



# Invitation for Bid

## Amendment 1

<b>Title:</b> <b>West River Shoreline Enhancement</b>	
<b>Contract Period/Term:</b> Three year term upon OSC approval; approximately 12/1/2022 through 11/30/2025	<b>Number:</b> C003620

### Designated Contact(s) & Bid Submission Address

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### IFB Timeline

Action	Date/Time
IFB Release	08/15/2022
Site Visit Registration Deadline	09/06/2022 C.O.B.
Mandatory Pre-Bid Site Visit	09/07/2022 11:00 AM ET
Questions Deadline	09/14/2022 3:00 PM ET
Questions Response	Approximately 09/21/2022
Bids Due	10/05/2022 3:00 PM ET
Tentative Award	Approximately 10/19/2022
Contract Start Date	Approximately 12/01/2022

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# Key Points

- **Read this document and associated attachments in their entirety.**

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

- **The Pre-Proposal Site Visit is MANDATORY.**

Interested Bidders must attend the Pre-Proposal Site Visit (See Section 1.4 Pre-Proposal Site Visit) to be eligible to submit a bid in response to this IFB.

- **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.

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

These are the only individuals that you are permitted to contact regarding this procurement 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.

- **Take advantage of the Question and Answer Period.**

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 timeline on the front page of this document. 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 2.1 Questions/Inquiries*.

- **Review this document and your proposal.**

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

- **Package your proposal as required.**

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 2.9 Submission Requirements*.

- **Submit your proposal on time.**

Except as specified in *Section 3.4*, proposals received after the date and time in the IFB Timeline will not be considered for award and may be returned, unopened, to the sender.

## 1. IFB Requirements

It is the intent of this solicitation to seek a vendor to provide all necessary services and/or commodities. Bidders shall provide proposals which meet mandatory requirements of this IFB.

### 1.1 Agency

The mission of the New York State Office of Parks, Recreation and Historic Preservation (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.

### 1.2 Overview / Purpose

Project involves the chemical treatment of specified invasive species along a 6-mile publicly owned recreational shoreline trail, with follow up treatments for two additional years. Work also includes restoration activities such as dispersing seed mixes and installing shrubs and trees in designated areas. Invasive species are a continual threat to ecological biodiversity and are outcompeting state threatened and other native plant species along this riparian habitat. Additionally, this work would enhance recreational aspects by improving views of the Niagara River from the trail.

### 1.3 Minimum Requirements

OPRHP is seeking bids from experienced companies with the personnel, facilities, and organization to meet the demands of a contract of this scope. Bidders shall comply with the laws of the State of New York and shall possess or obtain any required licenses, permits, or authorizations.

To be deemed qualified and responsive, bidders must meet the following minimum requirements:

- Using Attachment 10 - References, provide three (3) satisfactory client references for whom the Bidder has performed services similar to those defined in this IFB in the past five (5) years. Bidders should list at least 3 (three) similar projects they completed and should include the following: Project Name, Project Location, Project Dates (Start / End), and a brief description of the work that was done.
- Evidence supporting at least two (2) consecutive years of prior experience, within the past five (5) years, in the business of invasive species and landscape management.
- Must demonstrate employee(s) to perform herbicide application are New York State Department of Environmental Conservation (DEC) Certified Commercial Pesticide Applicators in Category 3A with copy of certification(s) to be included with bid.

References will be independently verified by OPRHP and will be scored on a pass/fail basis. If a Bidder's reference results in a fail, the bidder will be removed from further consideration.

## 1.4 Pre-Proposal Site Visit

A **MANDATORY** Pre-Proposal Site Visit will be held at:

Beaver Island State Park  
2136 Oakfield Rd.  
Grand Island, NY 14072

The Site Visit will be held on the date and time indicated in the IFB Timeline with a Rain Date the next business day. If it is necessary to utilize the Rain Date, all vendors on the Bidders List will be notified via e-mail as soon as possible.

Attendance at the Pre-Proposal Site Visit is **MANDATORY**. Interested Bidders should notify the designated contact by the date/time indicated in the IFB Timeline to indicate their intent to join the Pre-Proposal Site Visit.

## 1.5 Service Requirements

The project site spans the West River Shoreline Trail on Grand Island, running from the southernmost point at the intersection at Alt Boulevard to the northernmost point at the coordinates 43°02'49.6"N 79°00'03.3"W. (Figure 1, Exhibit B). This project involves the control of the following invasive species: buckthorn (*Rhamnus cathartica* & *Frangula alnus*), honeysuckle (*Lonicera* spp.), Japanese barberry (*Berberis thunbergii*), multiflora rose (*Rosa multiflora*), autumn olive (*Elaeagnus umbellata*), privet (*Ligustrum* spp.), common reed (*Phragmites australis*), and European black alder (*Alnus glutinosa*). Invasive species control will involve manual and chemical means.

### 1.5.1 Invasive Species Information

The total project site is 40 acres stretched across 6 miles of the West River Shoreline Trail, while the total acreage of invasives species to be treated is 30.71 acres. Table 1 contains the species to be targeted, total acreage of each species throughout the site, and the average percent cover. Exhibit B – Invasive Treatment Maps includes cover type maps which identify the treatment locations and estimated total project area.

**Table 1. Invasive Species along the West River Shoreline**

Species	Area (acres)	Average % Cover
<i>Rhamnus cathartica</i> (Common buckthorn)	23.37	6-50%
<i>Rosa multiflora</i> (Multiflora rose)	4.00	6-25%
<i>Alnus glutinosa</i> (European alder)	2.02	6-25%
<i>Lonicera maackii</i> (Amur honeysuckle)	0.45	0-25%
<i>Frangula alnus</i> (Glossy buckthorn)	0.38	0-25%
<i>Ligustrum vulgare</i> (Chinese privet)	0.34	0-25%
<i>Elaeagnus umbellata</i> (Autumn olive)	0.12	6-25%
<i>Phragmites australis</i> (Common reed)	0.02	26-50%
<i>Berberis thunbergii</i> (Japanese barberry)	0.01	0-5%

### 1.5.2 Control Methods

**Cut Stump/Stem Method:** The Contractor shall provide and apply diluted herbicide directly to the stems of target species that have been freshly cut to a height of 2" or flush with the ground using clippers, brush saws or other hand tools (i.e., no tractors or riding mowers). Herbicide shall be applied in an approved, per the product label, diluted concentration (mixed) into the stem cavity or on the cut stump using a backpack sprayer or dabber tool.

**Backpack Spray Application:** The Contractor shall provide and utilize an herbicide, registered by the U.S. Environmental Protection Agency and/or New York State for use in aquatic applications and diluted in accordance with the manufacturer's label, in a pressurized backpack application unit. Herbicide will be selectively applied to the leaves of target species, under low pressure, and at a close distance. In order to avoid impacts to nontarget species, application shall take place on low-wind days using flat-fan nozzles. Backpack sprayers shall not be used under windy conditions where there is an increased potential for drift when compared to the cut-stem or wicking techniques.

**Hand Wicking:** The Contractor shall provide and apply diluted herbicide directly to target plant stems by wiping them with a cotton wicking glove worn over a chemical resistant glove. Herbicide formulations must follow mixing instructions provided on the product label. This method will be used on scattered or isolated stems of common reed, or when trying to avoid impacts to non-target species. While hand wicking can be an effective form of control, it is not recommended for large patches and/or dense patches.

### 1.5.3 Specific Treatment Approach

The aforementioned control methods are utilized in four categories of treatment: Woody Invasive Approach 1, Woody Invasive Approach 2, Common Reed Approach 1, and Common Reed Approach 2. Each method is described in detail below. The Contractor is directed to use the specified treatment approach as the primary means of control at each treatment location. However, it is important to note that each treatment location may require more than one approach depending on the invasive species presence.

