is provided in either print or electronic format.

Contractor must submit, for review and approval by OPRHP, a draft agenda for the training course along with the User Manual. Contractor must revise and resubmit agenda and User Manual, if requested. Contractor must provide final agenda and User Manual in advance of scheduled training, and must use only OPRHP-approved documents during this training.

The Contractor shall deliver as part of training, written materials in sufficient detail and clarity, and with explanation and information, to enable OPRHP to understand, apply, modify, and maintain the CMS on a daily basis, without continual assistance from the contractor or other third parties. For OPRHP users (Authority Levels 1, 2, and 3), two (2) live training sessions shall be conducted by the Contractor on mutually agreeable dates, and in a mutually agreeable format (in person, via WebEx conference, or equivalent platform, etc.).

### **6.3.6 Disaster Recovery and Business Continuity Plan**

If the Contractor has possession of OPRHP Data or is otherwise responsible for making the system available (e.g., a SaaS solution), then the Contractor shall implement backup and recovery technology to ensure OPRHP's continued use of the system and recovery of OPRHP Data in the event of a disaster. The backup and recovery functionality will allow the system to be recovered within four (4) hours, with a loss of data no greater than four (4) hours prior to the time of failure, unless otherwise agreed to by OPRHP in writing. The Contractor shall:

1. provide a business continuity and disaster recovery plan to OPRHP;
2. test such plan annually;
3. provide OPRHP with the results of each such test.

## **6.4 Contract Staffing Requirements**

The awarded bidder shall provide capable personnel to effectuate the business relationship, discovery, implementation, and ongoing services of the resultant contract. Any changes to the Contractor's project team must be approved by OPRHP. The contractor shall provide for the continuity of the responsibilities of any position that must be reassigned or replaced with a qualified replacement made available within ten (10) business days, subject to the review and approval by OPRHP. Should the need arise to make substitutions for any member of the project team, the Contractor will promptly provide resumes of comparably experienced staff for OPRHP's review and approval.

## **6.5 Additional Consultant Hours**

The requirements outlined in this RFP will produce a System that meets the Agencies' current needs. However, it is expected that the Contractor will continue to iterate and improve upon their System at no charge to OPRHP to keep up with evolving technology over the course of the Contract Term as part of the Contract requirements.

In addition to Contractor's improvement cycle, the Contractor must set aside 100 developer hours each Contract year to develop and implement NYS-specific enhancements. Enhancements refer to additional functionality and deliverables unknown to the OPRHP at the time of RFP release. Enhancements may be identified by either OPRHP or the Contractor and may include additional functions or requirements resulting from changes impacting the project. Enhancements are above and beyond any of the updates and improvements defined in the first paragraph above. OPRHP reserves the right to accept, reject, or request revisions to an enhancement proposal. OPRHP must approve an enhancement proposal in writing, prior to commencement of work by the Contractor. When the Agencies seek such enhancement, they will work with the Contractor to determine a mutually agreed upon schedule and scope of work. If unused, these hours will accumulate up to a total of 200 hours.

## 6.6 Ongoing Support

Upon OPRHP acceptance of successful implementation, Contractor shall provide OPRHP Project Manager with an account representative's direct email address for on-going support throughout contract period. Additionally, Contractor shall have the assigned representative maintain a point of contact (either through written email correspondence or phone check-ins) with the OPRHP Program Director; such contacts are expected quarterly, at a minimum.

- Contractor is responsible for providing on-going comprehensive support services related to their proposed solution throughout the term of the contract. Contractor shall ensure that all support services personnel are fully trained on the System and are evaluated to ensure prompt, courteous, and knowledgeable service.
- Provide Help Desk support via telephone, email or online chat.
- Help desk support must be available, Monday through Friday from 8:00am to 5:00pm Eastern Time (excluding State holidays). However, if the Contractor's standard product support hours are more expansive than those set forth in this Section, then OPRHP shall be entitled to such expansive support hours.

All help desk, online, and support services that access any Data must be performed within CONUS.

The Contractor will provide OPRHP users (Authority Levels 1, 2, and 3) with full and unlimited access to webinars, both previously recorded sessions and future webinars. Such webinars should provide users supplemental information on system features, functionality, user experience, as well as any updates to the system. The Contractor will provide OPRHP users (Authority Levels 1, 2, and 3) with access to a FAQ section to assist in answering the most commonly asked questions.

## 6.7 Performance Standards

OPRHP requires that the services necessary to support a turn-key CMS system be provided in compliance with measurable performance standards.

### 6.7.1 System Availability

System Availability is the amount of time in each calendar month (excluding scheduled maintenance) that the CMS is available to OPRHP for use. Contractor shall guarantee uptime of at least 99.5%, excluding scheduled maintenance.

### 6.7.2 Response and Resolution

Response and Resolution Time is the amount of time for the Contractor to acknowledge an OPRHP Error report, and fully correct the Error so that the CMS functions in full compliance with the contract. The Response and Resolution Standard shall include:

| Severity Level   | Description   | Response Time                       | Resolve                                     |
|------------------|---|-------------------------------------|---|
| Severity Level 1 | Essential services are down, causing critical impact to business operations; no workaround available. | One (1) hour of Detection of Issue  | Within Four (4) Hours of Detection of Issue |
| Severity Level 2 | Essential services are significantly degraded and/or  | Two (2) hours of Detection of Issue | Within 24 Hours of Detection of Issue       |

| Severity Level   | Description   | Response Time                       | Resolve                             |
|------------------|---|-------------------------------------|-------------------------------------|
|                  | impacting significant aspects of business operations," etc.).   |                                     |                                     |
| Severity Level 3 | Problem detected, but it does not significantly impact work because there is a mutually agreed upon short- term workaround. | Five (5) days of Detection of Issue | Two (2) weeks of Detection of Issue |

### 6.7.3 Escalation Path

Upon contract award, the Contractor shall detail their "escalation path," which is the process by which an issue is tracked through the Contractor's support teams depending upon the severity of the issue and the subject matter expertise of the support level. OPRHP shall have an escalation point of contact for the highest-level severity issue at the highest support level.

### 6.7.4 Service Credits

Performance standards shall include financial credits to which OPRHP is entitled if the Contractor fails to meet a performance standard in a specific month (each, a "Service Credit"). The service credit shall be calculated against monthly fees and shall be paid against future fees. For any fees paid annually, the monthly fee shall be considered 1/12 the annual fee. Each Service Credit shall constitute 4% of the applicable month's total fee(s).

The Contractor agrees that OPRHP's receipt of Service Credits shall not constitute OPRHP's sole remedy for the Contractor's failure to meet performance standards, which could include termination of the contract. Please see Appendix B, Section 51 Termination.

### 6.7.5 Monitoring and Reporting

Throughout the term of this contract, the Contractor shall monitor these prescribed performance standards on a monthly basis and provide monthly reports to OPRHP of such monitoring, including:

- actual performance compared to each agreed upon Performance standard, and
- Service Credits to which OPRHP is entitled based on failures to meet an agreed upon performance standard.

The Contractor shall automatically apply accrued Service Credits to OPRHP's next invoice or, after receiving a written request from OPRHP, pay to OPRHP the amount of Service Credits due within thirty (30) days of such request.

## 6.8 System Changes & Upgrades

The Contractor shall give a minimum of five (5) business days advance written notice to the designated OPRHP contact of any upgrades, maintenance or other system changes that will impact services as provided in the contract. All such changes must be coordinated with OPRHP so as not to interfere with critical events.

The Contractor shall provide system upgrades at no additional cost to OPRHP for the Term of the contract resulting from this solicitation. "Upgrades" include software releases (including point releases), revisions, version changes, or enhancements to the Product that improve existing, or introduce new, features or functionality. The Contractor shall ensure that the Product is fully compatible with the then-current version of OPRHP operating system.

Upgrades, system changes, and Maintenance/support actions which are required by system vulnerabilities or emergency situations shall be carried out by the Contractor to protect the system.

### 6.8.1 Contractor Testing

Before deploying a proposed change to the System, Contractor shall perform full testing of the proposed changes, report test results to OPRHP, and then deploy the proposed change to the non-production testing environment for testing by OPRHP.

### **6.8.2 Approval**

Unless otherwise directed by OPRHP, all changes impacting the System will require written approval from OPRHP. Contractor shall deploy System changes in the production environment only after acceptance and approval by OPRHP.

### **6.8.3 Rollback Plans**

Contractor shall provide a rollback recovery plan for all scheduled changes. If Contractor plans to implement a change that cannot be rolled back or recovered, Contractor must notify OPRHP prior to the start of testing.

### **6.8.4 Release Notes**

When making changes to the System, Contractor shall provide detailed descriptions of the proposed changes to OPRHP, including how the proposed changes will impact business operations.

Contractor shall provide release notes at least two (2) weeks prior to the start of testing by OPRHP.

The Contractor must provide OPRHP with release notes written in non-technical terms and with examples or screenshots wherever possible.

## **6.9 Contractor's Compensatory Liability**

If the Contractor fails to complete any of the specified services within the timeframe required, OPRHP reserves the right to have such work completed either by another company or with in-house staff. In any such event, the Contractor shall be liable to reimburse OPRHP for all costs incurred to complete the work. OPRHP further reserves the right to collect such reimbursement from any outstanding payments due to the Contractor.

## **6.10 Warranties**

Contractor warrants that the services acquired under the resultant contract will be provided in a professional and workmanlike manner in accordance with industry standards.

All materials and workmanship provided under the resultant contract shall be warranted for a minimum of one year. Where the Contractor, Product manufacturer, or service provider generally offers additional or more advantageous warranties, such additional or more advantageous warranty shall apply. All warranties contained in the resultant contract shall survive the termination of the resultant contract.

## **6.11 Security Procedures**

Please note OPRHP locations may have on-site security policies that must be followed. The Contractor will work with OPRHP to obtain necessary clearances. The Contractor may be required to provide information such as, but not limited to, the company name, the employee's name (as it appears on valid driver license or photo identification), vehicle make, model and license plate, etc. to OPRHP.

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## **7. General Requirements**

With the submission of a response to this Request for Proposals, the Bidder agrees to all contract conditions outlined in this Section except that Bidders may propose changes as allowable in Appendix B, clause 6, Extraneous Terms.

### **7.1 Appendix A – Standard Clauses for New York State Contract**

The terms of Appendix A, Standard Clauses for New York State Contracts, attached hereto, are hereby incorporated into this RFP and any resulting contract. The Contractor is required to adhere to all clauses.

### **7.2 Appendix B – General Specifications for OPRHP Contracts**

The terms of Appendix B, General Specifications for OPRHP Contracts, attached hereto, are hereby incorporated into this RFP and any resulting contract and shall govern any situations not covered by this RFP or Appendix A.

### **7.3 Encouraging the Use of New York Businesses in Contract Performance**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Each Bidder must complete and submit Encouraging Use of New York State Business in Contract Performance.

### **7.4 Contractor Assurances**

The Bidder warrants that it has carefully reviewed OPRHP's needs as described in the RFP and its attachments/supplements. Bidder also warrants that it has familiarized itself with OPRHP's specifications and that it can provide such services as described in the RFP and as offered in its Bid.

If awarded the contract, the Bidder agrees that it will perform its obligations hereunder in accordance with all applicable Federal, State and local laws, rules, and regulations now or hereafter in effect.

The Bidder further warrants and affirms that the terms of this RFP and any resultant contract do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under the contract.

### **7.5 RFP Order of Precedence**

In the event of any inconsistency in or conflict among the document elements of the future contract identified herein, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth below:

1. Appendix A: Standard Clauses for New York State Contracts
2. Appendix B: General Specifications for OPRHP Contracts
3. RFP and Addenda, including any modifications by OPRHP and by official OPRHP's responses to questions

### **7.6 Procedures for Amendments**

See "Modification of Contract Terms" in Appendix B.

Any request by the Contractor to change or amend any part of the contract shall be made, in writing, to OPRHP and may be subject to approval by the Office of the State Comptroller and/or the Office of the Attorney General.

### **7.7 Equal Employment Opportunities**

A. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated thereunder by the Division of Minority and Women's Business Development of the New York State Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. The Contractor shall comply with the following provisions of Article 15-A:

1. Each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to the New York State Office of Parks, Recreation and Historic Preservation within seventy-two (72) hours after the date of the notice by New York State Office of Parks, Recreation and Historic Preservation to award the Contract to the Contractor.
3. If the Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Office of Parks, Recreation and Historic Preservation may provide the Contractor or Subcontractor a model statement (see Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment 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.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

C. Staffing Plan

To ensure compliance with this Section, for those contracts reaching \$250,000 or greater, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Workforce Employment Utilization Report ("Workforce Report")

1. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report, in such format as shall be required by New York State Office of Parks, Recreation and Historic Preservation on a monthly basis during the term of the contract.
2. Separate forms shall be completed by Contractor and any Subcontractor.
3. In limited 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 Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the

information provided related to the actual workforce utilized on the 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 Workforce 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.

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

## **7.8 Conformance to RFP**

Any exceptions or objections to the terms, conditions, and requirements of this RFP are governed by, and to be submitted in accordance with, the "Extraneous Terms" clause in Appendix B. Bidders are cautioned that any such exceptions or objections may render their bid non-responsive.

## **7.9 Lobby Law Termination Provision**

OPRHP reserves the right to terminate this contract in the event it is found that this certification filed by the Contractor, in accordance with NYS Finance Law 139-k, was intentionally false or incomplete. Upon such finding, OPRHP may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this contract.

## **7.10 Relationship as Independent Contractor**

The relationship of the Contractor to OPRHP is that of an independent contractor, and the Contractor, in accordance with its status as such, covenants and agrees that it will conduct itself in a manner consistent with such status, that it will not hold itself out as an agent of OPRHP by reason of this agreement, and that no employee of the Contractor, by reason of this agreement, will claim to be an officer or employee of OPRHP or make any claim, demand, or application for any benefit, right, or privilege applicable to employees of the State of New York.

## **7.11 Payment Requirements**

The awarded Contractor will be compensated as described in "Attachment 1 - Financial Proposal."

Payment requests shall be made on forms mutually agreed upon by the Contractor and the Agency and shall include appropriate back-up documentation to support the request for payment. All payments will be made in accordance with Article XI-A of the State Finance Law.

All requests for payment must include an explanation and breakdown showing determination of all charges.

The Agency pays charges after the services and or/products are provided and does not pay in advance for these services and/or products. Fees paid for which it is subsequently determined that the Contractor was not entitled must be reimbursed to the Agency, and the Agency may do so by subtracting such fees from any payments that later become due to the Contractor under the Contract.