**Woody Invasive Approach 1:** The Contractor shall treat all woody invasive species such as honeysuckle, buckthorn, multiflora rose, autumn olive, European black alder and Japanese barberry using the cut stem method with herbicide application for invasive stems. Cut stump applications shall occur within two timeframes. Timeframe 1, which occurs between November 1st and December 31st of any year, the Contractor will not need prior approval from Parks staff to perform necessary work relevant to nesting bird and bat restrictions. Timeframe 2, which occurs January 1st to October 31st of any year, the Contractor will need to verify with an approved subcontractor or with the regional biologist that no nesting birds or bats are within the designated area of treatment, prior to said treatments occurring. Contractor will mechanically chip any woody debris greater than 2 feet in length, or as directed by State Parks to reduce debris piles and dispose of any generated wood chips at an off-site location. Chipped material becomes the property of the contractor who is responsible for off-site disposal location.

**Woody Invasive Approach 2:** The Contractor shall treat woody invasive species such as honeysuckle, buckthorn, multiflora rose, autumn olive, and Japanese barberry by using a backpack sprayer using a foliar herbicide application, for follow up applications or on small seedlings that cannot be treated by Woody Invasive Approach 1. Foliar herbicide application would occur between early-mid September to mid-November.

**Common Reed Approach 1:** The Contractor shall initially treat the one stand of common reed by using a backpack sprayer using a foliar herbicide application followed by mechanical cutting. Foliar herbicide application would occur between early-mid September to mid-November before plant senescence followed by mechanical cutting in late fall. Contractors are responsible for cutting standing dead material in fall/winter.

**Common Reed Approach 2:** The Contractor shall treat low density common reed resprouts and saplings using the cut stem or hand wicking method of herbicide application. Following this chemical treatment, a late fall cutting of the standing plant material shall be required.

#### 1.5.4 Schedule

The Contractor shall commence invasive species treatment and restoration activities for the West River Shoreline Enhancement Project based on the graphic provided (Exhibit C, Table 2). Table 2 outlines the schedule of treatment for control for each month during the scope of the project. The project is separated into a yearly tentative treatment schedule based on anticipated needs and best management practices.

#### 1.5.5 Restoration

Anticipated landscape is aimed at restoring natural areas and providing scenic views of the river to park patrons. Restoration planting shall occur in congruence with invasives species treatment and removal efforts. Planting densities and locations shall be determined by the Owners representative post-invasive species treatments and approved by the Owner's representative prior to installation. The Contractor shall furnish and install the species, plant sizes, and quantities listed on the "Plant List" table (see below). Tree and shrub planting should occur between April 15 and June 15 or August 15 and November 30<sup>th</sup>; and seeding should occur during October and into to November based on the proposed timeline schedule. The Contractor is responsible for mulching, pruning, and watering all planting material. The Contractor shall commence any temporary erosion and sedimentation control where necessary to prevent soil erosion and discharge of soil-bearing water runoff to adjacent properties or waterways. Additional information regarding planting activities or maintenance can be found in the Exhibit A - Technical Specifications.

Plant List

Botanical Name	Common Name	Size	Density	Quantity
<b>Trees</b>				
Acer rubrum	Red Maple	No. 7 Container	6 per acre	186
Carpinus carolina	American Hornbeam	No. 7 Container	4 per acre	124
Carya ovata	Shagbark Hickory	No. 7 Container	4 per acre	124
Celtis occidentalis	Hackberry	No. 7 Container	6 per acre	186
Liquidambar styraciflua	Sweetgum	No. 7 Container	4 per acre	124
Quercus bicolor	Swamp White Oak	No. 7 Container	6 per acre	186
<b>Total:</b>			<b>30 trees per acre</b>	<b>930 trees</b>
<b>Shrubs</b>				
Clethra alnifolia	Summersweet	No. 2 Container	43 per acre	1333
Cornus sericea	Redosier Dogwood	No. 2 Container	35 per acre	1085
Diervilla lonicera	Bush Honeysuckle	No. 2 Container	54 per acre	1674
Physocarpus opulifolius	Ninebark	No. 2 Container	35 per acre	1085
Vaccinium angustifolium	Lowbush Blueberry	No. 2 Container	43 per acre	1333
<b>Total:</b>			<b>210 shrubs per acre</b>	<b>6,510 shrubs</b>

*Plant List continued on next page.*

Botanical Name	Common Name	Size	Density	Quantity
<b>Seed Mix</b>			Application Amount	Acreage
Quick Erosion Control Cover Mix by Ernst Seed or approved equal			50 lbs. per acre	Up to approx. 31 acres
Mix Composition				
(50.0%) Lolium multiflorum	Annual Ryegrass			
(50.0%) Lolium perenne, 'Blackstone'	Perennial Ryegrass, 'Blackstone'			

Plant List Note: No substitutions shall be allowed unless proper justification of plant material availability is provided and approved by the Owner's representative.

#### 1.5.6 Documentation and Communications

The Contractor shall obtain all applicable permits associated with herbicide application for this project. Payment of the permit application fee to the DEC will be the responsibility of the Contractor. The Contractor also shall complete standard DEC forms to document the application of herbicides and will provide completed forms to OPRHP in both hardcopy and electronic format (PDF format) within 3 weeks of treatment.

Contractor must provide OPRHP with representative digital photographs (.jpg format), including photographs of each treatment area before and after each treatment event, representative action photos (cutting, spraying, hand wicking, mixing), and representative photos in general. The Contractor must provide a list of photo numbers, with associated captions and acquisition date. Photos and their index information must be provided with each payment request capturing services performed during the payment request's period of service. The Contractor must inform OPRHP of its intended schedule before any work begins. While it is recognized that rain, wind, and other variables may cause schedules to be adjusted, the Contractor must inform OPRHP of changes to their intended schedule one week in advance. The Contractor must also communicate with the Owner's Representative to coordinate with any other concurrent projects in the park.

#### 1.5.7 Access and Safety

Property access to the sites is by car/truck. All vehicles and equipment must have the Contractor's name visible. The treatment areas along the West River Trail are accessible from paved walking paths. Contractors are not permitted to park or drive on Park trails or lawns. Gaining access to the trail shall be coordinated with the park manager and staff, as bollards may need to be removed. Parking access will be available during daylight hours. No equipment should be left overnight. The Contractor is solely responsible for site safety. All operations shall be conducted in a safe manner and in accordance with all applicable State and Federal Safety Regulations. The Contractor shall establish and maintain all measures as required to ensure site safety.

The Contractor's Site Supervisor or competent person is responsible for enforcing site safety and ensuring that all measures are in place and being maintained as required to promote site safety, including submission of a project specific Health and Safety Plan prior to commencing any work on site. Contractors must provide adequate traffic and pedestrian safety materials for any park road and trail obstructions in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). Contractor employees will be required to wear high-visibility clothing when working on Park property. Additionally, Contractors must provide the Owner's Representative with all Emergency Contact information.

#### 1.5.8 Applicator Certification, Herbicide Selection and Handling

The Contractor is responsible for adhering to all Federal, State, and local regulations pertaining to the purchase, transport, application, and disposal of herbicides. The herbicide applicator shall be a NYSDEC

Certified Commercial Pesticide Applicator. In planning the use of herbicides to control invasive species, the Contractor and Certified Pesticide Applicator shall ensure that herbicides used are labeled for the target species- through the pesticide label or through the unlabeled pest process, as provided in Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 2(ee). NYS regulations require that herbicide concentrations follow the manufacturer's specifications provided on the product label. At no time should these mixing instructions be modified, unless the manufacturer develops supplemental labeling materials approved by the State. **Contractor shall be responsible for all public notification and posting requirements.**

As of December 31st, 2021, a recent amendment to the Environmental Conservation Law bans any state department, state agency, public benefit corporation or any pesticide applicator employed as a contractor or subcontractor to apply glyphosate on state property. However, there are exemptions to this ban to maintain critical infrastructure, manage roadside vegetation to ensure public safety, for the control of invasive species and pests of significant public health importance, and for research purposes. **Until documentation processes have been finalized, Parks is continuing the ban of glyphosate on its property regardless of exemption status.** All herbicides recommended by Contractors must follow these new requirements.

#### *1.5.9 Work Restrictions*

Summarized work restrictions can be found below; however, Contractor must adhere to all IFB specifications, including those outlined within Exhibit A – Technical Specifications.