Payment shall be made as follows:

1. The Contractor shall submit to OPRHP for its approval, and for the audit and warrant of the State Comptroller, a proper invoice, receipts, and documents that verify the Contractor's expenditures as directed by OPRHP. The Contractor shall reference the contract number on the invoice.
2. Invoices should be submitted for services rendered and for acceptance by OPRHP to the following designated payment office:

Andrea Cerbie  
Andrea.Cerbie@parks.ny.gov

3. Within fifteen (15) calendar days of receiving the invoice, OPRHP shall notify the Contractor of any mistakes on the invoice or if additional documents must be submitted. Once the Contractor has submitted an invoice to OPRHP, OPRHP will review and audit the invoice and submit it for approval and payment in accordance with the requirements of the State Finance Law.
4. Contractor shall provide complete and accurate billing invoices to OPRHP in order to receive payment. Billing invoices submitted to OPRHP must contain all information and supporting documentation required by the Contract, OPRHP, and the State Comptroller. Payment for invoices submitted by the Contractor shall be sent to the address listed on the W-9 submitted by the Contractor with the returned, signed contract. In order to expedite payment, the Contractor may register for Electronic Funds Transfer by updating its registration with the Vendor Management Unit in the Office of the State Comptroller. Vendor support information is available at <http://www.sfs.ny.gov> as well as [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov) and toll-free at (855) 233-8363.
5. Contractor shall agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Agency, in the Agency's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at [www.osc.state.ny.us](http://www.osc.state.ny.us), by e-mail at [HelpDesk@sfs.ny.gov](mailto:HelpDesk@sfs.ny.gov), or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Agency has expressly authorized payment by paper check as set forth above.

## **7.12 Prime Contractor/Subcontractor**

The successful Bidder shall act as prime Contractor under the Contract and shall be held solely responsible for Contractor performance by the Bidder, its partners, officers, employees, sub-contractors and agents. The Bidder shall be responsible for payment of all Subcontractors and suppliers, including all third-party service providers contracted by or through the Bidder in performance of the Contract.

Where Services are supplied by or through the Contractor under the Contract, it is mandatory for the Contractor to assume full integration responsibility for delivery, installation, maintenance, performance and support services for such items, as applicable. The Contractor shall also be responsible for payment of any license fees, rents or other monies due third parties for Services or materials provided under the Contract.

Proposed subcontractors must be identified at the time of bid submission and are subject to the approval of OPRHP.

## **7.13 Advertising**

The Contractor agrees not to use OPRHP's names, logos, images, or any Data or results arising from this procurement process or Contract as a part of any commercial advertising without prior written approval OPRHP.

## **7.14 Tax Law §5-A**

Tax Law §5-a is effective with all solicitations to purchase issued by covered agencies on or after January 1, 2005. It applies to contracts where: (1) the total amount of such persons' 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, subcontractors, or affiliates of 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; and (2) the contracts or agreements with State agencies or public authorities for the sale of commodities or services have a value in excess of \$100,000. This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, its subcontractors and affiliates of the subcontractors are required to register to collect State sales and compensating use tax. Where required to register, the contractor must also certify that it is, in fact, registered with the New York State Department of Taxation and Finance (DTF). The law prohibits the Comptroller, or other approving agency, from approving a contract awarded to a vendor meeting the registration requirements but who is not so registered in accordance with the law.

Upon notice of potential award, the responsive Bidder may be required to submit, within ten business days of receipt of the notice, the New York State Tax Law §5-A Contractor Certification Forms (ST-220-CA and ST-220-TD). Failure to respond may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms to ensure compliance with the law.

Bidders may call the DTF at 1-800- 972-1233 for any and all questions relating to Tax Law §5-a and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: <https://www.tax.ny.gov/>.

### **7.15 Termination Pursuant to Tax Law §5-A**

In addition to the provisions for termination set forth in Appendix B, OPRHP's reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law was not timely filed during the term of the Contract, or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, OPRHP may exercise its termination right by providing written notification to the Contractor.

### **7.16 Vendor Responsibility Questionnaire**

If this or any other contract you have with the State of New York is valued at \$100,000.00 or more, OPRHP requires that Vendor file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. However, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <https://osc.state.ny.us/vendrep/index.htm>, or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of State Comptroller's Help Desk may be reached at 866-370-4672 or 518- 408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at <https://osc.state.ny.us/vendrep/index.htm> or may contact OPRHP or the Office of the State Comptroller's Help Desk for a copy of the paper form.

Vendors must provide their New York State Vendor Identification number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's help desk at 866-370-4672 or 518-408-4672 or by e-mail at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

To be considered timely, questionnaires filed via the VendRep System require that a vendor certify a questionnaire no more than six months before the due date of the bid. If you are bidding on other state contracts in the future, you only have to update any changes that have occurred in the last six months or since the last time you updated your questionnaire, (you do not have to completely fill out a new questionnaire unless you have made a major change to your company).

### **7.17 Consultant Disclosure Requirements**

Chapter 10 of the Laws of 2006 amended State Finance Law §§8 and 163 by instituting new reporting requirements in contracts for consultant services. As a result of this amendment to the law, State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by those employees. Chapter 10 of the Laws of 2006 expands the definition of contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

In order to comply with these requirements, the Contractor is required to complete the State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term ("Form A"). The completed form must include information for all employees providing services under the Contract, whether employed by the Contractor or a subcontractor.

Additionally, the Contractor is required to submit annual employment reports to OPRHP, Office of the State Comptroller, and Department of Civil Service. This reporting will be accomplished through the State Consultant Services Contractor's Annual Employment Report ("Form B"). Form B must be submitted each year the contract

is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 - March 31).

Information regarding Consultant Disclosure Legislation, including where Form B must be submitted, can be obtained on the website of the Office of the State Comptroller at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm>.

## **7.18 Responsibility Provisions**

The State must conduct business only with responsible entities.

### **7.18.1 General Responsibility:**

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

### **7.18.2 Suspension of Work (for Non-Responsibility):**

The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

### **7.18.3 Termination (for Non-Responsibility):**

Upon written notice to the Contractor and a reasonable opportunity to be heard with appropriate OPRHP's officials or staff, the Contract may be terminated by the Commissioner or his or her designee, at the Contractor's expense, where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

## **7.19 Insurance Requirements**

### **7.19.1 General Requirements**

- A. Prior to the start of this Agreement, the Contractor shall procure, at its sole cost and expense, all insurance coverage required by this Section.
- B. All required policies of liability insurance shall name the State of New York, OPRHP, and their officers, employees, and agents as an additional insured.
- C. All insurance required by this section shall be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and that have an A.M. Best Company rating of "A-", Class "VII" or better.
- D. All required policies of liability insurance shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State.
- E. All required policies of liability insurance shall be written such that OPRHP is afforded at least thirty (30) days' prior notice of cancellation, modification or renewal of coverage.
- F. The Contractor shall notify OPRHP of any claims arising from the activities or operations under this Agreement as soon as practicable, but in no event more than five (5) days from the Contractor's receipt of notice of the accident or claim.
- G. During the term of this Agreement, the Contractor shall maintain in force any and all policies of insurance required by this section.
- H. Contractor shall require any of its contractors retained in relation to this Agreement to meet the requirements of this Section. Contractor shall provide OPRHP with proof of any such contractor's insurance as provided in 6.20.3 and 6.20.4 of this Section.

### 7.19.2 Insurance Coverage Types and Minimum Policy Limits

Contractor shall procure the types of insurance coverage and minimum liability limits set forth below. Contractor may meet the required insurance coverage limits through a combination of primary and excess/umbrella liability policies.

- A. Commercial General Liability Insurance for claims that may arise out of ongoing and completed operations under the Agreement. Such policy shall have a liability limit of at least \$1,000,000 each occurrence and at least \$2,000,000 general aggregate. Professional Liability Insurance.
- B. Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile used in connection with performance under this Agreement including owned, leased, hired, and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Law of the State of New York to bear license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000 each accident.  
In the event that the Contractor does not own, lease, or hire any automobiles used in connection with performance under this Agreement, the Contractor is not required to obtain Comprehensive Business Automobile Liability Insurance.
- C. Fire Insurance. Such policy shall have a liability limit of at least \$500,000; if such insurance contains an aggregate limit, it shall apply separately on a per-location basis.

### 7.19.3 Proof of Liability Insurance

- A. Prior to the start of this Agreement, the Contractor shall provide OPRHP with an ACORD 25 Certificate of Insurance in accordance with the conditions set forth below.
  - i. Forms shall reference the Contract number.
  - ii. The certificate holder shall be "New York State Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, New York, 12238."
  - iii. Forms shall be completely filled out with the date of issuance, names of the insured, carrier, policy numbers, coverage period, any deductible or self-insured retention amounts, each occurrence and aggregate limits, and exclusions or additional insured endorsements to the policy.
  - iv. Forms shall be signed by an authorized representative of the reference insurance carriers.
  - v. Only original forms or electronic versions of the same that can be directly traced back to the insurer, agent, or broker via email distribution or similar means will be accepted.
- B. Upon renewal of insurance coverage, the Contractor shall submit to OPRHP current proof of insurance.

### 7.19.4 Workers' Compensation and Disability Benefits Insurance

Prior to the start of this Agreement, the Contractor shall provide OPRHP with proof of Workers' Compensation Insurance and Disability Benefits Insurance. The following are the only acceptable means of proof; ACORD forms are NOT acceptable proof of coverage.

- A. Workers' Compensation
  - i. CE-200: Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage; or
  - ii. C-105.2(9-07): Certificate of Workers' Compensation Insurance; note: the State Insurance Fund provides its own version of this form, the U-26.3; or
  - iii. SI-12: Certificate of Workers' Compensation Self-Insurance.
- B. Disability Benefits
  - i. CE-200: Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage; or
  - ii. DB-120.1: Certificate of Disability Benefits Insurance; or
  - iii. DB-155: Certificate of Disability Benefits Self-Insurance.

## **7.20 Prevailing Wages / Payroll Certification**

Prevailing Wage does not apply to the services involved in this procurement.

## **7.21 NYS Finance Law § 139-I**

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy, and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL:<https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, Parks may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

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## 8. New York State Information Technology Requirements

Contractor shall warrant, covenant, and represent that it shall comply fully with all technology and information security laws, policies and procedures of the State including but not limited to:

- New York State Information and Security Breach Notification Act (“ISBNA”) (General Business Law Section 899-aa; State Technology Law Section 208)
- Acceptable Use of Information Technology Resources Policy
- Information Security Policy
- Security Logging Standard
- Information Security Risk Management Standard
- Information Security Controls Standard
- Sanitization/Secure Disposal Standard
- Mobile Device Security Standard
- Remote Access Standard

ITS Security Policies and Standards may be found at <https://its.ny.gov/tables/technologypolicyindex>

Contractor shall document its information security policy, standards, and procedures, and shall make them available for review by OPRHP upon request.

### 8.1 Accessibility

The Contractor must supply TTY (teletypewriter) capability in compliance with the Americans with Disabilities Act.

In addition, Section 508 of the U.S. Department of Health & Human Services requires that all website content (web applications and web pages) be accessible to people with disabilities.

### 8.2 Unauthorized Data Use or Transmission

Contractor agrees that all Data provided by OPRHP or accessed by Contractor under the terms of the Contract shall be used expressly and solely for the authorized purposes set forth in the Contract. Data shall not be distributed, used, repurposed or shared across other applications, environments, or business units of the Contractor.

Contractor agrees that no Data provided by OPRHP or accessed by Contractor shall be transmitted, exchanged or otherwise passed to other contractors, agents, subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by OPRHP.

Contractor agrees that no Data provided by OPRHP or accessed by the Contractor under the terms of the Contract will be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the Contract.

Contractor shall hold OPRHP harmless from any damage or loss, including a consequential financial loss, arising from the acts or omissions of the Contractor, its subcontractors, officers, employees, or agents related to the unauthorized activities described herein while providing services under this Contract.

In addition, in the event that any Data is lost or destroyed because of any act or omission of the Contractor or any non-compliance with the obligations of this RFP and its resultant Contract, then Contractor, at its own expense, shall restore such Data as soon as feasible. Contractor shall reimburse OPRHP for any costs incurred by OPRHP in correcting, recovering, recreating, restoring or reprocessing such Data or in assisting therewith.

### 8.3 System Requirements for Information Security

The System must comply with the most recent version of NYS Information Technology Policy, Information Security no. NYS-P03-002 and its associated policies and standards (<https://its.ny.gov/eiso/policies/security>).

## **8.4 Breach of Data and Private Information**

Access to OPRHP's Data, including "private information" as defined in the New York State Information and Security Breach Notification Act ("ISBNA"), which is set forth in General Business Law Section 899-aa and State Technology Law Section 208, shall be restricted to those Contractor employees and subcontractors who need to access the information to perform the services under this RFP.

The Contractor shall maintain a list of employees and subcontractors who have access to this Data and provide the list to OPRHP upon request.

The Contractor must notify OPRHP of any suspected or actual breaches of Data, including Data that contains "private information" pursuant to the ISBNA, immediately upon discovery.

The Contractor shall hold OPRHP harmless from any damage or loss, including a consequential financial loss, resulting from a breach of Data including Data that contains "private information."

## **8.5 Ownership of Data**

All Data is owned exclusively by OPRHP and will remain the property of OPRHP. Contractor is permitted to use Data solely for the purposes set forth in the RFP and the resulting Contract, and for no other purpose. At no time shall the Contractor access, use, or disclose any confidential information (including personal or financial) for any other purpose. The Contractor is strictly prohibited from releasing or using Data or information for any purposes other than those purposes specifically authorized by OPRHP. Contractor agrees that Data shall not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the Contractor or otherwise passed to other contractors, agents, subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by OPRHP.

## **8.6 Data Migration**

The Contractor shall integrate Data from existing sources, as received from or as transferred under the authority of OPRHP.

## **8.7 Transfer and Destruction of Data**

Upon the request of OPRHP or upon expiration or termination of the resultant contract, all Data will be transferred in a form acceptable to OPRHP, to OPRHP or other designated entity within seven (7) business days.

## **8.8 Storage of Data, Access and Location**

OPRHP shall have access to its Data at all times, through the term of the Contract.

The Contractor must ensure that all Data related to this Contract is stored within the Contiguous United States (CONUS), in a controlled access environment, to ensure Data security and integrity. All access to Data, physical or virtual, must be conducted within CONUS and have adequate security systems in place to protect against unauthorized access to the facilities and Data stored therein. The Contractor shall not send or permit to be sent to any location outside of the CONUS, any Data related to this Contract. Contractor will provide OPRHP a list of the physical locations where the Data is stored at any given time and will update that list if the physical location changes. Access into and within the facilities must be restricted through an access control system that requires positive identification as well as maintains a log of all accesses (e.g., date and time of the event, type of event, user identity, component of the information system, outcome of the event). The Contractor shall have a formal procedure in place for granting computer system access to the Data and to track access. Access for projects outside of those approved by OPRHP is prohibited.

The Contractor shall not copy or transfer Data unless authorized by OPRHP. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. The Contractor shall not access any Data for any purpose other than fulfilling the CMS service requirements. The Contractor is prohibited from Data Mining, cross tabulating, monitoring OPRHP's Data usage and/or access, or performing any other Data Analytics other than those required within the Contract. At no time shall any Data or processes (e.g., workflow, applications, etc.), which either are owned or used by OPRHP be copied, disclosed, or retained by the Contractor or any party related to the Contractor. The Contractor is allowed to perform industry standard back-ups of Data.

## **8.9 Request for Data by Third Parties**

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

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

## **8.10 Access to Security Logs and Reports**

Upon request, the Contractor shall provide access to security logs and reports in the event of a Data breach or other such Incident. Such logs may be redacted to limit information disclosure to only that which is pertinent to the engagement and services provided.

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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, licenser, licensee, lessor, lessee or any other party):

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, 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 (2 NYCRR § 105.4).