- A. Comply with restrictions on construction operations.
  - 1. Comply with limitations on use of public streets, work on public streets, rights of way, and other requirements of authorities having jurisdiction.
- B. On-Site Work Hours: Limit work to between 7 a.m. to 4 p.m., Monday through Friday, unless otherwise indicated. Work hours may be modified to meet Project requirements if approved by Owner and authorities having jurisdiction.
  - 1. Weekend and holiday hours are not permitted unless Owner grants permission. Permission must be requested not less than two days in advance.
- C. Smoking and Controlled Substance Restrictions: Use of tobacco products, alcoholic beverages and other controlled substances on Project site is not permitted.

#### *1.5.10 Miscellaneous Requirements*

All the treatment locations identified are located on public lands. No work shall take place in the park on weekends and NY State and Federal holidays to avoid work during periods of high public use. If the Contractor has the desire to work on a weekend or holiday, it must be cleared with the Owner's Representative at least one week in advance.

#### *1.5.11 Protection of Existing Facilities*

Protect existing native vegetation, equipment, structures, utilities, and other improvements at Project site and on adjacent properties, except those indicated to be removed or altered. The Contractor shall clean and restore each work site and ingress/egress road corridors to original shape and condition upon completion of each treatment event, as well as repair damage that may be incurred during the course of work to existing facilities to original or better condition. This includes, but is not limited to: trails, roads, parking areas, etc.

#### *1.5.12 Environmental Protection*

Provide protection, operate temporary facilities, and conduct treatments as required to comply with environmental regulations and that minimize possible air, waterway, and subsoil contamination or pollution or other undesirable effects. The Contractor is responsible to assure that his personnel abide by all applicable environmental regulations, including but not limited to Federal, State, and local rules governing pollution and the protection of plants and animals. Precautions shall be taken to avoid and limit negative effects to neighboring vegetation from wind drift or handling herbicides, fuel, or other hazardous materials. Contractor



must follow permit conditions such as applying herbicide during low wind conditions, and not during rain or prior to forecasted rain.

### 1.5.13 Protected Species

The project area includes known populations of a NYS protected herbaceous species. Consultation and protection of said species shall be coordinated with the Owner's Representative & Regional Biologist prior to treatments or restoration occurring.

## 1.6 Glossary

Term	Description
Agency	New York State Office of Parks, Recreation and Historic Preservation (OPRHP).
Agency Staff	An employee of OPRHP who an authorized user (Administrative, Facility, Researcher) of the system is.
OPRHP	Office of Parks, Recreation and Historic Preservation
Owner's Representative	OPRHP's point of contact for the services of this IFB.

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

## Appendices

## Appendix A – Standard Clauses for New York State Contracts

## Appendix B – General Specifications for OPRHP Contracts

Appendix C – Omitted

## Appendix D – Bid Protest Procedures

## Appendix E – OSC Consultant Disclosure Reporting Requirements

## Appendix F – Insurance Requirements

## Attachments

## Attachment 1 – Bid Form

## Attachment 2 – Lobbying Law Certification

## Attachment 3 – Non-Collusive Bidder Certification

Attachment 4 – Public Officers Law

## Attachment 5 – Encouraging Use of New York State Businesses in Contract Performance

Attachment 6 – NYS Finance Law §139-I and Executive Order No. 177 Certification

## Attachment 7 – Diversity Practice Questionnaire

## Attachment 8 – Vendor Responsibility Attestation

Attachment 9 – No Bid Form

## Attachment 10 – References

Attachment 13 – Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

FORM A State Consultation Services - Contractor's Planned Employment

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

## Exhibits

## Exhibit A – Technical Specifications

Exhibit B – Invasive Treatment Maps

Exhibit C – Proposed Project Schedule

**1.8 Downstream Prohibition**

Any entity, contractor (or sub-contractor) involved with OPRHP for the development of specifications related to this project is not eligible to receive an award or subcontract with the contractor or any subcontractor in connection with this bid or subsequent award.

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## 2. Instructions to Bidders

### 2.1 Questions/Inquiries

Prospective Bidders will have an opportunity to submit written questions and requests for clarification regarding this Invitation for Bids (IFB). All questions regarding this IFB must be submitted via e-mail or mail and be received by the date and time specified in the IFB Timeline. Questions must reference the relevant page and section of the IFB and must be directed to the designated contact.

Questions submitted by Bidders should be printed or in a Word or Excel document in the following format:

No.	IFB Section	IFB Page	Vendor Name	Question
1	2.1	16	ABC Bidder Example	How should Q&As be formatted?

Prospective Bidders should note that all clarifications and exceptions, including those relating to the terms and conditions of the IFB, are to be resolved prior to the submission of a bid 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 IFB that would prohibit a Bidder from bidding. Bidders entering a contract with the State are expected to comply with all the terms and conditions contained herein.

Contacting individuals other than the designated contact listed above may result in the disqualification of the Bidder's proposal.

### 2.2 Procurement Lobbying Guidelines

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OPRHP and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OPRHP and, if applicable, the Office of the State Comptroller ("restricted period") to other than the Designated Contact(s) unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a).

Designated Contact(s), as of the date hereof, is identified above. OPRHP employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Information related to the Procurement Lobbying Law and guidelines can be found with in Attachment 2.

### 2.3 Response to Bidder Questions and Requests for Clarification

The Agency 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 to the Agency-maintained Bidders List.

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

#### 2.4.1 "No Bid" Submission

If you do not intend to bid on this procurement, please complete Attachment 9 - No Bid Form and send to the designed contact address listed on the cover of this IFB.

### **2.4.2 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 requesting such to the designated contact listed on the cover of this IFB.

## **2.5 Method of Award**

In the sole discretion of OPRHP, the award of the contract will be made to a responsive, responsible and qualified bidder who offers the lowest Grand Total bid to perform work as outlined in these specifications. The successful bidder will be found non-responsible if OPRHP finds that he/she does not have sufficient resources.

Written notification of OPRHP's selection will be furnished to all responding bidders, and a final contract shall be mailed or delivered to the recommended awardee. If the selected bidder fails to execute and return the contract to OPRHP within the time allotted, OPRHP reserves the right to reject the selected bidder's bid and select the next lowest responsible bidder that will best promote the public interest. If all bids are rejected, each solicited bidder will be so notified.

## **2.6 Public Building Law § 8(6)**

Not applicable to this IFB.

## **2.7 Contract Signing and Contract Term**

The Agency intends to award one, three-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 term will commence upon the date of OSC approval.

## **2.8 Form of Bids**

The Attachment 1 - Bid Form shall be completed in ink. The grand total bid amount must be shown in numeric form. Bidders may elect to submit either a hardcopy bid or a scanned copy of the original signed bid via e-mail.

All bids must be received at or before the time specified and at the place designated for the bid opening. A late bid will not be eligible for consideration unless no bids were received when due.

All bids and accompanying documentation submitted in response to this IFB will become the property of OPRHP and will not be returned. The resulting contract will include a copy of the specifications and the successful Bidder's Bid.

Bid submissions MUST be addressed to the designated contact listed on the cover page of this IFB.

### **2.8.1 Hardcopy Bids**

The bid shall be submitted in a sealed envelope marked in the lower left-hand corner with the following information:

PROPOSAL ENCLOSED IFB C003620 West River Shoreline Enhancement Proposal Submission Due October 5, 2022, 3:00 PM EST
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### **2.8.2 E-Mail Bids**

The bid shall be submitted via e-mail to [ServiceContracts@parks.ny.gov](mailto:ServiceContracts@parks.ny.gov) with the subject of the e-mail clearly marked with the following information:

Proposal Enclosed - IFB C003620 – West River Shoreline Enhancement - Due 10/05/22 3:00 PM EST

## **2.9 Submission Requirements**

### *2.9.1 Cover Letter and Attachments*

A. A Statement of Experience which, at a minimum, must include the following information:

- The business name of the bidder and the legal entity under which the quote is being submitted.
- The number of years the bidder has been providing services under the present business name.
- Any other name(s)/business entity (entities) under which the bidder has conducted similar business and the number of years' services were provided under that/those name(s).
- The Bidder shall provide the NYSOPRHP a copy of any herbicide product labels they intend to use and shall include the product name, rate of application, and EPA registration number.
- Bidders shall provide a brief statement of their qualifications and experience in performing services similar in scope and size to those contained in these specifications.

B. The information requested in *Section 1.3, Minimum Requirements* of this document.

### *2.9.2 Completed Forms*

- Attachment 1 - Bid Form
- Attachment 2 - Lobbying Law Certification
- Attachment 3 - Non-Collusive Bidding Certification
- Attachment 4 - Public Officers Law Form
- Attachment 5 - Encouraging Use of New York State Businesses in Contract Performance
- Attachment 6 - NYS Finance Law §139-I and Executive Order No. 177 Certification
- Attachment 7 Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement
- Attachment 8 - Vendor Responsibility Attestation
- Attachment 10 – References
- Attachment 13 – Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia
- Form A: State Consultation Services - Contractor's Planned Employment

## **2.10 Tie Bids**

In the event there is a tie in the Grand Total Bid, Final determination will be made by the Commissioner of OPRHP

## **2.11 Modification or Withdrawal of Bids**

Bid modifications that are submitted in writing and signed by an authorized representative of the bidding firm will be considered for award if received at the place of the bid opening any time prior to the scheduled bid opening. Bids may be withdrawn or cancelled prior to the scheduled bid opening. A bid may be rejected by OPRHP: if it shows any alteration of terms, conditions or requirements; for any other irregularities; if it is incomplete, or if it offers an alternate bid not invited by the specifications.

### **3. Administrative Requirements**

With the submission of a response to this Invitation for Bid, the Bidder agrees to the proposal conditional outlined in this section.

#### **3.1 Issuing Agency**

This IFB is issued by the New York State Office of Parks, Recreation and Historic Preservation, which is responsible for all criteria stated herein and for evaluation of all bids submitted.

#### **3.2 Solicitation**

This IFB is a solicitation to bid, not an offer of a contract.

#### **3.3 Liability**

OPRHP/The State of New York is not liable for any costs incurred by a Bidder in the preparation and production of any proposal, or for any work performed prior to the execution of a formal contract.

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

By submitting a bid, 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 reserve the right to exercise the following:

- Change any of the scheduled dates herein;
- Amend IFB Requirement(s) after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all potential Bidders;
- Withdraw the IFB, 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 bids, in whole or in part, and to 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 Offerer's proposal and/or to determine an Offerer'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 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 IFB;
- 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 IFB 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 terminates the Contract for non-performance, 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 months of the award;
- Utilize any and all ideas submitted in the bids received;
- Make an award under the IFB in whole or in part; and
- Seek revisions of bids.

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 the Agency, a statement is intended to mislead the Agency in its evaluation of the bid, and the attribute, condition, or capability is a requirement of the IFB, the bid shall be disqualified from consideration.

### **3.5 Freedom of Information Law**

Your bid 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."

### **3.6 Bid Security**

Each Bidder's bid will be held in strict confidence by OPRHP/State of New York staff and will not be disclosed except to the Office of the Attorney General and the Office of the State Comptroller as may be necessary to obtain approvals of those agencies for the final Contract and except as required by law.

Public inspection of the bids is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The bids are presumptively available for public inspection. If this would be unacceptable to Bidders, they should apply to OPRHP for trade secret protection for their bid.

The public officers' code of ethics (Section 74 of the Public Officers Law) sets the standard that no officer or employee of a State agency shall disclose confidential information that he acquires during the course of his official duties. These standards control the confidentiality of a Bidder's bid unless OPRHP grants a petition for records access in accordance with the Freedom of Information Law.

Bidders should be advised that the confidentiality of their proposals is founded upon statute, as described above. A nondisclosure agreement, whether prescribed by OPRHP or the Bidder, would not alter the rights and responsibilities of either party under the Freedom of Information Law. Bidders should not propose a nondisclosure agreement for OPRHP employees, for that would be legally ineffective to alter any legal responsibility under the Freedom of Information Law or the code of ethics.

The provisions of the Freedom of Information Law will also govern the confidentiality of any and all products or services supplied by the successful Bidder.

### **3.7 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.

### **3.8 Bid Effective Period**

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

### **3.9 Bid Opening**

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

### **3.10 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 reserve 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 IFB.

### **3.11 Bid Evaluation and Selection**

See *Section 2.5, Method of Award*, regarding bid selection and evaluation methodology. Submitted bids may be reviewed and evaluated by any personnel or agents of OPRHP, other than one associated with a competing Bidder.

### **3.12 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.

### **3.13 Bid Review and Contract Approval**

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

### **3.14 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 listed on the cover of this IFB. The debriefing will be scheduled within ten (10) business days of receipt of written request by OPRHP or as soon after that time as practicable under the circumstances.



### **3.15 Bid Protest Procedure**

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

### **3.16 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, OPRHP may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

### **3.17 Conformance to IFB**

Any exceptions or objections to the terms, conditions, and requirements of this IFB are governed by, and to be submitted in accordance with *Appendix B, Section 10, Extraneous Terms*. Bidders are cautioned that any such exceptions or objections may render their bid non-responsive.

### **3.18 Encouraging use of New York State Business 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.

### **3.19 Bidder Assurances**

The Bidder warrants that it has carefully reviewed OPRHP's needs as described in the IFB 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 IFB 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 IFB 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.

### **3.20 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>. 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).

### **3.21 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 (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 [www.tax.ny.gov](http://www.tax.ny.gov).

ST-220-CA [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

ST-220-TD [https://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

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## **4. Contractual Requirements**

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

### **4.1 Appendix A Standard Clauses for New York State Contracts**

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

### **4.2 Appendix B General Specifications for OPRHP Contracts**

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

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

Not Applicable to this IFB.

### **4.4 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:

- A. Appendix A Standard Clauses for New York State Contracts
- B. Appendix B General Specifications for OPRHP Contracts
- C. Executed Agreement
- D. IFB, including all other associated Appendices, Attachments, Addenda and Questions and Answers
- E. Contractor's Bid in Response to the IFB

### **4.5 Procedures for Amendments**

See *Appendix B, Section 31, Modification of Contract Terms*.

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.

### **4.6 Conflict of Interest**

The Contractor will be responsible for establishing procedures to identify potential conflicts of interest. If during the term of this Agreement, and any extensions thereof, the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest, the Contractor shall immediately notify the State in writing and disclose the nature of the potential conflict of interest in the manner prescribed by the State. The State will have sole discretion in evaluating the nature of the identified conflict of interest and will make the final decision regarding its resolution.

#### **4.7 Litigation Support**

In the event that the Agency 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.

#### **4.8 Interpretation & Disputes**

Any dispute arising from this IFB, or from any resulting contract, shall be submitted in writing within seven (7) business days after the issuance of the award recommendation letter, to the Designated Contact provided on the cover of this IFB.

#### **4.9 Indemnification**

The Contractor agrees to indemnify, defend, save, and hold harmless the State of New York, OPRHP, and their officers, employees and agents of and from any claims, demands, actions, or causes of action of any kind arising out of the services of the Contractor provided for in this agreement.

#### **4.10 Equal Employment Opportunities**

- 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 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.

#### **4.11 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 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.

#### 4.12 Payment Requirements

The Contractor's compensation will be based on the Contractor's response to this IFB.

Payment requests shall be submitted by the Contractor on forms mutually agreed upon by the Contractor and OPRHP 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.

OPRHP 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 OPRHP, and OPRHP may subtract such fees from any payments that later become due to the Contractor under the Contract.

Payment shall be made as follows:

- A. 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.
- B. Invoices should be submitted for services rendered and for acceptance by OPRHP on a monthly basis to the following designated payment office:

By email: [Jillian.Harris@parks.ny.gov](mailto:Jillian.Harris@parks.ny.gov)

By USPS: Jillian Harris

3160 DeVeaux Woods Dr.

Niagara Falls, NY 14305

- C. 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.
- D. 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.

#### 4.13 CPI Price Adjustments

On each anniversary date of the Contract, the Contractor may request a rate change (increase or decrease) based upon the fluctuation in the latest published copy of the Consumer Price Index that is applicable to this service (all urban consumers, Northeast region, not seasonally adjusted, all items, <https://data.bls.gov/cgi-bin/surveymost?cu>, Northeast Region All Items, 1982-1984=100 - CUUR0100SA0).