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, 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. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to 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 Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

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

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

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

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

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

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

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

**APPENDIX B**

**GENERAL SPECIFICATIONS  
FOR OPRHP CONTRACTS**

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**GENERAL**

**1. APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP” or the “Agency”), or let by any other Issuing Entity where incorporated by reference in its Bid Documents. Appendix B shall govern such procurements or contracts unless expressly modified or amended by the terms of a Bid Specification, Solicitation, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

**2. GOVERNING LAW** This procurement, the resulting Contract and/or any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the Contract shall be heard in a court of competent jurisdiction in the State of New York.

**3. APPENDIX A** The terms of Appendix A (*Standard Clauses for New York State Contracts*) are expressly incorporated herein.

**4. ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 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 Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, 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. DEFINITIONS** Terms used herein shall have the following meanings:

**a. AFFILIATE** Any individual or other legal entity (including, but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity’s daily operations, then that entity shall be considered an Affiliate hereunder.

**b. AGENCY** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York, including the Office of Parks, Recreation and Historic Preservation (“OPRHP”).

**c. ATTORNEY GENERAL** Attorney General of the State of New York.

**d. BID** A response to the Solicitation submitted by a Bidder to provide Products.

**e. BIDDER** Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a “Contractor.” See also “Contractor.”

**f. BID SPECIFICATIONS** A written description drafted by OPRHP setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term “Bid Specifications” shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

**g. COMMISSIONER** The Commissioner of the Agency.

**h. COMPTROLLER** Comptroller of the State of New York.

**i. CONTRACT** The writings that contain the agreement of the Agency and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

**1. Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Agencies.

**2. Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction’s contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

**3. Back-Drop Contracts** Multiple-award Centralized Contracts where OGS provides a written description for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

**4. Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

**5. Contract Letter** A letter to the successful Bidder indicating acceptance of its Bid in response to a Solicitation. Unless otherwise specified, the issuance of a letter of acceptance forms a Contract but is not an order for Product, and the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

**j. CONTRACT AWARD NOTIFICATION**

An announcement to Bidders that a Contract has been recommended for award prior to any negotiation and approval by the Office of the New York State Comptroller.

**k. CONTRACTOR** Any successful Bidder to whom a Contract has been awarded by the Agency.

**l. DOCUMENTATION** The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable the Agency to properly test, install, operate and enjoy full use of the Product.

**m. EMERGENCY** An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

**n. ENTERPRISE** The total business operations in the United States of OPRHP without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of the OPRHP.

**o. ENTERPRISE LICENSE** A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

**p. ERROR CORRECTIONS** Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

**q. GROUP** A classification of a Product.

**r. INVITATION FOR BIDS (IFB)** A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

**s. ISSUING ENTITY** The Agency who issued the Solicitation for a procurement.

**t. LATE BID** A bid not received in the location established in the Bid Specifications on or before the date and time of the submission deadline specified in the Solicitation.

**u. LICENSED SOFTWARE** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, enhancements or New Licensed Software Releases, and any deliverables due under a technical support/maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

**v. LICENSEE** The Agency who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the Agency who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

**w. LICENSE EFFECTIVE DATE** The date Product is delivered to the Agency. Where a License involves Licensee's right to copy a

previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

**x. LICENSOR** A Contractor who transfers rights in proprietary Product to in accordance with the rights and obligations specified in the Contract.

**y. NEW LICENSED SOFTWARE RELEASES** (Licensed Software Revisions) Any commercially released revisions to the licensed version of Licensed Software as may be generally offered and available to the Agency that is currently on technical support/maintenance. New Licensed Software Releases involve a substantial revision of functionality from a previously released version of the Licensed Software. Updates are provided when available, and Contractor is under no obligation to develop any future Product or functionality.

**z. OGS** The New York State Office of General Services.

**aa. PROCUREMENT RECORD** Documentation by the Issuing Entity of the decisions made and approach taken during the procurement process, including but not limited to a copy of the Solicitation, any modification and justification for same, and any documentation considered necessary for contract review purposes by the Office of the New York State Comptroller.

**bb. PRODUCTS** Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

**cc. PROPRIETARY** Owned by a private individual, corporation or governmental entity under copyright, trademark, trade secret or patent laws.

**dd. PURCHASE ORDER** The Agency's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Purchasing Card, electronic Purchase Order, or other authorized instrument).

**ee. REQUEST FOR PROPOSALS (RFP)** A type of Solicitation which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law.

**ff. REQUEST FOR QUOTATION (RFQ)** A type of Solicitation that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

**gg. RESPONSIBLE BIDDER** A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Agency. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

**hh. RESPONSIVE BIDDER** A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the Agency.

**ii. SINGLE SOURCE** A procurement where two or more Bidders can supply the required Product, and the Agency may award the contract to one Bidder over the other.

**jj. SITE** The location (street address) where Product will be delivered or executed.

**kk. SOLE SOURCE** A procurement where only one Bidder is capable of supplying the required Product.

**ll. SOLICITATION** Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications for OPRHP Contracts), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term “Solicitation” shall be deemed to refer to all the terms and conditions identified by the State.

**mm. SOURCE CODE** The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine object code.

**nn. STATE** State of New York.

**oo. STATE AGENCY OR AGENCIES** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York, including OPRHP.

**pp. SUBCONTRACTOR** Any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

**qq. TERMS OF LICENSE** The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

**rr. VIRUS** Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

### **BID SUBMISSION**

**6. INTERNATIONAL BIDDING** All Bids, including all information and Product required by the Solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any Bids submitted which do not meet the above criteria will be rejected.

**7. BID OPENING** Bids may, as applicable, be opened publicly. The Agency reserves the right at any time to postpone or cancel a scheduled Bid opening.

**8. LATE BIDS REJECTED** Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Solicitation are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Agency. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with the Solicitation. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Agency, shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance, shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Agency.

**9. BID CONTENTS** Bids must be complete and legible. All bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Solicitation. Changes may be ignored by the Agency or may be grounds for rejection of the bid. Changes, corrections and/or use of white-out in the bid or Bidder’s response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their bids before submission, as amendments to bids or requests for withdrawal of bids received by the Agency after the time specified for the bid opening, may not be considered

**10. EXTRANEOUS TERMS** Bids must conform to the terms set forth in the Solicitation. Extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form;
- b. The writing must identify the particular Solicitation requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, deletion, counter-offer, deviation, or modification from the Solicitation, and the reasons therefor.

No extraneous terms, whether or not deemed “material,” shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Agency expressly accepts each such terms in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of extraneous terms.

**11. CONFIDENTIAL/TRADE SECRET MATERIALS**

**a. CONTRACTOR** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by the Agency to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The State’s receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

**b. AGENCY** Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or the Agency hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Agency. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Agency, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

**12. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS** If any portion of work being solicited is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

**a. PREVAILING WAGE RATE APPLICABLE TO BIDS** A copy of the applicable prevailing wage rate schedule is attached to the Solicitation and may also be obtained by visiting [www.labor.ny.gov](http://www.labor.ny.gov) and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

**b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such

required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

**c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS** In compliance with Article 8, Section 220 of the New York State Labor Law:

**i. Posting** The Contractor must publicly post on the work Site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

**ii. Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in the State, such records must be kept at the work Site. For building services contracts, such records must be kept at the work Site while work is being performed.

**iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Agency issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

**iv. Day’s Labor** No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. “Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.

**d. ARTICLE 9 BUILDING SERVICES CONTRACTS** In compliance with Article 9, Section 230 of the New York State Labor Law:

**i. Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work Site while work is being performed.

**ii. Overtime** Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

**13. TAXES**

**a.** Unless otherwise specified in the Solicitation, Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and the Agency are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

**14. EXPENSES PRIOR TO CONTRACT EXECUTION** The Agency is not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

**15. ADVERTISING RESULTS** The prior written approval of the Agency is required in order for results of the Solicitation to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Agency relative to the Solicitation or Contract for press or other media releases.

**16. PRODUCT REFERENCES**

a. “Or Equal” In all Solicitations or Bid Specifications, the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Agency’s decision as to acceptance of the Product as equal shall be final.

b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

**17. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS** Upon the conditions specified in the Solicitation and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements or by the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, Contractor shall deliver new materials in accordance with the “Warranties” set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

**18. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS** Bids offering Products that are manufactured or produced in public institutions will be rejected.

**19. PRICING**

a. **Unit Pricing** If required by the Solicitation, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Solicitation. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Agency, such unit pricing is obviously erroneous.

b. **Net Pricing** Unless otherwise required by the Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Solicitation.

c. **“No Charge” Bid** When Bids are requested on a number of Products as a Group or lot, a Bidder desiring to Bid “no charge” on a Product in the Group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Agency.

d. **Educational Pricing** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. **Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to the Agency.

f. **Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Agency, shall be immediately reduced to the lower price.

**g. Specific Price Decreases:**

(i) **GSA Changes:** Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where net pricing under the Contract is based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) **Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) **Special Offers/Promotions to the Agency:** Contractor may offer the Agency, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net pricing set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from the Agency without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

**h. Cost Proposal Revisions** A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

## 20. DRAWINGS

**a. Drawings Submitted With Bid** When the Solicitation requires the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Solicitation and shall, when approved by the Agency, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

**b. Drawings Submitted During the Contract Term** Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Agency's representative.

**c. Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Product, or carrying out any other requirements of the intended scope of work.

**21. SITE INSPECTION** Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

**22. PURCHASING CARD** The State's Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables the Agency to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Agency. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

## 23. SAMPLES

**a. Bidder Supplied Samples** The Agency reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

A sample may be held by the Agency during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Agency as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

**b. Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Agency may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

**c. Conformance with Samples** Submission of a sample (whether or not such sample is tested by, or for, the Agency) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Agency the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Agency may reject the Bid. If an award has been made, the Agency may cancel the Contract at the expense of the Contractor.

**d. Testing** All samples are subject to tests in the manner and place designated by the Agency, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

**e. Requests For Samples By the Agency** Requests for samples by the Agency require the consent of the Contractor. Where Contractor refuses to furnish a sample, the Agency may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

## BID EVALUATION

**24. BID EVALUATION** The Agency reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Agency determines the best interests of the State will be served. The Agency, in its sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be

considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the Bid.

**25. TIE BIDS** In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Agency may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Agency to award a Contract to one or more of such Bidders shall be final.

**26. QUANTITY CHANGES PRIOR TO AWARD** The Agency reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

**27. CLARIFICATION / REVISIONS** Prior to award, the Agency reserves the right to seek clarifications on Bids, request revisions to Bids, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for contract award. Failure to provide requested information may result in rejection of the Bid.

**28. TIMEFRAME FOR OFFERS** The Agency reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Solicitation, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Solicitation, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Agency written notice of the withdrawal of its Bid.

### **TERMS & CONDITIONS**

**29. CONTRACT CREATION / EXECUTION** Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Solicitation, a Contract shall be deemed executed and created with the successful Bidder(s) upon the Agency's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Agency.

**30. OFFICIAL USE ONLY/NO PERSONAL USE** The Contract is only for official use by the Agency. Use of the Contract for personal or private purposes is strictly prohibited.

**31. MODIFICATION OF CONTRACT TERMS** The terms and conditions set forth in the Contract shall govern all transactions by the Agency under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Agency and Contractor.

The Contractor may, however, offer the Agency more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Agency by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Agency than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against the Agency unless authorized by the Agency or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding the Agency's subsequent acceptance of Product, or that the Agency has subsequently processed such document for approval or payment.

**32. SCOPE CHANGES** The Agency reserves the right, unilaterally, to require, by written order, changes altering, adding to or deducting from the Contract specifications, such changes to be within the general scope of the Contract. The Agency may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

**33. ESTIMATED/SPECIFIC QUANTITY CONTRACTS** Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed.

With respect to any specific quantity stated in the Contract, the Agency reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Agency may purchase greater or lesser percentages of Contract quantities should the Agency and Contractor so agree. Such agreement may include an equitable price adjustment.

**34. EMERGENCY CONTRACTS** In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner of the Agency determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

**35. PURCHASE ORDERS** Unless otherwise authorized in writing by the Agency, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Agency. Unless terminated or cancelled pursuant to the authority vested in the Agency, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to a Contract let by the Agency must bear the appropriate Contract number and, if necessary, required

State approvals. As deemed necessary, the Agency may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Contracts will be placed by the Agency directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Agency.

The Purchase Order shall indicate the address for delivery of the Product. The Agency shall confirm pricing, supported hardware platforms and model availability with Contractor prior to placement of orders. Contractor's order form shall, at a minimum, contain the NYS Product reference number, license type, price, and must separately itemize quantities for software, documentation, and services. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to verify any Purchase Orders placed under the Contract.

**36. PRODUCT DELIVERY** Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Agency and the Contractor. The decision of the Agency as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Agency, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Agency. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Agency's discretion, the Contract.

**37. WEEKEND AND HOLIDAY DELIVERIES** Unless otherwise specified in the Contract or by the Agency, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Agency shall govern.

**38. SHIPPING/RECEIPT OF PRODUCT**

**a. Packaging** Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Agency unless otherwise specified in the Contract documents.

**b. Shipping Charges** Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Agency. Unless otherwise agreed, items purchased at a price F.O.B. shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Agency's payment of transportation charges. Contractor shall be responsible for ensuring that the bill of lading states "charges prepaid" for all shipments.

**c. Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Agency. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

**39. TITLE AND RISK OF LOSS** Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Agency until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Contract or Purchase Order. Mere acknowledgment by Agency personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Agency.

**40. RE-WEIGHING PRODUCT** Deliveries are subject to re-weighing at the point of destination by the Agency. If shrinkage occurs which exceeds that normally allowable in the trade, the Agency shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Agency.

**41. PRODUCT SUBSTITUTION** In the event a specified Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause), a Product deemed in writing by the Agency to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Agency. Unless otherwise specified, any substitution of Product prior to the Agency's written approval may be cause for termination of Contract.

**42. REJECTED PRODUCT** When Product is rejected, it must be removed by the Contractor from the premises of the Agency within ten calendar days of notification of rejection by the Agency. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Agency shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Agency for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

**43. INSTALLATION** Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the Site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or Site. Work shall be performed to cause the least inconvenience to the Agency and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and

in a neat, unobstructed condition, and everything in satisfactory repair and order.

**44. REPAIRED OR REPLACED PRODUCTS, PARTS, OR COMPONENTS**

Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including warranties, as set forth in the Warranties clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Agency. Before installation, all proposed substitutes for the original manufacturers' installed parts or components must be approved by the Agency. The part or component shall be equal to or of better quality than the original part or component being replaced.

**45. ON-SITE STORAGE** With the written approval of the Agency, materials, equipment or supplies may be stored at the Agency's site(s) at the Contractor's sole risk.

**46. EMPLOYEES, SUBCONTRACTORS AND AGENTS**

All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Contract, and must comply with all security and administrative requirements of the Agency. The Agency reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Agency reserves the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

**47. ASSIGNMENT**

In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Agency (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Agency and seek written agreement from the Agency which will be filed with the State Comptroller. The Agency shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes responsibility for the Contract.

**48. SUBCONTRACTORS AND SUPPLIERS** The Agency reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the Agency determines that the company is not qualified; the Agency determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit New York State certified minority- and women-owned business enterprises as required by prior Contracts.

**49. PERFORMANCE/BID BOND** The Agency reserves the right to require a Bidder or Contractor to furnish, without additional cost, a performance, payment or Bid bond, negotiable irrevocable letter of credit, or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Agency.