This index is published monthly by the US Bureau of Labor Statistics and posts statistics that include the preceding twelve (12) months service period. Some contract rates may not change; however, increases or decreases will be based on the applicable CPI and may not exceed 5% of the contract rate paid during the prior term. The percentage change from 12 months prior for any goods or services listed in the CPI will be used to calculate the applicable rate increase or decrease.

Ninety days prior to the anniversary date, the contract rate will be reviewed using the CPI as a cost basis. The percentage change in price from the 15 months prior to the anniversary date will be used to calculate the applicable contract rate.

For example, if the anniversary date of the contract is April 1, 2020, the January 2020 CPI would be compared to the January 2019 CPI to calculate the rate. If the CPI lists a price that has risen in the prior 12 months, the contract rate may be adjusted by that percent change.

##### Sample Calculation

CPI for January 2020	262.188
Less CPI for January 2019	258.073
Equals index point change	4.115
Divided by previous period CPI	0.016
Result multiplied by 100 = Rounded Percent Change	1.57

The Contractor is solely responsible for notifying OPRHP that the Contractor wishes to receive the CPI rate change and to submit a request in writing to OPRHP at [ServiceContracts@parks.ny.gov](mailto:ServiceContracts@parks.ny.gov) for the adjusted rate on the contract anniversary date.

Should the Contractor fail to make a written request to OPRHP at [ServiceContracts@parks.ny.gov](mailto:ServiceContracts@parks.ny.gov) within ninety (90) days after the applicable anniversary date, the Contractor shall be deemed to have waived its right to any increase in price for that year, but OPRHP shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

CPI rate adjustments made pursuant to this section should only pertain to non-labor items (i.e., supplies and materials) or labor rates not covered under IFB Section 4.20 Prevailing Wages / Payroll Certification (if applicable).

#### 4.14 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, Subcontractors 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.



#### **4.15 Diesel**

Contractor certifies and warrants that all heavy-duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used under this Contract will comply with the specifications and provisions of ECL section 19-0323, as well as any regulations promulgated pursuant thereto, including NYCRR Part 248; which, requires the use of Best Available Retrofit Technology (BART) and Ultra-Low Sulfur Diesel (ULSD) fuel.

#### **4.16 Advertising**

The Contractor agrees not to use the Agency's name, 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 by OPRHP.

#### **4.17 Termination Provisions**

In addition to the provisions for termination set forth in Appendix B, Section 51, Termination, the following apply:

##### *4.17.1 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.

##### *4.17.2 Termination Pursuant to Tax Law §5-a*

the Agency 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, the Agency may exercise its termination right by providing written notification to the Contractor.

##### *4.17.3 Termination Pursuant to Vendor Responsibility (for Non-Responsibility):*

Upon written notice to the Contractor and a reasonable opportunity to be heard with appropriate OPRHP 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.

#### **4.18 Vendor Responsibility Provisions**

The State must conduct business only with responsible entities.

##### *4.18.1 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.

##### *4.18.2 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.

#### **4.19 Insurance Requirements**

OPRHP insurance requirements are set forth in *Appendix F, Insurance Requirements*.

#### **4.20 Prevailing Wages / Payroll Certification**

The work under this contract has been determined to be a public work pursuant to Article 9 of the New York Labor Law. That law requires prevailing wages to be paid. A willful violation of such may result in civil penalties and debarment from public contracting in the State of New York.

The applicable Prevailing Wage Rate Schedule for this bid and subsequently awarded contract is:

Prevailing Wage Schedule	
PRC Number	2022008782
Scheduled Period	7/1/2022 – 6/31/2023
Link	<a href="https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&amp;id=1536345">https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&amp;id=1536345</a>

OPRHP reserves the right to request that payroll certification reports be submitted with each invoice. Failure to provide this requested documentation shall result in non-payment of invoices. Additional requirements can be found in the Prevailing Wage Rate Schedule.

#### **4.21 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.

#### **4.22 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.

Unless otherwise provided within, 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.

#### **4.23 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.

#### **4.24 Travel, Meals and Lodging**

Not applicable to this IFB.

#### **4.25 Damages**

It is the Contractor's responsibility to replace or repair any property lost or damaged in the course of performing the contract through no fault of OPRHP. If, during the term of the contract, loss or damage to property occurs through no fault of OPRHP, OPRHP has the right to withhold monies from the Contractor equivalent to the costs of the loss or damage sustained until the property is returned by the Contractor to the condition immediately preceding the loss or damage, either by repair or replacement. OPRHP will not be liable for any deductible through any claim and retains the right to inspect and reject insufficient repairs.

#### **4.26 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.

#### **4.27 Additional Consultant Hours**

Not applicable to this IFB.

#### **4.28 Vehicles**

Vehicles to be used in the performance of this service will be clearly marked as property of the Contractor, and will travel to and from the service areas strictly in accordance with the directions and/or maps furnished by park staff.

#### **4.29 Retainage**

A 10 percent retainage provision has been included with this IFB. OPRHP will retain 10 percent of each payment request until Contract has achieved final completion and ultimate acceptance by OPRHP. Upon OPRHP's determination of Final Acceptance in accordance with Exhibit A for all work areas, Contractor shall submit a payment request for the OPRHP-retained payment amount.

#### **4.30 Kickoff Meeting**

After contract award, the Contractor must 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 five (5) business days to review and provide comments/corrections.

#### **4.31 Ongoing, Bi-Weekly Progress Meetings**

The Contractor must 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.

Owner's Representative shall prepare Meeting Minutes and circulate to the project team.

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.

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# Appendix A - Standard Clauses for New York State Contracts

October 2019

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the 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

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  
<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.

**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

## 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 discontinues 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

## **Appendix D - Bid Protest Procedures**

It is the policy of the Office of Parks, Recreation and Historic Preservation (OPRHP) to provide bidders with an opportunity to administratively resolve disputes or inquiries related to OPRHP contract awards. Bidders are encouraged to seek resolution of disputes through consultation with the Designated Contact(s). After being notified of the results of this contract opportunity, any entity or individual that participated in the procurement may submit a protest of the resulting contract award.

OPRHP reserves the right to suspend, modify, or cancel this procurement at any time during the procurement process. OPRHP also reserves the right to waive or extend the deadlines in this procedure.

### **Submission of Formal Written Protests**

Protests must be received by the Designated Contact no later than five (5) business days after a debriefing or ten (10) business days after the written notice of selection or non-selection for contract award, whichever is later.

Protests must be submitted in writing, clearly marked as a protest on the envelope or in the email subject line, and include the following information:

1. Solicitation or contract number
2. Name, address, email address and telephone number of the filer
3. Detailed statement of the legal and factual grounds for the protest
4. Statement of the relief requested
5. Copies of relevant documents

### **Agency Response**

Within 30 business days of receipt of a protest, OPRHP's protest officer (the Director of Audit or her designee) will respond with a protest determination stating the agency's decision on the protest and the reasoning on which it is based. In making a determination, the protest officer will consider the legal and factual grounds stated in the protest, consult with the Designated Contact and appropriate program staff, and review all relevant documents.

### **Finality; Appeal**

For contract opportunities subject to the approval of the Office of the State Comptroller, the protesting party may appeal OPRHP's protest determination to the Office of the State Comptroller in accordance with the regulations contained in Part 24 of Title 2 of the New York Codes, Rules and Regulations.

For contract opportunities that are not subject to the approval of the Office of the State Comptroller, OPRHP's protest determination is the conclusive and final determination of the protest.

Nothing in these bid protest procedures is intended to limit or impair the rights of any bidder to seek and pursue remedies of law through the judicial process.

# 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 OPRHP (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 OPRHP as the contracting agency, and Form B must be submitted to OPRHP (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 below 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 OPRHP (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 OPRHP (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 OPRHP (as the contracting Agency):**

By mail: Director of Procurement and Diversity Compliance  
Procurement and Diversity Compliance Unit  
Office of Parks, Recreation and Historic Preservation  
625 Broadway  
Albany, NY 12207

By email: [ServiceContracts@parks.ny.gov](mailto:ServiceContracts@parks.ny.gov)

#### **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

## Appendix F – Insurance Requirements

Prior to the start of this Agreement, the Contractor shall procure, at its sole cost and expense, all insurance coverage required by this Appendix. During the term of this Agreement, the Contractor shall maintain in force any and all policies of insurance required by this Appendix.