**50. SUSPENSION OF WORK** The Agency, in its sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the Agency. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Agency issues a formal written notice authorizing a resumption of performance under the Contract.

**51. TERMINATION**

**a. For Cause** For a material breach that remains uncured for more than thirty (30) calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Agency at the Contractor's expense. Such termination shall be upon written notice to the Contractor. In such event, the Agency may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

**b. For Convenience** This Contract may be terminated at any time by Agency for convenience upon sixty (60) calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Agency shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

**c. For Violation of Sections 139-j and 139-k of the State Finance Law**

The Agency reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Agency may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

**d. For Violation of Section 5-a of the New York State Tax Law**

The Agency reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or

intentionally incomplete. Upon such finding, the Agency may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

**e. For Non-Responsibility** The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Agency may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency officials or staff, the Contract may be terminated by the Agency at the Contractor's expense where the Contractor is determined by the Agency to be non-responsible. In such event, the Agency may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**f. Upon Conviction of Certain Crimes** The Agency reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

**52. SAVINGS/FORCE MAJEURE** A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Agency in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond thirty (30) days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

- a. The Agency may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or

- b. The Contractor will provide the Agency with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Agency may accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Agency shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Agency to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Agency where the delay or failure will significantly impair the value of the Contract to the State or to the Agency, the Agency may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Agency reserves the right, in his or her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. In the event of a dispute between the Contractor and the Agency, such dispute shall be resolved in accordance with the Agency's Dispute Resolution Procedures set forth in herein; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

### **53. CONTRACT INVOICING**

**a. Invoicing** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to the Agency in order to receive payment. Billing invoices submitted to the Agency must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Agency from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Agency, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Agency. The Agency may direct the Contractor to provide the information to the State Comptroller.

**b. Payment of Contract Purchases made by the Agency when the State Comptroller is responsible for issuing such payment** The Agency and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Agency, in the Agency's sole discretion, due to extenuating circumstances. Such electronic payments

shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at [www.osc.state.ny.us](http://www.osc.state.ny.us), by e-mail at [HelpDesk@sfs.ny.gov](mailto:HelpDesk@sfs.ny.gov), or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Agency has expressly authorized payment by paper check as set forth above.

**c. Payment of Contract Purchases made by the Agency when the State Comptroller is not responsible for issuing such payment** The Agency and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Agency. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. The Agency strongly encourages the Contractor to establish electronic payments.

#### **54. DEFAULT – BY AGENCY**

**a. Breach by Agency** The Agency's breach shall not be deemed a breach of the Contract; rather, it shall be deemed a breach of the Agency's performance under the terms and conditions of the Contract.

**b. Failure to Make Payment** In the event the Agency fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within thirty calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to the Agency, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

**c. Notice of Breach** Notwithstanding the foregoing, the Contractor shall, at least ten business days prior to declaring a breach of Contract by the Agency, by certified or registered mail, notify the Agency of the specific facts, circumstances and grounds upon which a breach will be declared.

**d. Insufficient basis** If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to provide Products to the Agency may constitute a breach of the Contract, and the Agency may thereafter seek any remedy available at law or equity.

#### **55. PROMPT PAYMENTS**

**a. State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).

**b. By Contractor** Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

**56. REMEDIES FOR BREACH** It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

**a. Cover/Substitute Performance** In the event of Contractor's material, uncured breach, the Agency may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the Agency is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Agency may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Agency shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

**b. Withhold Payment** In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Agency. Should Contractor and the Agency fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute to be resolved in accordance with the Agency's Dispute Resolution Procedures.

**c. Bankruptcy** In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Contract, the Agency may, at its discretion, make application to exercise their right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

**d. Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Agency promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Agency may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

**e. Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by the Agency from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Agency the amount of such claim or portion of the claim still outstanding, on demand. The Agency reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

**57. ASSIGNMENT OF CLAIM** Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.

**58. TOXIC SUBSTANCES** Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide

the Agency with not less than two copies of a Material Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Agency representative.

**59. INDEPENDENT CONTRACTOR** It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Agency, and therefore are not entitled to any of the benefits associated with such employment.

**60. SECURITY** Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Agency in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

**61. COOPERATION WITH THIRD PARTIES** The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Agency, as necessary to ensure delivery or performance of Product.

**62. CONTRACT TERM - RENEWAL** The Agency may extend by mutual agreement of the Agency and the Contractor any stated renewal periods in the Contract.

**63. WARRANTIES**

**a. Product Performance** Contractor hereby warrants and represents that the Products acquired by the Agency under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

**b. Title and Ownership** Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by the Agency under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify and hold harmless the Agency from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.

**c. Product Warranty** Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one (1) year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Agency. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the

Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer's standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or the Agency shall in no event be liable or responsible therefor.

Where Contractor, the independent software vendor (ISV), or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with ISV or other third-party manufacturers for warranty repair or replacement of ISV or other third-party manufacturer's Product.

Where Contractor, ISV or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Agency and pass through the standard commercial warranty to the Agency at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable or Recovered Materials clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor shall not be responsible for any modification of the Products made by the Agency without Contractor's approval.

**d. Virus Warranty** The Contractor represents and warrants that any Licensed Software acquired under the Contract by the Agency does not contain any known Viruses. Contractor is not responsible for Viruses introduced at Licensee's Site.

**e. Date/Time Warranty** Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: (i) consulting, integration, code or data conversion, (ii) maintenance or support services, (iii) data entry or processing, or (iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and

timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

**f. Workmanship Warranty** Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Agency must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

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

**h. Prompt Notice of Breach** The Agency shall promptly notify the Contractor in writing of any claim of breach of any warranty provided herein.

**i. Additional Warranties** Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the Agency.

**j. No Limitation of Rights** The rights and remedies of the State and the Agency provided in this clause are in addition to and do not limit any rights afforded to the State and the Agency by any other clause of the Contract.

**64. LEGAL COMPLIANCE** Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Agency that it meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Agency to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Agency. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

**65. INDEMNIFICATION** Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Agency from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Agency.

The Agency shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify the Agency, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense,

and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Agency arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Agency and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Agency to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and the Agency may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

#### **66. INDEMNIFICATION RELATING TO INFRINGEMENT**

The Contractor will also defend, indemnify and hold the Agency harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: (a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Agency or by someone other than Contractor at the direction of the Agency without Contractor's approval, and (b) the Agency gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

The Agency shall give Contractor the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against the Agency in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Agency's negligent act, failure to act, gross negligence or willful misconduct.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Agency the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Agency is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action at law or in equity is commenced against the

Agency arising out of a claim that the Agency's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Agency and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Agency and seek to secure a continuance to permit the Agency to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Agency may have. This constitutes the Agency's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

**67. LIMITATION OF LIABILITY** Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability shall be as follows:

**a.** Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Agency's claim or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

**b.** The Agency may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Agency unless Contractor at the time of the presentation of claim shall demonstrate to the Agency's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

**c.** Notwithstanding the above, neither the Contractor nor the Agency shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Agency, the Contractor, or by others.

**68. AGENCY'S DISPUTE RESOLUTION PROCEDURES** The first step of the dispute resolution will be through conference between the Agency and the Contractor. The party initiating the process shall notify the other party in writing and set forth the issues for resolution and provide all necessary documentation. Unresolved disputes will be resolved by the Commissioner or his/her designee, whose decision is final and binding. During this period all work required hereunder shall be performed. If the Contractor pursues any legal or equitable remedy outside the Agency, the Contractor will continue to perform work in accordance with the direction of the Agency until such proceedings may be concluded and will continue to be paid in accordance with the Agreement, and less any amounts attributable to the dispute. Disputes that go to litigation must be pursued in a court of competent jurisdiction of the State of New York. New York law will govern the dispute and venue must be laid in Albany County, New York.

**THE FOLLOWING CLAUSES PERTAIN TO  
TECHNOLOGY & NEGOTIATED CONTRACTS**

**69. SOFTWARE LICENSE GRANT** Where Product is acquired on a licensed basis the following shall constitute the license grant:

**a. License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by the Agency otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

**b. License Term** The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the license term shall be extended by the time period for testing, acceptance or trial.

**c. Licensed Documentation** If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet; and (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per Site
- Processing Capacity - 10 copies per Site

Software media must be in a format specified by the Agency, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the Terms of License.

**d. Product Technical Support & Maintenance** Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Contract term. Maintenance terms and any renewals thereof are independent of the expiration of the Contract term and shall not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, fixes, upgrades and New Licensed Software Releases to Licensee, and (ii) help desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line help desk accessibility. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the technical support/maintenance term.

The Agency shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that the Agency does not initially acquire or discontinue maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

**e. Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior Site. There shall be no additional license or other transfer fees due Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred Site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

**f. Restricted Use By Outsourcers, Facilities Management, Service Bureaus, or Other Third Parties** Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and (ii) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and (iii) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a State function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

**g. Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or

corruption of the Product or disasters or emergencies that require Licensee to restore backups or to initiate disaster recovery procedures for its platform or operating systems; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. The phrase "cold site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

**h. Confidentiality Restrictions** The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

**i. Restricted Use by Licensee** Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

**70. PRODUCT ACCEPTANCE** Unless otherwise provided by mutual agreement of the Agency and the Contractor, the Agency shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Agency until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Agency as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Agency agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Agency and the Contractor, the Agency shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by the Agency. Where using its own data or tests, the Agency must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Agency, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Agency after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, the Agency shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. The Agency shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Agency for damages, loss of profits, expenses, or other remuneration of any kind.

If the Agency elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Agency shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at

the end of the extended testing period, the Agency, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Agency to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Agency's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Agency within ten calendar days of notification of non-acceptance by the Agency. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Agency shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Agency for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

**71. AUDIT OF LICENSED PRODUCT USAGE** Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any Site where a copy of the Product resides provided that: (i) Contractor gives Licensee at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor's U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

## **72. OWNERSHIP/TITLE TO PROJECT DELIVERABLES**

### **a. Definitions**

(i) For purposes of this clause, "Products." Deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

(ii) For purposes of this clause, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this clause, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for the Agency under the Contract.

**b. Title to Project Deliverables** Contractor acknowledges that it is commissioned by the Agency to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Solicitation or Purchase Order, the Agency shall have ownership and license rights as follows:

#### **(i) Existing Products:**

**1. Hardware** - Title and ownership of Existing Hardware Product shall pass to the Agency upon acceptance.

**2. Software** - Title and ownership to Existing Software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to the Agency in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Agency a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the Agency as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Agency's satisfaction) and distribute Existing Licensed Product to the Agency up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or the Agency's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the Licensee where the Agency is a State Agency. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Agency shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to the Agency the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. The Agency may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of the Agency taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all the Agency shall

be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

**c. Transfers or Assignments to a Third Party Financing Agent** It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third party financing by the Agency. The Agency shall make the sole determination of the acceptability of any financing proposal. The Agency will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, the Agency may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee (“Trustee”) as collateral where required by the terms of the financing agreement. Trustee’s sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to the Agency all of its Licensee’s rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee’s rights in such Licensed Product shall terminate immediately and the Agency’s prior rights to such Existing Licensed Product shall be revived.

**d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)** The Agency’s sale or other transfer of Custom Products which were acquired by the Agency using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Agency which complies with the terms of this clause.

**e. Contractor’s Obligation with Regard to ISV (Third Party) Product** Where Contractor furnishes Existing Licensed Product(s) as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV’s standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Agency at Contractor’s sole cost and expense.

**73. PROOF OF LICENSE** The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer’s certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

**74. PRODUCT VERSION** Purchase Orders shall be deemed to reference Manufacturer’s most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by the Agency and Contractor is willing to provide such version.

**75. CHANGES TO PRODUCT OR SERVICE OFFERINGS**

**a. Product or Service Discontinuance** Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers (“date of notice”) that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor (“withdrawn support”) is no longer going to be

offered, Contractor shall be required to: (i) notify the Agency and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other customer, or (b) not less than twelve (12) months from the date of notice; and (iii) at the Agency’s option, provided that the Agency is under contract for maintenance on the date of notice, either: provide the Agency with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable the Agency to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor’s obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

**b. Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers (“date of notice”) that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and the Agency in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other customer, or (b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed re-bundling change to the Agency for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

**76. NO HARDSTOP/PASSIVE LICENSE MONITORING** Unless the Agency is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all upgrades do not and will not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that the Agency shall not have an adequate remedy at law, including monetary damages, and that the Agency shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the Agency shall be entitled.

**77. SOURCE CODE ESCROW FOR LICENSED PRODUCT** If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall: (i) provide Licensee with the Source Code for the

Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) certify to the State that the Product manufacturer/developer has named the State, acting by and through the Agency, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such Source Code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

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# Appendix C - Participation by Minority Group Members and Women with Respect to State Contracts

## I. General Provisions

- A. The New York State Office of Parks, Recreation and Historic Preservation is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Office of Parks, Recreation and Historic Preservation, to fully comply and cooperate with the New York State Office of Parks, Recreation and Historic Preservation in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

## II. Contract Goals

- A. For purposes of this procurement, the New York State Office of Parks, Recreation and Historic Preservation hereby establishes New York State certified minority-owned business enterprises ("MBE") participation and New York State certified women-owned business enterprises ("WBE") participation (collectively, "MWBE Contract Goals") based on the current availability of qualified MBEs and WBEs as defined in the bidders documentation provided at the time of solicitation. After contract approval, MWBE Contract Goals as defined on the approved utilization plan will be endorsed to determine compliance for the contract term.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York State Office of Parks, Recreation and Historic Preservation for liquidated or other appropriate damages, as set forth herein.

## III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
  1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to the New York State office of Parks, Recreation and Historic Preservation within seventy-two (72) hours after the date of the notice by the New York State office of Parks, Recreation and Historic Preservation to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, the New York State office of Parks, Recreation and Historic Preservation may require the Contractor or subcontractor to adopt a model statement (see Form – Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment 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.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

#### C. Staffing Plan

To ensure compliance with this Section, for those contracts reaching \$250,000 or greater, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

#### D. Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the New York State Office of Parks, Recreation and Historic Preservation on a [MONTHLY/QUARTERLY] basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.
3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

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

#### IV. **MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the New York State Office of Parks, Recreation and Historic Preservation, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

- C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Office of Parks, Recreation and Historic Preservation shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness.

#### **V. Waivers**

- A. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to New York State Office of Parks, Recreation and Historic Preservation.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Office of Parks, Recreation and Historic Preservation shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the New York State Office of Parks, Recreation and Historic Preservation, upon review of the MWBE Utilization Plan and updated MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the New York State Office of Parks, Recreation and Historic Preservation may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **VI. MWBE Contractor Compliance Report**

The Contractor is required to submit MWBE Contractor Compliance Reports through the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the New York State Office of Parks, Recreation and Historic Preservation. Reports will be generated by the NYSCS for completion upon the generation of a payment to the Contractor. Reports should be completed for the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### **VII. Liquidated Damages - MWBE Participation**

- A. Where New York State Office of Parks, Recreation and Historic Preservation determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the New York State Office of Parks, Recreation and Historic Preservation liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Office of Parks, Recreation and Historic Preservation, the Contractor shall pay such liquidated damages to the New York State Office of Parks, Recreation and Historic Preservation within sixty (60) days after they are assessed by the New York State Office of Parks, Recreation and Historic Preservation unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Office of Parks, Recreation and Historic Preservation.

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

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

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

For purposes of this procurement, the New York State Office of Parks, Recreation and Historic Preservation encourages the use of good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

## Appendix D - Bid Protest Procedures

By establishing the procedures set forth herein, the contracting program at the New York State Office of Parks, Recreation and Historic Preservation ("Parks") provides all Bidders with an opportunity to administratively resolve complaints or inquiries related to bid solicitations or pending contract awards. Parks encourages Bidders to seek resolution of complaints concerning the contract award process through consultation with Parks contracting program. All such matters will be accorded impartial and timely consideration.

### **Informal Complaints/Protests**

It is strongly recommended that Parks staff encourage, be receptive to and resolve issues, inquiries, questions and complaints on an informal basis, whenever possible. Information provided informally by any interested party should be fully reviewed by Program Team Leaders, the contract administrator of the Service Contract Unit and/or the Director of Financial Administration. In addition, matters that are perceived to contain, or are potentially confidential or trade secret information should be shared with the Director of Financial Administration for possible direction. Staff should document the subject matter and results of informal inquiries. As appropriate, Parks responses to the inquirer should indicate the existence of the formal protest procedures available to them should the informal process fail to resolve the matter.

In addition to informal inquiries, Bidders may also file formal written protests according to the procedures specified below. Final agency determinations or recommendations for award generally may only be reconsidered in the context of a formal written protest.

### **Formal Written Protests**

Any potential Bidder who believes that there are errors or omissions in the procurement process, or that the Bidder has been aggrieved in the drafting or issuance of a bid solicitation or pending contract award, may present to a formal complaint to Parks and request administrative relief concerning such action ("formal protest").

### **Submission of Bid or Award Protests**

#### *Deadline for Submission*

- a. Concerning Errors, Omissions or Prejudice in the Bid Specifications or Documents - Formal protests which concern the drafting of bid specifications must be received by Parks at least twenty (20) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than twenty (20) business days from the date of issue, formal protests concerning the specifications must be received by Parks at least seventy-two (72) hours before the time designated for receipt of bids.
- b. Concerning Proposed Contract Award - Formal protests concerning a pending contract award must be received within five (5) business days after the protesting party ("protester") knows or should have known of the facts which form the basis of the protest, and, where State Finance Law § 112 approval is required, prior to final approval of the recommendation by the State Comptroller.

#### *Transmittal*

A formal protest must be submitted in writing to Parks, by ground mail, or, where permitted in the solicitation, facsimile or e-mail transmission. The following statement must be clearly and prominently displayed on the envelope or package or header of electronic or facsimile transmittal: "Bid Protest of Parks Solicitation (Reference Number)."

#### *Contents*

A formal protest must include:

- a. a statement of all legal and/or factual grounds for disagreement with a specification or a procurement determination;
- b. a description of all remedies or relief requested; and
- c. copies of all applicable supporting documentation.

Protests should be delivered to the Contact named in the IFB/RFP.

### **Review and Final Determination**

Copies of all protests will be provided to the Director of Financial Administration and appropriate program staff.

Protests shall be resolved through written correspondence, however, either the protester or Parks may request a meeting to discuss a formal protest, at which time the participants may present their concerns. Where further formal resolution is

required, the Director of Financial Administration may designate an alternate ("designee") to determine and undertake the initial resolution or settlement of any protest.

The program staff in conjunction with Service Contract Unit staff will conduct a review of the records involved in the protest, consult with the Director of Financial Administration, and provide a memorandum to the Deputy Commissioner for Finance and Administration summarizing the results of the review and recommendation. The Deputy Commissioner for Finance and Administration will evaluate the recommendation, the material presented by the protester, and, if necessary, consult with appropriate senior level program staff and Counsel and prepare a written response to the protest.

A copy of the decision, stating the reason(s) upon which it is based shall be sent to the protester or its agent within thirty (30) business days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest determination should be recorded and included in the Procurement Record, or otherwise forwarded to OSC upon issue. The decision of the Deputy Commissioner for Administration and Finance will be final.

### **Reservation of Rights and Responsibilities of Parks**

Parks reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and Parks.

If Parks determines that there are compelling circumstances, including the need to proceed immediately with contract award in the best interest of the State, then these protest procedures may be suspended and such determination shall be documented in the procurement record.

Parks will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

If a formal bid protest is received by Parks, a final determination on the protest must be made prior to OSC approval of the award under State Finance Law § 112. However, during the pendency of the protest, bid evaluation by Parks and subsequent OSC review of the recommended award may continue to progress at the discretion of the Director, Financial Administration.

If a formal protest is received prior to a determination by Parks on a recommended award, notice of receipt of the protest must be given in the procurement record forwarded to OSC. If a final protest determination has been reached prior to transmittal to OSC, a copy of the final determination should be included in the Procurement Record and forwarded with the recommendation for award.

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

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

# Appendix E - OSC Consultant Disclosure Reporting Requirements

## Background:

Pursuant to New York State Finance Law Section 163(4)(g), state agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract, such report to include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Contractors selected for award on the basis of a procurement issued by OSC (Request for Proposals, Mini-Bid, or Invitation for Bids) must complete Form A, State Consultant Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term upon notification of award. The completed Form A must include information for all employees that will be providing services under the contract, whether employed by the contractor or by a subcontractor.

Contractors selected for award are also required to complete Form B, State Consultant Services Contractor’s Annual Employment Report annually for each year of the contract term, on a State fiscal year basis. The first report is due on May 15 for the period April 1 through March 31.

Form A must be submitted to OSC as the contracting agency, and Form B must be submitted to OSC (as the contracting agency), the Department of Civil Service, and the Consultant Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in these instructions.

Form A, State Consultant Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term and Form B, State Consultant Services Contractor’s Annual Employment Report, are attached to these instructions. Please see these instructions for further information regarding completion and submission of the forms.

## Instructions

### FORM A:

**Upon notification of contract award, use Form A, State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term**, attached to these instructions, to report the necessary planned employment information prospectively from the start date through the end of the contract term. This is a one-time reporting requirement.

Complete **Form A** for contracts for consulting services in accordance with the following:

- **Employment category:** the specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract.  
(Note: Access the O\*NET database, which is available through the US Department of Labor’s Employment and Training Administration, on-line at [www.online.onetcenter.org](http://www.online.onetcenter.org) to find a list of occupations.)
- **Number of employees:** the total number of employees in the employment category anticipated to be employed to provide services under the contract, including part time employees and employees of subcontractors.
- **Number of hours to be worked:** the total number of hours anticipated be worked by the employees in the employment category.
- **Amount payable under the contract:** the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Submit completed **Form A** within 48 hours of notification of selection for award to OSC (as the contracting agency) at the address listed below.

**FORM B:**

Use **Form B, State Consultant Services Contractor's Annual Employment Report**, attached to these Instructions, to report the annual employment information required by the statute. This form will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit **Form B** to OSC (as the contracting Agency), the Department of Civil Service (DCS), and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below.

Complete **Form B** for contracts for consulting services in accordance with the following:

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

Submit the completed **Form B** annually by **May 15<sup>th</sup>** for each State fiscal year (or portion thereof) the contract is in effect, as follows:

**To OSC (as the contracting Agency):**

By mail: Mr. Larry Appel, Assistant Comptroller  
Financial Management  
Office of the State Comptroller  
110 State Street, Stop 13-2  
Albany, NY 12236-0001

By email: [rfp@osc.state.ny.us](mailto:rfp@osc.state.ny.us)

**To the Consultant Reporting Section of the Bureau of Contracts at OSC:**

By mail: NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236  
Attn: Consultant Reporting

By fax: (518) 474-8030 or (518) 473-8808

**To DCS:**

By mail: NYS Department of Civil Service  
Alfred E. Smith Office Building  
Albany, NY 12239

## Attachment 1 – Financial Proposal

The Financial Proposal is a Microsoft Excel document with the filename: C003421 – Financial Proposal.xlsx. Bidders must complete and submit this form as their Financial Proposal. Any expenses occurring outside of that which is submitted within the completed Financial Proposal shall be borne by the Contractor.

If you did not receive this file or are unable to access this file, please contact one of the Designated Contacts.

## Attachment 2 – Proposal Response Form

The Proposal Response Form is an Adobe PDF document with the filename: C003421 – Proposal Response Form.pdf. Bidders must complete and submit this form as part of their Technical Proposal. Bidders shall indicate whether their Proposal and thereby System will meet or will not meet each requirement. Where neither check box is selected, it will be interpreted that the Proposal **will not** meet the associated requirement. Accordingly, Bidders should ensure the Proposal Response Form is complete and true prior to proposal submission.

If you did not receive this file or are unable to access this file, please contact one of the Designated Contacts.

## Attachment 3 – Lobbying Law Certification

### **Offerer’s Affirmation of Understanding of and Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6)(b)**

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 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 procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

### **Offerer Disclosure of Prior Non-Responsibility Determinations**

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**

The Office of State Parks, Recreation and Historic Preservation (OPRHP) includes this 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 OPRHP unit conducting the Governmental Procurement.

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 mark):  
 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 mark):  
 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 mark):  
 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: \_\_\_\_\_

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(attach 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 mark):  
 No  Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

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(attach additional pages as necessary)

| <b>Lobbying Certification</b>  |                  |
|--|------------------|
| Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k, §139-j(3) and §139-j(6)(b), §139-k(5) is complete, true and accurate. |                  |
| Company Name: _____  |                  |
| Doing Business As: _____   |                  |
| Address: _____   | City _____       |
|  | State _____      |
|  | Zip Code _____   |
| Name of Official: _____  | Title _____      |
| E-Mail _____   | Telephone: _____ |
| _____<br>Signature   | _____<br>Date    |

# Attachment 4 - Non-Collusive/Procurement Lobbying Bidding Certification

The undersigned hereby certifies his or her compliance with the following:

By submission of this bid, each bidder and each person signing on behalf of any other 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 or her knowledge and belief:

- A. The prices of 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;
- B. Unless otherwise required by law, the prices which have been quoted in this bid have not 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
- C. 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.
- D. Bidder has reviewed the enclosed Parks guidelines regarding the Procurement Lobbying Law, \* and understands:
  - a. which contacts with Parks procurement staff are considered permissible during the "restricted period" of this solicitation, and
  - b. the consequences of violating the statute, and the actions that would be taken by Parks in such an event
- 7. Within the previous four years, has the bidder been found non-responsible by a government entity? (Please mark):  
 No    Yes
- 8. If "yes," was the determination of non-responsibility due to (1) engaging in impermissible contacts with a government entity, or (2) the intentional provision of false or incomplete information to a government entity? (Please mark):  
 No    Yes - If yes, please explain on a separate sheet.

| Certification  |            |
|--|------------|
| The undersigned has carefully examined the bidding and contract documents and agrees to perform this contract and to provide all goods and / or services, labor, material and equipment necessary for this contract. In addition, the bidder certifies that all information submitted regarding the Procurement Lobbying Law * is complete, true and accurate. If such information is found to be intentionally false or intentionally incomplete, Parks reserves the right to terminate the resulting contract. |            |
| Company Name:  |            |
| Doing Business As:   |            |
| Address:   | City       |
|  | State      |
|  | Zip Code   |
| Name of Official:  | Title      |
| E-Mail   | Telephone: |
| _____  | _____      |
| Signature  | Date       |

\* Relevant to transactions with an annualized value in excess of \$15,000.

## Attachment 5 - Public Officers Law

THE FOLLOWING PROHIBITIONS PERTAIN TO THE SALE OF GOODS AND SERVICES BY STATE EMPLOYEES TO NEW YORK STATE AGENCIES PURSUANT TO THE NYS PUBLIC OFFICERS LAW

(Please complete this form and return it with your bid.)

**Current State Employees** - Current employees of New York State cannot sell goods or services valued at \$25 or more to any state agency, either as a private contractor or through a company in which that employee holds ownership of at least 10%, unless the procurement opportunity is first advertised in the NYS Contract Reporter and competitively bid.

**Former State Employees** - Former employees of the New York State Office of Parks, Recreation and Historic Preservation (Parks) cannot sell goods or services to Parks under any circumstance for two (2) years following the date they leave Parks' employ. (This applies only to Parks and Parks' employees, and does not preclude a former employee of another state agency from selling goods or services to Parks within two years following the last date of that person's state employment.)

**Please check ( X ) as appropriate, sign and date.**

- I am currently a state employee, and/or own at least 10% of the company that is being asked to provide goods or services to Parks.
- I am a former Parks employee, and my service with them ended less than two years prior to the date of my signature below.
- Neither of the above apply.

| Certification  |            |
|--|------------|
| Company Name:  |            |
| Doing Business As:   |            |
| Name of Official:  | Title      |
| E-Mail   | Telephone: |
| <div style="display: flex; justify-content: space-between; width: 80%; margin: 0 auto;"> <div style="border-top: 1px solid black; width: 60%;"></div> <div style="border-top: 1px solid black; width: 20%;"></div> </div> <div style="display: flex; justify-content: space-between; width: 80%; margin: 5px auto;"> <span>Signature</span> <span>Date</span> </div> |            |

October 1, 2003



# Attachment 7 - NYS Finance Law §139-I and Executive Order No. 177 Certification

## State Finance Law § 139-I 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 the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

## Executive Order No. 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

| <b>Certification</b>  |            |
|---|------------|
| By signing, you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of the above certifications and that all information provided is complete, true and accurate. |            |
| Company Name:   |            |
| Doing Business As:  |            |
| Name of Official:   | Title      |
| E-Mail  | Telephone: |
| _____   | _____      |
| Signature   | Date       |

## Attachment 8 – Vendor Responsibility Attestation

If this or any other contract you have with the State of New York is valued at \$100,000.00 or more, Office of Parks, Recreation and Historic Preservation (OPRHP) requires that Vendor file the required Vendor Responsibility Questionnaire.

To comply with the Vendor Responsibility Requirements outlined in Section 6.20, Administrative. Vendor Responsibility Questionnaire, I hereby certify:

**Choose One:**

- The total value bid/proposed is less than \$100,000; therefore, a Vendor Responsibility Questionnaire is not required at this time.<sup>1</sup>
- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.
- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months. [https://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](https://www.osc.state.ny.us/vendrep/forms_vendor.htm)
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations. [https://www.osc.state.ny.us/vendrep/documents/vendrep/document\\_requirements.pdf](https://www.osc.state.ny.us/vendrep/documents/vendrep/document_requirements.pdf)

| Certification      |            |
|--------------------|------------|
| Company Name:      |            |
| Doing Business As: |            |
| Name of Official:  | Title      |
| E-Mail             | Telephone: |
| _____              | _____      |
| Signature          | Date       |

January 2019

<sup>1</sup> If during the term of the contract the value exceeds \$100,000 due to an amendment or extension, a Vendor Responsibility Questionnaire may be required.

## Attachment 9 – Diversity Practice Questionnaire

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

|   |  |
|---|--|
| 1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives?              | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| <i>If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals:</i> |  |
|   |  |
| <i>Attach Additional Sheets, If Necessary</i>   |  |

|   |         |
|---|---------|
| 2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers? | _____ % |
|---|---------|

|   |         |
|---|---------|
| 3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or noncontract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors? <sup>2</sup> | _____ % |
|---|---------|

|   |  |
|---|--|
| 4. Does your company provide technical training <sup>3</sup> to minority- and women-owned business enterprises?   | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| <i>If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs:</i> |  |
|   |  |
| <i>Attach Additional Sheets, If Necessary</i>   |  |

<sup>2</sup> Do not include onsite project overhead.