All policies of insurance required by this Appendix 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 ("Authorized Carriers") with an A.M. Best Company rating of "A-" Class "VII" or better. If during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Office of Parks, Recreation and Historic Preservation (OPRHP) and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OPRHP evidence of such policies in a form acceptable to OPRHP. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OPRHP does not and shall not be construed to relieve Contractor of any obligations, responsibilities, or liabilities under any contract resulting from this solicitation.

All policies of insurance required by any contract resulting from this solicitation must meet the following requirements:

- All required policies of liability insurance, with the exception of Professional Liability insurance, shall be endorsed to name the "State of New York, Office of Parks, Recreation, and Historic Preservation, and their officers, employees, and agents" as an additional insured.
- Forms shall be 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.
- Forms shall be signed by an authorized representative of the reference insurance carriers.
- 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.
- Forms shall refer to the contract number resulting from the solicitation.
- Upon renewal of insurance coverage, the Contractor shall submit to OPRHP current proof of insurance.
- All required policies, with the exception of Professional Liability, shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State.
- If the policy is written on a claims-made basis, Contractor must submit to OPRHP an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.
- All required policies shall be written such that OPRHP is afforded at least thirty (30) calendar days' prior notice of cancellation, modification or renewal of coverage.
- 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) business days from the Contractor's receipt of notice of the accident or claim.

OPRHP generally requires Contractors and subcontractors to submit only certificates of insurance and additional insured endorsements, although OPRHP reserves the right to request other proof of insurance. Contractors and subcontractors should refrain from submitting entire insurance policies, unless specifically requested by OPRHP. If an entire insurance policy is submitted but not requested, OPRHP shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OPRHP does not constitute proof of compliance with the insurance requirements and does not discharge Contractors and subcontractors from submitting the requested insurance documentation.

**Waiver of Subrogation**

For all liability policies and the Workers' Compensation insurance required below, with the exception of Professional Liability, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of Parks, Recreation and Historic Preservation and their officers, agents, and employees, or, if such waiver is unobtainable:

- an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of Parks, Recreation and Historic Preservation and their officers, agents, and employees; or
- any other form of permission for the release of The People of the State of New York, the New York State Office of Parks, Recreation and Historic Preservation and their officers, agents, and employees.

A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

**Subcontractors**

Contractor shall require any of its subcontractors retained in relation to this Agreement to meet the requirements of this Section, including but not limited to naming the "State of New York, Office of Parks, Recreation, and Historic Preservation, and their officers, employees, and agents" as additional insureds on all required policies of insurance. Prior to the commencement of any work, an Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor by their subcontractor and shall be provided to OPRHP upon request.

**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. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided after renewal and/or upon request.

A. **Commercial General Liability** Said policy shall cover the liability of the Contractor for bodily injury, property damage, premises liability and personal/advertising injury from all work and operations under any contract resulting from this solicitation. The limits under such policy shall not be less than the following:

- |                                 |                |
|---------------------------------|----------------|
| • Each Occurrence limit         | \$2,000,000.00 |
| • General Aggregate             | \$2,000,000.00 |
| • Products/Completed Operations | \$2,000,000.00 |
| • Personal Advertising Injury   | \$1,000,000.00 |
| • Damage to Rented Premises     | \$50,000.00    |
| • Medical Expense               | \$5,000.00     |

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- b. CG 20 10 11 85 or an equivalent – Additional Insured – Owner, Lessees or Contractors (Form B)
- c. Waiver of Subrogation

B. **Comprehensive Business Automobile Liability Insurance.** Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000 each accident. Said policy shall cover 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.

If 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.** Said 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.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor's insurer as a result of this Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of this Contract.
- The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the People of the State of New York, OPRHP, their officers, agents, and employees as "Loss Payees" for all Third Party coverage secured. An Endorsement naming as Loss Payees "The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an Authorized User and their officers, agents and employees" shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

- D. **Pollution Legal Liability.** Such policy shall provide and maintain Pollution Legal Liability coverage with limits not less than \$2,000,000 per Claim.

### **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.

<b>Acceptable Proof of Workers' Compensation</b>	
CE-200	Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage
C-105.2	Certificate of Workers' Compensation Insurance
U-26.3	NYS Insurance Fund Certificate
GSI-105.2	Certificate of Participation in Workers' Compensation Group Board - approved self-insurance
SI-12	Certificate of Workers' Compensation Self-Insurance

<b>Acceptable Proof of Disability Benefits</b>	
CE-200	Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage
DB-120.1	Certificate of Disability Benefits Insurance
DB-120.2	Certificate of Participation in Disability Benefits Group Self Insurance
DB-155	Certificate of Disability Benefits Self-Insurance

For more information about Workers' Compensation and Disability insurance, log onto the Workers Compensation Board website at [www.wcb.state.ny.us](http://www.wcb.state.ny.us) or call them toll-free at 1-866-546-9322.

# Attachment 1 - Bid Form

Method of Award is based on the lowest Grand Total Cost to OPRHP from a responsive and responsible vendor.

The figures shown below represent OPRHP's best estimate, included for bidding purposes. OPRHP guarantees no minimum or maximum amount of work. Payment to contractor will reflect only work completed. All ancillary costs, including but not limited to travel, maintenance, and warranty satisfaction **must** be included in rates bid. To submit a bid, please enter your price(s) below, being mindful of any required mathematical extensions (e.g. multiplied by quantities/frequency, etc.). **All figures must be rounded to two decimal places.**

#	Description	A	B	A × B
		Approximate Quantity	Rate Bid	Total Cost
1	Invasive Treatment (per acre)	31		
2	Plantings – Trees (per tree)	930		
3	Plantings – Shrubs (per shrub)	6,510		
4	Plantings – grass (per acre)	31		
Grand Total Cost to OPRHP (1+2+3+4)				

**Note:** All bids must be valid for at least 180 days.

Bidder Certification				
By completing this bid form, the Bidder certifies that it has carefully examined the bidding and contract documents, has a full understanding of OPRHP's requirements, and agrees to perform this contract and to provide all goods and / or services, labor, material and equipment necessary for this contract at the bid price offered, if so awarded.				
Company Name:			Federal ID No.:	
Doing Business As:			SFS ID No.:	
<input type="checkbox"/> NYS Small Business* <sup>1</sup> # Employees	<input type="checkbox"/> NYS Certified Minority-Owned Business	<input type="checkbox"/> NYS Certified Women-Owned Business	<input type="checkbox"/> NYS Service-Disabled Veteran Owned Business	
Address:			City	
			State	
			Zip Code	
Name of Official:			Title:	
E-Mail			Telephone:	
_____ Signature			_____ Date	

**Bidder Certification Signature shall be completed in ink.**

<sup>1</sup> A "New York State Small Business" is defined as a company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. There is no certification process to be considered a New York State Small Business.



## Attachment 2 – Lobbying Law Certification

Pursuant to State Finance Law §§139-j and 139-k, this solicitation [or use identifier that is pertinent such as “Invitation for Bid” or “Request for Proposal”, etc.] includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest posting, on a Governmental Entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerers intending to result in a Procurement Contract with a Governmental Entity through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, the Office of the State Comptroller (“Restricted Period”) [conform for pertinent government entity] to other than the Designated Contacts for the Governmental Procurement unless it is a Contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). The Designated Contact(s) for this Governmental Procurement, as of the date hereof, are identified on the first page of this solicitation [or conform to whatever location is used to identify Designated Contacts]. Governmental Entity employees [conform for pertinent government entity] are also required to obtain certain information when Contacted during the Restricted Period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found [conform for how will provide copies of the rules, regulations, guidelines or procedures].