<sup>3</sup> The process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

|   |  |
|---|--|
| 5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?   | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| <i>If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program:</i> |  |
|   |  |
| <i>Attach Additional Sheets, If Necessary</i>   |  |

|  |  |
|--|--|
| 6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements?                           | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| <i>If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained:</i> |  |
|  |  |
| <i>Attach Additional Sheets, If Necessary</i>  |  |

|  |  |
|--|--|
| 7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| <i>If Yes, provide documentation of program activities and a copy of policy or program materials.</i>        |  |
|  |  |
| <i>Attach Additional Sheets, If Necessary</i>  |  |

|  |  |
|--|--|
| 8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| <i>If Yes, provide a description of your efforts.</i>  |  |
|  |  |
| <i>Attach Additional Sheets, If Necessary</i>  |  |

| <b>Certification</b>   |                                    |
|--|------------------------------------|
| <i>I swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge.</i> |                                    |
| Company Name:  |                                    |
| Doing Business As:   |                                    |
| Name of Official:  | Title                              |
| E-Mail   | Telephone:                         |
| <hr style="width: 100%;"/><br>Signature  | <hr style="width: 100%;"/><br>Date |

## Attachment 10 – Intent to Bid / No Bid

Please complete this for to signify if your firm intends to bid or has chosen not to bid on this procurement opportunity, please use the space below to briefly explain why and return this form to:

Office of Parks, Recreation and Historic Preservation  
 Contract Unit  
 625 Broadway  
 Albany, NY 12207  
[Contracts@parks.ny.gov](mailto:Contracts@parks.ny.gov)

- My Company / Firm Intends to Bid on this RFP
- My Company / Firm Does Not Intend to Bid on this RFP for the reason(s) stated below:

Reason(s):

|                    |  |            |
|--------------------|--|------------|
| Company Name:      |  |            |
| Doing Business As: |  |            |
| Name of Official:  |  | Title      |
| E-Mail             |  | Telephone: |
| _____              |  | _____      |
| Signature          |  | Date       |

## Attachment 11 – References

**Bidder Name:**

Bidders must provide References per RFP Sections Reference Customers 1.8.2 and Reference Qualifications 1.8.3.

Bidders must include at least (3) three Reference Customers where they have provided Collections Management Systems, each of whom has asset totals of at least one (1) TB or three (3) million records. Reference Customers must have been customers within five (5) years immediately preceding the issuance of this RFP and have utilized the proposed system to manage Collections.

Bidders References provided herein will be scored on a pass/fail basis for the highest ranked Bidder after all other evaluation steps. If a reference is not accepted for evaluation, that Reference shall be scored as a fail. If more than three references are provided by a Bidder, Parks will cease reference checks upon the response of the third reference.

### Reference 1

|   |                        |
|---|------------------------|
| Customer Name:                          | Timeframe of Services: |
| Address                                 | Asset Totals:          |
| Contact Name:                           | Title:                 |
| E-Mail                                  | Telephone:             |
| Brief Description of Services Provided: |                        |

### Reference 2

|   |                        |
|---|------------------------|
| Customer Name:                          | Timeframe of Services: |
| Address                                 | Asset Totals:          |
| Contact Name:                           | Title:                 |
| E-Mail                                  | Telephone:             |
| Brief Description of Services Provided: |                        |

### Reference 3

|   |                        |
|---|------------------------|
| Customer Name:                          | Timeframe of Services: |
| Address                                 | Asset Totals:          |
| Contact Name:                           | Title:                 |
| E-Mail                                  | Telephone:             |
| Brief Description of Services Provided: |                        |



# FORM B State Consultation Services - Contractor's Annual Employment Report

## FORM B

**OSC Use Only:**

Reporting Code:

Category Code:

**Report Period: April 1,            to March 31,**

|  |                    |
|--|--------------------|
| Contracting State Agency Name: Office of the State Comptroller | Agency Code: 02000 |
| Contract Number:   |                    |
| Contract Term:    /    /            to    /    /               |                    |
| Contractor Name:   |                    |
| Contractor Address:  |                    |
| Description of Services Being Provided:                        |                    |

**Scope of Contract (Choose one that best fits):**

Analysis     Evaluation     Research     Training

Data Processing     Computer Programming     Other IT consulting

Engineering     Architect Services     Surveying     Environmental Services

Health Services     Mental Health Services

Accounting     Auditing     Paralegal     Legal     Other Consulting

| Employment Category | Number of Employees | Number of Hours Worked | Amount Payable Under the Contract |
|---------------------|---------------------|------------------------|-----------------------------------|
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
|                     |                     |                        |                                   |
| Total this page     | 0                   | 0                      | \$ 0.00                           |
| Grand Total         |                     |                        |                                   |

|  |                |
|--|----------------|
| Name of person who prepared this report: |                |
| Preparer's Signature: _____              |                |
| Title: _____                             | Phone #: _____ |
| Date Prepared:    /    /                 |                |



# Contractor Certification to Covered Agency

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

# ST-220-CA

(12/11)

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

|   |   |  |          |
|---|---|--|----------|
| Contractor name   |   | For covered agency use only<br>Contract number or description                        |          |
| Contractor's principal place of business                  | City  | State  | ZIP code |
| 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 ST-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. 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.

**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:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. 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 }
: 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.

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 Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



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, call the information center.



# Contractor Certification

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

For information, consult Publication 223, *Questions 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)   |   | City  | State                                  | ZIP code |
| Contractor's federal employer identification number (EIN)  | Contractor's sales tax ID number (if different from contractor's EIN) |       | Contractor's telephone number<br>( )   |          |
| Covered agency or state agency   | Contract number or description  |       | Covered agency telephone number<br>( ) |          |
| Covered agency address   | City  | State | ZIP code                               |          |
| Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000? |   |       |  |          |
| Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>               |   |       |  |          |

### General information

Tax Law section 5-a, 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 Form ST-220-CA, *Contractor Certification to Covered Agency*, 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.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

**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 12227-0826**

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



#### Telephone assistance

**Sales Tax** Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**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, call the information center.

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.

**Complete Sections 1, 2, and 3 below. Make only one entry in each section.**

**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 Tax Law sections 1134 and 1253, 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 Tax Law sections 1134 and 1253. 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 Tax Law sections 1134 and 1253. 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)



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. \_\_\_\_\_



# Parks, Recreation and Historic Preservation

## Request for Proposals

### C003421 Collections Management System

May 26, 2020

# Exhibit A Use Cases

#### Designated Contact(s)

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## Instructions to Bidders

*Exhibit A Use Cases* includes multiple scenarios that are designed to illustrate how OPRHP intends to utilize the Collection Management System (CMS) in its application of collection management processes.

Bidders must show how the proposed CMS supports or captures the processes described in each use case scenario during the demonstration phase of the proposal evaluation using the information provided herein. Additional information regarding the objects referenced in each scenario is provided within *Exhibit A.1 Use Case Object List*. Bidders are expected to refer to and utilize this additional information where applicable to the particular scenario.

Steps or procedures that are identified as desirable in the Business Requirements are prefaced by the label "DESIRABLE FUNCTION" in these Use Case scenarios. Bidders are only required to demonstrate these functions when they are included in the Bidder's proposal. Refer to Section 4.2.3 of the RFP for additional information.

### 1. Acquisition & Accessioning and Cataloging (Sections 2.2.1 and 2.2.2)

Using the information provided below and in the accompanying Exhibit A.1 Use Case Object List, demonstrate each step in the process of cataloging an object in the system, including uploading any associated files or file attachments. Demonstrate, as part of this task, any desirable features that are supported by the CMS as well as all relevant 2.3 Data Management and 2.4 User Interface features (such as data validation tools, vocabulary control, data entry tools and help features) that are available to assist in this process.

#### 1.1 Donation of a Collection

OPRHP acquired, by donation, the objects listed below from the estate of George Yaw, formerly residing at 15 Diagon Alley, London, CT. The executor of the estate is Sandra Day O'Connor with offices at 315 Broadway, New York, NY.

| OPRHP Accession No. | Object Name/Title                            |
|---------------------|--|
| FC.1999.12          | Chair, Side                                  |
| FC.1999.13.A,.B     | <i>Backgammon Players</i>                    |
| FC.1999.14          | Pistol                                       |
| FC.1999.15.1-3      | Candlesticks (set of three)                  |
| FC.1999.16.1-8      | Set, Teacup and saucer (set of four of each) |

The objects were offered to OPHRP on 19 September 1998 and accepted by OPHRP's collections committee on 27 January 1999 as historic collections assigned to Crailo State Historic Site. An executed Deed of Gift was recorded on 1 April 1999.

Upon acceptance, accession photography was completed for each object (consisting of color photographs, stored as TIFF images, at 300 dpi). Condition Assessment reports were also prepared for each object.

The accession records were completed by Marie Antoinette on 10 April 1999.

**DESIRABLE FUNCTION:** James Taylor physically applied the accession numbers to these objects on 15 April 1999.

#### 1.2 Acquisition by Purchase

OPRHP purchased the object listed below at auction conducted by Sotheby's (Sale No. 413, Lot No. 3). The sale involved items from the Museum of Science and Industry. The auction price was \$500 USD; a Buyer's Premium of five percent (5%) was added. A copy of the bill of sale has been scanned for uploading into the database.

| OPRHP Accession No. | Object Name/Title |
|---------------------|-------------------|
|---------------------|-------------------|

|            |              |
|------------|--------------|
| OL.2019.15 | Book: COSMOS |
|------------|--------------|

The book was accepted by OPRHP's Collection Committee on 22 April 2019 as special collections (archival) for Olana State Historic Site.

The frontispiece contains von Humboldt's original signature in ink. OPRHP created a digital image of this frontispiece while preparing the condition assessment, which was completed by Marie Curie on 1 May 2019.

The condition assessment indicates that the object is in good condition with minor wear along the binding and corners of the front cover.

Storage requirements include placing in a dark room (no more than 30 lux); display requirements specify that a book cradle is required for display with a maximum of 30,000 lux/hours per year for exhibition. The object requires special handling and packing requirements if shipped.

**DESIRABLE FUNCTION:** Emily Dickenson physically applied the accession number to the object on 5 May 2019.

### 1.3 Recording a Temporary Receipt

OPRHP received the object listed below on a temporary 120-day loan from the owner, Robert Frost. The purpose of this loan is to allow for examination to determine the object's authenticity. The owner provided information regarding the history of the object in a series of letters that have been scanned for uploading into the database.

| OPRHP Accession No. | Object Name/Title |
|---------------------|-------------------|
| RF.2017.1           | Horn, Powder      |

The object was received on 21 December 2017. A copy of the temporary object receipt has been scanned for uploading into the database.

An examination was conducted by Margaret Mead and includes x-ray photography of the neck. This determined that the metal ring was secured using machine-made screws. Military historian Eugene Davis determined that the inscription was not in common use until after 1850. The powder horn was packed and returned to its owner via FedEx on 6 March 2018. A copy of the signed receiving slip has been scanned for uploading into the database.

## 2. Inventory Control (Section 2.2.3)

**Using the information provided below and in the accompanying Exhibit A.1 Use Case Object List, demonstrate each step in the process of updating the location history of an object as well as the reason for movement. Demonstrate, as part of this task, any desirable features that are supported by the CMS as well as all relevant 2.3 Data Management and 2.4 User Interface features (such as data validation tools, vocabulary control, data entry tools and help features) that are available to assist in this process.**

### 2.1 Assigning Separate Locations for Associated Objects

The object listed below was transferred to the Agency's conservation laboratories (Peebles Island) for conservation treatment of the gilded frame. While the frame was undergoing treatment in the frame lab (PI-CCC-WW-108), the painting was placed in temporary storage (PI-CCC-EW-05).

| OPRHP Accession No. | Object Name/Title |
|---------------------|-------------------|
| CL.1981.10.A,.B     | <i>Waterfall</i>  |

Leonardo da Vinci transported the object from Clermont to Peebles Island on 21 March 2018. The conservation treatment work was completed on 16 March 2019. The painting was refitted into its frame and then returned to Clermont for display by Ella Fitzgerald on 1 April 2019.

**DESIRABLE FUNCTION:** The location given for final display of the painting was "the library." Ella Fitzgerald referenced an OPRHP floor plan to confirm the correct room number for this location.

## 2.2 Temporary Relocation and Group Relocation

The objects listed below were placed on temporary exhibition in Room 102 of the visitor center at Schoharie Crossing State Historic Site (SX-002-102) by Janice Joplin on 15 April 2014:

| OPRHP Accession No. | Object Name/Title         |
|---------------------|---------------------------|
| FC.1999.13.A,.B     | <i>Backgammon Players</i> |
| CL.1981.10.A,.B     | <i>Waterfall</i>          |
| OL.2019.15          | Book: <i>COSMOS</i>       |

All three objects were returned to their permanently assigned location by Augustus Roebing on 30 September 2015.

**DESIRABLE FUNCTION:** When updating the database, Augustus Roebing uses available short-cuts for re-setting location fields in the system.

## 3. Deaccessioning (Section 2.2.4)

Using the information provided below and in the accompanying Exhibit A.1 Use Case Object List, demonstrate each step in the process of deaccessioning an object, including data retention following conclusion of the final step in deaccessioning. As part of this task, demonstrate all relevant 2.3 Data Management and 2.4 User Interface features (such as data validation tools, vocabulary control, data entry tools and help features) that are available to assist in this process.

### 3.1 Witnessed Destruction of One Element in a Set

A single teacup, one (1) of a set of four (4) teacups and four (4) saucers, was reported missing on 31 October 2014. Two weeks later, the teacup was discovered below a cupboard shattered into tiny fragments.

| OPRHP Accession No. | Object Name/Title |
|---------------------|-------------------|
| FC.1999.16.3        | Teacup            |

The fragments were collected and transported to Peebles Island on 4 November 2014 and the teacup is tagged for possible deaccession. Upon further review, Dave Brubaker determined that the teacup was damaged beyond repair. A decision was made to deaccession the teacup by witnessed destruction. The condition of the teacup was documented photographically (for uploading to the database) and its disposal on 21 November 2014 was witnessed by Alice Carroll and Cheshire Cat.

### 3.2 Surplus Deaccession

The object listed below was tagged for deaccessioning as surplus (redundant example) by Jerry Garcia on 15 July 2015.

| OPRHP Accession No. | Object Name/Title |
|---------------------|-------------------|
| CL.1981.10.A,.B     | <i>Waterfall</i>  |

The painting was found to be similar to another painting in the site's collection, but in much poorer condition (the painting had been extensively in-painted during a 1950s restoration). A review of purchasing records revealed that the frame had been purchased by OPRHP in 1948. The object record is updated to capture this new information.

A majority vote in favor of deaccessioning passed at two Collections Committee meetings (21 November 2015 and 23 January 2016). OPRHP gave written notice to the following three NYS agencies on 30 April 2016; all three agencies declined to accept the painting or frame on 30 May 2016.

- New York State Museum
- New York State Division of Military and Naval Affairs (DMNA) and
- New York State Archives.

OPRHP's Deputy Commissioner for Historic Preservation approved the recommendation to deaccession 4 July 2016.

Both the painting and frame were transferred to NYS Office of General Services on 9 September 2016 and sold at auction for a seller's profit of \$35. OPRHP's deaccessioning account was credited with \$35 on 15 November 2016.

#### 4. Exhibition Management (Section 2.2.5)

Using the information provided below and in the accompanying Exhibit A.1 Use Case Object List, demonstrate each step in the process of creating and tracking an exhibition. As part of this task, demonstrate all relevant 2.3 Data Management and 2.4 User Interface features (such as data validation tools, vocabulary control, data entry tools and help features) that are available to assist in this process.

##### 4.1 Setting Up a Multi-Venue Outgoing Loan and Exhibition

The Smithsonian Museum of American Art requested the objects listed below for display in an exhibition titled *The River that Flows Both Ways*. This request was received on 15 April 2011 and the objects were immediately placed on reserve.

| OPRHP Accession No. | Object Name/Title      |
|---------------------|------------------------|
| OL.1972.22.A,.B     | <i>Icebergs</i>        |
| OL.2019.15          | Book: <i>COSMOS</i>    |
| OL.1986.88          | <i>Island Dwellers</i> |
| OL.1970.63          | <i>River Conch</i>     |

The exhibition includes three venues (listed below). A facility report was provided for each venue on 15 June 2011.

- Washington D.C. (1 June 2012 – 30 November 2012);
- St. Louis, MO (15 December 2012 – 30 April 2013); and
- Lexington, KY (15 May 2013 – 30 October 2013).

The first, third and fourth objects will travel to all three venues. The second object will travel only to the first venue.

The loan request is approved at the Collections Committee meeting held on 26 June 2011. A loan offer is prepared one week later that lists the terms and condition for the loan as follows. A copy of this offer letter is scanned for uploading to the database.

- An installation courier is required for venues 1 and 2; a deinstallation courier is required for the third venue.
- The database is reviewed for light exposure and display requirements.

Exhibition fees and expenses are established as follows:

- Loan fee of \$150 per item;
- Preparation (framing and glazing) of OL.1986.88 of \$250;
- Appraisal fee of \$250 for OL.1970.63 (The other objects have current appraisals on file);
- Exhibition photography of \$75 per item; and
- Courier expenses, estimated at \$750 (to be invoiced at actual cost).

A loan and exhibition agreement is signed on 15 April 2012. A certificate of insurance, received on 28 May 2012, shows an expiration date of 1 July 2012.

Classic Carriers (Brooklyn, NY) is the designated transporter for the first and third venues. Fine Art Handlers (Columbus, OH) is the designated transporter for the second venue.

##### 4.2 Setting Up an Annually, Renewable Loan

The object listed below has been on loan to the Fort Perpetual Army Museum since 1 July 1982. The loan is subject to annual renewal.

| OPRHP Accession No. | Object Name/Title |
|---------------------|-------------------|
| SA.1982.14          | Walking Stick     |

Every four years, the borrower is required to re-certify their intended use of the object and provide a current photograph showing its condition and how it is being displayed. The last time this documentation was received was nearly four years ago, so another certification is due.

A letter, containing a blank re-certification form and instructions, was sent 60 days prior to the loan's expiration. A copy of this letter was scanned for uploading to the database. The borrower returns the completed certification along with a current photograph of the object 30 days later; these documents are scanned for uploading to the database. The condition of the object is confirmed as good and suitable for display.

The borrower's certificate of insurance (COI) has an annual policy term that expires on 30 September.

### 4.3 Setting Up a Loan Bequest

The object listed below has been on loan since 2002. The owner (Barbara Streisand) has offered it for donation as a bequest.

| OPRHP Accession No. | Object Name/Title |
|---------------------|-------------------|
| BSC.2002.1          | Table, Library    |

A bequest agreement was signed on 14 July 2018 and includes a condition that the object be displayed at the Darwin Martin House. Donor acknowledgement is to be "anonymous." A copy of the bequest agreement has been scanned for uploading into the database.

OPRHP is required to maintain fine art insurance coverage until the loan is superseded by the bequest agreement. The insurance policy renews annually on 1 July, and a new Certificate of Insurance is required for the next policy period.

## 5. Object Conservation (Section 2.2.6)

Using the information provided below and in the accompanying Exhibit A.1 Use Case Object List, demonstrate how condition is captured, storage and display requirements recorded, and documents are uploaded. As part of this task, demonstrate all relevant 2.3 Data Management and 2.4 User Interface features (such as data validation tools, vocabulary control, data entry tools and help features) that are available to assist in this process.

### 5.1 Capturing Object Condition and Materials Analyses

| OPRHP Accession No. | Object Name/Title         |
|---------------------|---------------------------|
| FC.1999.13.A,.B     | <i>Backgammon Players</i> |

The object listed above has been examined by Paintings Conservator Marie Curie. As part of the examination, a series of tests were conducted, as listed below.

- 24 February 2020: X-ray photography, revealing an earlier image under the existing. Digital image is available for uploading.
- 28 February 2020: Results from a series of six (6) solvent tests for removing surface grime. The use of ethanol (3% w/v) and Armeen gel was found most effective. Using this method, grime removal is expected to take about 60 hours to complete.
- 4 March 2020: Three (3) cross sections of the paint stratigraphy were taken and later examined under Polarized light microscopy. The samples were taken from proper left margin (one-third up from bottom). All three samples revealed titanium white pigment within an intermediate paint layer, indicating that this paint layer dated after 1900.

The overall condition of the object was reported as fair. Recommendations include removal of surface grime and modern varnish layer. The presence of titanium white pigment suggests that the existing image is not an authentic 17<sup>th</sup> century Dutch genre painting; however, the underlying image may be authentic. A copy of the treatment proposal is scanned for uploading.

### 5.2 Capturing Conservation Treatment History

| OPRHP Accession No. | Object Name/Title |
|---------------------|-------------------|
|---------------------|-------------------|

|            |            |
|------------|------------|
| CL.1974.18 | Gilt Eagle |
|------------|------------|

The object listed above has been recently conserved by Gilt Object Conservator King Midas. The conservation treatment took 15 months to complete, and was performed between 1 October 2018 and 1 January 2020. A summary of the principal treatment procedures is listed below. In addition, the Treatment Report, with photographs showing the object before, during and after treatment, has been scanned for uploading.

- Removal of loose, flaking gold leaf and areas of bronze overpaint (damaged areas covered about 60% of the entire surface);
- Repairs to unstable areas of gesso (four [4] before and after pictures were taken of these repairs);
- Application of red clay bole and water gilding at areas of loss;
- Burnish and toning; and
- Fabrication of new mount to prevent eagle tail feathers from pressing against wall.

### 5.3 Capturing Storage and Display Requirements

The object listed below requires special conditions for storage and display. These conditions include reduced exposure to visible and UV light as well as special packing and shipping requirements. Information regarding requirements for temperature and humidity are also indicated.

| OPRHP Accession No. | Object Name/Title      |
|---------------------|------------------------|
| OL.1986.88          | <i>Island Dwellers</i> |

The object was displayed at the Smithsonian Museum of American Art for a period of 25 weeks. Illumination conditions during the exhibition were fixed at 30 lux. The exhibition was open to the public 10 hours per day and 6 days per week. The resulting total light exposure for this exhibit is 45,000 lux hours.

The maximum annual light exposure for this object is set at 30,000 lux hours. This exhibition resulted in excess light exposure of 15,000 lux hours, or 1.5 times the annual exposure limit. As a result, the object requires at least a 6 month (180 day) rest period (storage in total darkness) at the conclusion of the exhibition.

The object was received at Peebles Island on 14 January 2014, and was examined to reassess condition on the following two days. The object was placed in dark storage on 17 January 2014 and will need to remain there at least until 15 July 2014.

**DESIRABLE FUNCTION:** Capturing the duration of a required rest period either by the total duration (keyed to a start date) or by defined dates.

## 6. Online Catalog (Section 2.2.7)

Using the information provided below and in the accompanying Exhibit A.1 Use Case Object List, demonstrate each step in the process of publishing records to the catalog. As part of this task, demonstrate all relevant 2.3 Data Management and 2.4 User Interface features (such as data validation tools, vocabulary control, data entry tools and help features) that are available to assist in this process.

### 6.1 Publishing Catalog Records

Marie Antoinette, an OPRHP Administrative User (Level 1), needs to publish information on the following objects to the online catalog.

| OPRHP Accession No. | Object Name/Title      |
|---------------------|------------------------|
| OL.1972.22.A,.B     | <i>Icebergs</i>        |
| OL.2019.15          | Book: <i>COSMOS</i>    |
| OL.1986.88          | <i>Island Dwellers</i> |
| OL.1970.63          | <i>River Conch</i>     |

Only selected object data is permitted to be published; all other data need to be hidden from public view. For instance, the data that may be displayed is limited to the following:

- type of object (object classification);
- name or title of the object;

- date and maker or manufacturer's name;
- Dimensions; and
- published bibliographic information.

In addition, each published object record must include at least one (1) representative image. Images must include a caption and have an applied watermark.

## 6.2 Browse and Search the Online Catalog

The curator of the Wallraf-Richartz Museum (Cologne, Germany) wishes to browse the online catalog for works created by artists in the 19<sup>th</sup> century.

**DESIRABLE FUNCTION:** The curator's preferred language is German.

## 6.3 Customize the Welcome Screen

Marie Antoinette, an OPRHP Administrative User (Level 1), needs to edit the Welcome Screen for the Online Catalog. The welcome screen is to display the following messages:

- The exhibition "Views of the Past: Landscapes in a Changing Climate," scheduled to open at Olana State Historic Site on 4 July 2020 has been postponed. This exhibition will now open on 15 June 2021.
- The National Purple Heart Hall of Honor is temporarily closed for construction. The museum will re-open, with expanded galleries, on 11 November 2020. An online exhibition of selected objects from the museum is available at [www.nationalpurpleheart.org](http://www.nationalpurpleheart.org).

## 7. Queries and Reports (Section 2.5)

**Using the information provided below, demonstrate how to run a series of queries of the database and generate reports. Provide a demonstration of available options for sorting and viewing the query results, accessing records from query results, and creating or modifying both standard and customized report templates.**

### 7.1 Running a Query & Reviewing Results

Mary Poppins is preparing for a seasonally-changing exhibition at Washington's Headquarters State Historic Site. To determine what is available for display, she conducts a search of the Agency's entire collection of 18<sup>th</sup> century works of art on paper. This search is further refined by the unframed height of the objects, which must be 24 inches or less.

### 7.2 Editing an existing Query

Mary Poppins, after previously pulling results for the seasonally-changing exhibition, realizes that she entered the wrong search criteria! She now needs to broaden her focus her to include both 18<sup>th</sup> and 19<sup>th</sup> century works of art on paper; however, she must also limit her search to objects from the collections of Washington's Headquarters and Olana State Historic Sites. (These objects are identifiable by accession numbers with the prefix WH and OL)

## 8. System Administration (Section 2.6)

**Using the information provided below demonstrate how an Agency administrative user adds, removes or modifies the authority levels of other Agency users. Include tasks that enable an Agency administrative use to selectively mark certain data fields as restricted or hidden from view.**

### 8.1 Adding and Removing Users

The position of historic site manager at Lorenzo State Historic Site is changing. The current historic site manager, Shirley Jackson, is retiring on 1 June 2021. The new site manager, Margaret Thatcher, will be starting work on 15 May 2021. Margaret needs to be added to the system as a Level 2 Facility User. Shirley needs to be removed as an Agency User effective on her retirement date.

## 8.2 Changing User Authority & Editing Capabilities

Lorenzo State Historic Site staff will be undertaking a large inventory project. To streamline efforts, three (3) of their staff members need their User Authority Level changed, as follows:

- Otis Redding, the site's interpretive program assistant, is currently registered as a Level 3 Research User. He will be leading this effort and needs to have his User Authority Level upgraded to Level 2, Facility User.
- Janet Reno, the historic site assistant, will be assisting with the project. She is also currently registered as a Level 3 Research User. She will need to have her User Authority Level upgraded to Level 2, Facility User but only for the next 6 months – after which her User Authority Level should revert back to a Level 2, Research User.
- Margaret Thatcher, the site manager, will need her Facility User Level changed to Level 1, Administrative User.

**DESIRABLE FUNCTION:** Otis Redding will need to be able to create object records and enter accession numbers into the system, something that is typically only permitted of an Administrative User (Level 1). His assignment as a Facility User (Level 2) needs to be customized to allow him to do this particular task without allowing full access to all other Level 1 capabilities.

## 8.3 Editing Controls

Janet Reno is updating an object catalog record to capture the acquisition history and bibliographic information on file. Otis Redding attempts to open the same object catalog record to add appraisal and donor information; however, when he attempts to do this, he sees that the object record is temporarily “locked” for editing.