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

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: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(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: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(attach additional pages as necessary)

### Lobbying Affirmation and Certification

Offerer affirms that it understands and agrees to comply with the procedures of the OPRHP relative to permissible Contacts as required by State Finance Law §139-j(3) and §139-j(6)(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: \_\_\_\_\_

\_\_\_\_\_  
 Signature Date

## Attachment 3 - Non-Collusive 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.

1. Within the previous four years, has the bidder been found non-responsible by a government entity? (Please mark):  
☐ No ☐ Yes

2. 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, OPRHP 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:	
<div style="display: flex; justify-content: space-between; margin-top: 10px;"> <span>_____</span> <span>_____</span> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <span>Signature</span> <span>Date</span> </div>			

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

## Attachment 4 - 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 § 73(4)

**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 OPRHP State Employees** - Former employees of the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) cannot sell goods or services to OPRHP under any circumstance for two (2) years following the date they leave OPRHP's employ. This applies only to OPRHP and OPRHP's employees, and does not preclude a former employee of another state agency from selling goods or services to OPRHP 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:
- ☐ am a private contractor
- ☐ own at least 10% of the company that is being asked to provide goods or services to OPRHP.
- ☐ I am a former OPRHP employee, and my service with OPRHP ended less than two (2) years prior to the date of my signature below.
- ☐ None 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;"><div>_____ Signature</div><div>_____ Date</div></div>	

Please complete this form and return it with your bid

Revised July 2021

## **Attachment 5 - Encouraging Use of New York State 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 the 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.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

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

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

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract? ☐ Yes ☐ No

Winning bidders will be asked to identify the New York State businesses that will be used.

[illegible]

# Attachment 6 - 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.

Certification	
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:
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 60%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>           Signature         </div> <div style="width: 35%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>           Date         </div> </div>	

# Attachment 7 – Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement

## M/WBE and EEO Policy Statement

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at \_\_\_\_\_

**M/WBE** This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO** (a) This organization 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 programs of affirmative action to ensure that minority group members 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 on state contracts.

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) 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.

(e) This organization will include the provisions of sections (a) through (d) of this agreement 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 State contract

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ By \_\_\_\_\_  
Print: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison), responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

## M/WBE Contract Goals

0 % Minority and Women's Business Enterprise Participation

0 % Minority Business Enterprise Participation

0 % Women's Business Enterprise Participation

## 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>2</sup>
- ☐ An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire> 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/state-vendors/vendrep/profit-non-construction-questionnaire>
- ☐ 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:
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 60%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>           Signature         </div> <div style="width: 35%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>           Date         </div> </div>	

January 2019

<sup>2</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 - No Bid Form

If your firm has chosen not to bid on this procurement opportunity, please use the space below to briefly explain why and return this form to [ServiceContracts@parks.ny.gov](mailto:ServiceContracts@parks.ny.gov) or mail hardcopy to:

Office of Parks, Recreation and Historic Preservation  
Contract Bureau  
625 Broadway  
Albany, NY 12207

Reason(s):

Certification	
Company Name:	
Doing Business As:	
Name of Official:	Title
E-Mail	Telephone:
<div style="display: flex; justify-content: space-between;"><div>_____</div><div>_____</div></div> <div style="display: flex; justify-content: space-between;"><div>Signature</div><div>Date</div></div>	

## Attachment 10 – References

**Bidder Name:**

Per IFB Section 1.3 Minimum Requirements, please provide three (3) satisfactory client references for whom the Bidder has performed services similar to those defined in this IFB in the past five (5) years. Please provide phone number, email, and address for all references.

### Reference 1

Company/Organization Name:	
Contact Person:	
Address:	
City, State, Zip Code:	
Telephone Number:	
E-Mail Address:	
Timeframe of Services Provided:	
Brief Description of Services Provided:	

### Reference 2

Company/Organization Name:	
Contact Person:	
Address:	
City, State, Zip Code:	
Telephone Number:	
E-Mail Address:	
Timeframe of Services Provided:	
Brief Description of Services Provided:	

### Reference 3

Company/Organization Name:	
Contact Person:	
Address:	
City, State, Zip Code:	
Telephone Number:	
E-Mail Address:	
Timeframe of Services Provided:	
Brief Description of Services Provided:	

# Attachment 13 – Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

**Bidder Name:**

<https://ogs.ny.gov/EO-16> Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found here.

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

- ☐ 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- ☐ 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- ☐ 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- ☐ 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Certification	
Company Name:	
Doing Business As:	
Name of Official:	Title
E-Mail	Telephone:
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 60%; text-align: center;"> <hr style="border: none; border-top: 1px solid black;"/>           Signature         </div> <div style="width: 35%; text-align: center;"> <hr style="border: none; border-top: 1px solid black;"/>           Date         </div> </div>	

# FORM A State Consultation Services - Contractor's Planned Employment

**OSC Use Only:**

Reporting Code:

Category Code:

Date Contract Approved:

**FORM A**

From Contract Start Date Through The End Of The Contract Term

State Agency Name: Office of Parks, Recreation & Historic  
Preservation

Agency Code: 49070

Contractor Name:

Contract Number:

Contract Start Date:     /     /

Contract End Date:     /     /

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared:     /     /

(Use additional pages, if necessary)

Page     of

# 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,

State Agency Name: Office of Parks, Recreation & Historic Preservation	Agency Code: 49070
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:    /    /

Use additional pages if necessary)

Page    of



# **Parks, Recreation and Historic Preservation**

## **Invitation for Bids**

### **C003620 - West River Shoreline Enhancement**

**August 15, 2022**

# **Exhibit A**

## **Technical Specifications**

<b>Designated Contact(s)</b>
Eric Zeissler, Guenevere Palmatier <a href="mailto:ServiceContracts@parks.ny.gov">ServiceContracts@parks.ny.gov</a> Office of Parks, Recreation and Historic Preservation Contract Unit 625 Broadway, 2 <sup>nd</sup> Floor Albany, NY 12207

## SECTION 329300 - PLANTS

### PART 1 - GENERAL

#### 1.1. DEFINITIONS

- A. Backfill: The earth used to replace or the act of replacing earth in an excavation.
- B. Container-Grown Stock: Healthy, vigorous, well-rooted plants grown in a container, with a well-established root system reaching sides of container and maintaining a firm ball when removed from container. Container shall be rigid enough to hold ball shape and protect root mass during shipping and be sized according to ANSI Z60.1 for type and size of plant required.
- C. Finish Grade: Elevation of finished surface of planting soil.
- D. Pesticide: A substance or mixture intended for preventing, destroying, repelling, or mitigating a pest. Pesticides include insecticides, miticides, herbicides, fungicides, rodenticides, and molluscicides. They also include substances or mixtures intended for use as a plant regulator, defoliant, or desiccant. Some sources classify herbicides separately from pesticides.
- E. Pests: Living organisms that occur where they are not desired or that cause damage to plants, animals, or people. Pests include insects, mites, grubs, mollusks (snails and slugs), rodents (gophers, moles, and mice), unwanted plants (weeds), fungi, bacteria, and viruses.
- F. Planting Area: Areas to be planted.
- G. Planting Soil: Existing, on-site soil; imported soil; or manufactured soil that has been modified with soil amendments and perhaps fertilizers to produce a soil mixture best for plant growth. Plant; Plants; Plant Material: These terms refer to vegetation in general, including trees, shrubs, vines, ground covers, ornamental grasses, bulbs, corms, tubers, or herbaceous vegetation.
- H. Root Flare: Also called "trunk flare." The area at the base of the plant's stem or trunk where the stem or trunk broadens to form roots, the area of transition between the root system and the stem or trunk.
- I. Stem Girdling Roots: Roots that encircle the stems (trunks) of trees below the soil surface.
- J. Subgrade: The surface or elevation of subsoil remaining after excavation is complete, or the top surface of a fill or backfill before planting soil is placed.

#### 1.2. WARRANTY

- A. Remove and replace plants found to be dead or in unhealthy condition during the 18-month warranty period. Make replacements during growth season following end of warranty period. Replace plants which are in doubtful condition as determined by Owner's Representative or at end of warranty period.
- B. Contractor shall provide all specified maintenance work for plant materials until eighteen (18) months after the completion and acceptance of the landscape plantings by the Owner's Representative. Acceptance of landscape plantings shall occur every ½ mile section of completion.
  - 1. Begin maintenance work immediately after planting. Maintenance work shall include watering, removal and replacement of dead material, resetting settled plants to proper grade or upright position, re-guying and re-staking, and other necessary operation as may be required to keep the plants in a live and healthy growing condition.