| OPRHP Accession Number | Prior Accession Number | Object Classification          | Classification Category | Description   | Maker/Manufacturer                    | Date      | Dimensions   | Acquisition History  | Appraisal Information  | OPRHP Assigned Location | Current Location         | Prior Location | Bibliographic References   | Exhibition History   | Conservation Data  |
|------------------------|------------------------|--------------------------------|-------------------------|---|---------------------------------------|-----------|--|--|--|-------------------------|--------------------------|----------------|--|--|--|
| FC.1999.12             |                        | Furniture                      | 0203                    | Oak frame with leather cushion and seat back; turned legs and stretchers  | Dutch                                 | 17th C    | 38 in high by 19 in wide by 20 in deep                                   | Purchased in 1982 from DePeyster & Sons Auction House; Philadelphia, PA                      | \$2500; 8 August 1998; Top Value Appraisers, New Haven, CT.    | FC-001-203              | PI-CCC-103               | PI-CCC-115     |  |  | Condition Assessment Report: 21 March 1999. X-ray photography: 19 March 1999 - revealed doweled joinery.   |
| FC.1999.13.A.,B        |                        | Painting [w/Frame]             | 0802                    | Oil on wood panel   | Abraham Deipraam (1622-1670); attrib. | 1664      | Painting: 16.25 in high by 12 in wide. Frame: 19 in high by 16 in wide.  |  | \$3200; 8 August 1998; Top Value Appraisers, New Haven, CT.    | FC-001-103              | PI-CCC-115               | PI-CCC-104     |  |  | Condition Assessment Report: 21 March 1999. Treatment Proposal: 5 May 1999. Paint cross section analysis: 30 April 1999 - revealed titanium white pigment. |
| FC.1999.14             | MGM.1963.2             | Handgun                        | 0502                    | Single-shot, muzzle-loading, percussion cap pistol with carved walnut grip; SN 186354   | Henry Deringer                        | 1835      | .41 caliber; 5 in barrel   | Reputedly used by "Kitty Russell" (Amanda Blake) in the TV series "Gunsmoke"                 | \$15,000; 31 July 1990; Top Gun Appraisers, Hollywood, CA      | FC-001-101              | PI-CCC-105               | PI-CCC-115     | <i>The Lure of the Deringer</i> , William Kidd; <i>Hollywood Journal</i> (Vol 5, No 2; 1972)   |  |  |
| FC.1999.15.1.-3        | Met.1981.23.1.-3       | Lighting Equipment             | 0205                    | Brass; set of three; "MB" stamped on underside of base  | Milton Bradley & Co                   | 1680-1720 | 8.25 in high by 4 in diameter (base)                                     |  | \$750 each; 8 August 1998; Top Value Appraisers, New Haven, CT | FC-001-101              | PI-CCC-105               | PI-CCC-115     | (1) Video clip featuring object on exhibition. (2) You Tube, commentary by Alexander Hamilton; 27 March 2016; <a href="http://www.youtube.com/12345">www.youtube.com/12345</a> | "Lighting in Dutch Homes: 1500-1850." Metropolitan Museum of Art; 2 February - 30 June 1981. |  |
| FC.1999.16.1.-8        |                        | Food Service Tools & Equipment | 0405                    | Hand-painted porcelain; design features twinning vine on rim; matching set of four  | Dutch West India Company              | ca 1740   | Cups: 4 in diameter by 3 in high. Saucers: 5 in diameter by 0.5 in high. |  |  |                         | PI-CCC-105               | PI-CCC-EW-02-4 | Smith, Maggie. <i>Dutch Dining</i> . New York, NY; Abrams, 1997, pp.14-15. File includes a digital scan of this article.   |  |  |
| OL.2019.15             | MSI.1953.231           | Documentary Objects            | 0804                    | First edition publication; bound with embossed leather cover; authored by Alexander von Humboldt (1769-1859); autographed frontispiece. | University of Berlin                  | 1845      | 8 in wide by 10 in high by 1.25 in thick                                 | Sold at auction. Previous owner: Museum of Science & Industry, 612 Barclay St, New Haven, CT |  | PI-CCC-EW-H-010-22      |                          |                |  |  | Light exposure: 30 lux; 30,000 lux/hours; book cradle required for display; special packing required for transport   |
| RF.2017.1              |                        | Armaments                      | 0508                    | Light tan color; engraved with an image of a schooner and signed "August 8, 1812 - Sackets Harbor US"                                   | Sgt Thomas Watson (attrib)            | 1812      | 6 in diameter by 14 in long; 1.5 inch neck diameter                      | Private owner; not acquired  |  |                         |                          |                |  |  |  |
| CL.1981.10.A.,B        |                        | Work on Paper                  | 0804                    | Graphite and watercolor on toned paper  | Honorina Livingston                   | 1943      | 24 in wide by 12 in high   | Gift of David Copperfield (grandson of Honorina Livingston); 1981                            |  | CL-001-117              | PI-CCC-107               |                |  |  |  |
| OL.1972.22.A.,B        |                        | Painting [w/Frame]             | 0802                    | Oil on canvas   | Frederic E. Church                    | 1888      | 32 in wide by 20 in high   |  | \$250,000; Sotheby's. NYC                                      | OL-001-119              | PI-CCC-103               |                |  |  | Light exposure: max 50 lux; 50,000 lux/hours per year  |
| OL.1986.88             |                        | Work on Paper                  | 0804                    | Graphite on toned paper   | Martin Johnson Heade                  | 1872      | 12 in wide by 18 in high   | Gift of David Seaman; 1971   |  | OL-001-214              | PI-CCC-107               |                |  |  | Light exposure: max 30 lux; 30,000 lux/hours per year  |
| OL.1970.63             |                        | Sculpture                      | 0802                    | Carved soapstone  | Lockwood DeForest                     | 1870      | 5 in wide, 2.25 in high, 4 in deep                                       | Gift from maker to FEC; acquired with property   |  | OL-001-105              | PI-CCC-105               |                |  |  | Light exposure: max 30 lux; 30,000 lux/hours per year  |
| SA.1982.14             |                        | Armaments                      | 0505                    | Iron; 1812 model "Walking Stick"  | Watervliet Arsenal                    | 1814      | 32 lb; 53 in barrel  | US Army Depot; intra-agency transfer; 1978   | \$2500; Jamestown Arsenal                                      | PI-CCC-WT-001           | Ft Perpetual, Joplin, MO | SA-GND-003     |  |  |  |
| BSC.2002.1             |                        | Furniture                      | 0203                    | Oak; half-round top with intermediate shelf; one drawer   | Matthew Brothers, Milwaukee, WI       | 1904      | Top: 42 in wide by 64 in long; 35 in high                                | On loan (bequest)  | \$25,000; FLW Foundation                                       | DMH-002-103             | DMH-002-103              |                |  |  |  |
| CL.1974.18             |                        | Sculpture                      | 0802                    | Poplar; carved with gesso ornament, and 23K gold leaf on red bole   | French                                | ca 1820   | Wingspan: 42 in; Height: 30 in; Depth: 14 in.                            | Acquired with property (Livingston family)   |  | CL-001-117              | PI-CCC-108               | CL-001-117     |  |  |  |
| WH.1976.34             |                        | Print, Intaglio                | 0804                    | Engraving of DeWitt Clinton at the dedication of the Erie Canal   | John B. Jervis                        | 1845      | 10 in wide by 15 in high   | Gift of Charles Sprague Sargent; 1889  |  |                         |                          |                |  |  |  |
| A.BB.2015.45           |                        | Archaeology                    | 0306                    | Assortment of Ivory and brass coat buttons (25 total); plain face   | unknown                               | 1750-1820 | 0.5 in dia by 1/8 in thick   | Collected on site by BRAVO B, field reconnaissance survey; June-August 2015                  |  |                         |                          |                |  | "Recent Finds at Bennington Battlefield"; Bennington Library; June 15 - September 30, 2019   | OPRHP Conservation Treatment Report. Treatment of 15 Ivory and Brass Buttons from Bennington Battlefield; May 2019   |
| A.MM.2009.15           |                        | Archaeology                    | 0503                    | Lithic points; assorted sizes; some whole and some fragmentary  | Native American (Munsee)              | 2000 BCE  | range: 2-6 in long, 1 -2.5 in wide and 3/8 to 1/5 in thick (at head)     | Excavated from TU #4, stratum 3 (2009)   |  |                         |                          |                | Fary, Andrew. Settlement Patterns of Indigenous Peoples in the Hudson River Valley. OPRHP Archaeology Excavation Report; December 2009.  |  |  |

**Accession Numbering RFP Section 2.1.1**

Accession numbers must conform to the following format, consisting of both letters and numbers:

A standardized abbreviation indicating the specific park/historic site having primary association:  
consisting of 2-4 letters [OL]

A four-digit number representing the year that title to the object was acquired [1980].

A one to four-digit number reflecting the sequence acquired at an individual park/historic site within a given year.

A one- to two-digit letter representing the parts of an object (where applicable) [A, B, C....]

A one- to five-digit number representing the parts of an object lot or assembled collection

**Examples:**

OL.1980.72.A, .B – An object, having two parts, that was the 72<sup>nd</sup> acquisition for Olana State Historic Site in 1980.

OL.1980.24.1 – The first object, in a set of objects (object lot), that was the 24<sup>th</sup> acquisition for Olana State Historic Site in 1980.

**Examples:**

LLLL.####.#####.variable or L.LLLL.####.#####.variable

L = Letter, 2-4 letter acronym representing particular site/park. Also used to describe components to an overall object (ex. Jar and lid)

# = Number, Year of acquisition, as well as number of objects associated with a particular acquisition when not jointly associated with each other (ex. Group of several loose letters gifted at one time by one individual).

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**Location Information – RFP Section 2.3.1**

Location of an object (or object lot) must conform to the following format, consisting of both letters and numbers:

A standardized abbreviation indicating the specific park/historic site at which the object is located: consisting of letters [PI]

A standardized abbreviation indicating the specific building in which the object is located at said park/site: consisting of letters and/or numbers [CCC]

A standardized abbreviation indicating the specific room in which the object is located within said building: consisting of letters and/or numbers [EW]

A standardized abbreviation indicating the specific unit in which the object is located within said room: consisting of letters, numbers, and/or break symbols [OL-04]

A standardized abbreviation indicating the specific shelf in which the object is located within said unit: consisting of letters and/or numbers [B]

A standardized abbreviation indicating the specific series in which the object is located within said shelf: consisting of letters, numbers, and/or break symbols [S05/SSB]

A standardized abbreviation indicating the specific box in which the object is located within said series or shelf: consisting of letters and/or numbers [OBJ 03]

A standardized abbreviation indicating the specific folder in which the object is located within said box: consisting of letters and/or numbers [F14]

All fields must be able to accommodate up to 20 characters that consist of letters, numbers, and/or symbols.

Additional fields may be necessary beyond these specifics, to include more finite or identifiable location information. These fields should be able to hold letters and numbers.

Example:

OL.1977.153 is located at: PI, CCC, EW, OL-04, D, S05/SSB, B18, F05

Such location indicates it is at Peebles Island, Collections Care Center, East Wing, Unit OL-04, Shelf D, Series 05 Subseries B, Box 18, Folder 05

## Office of Parks, Recreation and Historic Preservation Regulations

## 9 NYCRR Title 9, Subtitle I

## Subchapter C. Collections

## Part 429. Disposition of Works of Art of Historic Objects

*Section 429.1. Purpose*

(a) The commissioner shall maintain a written record of all materials submitted to him, all documents and all findings and comments thereon, and shall make them available pursuant to the Freedom of Information Law and Part 463 of this Title.

(b) An APO shall provide the reasons for a determination that an undertaking is not subject to the review of the commissioner, pursuant to section 428.4 of this Part, to any interested party requesting this information in writing.

(c) The commissioner shall issue an annual report of State agency undertakings on which comment has been requested and issued, including the results of the review process and alternatives proposed or implemented by State agencies.

*Sec. added by renum. 428.15, filed June 3, 1991 eff. June 19, 1991.*

*Section 429.2. Determination of need*

Prior to the disposition of a work of art or historic object the commissioner shall determine based upon the recommendation of the office's division for historic preservation that it is surplus and fits one or more of the following criteria:

(a) The work of art or historic object is not relevant to the purposes, functions or interpretive goals and policies of the office;

(b) The work of art or historic object is one of several examples of a particular type or class of art or historic object in the custody of the office, and these other examples adequately fulfill the interpretive goals and policies of the office; or

(c) The work of art or historic object has deteriorated beyond usefulness or has become wholly or partially comprised of material that may be hazardous to the health or safety of staff or damaging to another work of art or historic object.

*Sec. added by renum. 285.2, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 430.2, filed Aug. 19, 1997 eff. Sept. 3, 1997; repealed, new added filed May 20, 2014 eff. June 4, 2014.*

*Section 429.3. Manner of disposition*

(a) Deteriorated or hazardous conditions. A work of art or historic object that has been determined to be surplus in accordance with the provisions of section 429.2(c) of this Part may be destroyed and disposed of in an environmentally-responsible manner subject to industry standards under a process known as witnessed destruction.

(b) A work of art or historic object that has been determined to be surplus in accordance with the provisions of section 429.2(a) or (b) of this Part may be disposed of in the following manner, after being properly documented in accordance with the office's collections guidelines:

(1) it shall first be offered to the New York State Museum and if the State Museum fails to accept this offer within 30 days, it shall be offered to State agencies allowed to acquire, exhibit, preserve or interpret it; and if no State agency accepts this offer within 30 days it may be:

- (i) donated to a public corporation;
- (ii) donated to a not-for-profit corporation authorized to acquire, exhibit, preserve or interpret it;
- (iii) sold for fair market value;
- (iv) sold for less than fair market value provided the office makes a written justification on a case-by-case basis that it would be in the best interests of the State; or
- (v) transferred to the Office of General Services with or without conditions for disposition either by public sale as provided in section 167 of State Finance Law or by private sale.

*Sec. added by renum. 285.3, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 430.3, filed Aug. 19, 1997 eff. Sept. 3, 1997; repealed, new added filed May 20, 2014 eff. June 4, 2014.*

#### **Section 429.4. Terms and conditions**

The commissioner may impose such terms or conditions upon the disposition of a work of art or historic object as the commissioner deems appropriate to encourage its conservation and preservation for the public benefit.

*Sec. added by renum. 285.4, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 430.4, filed Aug. 19, 1997 eff. Sept. 3, 1997; repealed, new added filed May 20, 2014 eff. June 4, 2014.*

#### **Section 429.5. Restrictions on dispositions**

(a) A work of art or historic object shall not be disposed of under this Part within 10 years of its acquisition by the State.

(b) A work of art or historic object that is undocumented may be disposed of under this Part between 10 and 20 years after acquisition by the State provided the disposition is first approved by a court of competent jurisdiction. The office shall attempt to notify the previous owner or heirs or legal representatives, however, this requirement shall be deemed waived if the office is unsuccessful after making reasonable efforts to locate and notify such persons.

(c) A work of art or historic object that is undocumented may be disposed of under this Part without court approval 20 years or more after its acquisition by the State.

(d) If disposal of a documented work of art or historic object is inconsistent with the terms or conditions of the instrument by which title was conveyed to the State, it may, nevertheless, be disposed of under this Part provided the disposition is first approved by a court of competent jurisdiction. The office shall attempt to notify the previous owner or heirs or legal representatives, however, this requirement shall be deemed waived if the office is unsuccessful after making reasonable efforts to locate and notify such persons.

(e) A work of art or historic object determined to be surplus under section 429.2(c) of this Part may be disposed of under this Part at any time after its acquisition without court approval.

*Sec. added by renum. 285.5, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 430.5, filed Aug. 19, 1997 eff. Sept. 3, 1997; repealed, new added filed May 20, 2014 eff. June 4, 2014.*

*Section 429.6. Proceeds from disposition*

Proceeds derived from the disposition of any property from the collections of the office shall be deposited into the state park infrastructure fund established pursuant to section 97-mm of the State Finance Law and shall be used only for the acquisition of collections or for the preservation, protection and care of the collections or both, including related capital projects.

*Secs. added by renum. 285.6, Title 6, filed Sept. 1971; repealed, filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new filed May 20, 2014 eff. June 4, 2014.*

*Section 429.7. Definitions*

(a) **Deteriorated beyond usefulness** means the work of art or historic object lacks significance and is in poor physical condition or has suffered a substantial loss of integrity and has no intrinsic historic, artistic, scientific or cultural value.

(b) **Disposal** means the removal of works of art or historic objects from the office through transfer, gift or sale; or the witnessed destruction of works of art or historic objects that have deteriorated beyond usefulness or are hazardous.

(c) **Surplus** means does not support a mission of the office and does not provide any current or future public benefit.

(d) **Witnessed destruction** means two qualified staff persons from the office's division for historic preservation:

- (1) document the work of art or historic object;
- (2) make the appropriate finding or findings under section 429.2(c) of this Part;
- (3) determine the work of art or historic object cannot be reconstituted or does not merit extraordinary remediation or conservation efforts;
- (4) witness the destruction and disposal or the transfer for disposal; and
- (5) make and keep on file sworn and notarized affidavits outlining the findings, determination and process.

*Secs. added by renum. 285.7, Title 6, filed Sept. 1971; repealed, filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new filed May 20, 2014 eff. June 4, 2014.*

**New York State Agencies with Collecting Ability**

The following state agencies that are offered approved deaccessioning candidates:

- New York State Museum (State Education)

Upon the declination of NYS Museum of offered material(s), the following state agencies will be offered approved deaccessioning candidates:

- Division of Military & Naval Affairs (DMNA);
- Capital Collections (Office of General Services);
- New York State Library (State Education);
- New York State Archives (State Education)