2. All replacements shall be plants of the same kind, and size as originally specified in the "Plant List" in IFB Section 1.5.5 and they shall be furnished, planted and staked at no additional cost.
  3. Maintenance work shall include watering, remedial work such as repair of project-related erosion and reseeding or replanting if required. Other work shall be included as maintenance work if necessary, such as weeding, etc., as deemed appropriate by the Owner's Representative during the maintenance period.
- C. Inspection and Acceptance of Plant Materials
1. For every ½ mile section that is completed, the Contractor shall notify the Owner's Representative requesting inspection of the work to determine its degree of completion to establish the end of the establishment period.
  2. After inspection, the Contractor will be notified of final acceptance of the work or any deficiencies which must be corrected to the satisfaction of the Owner's Representative before acceptance.
- D. SUBMITTALS
1. Plant Sources: Submit list of plant sources for approval by Owner's Representative before ordering material.
  2. Planting Schedule: Submit proposed planting schedule, indicating dates for plant tagging, digging of woody material, and installation of each type of landscape work during normal seasons for such work in area of site. Correlate with specified maintenance periods to provide maintenance from date of substantial completion. Once accepted, revise dates only as approved in writing, after documentation of reasons for delays.
- 1.3. QUALITY ASSURANCE
- A. Provide shrubs of quantity, size, genus, species and variety shown and scheduled for landscape work and complying with recommendations and requirements of ANSI Z60.1 "American Standard for Nursery Stock" published by the American Association of Nurserymen, Inc.
- B. Plant Selection: list to the Owner's Representative for approval before ordering material.
1. All woody plant material shall be obtained from nurseries located in areas of soils, similar to the soils of the project site and grown under climatic conditions, for at least two years.
  2. Plants names indicated must comply with "Standardized Plant Names" as adopted by the latest edition of the American Joint Committee of Horticultural Nomenclature. Names of varieties not listed conform generally with names accepted by the nursery trade. Provide stock true to botanical name and legibly tagged.
- C. No plant material shall be planted by the Contractor until inspected and approved by the Owner's Representative at the site of the work. The Owner's Representative shall be the sole judge of the quality and acceptability of the plant materials. All rejected material shall be immediately removed from the site and replaced with acceptable material at no additional cost.
1. In the event of a discrepancy between plant schedule and field conditions, notify the Owner's Representative immediately for clarification(s) as necessary.
- 1.4. JOB CONDITIONS
- A. Proceed with planting work as rapidly as portions of the site become available, working within seasonal limitations for each kind of planting required.



- B. Utilities: Determine location of underground utilities including irrigation system, and perform work in a manner which will avoid possible damage. Hand excavate as required.
  - 1. Protection of Existing Utilities: Locate existing underground utilities in area of work. If utilities are to remain in place, provide adequate means of support and protection during earthwork operations.
  - 2. Should uncharted, or incorrectly charted, piping or other utilities be encountered during excavation, consult with Owner's Representative immediately for directions. Cooperate with Owner's Representative and utility companies in keeping respective services and facilities in operation. Repair damaged utilities to satisfaction of utility owner and the Owner at no extra cost to the Owner.
- C. Excavation: When conditions detrimental to plant growth are encountered such as rubble fill, adverse drainage conditions or obstructions, notify Owner's Representative before installation of plant materials.
- D. Liability: The Contractor shall protect and shall be liable for injuries or damage to all plants, curbs, pavements, structures, utilities, turf and other features on-site.

## PART 2 - PRODUCTS

### 2.1. MATERIALS

- A. Provide sound, healthy, vigorous stock, well branched and densely foliated when in leaf. They shall be free of disease, insect pests, eggs or larvae, and shall have healthy, well developed root systems. All plants shall conform to ANSI Z60.1. Root development of all plants shall be such that when the plant is removed from its container, the root system will hold at least 95% of the soil. Poorly rooted materials will be rejected at the job site at the sole discretion of the Owner's Representative.
- B. Shredded Hardwood Bark Mulch: Mulch shall be double ground bark mulch made from a mixture of natural, untreated hardwood and/or softwood. Mulch shall be aged a minimum of one (1) year for partial decomposition. It shall be screened to exclude particles larger than one (1) inch in diameter. Material shall be composed of natural bark and have a low wood content with no hidden woods from construction debris, pallets or pressure treated lumber and be free of weeds, seeds, and green leaf matter. It shall be naturally dark brown in color. No dyed mulch will be accepted. Mulch shall be locally sourced and will be accepted on the basis of a visual inspection for compliance with the material requirements.
- C. Water must be free of substance harmful to plant growth. Hoses and other watering equipment required to transport water from a source on the site to the planting work shall be included as part of the Contractor's work.

## PART 3 - EXECUTION

### 3.1. GENERAL

- A. Weather Conditions: All operations shall be performed only when proper soil and weather conditions are present to permit satisfactory completion of work without destroying soil tilth and structure.
- B. Workmanship
  - 1. Carry out all work in accordance with the best-known methods of the Trade.
  - 2. Provide competent supervision at all times by experienced personnel with previous experience in this technique satisfactory to the Owner's Representative.
  - 3. Utilize proper equipment for the mixing, handling, and stockpiling of materials satisfactory to the Owner's Representative.

4. Soils shall not be worked on in a wet condition.
- C. Examine the areas and conditions under which planting work is to be performed and notify the Owner's Representative in writing of conditions detrimental to the proper and timely completion of the work. Do not proceed with work until unsatisfactory conditions have been corrected in an acceptable manner.
- D. Scheduling of Work
  1. All activity shall take place with consent of Owner's Representative.
- 3.2. TIME OF PLANTING
  - A. Conduct planting operations under favorable weather conditions which are normal for such work as determined by accepted practice in the locality of the project. Do not plant when the ground is frozen. Contractor shall notify and obtain approval of the Owner's Representative prior to commencing planting operations. In general, plant during the following season unless otherwise approved:
    1. Spring Planting: April 15 to June 15.
    2. Fall Planting: August 15 to November 30.
  - B. All planting stock shall be delivered promptly when dug and the roots and foliage shall be carefully protected in transit against drying out.
  - C. All precautions customary in good trade practice shall be taken in preparing plants for transplanting, and workmanship that fails to meet the highest standards will be rejected.
- 3.3. LAYOUT
  - A. The Contractor shall stake out all plant locations on the site for review and adjustments as required by the Owner's Representative.
- 3.4. PLANTING SCHEDULE
  - A. The Contractor shall give advance notification to the Owner's Representative of installation dates and schedule. The Owner's Representative shall review with the Contractor the placing and orientation of plants upon installation.
- 3.5. PLANTING OF CONTAINERIZED SHRUBS AND TREES
  - A. Space shrubs and trees as shown on drawings and/or as specified on plant schedule, to be mutually developed by OPRHP and the Contractor.
  - B. Dig holes large enough to allow for spreading of roots. Remove any construction debris encountered while digging holes. Backfill with native soil.
  - C. Do not remove plants from containers until immediately before planting. Carefully separate any pot-bound or cramped roots and spread them out when placing the plant so that the roots can grow without further constriction of the root ball. Do not let exposed roots dry out.
  - D. Work planting mix around roots and compact lightly to eliminate air pockets. Leave a slight saucer indentation sloping towards the trunk around the entire plant root mass to hold water. Water in thoroughly after backfilling.
- 3.6. MULCHING
  - A. Mulch tree planting pits and shrub beds with Shredded Hardwood Bark Mulch, 3" deep, immediately after planting. Thoroughly water mulched areas. After watering, rake mulch to provide a uniform, finished surface. Do not place mulch around base of trunks or stems.
- 3.7. PRUNING

- A. Remove crossing, dead, or injured branches with a clean cut as directed by the Owner's Representative. Prune shrubs in the presence of the Owner's Representative and in accordance with standard horticultural practices to preserve the natural character of the plants.

3.8. WATERING

- A. All woody plant material shall be thoroughly watered to a saturated depth of 6" minimum, the same day as they are planted. There will be no exceptions. Watering shall continue as needed to keep plants healthy and unwilted through the warranty period.

3.9. DISPOSAL OF EXCESS AND WASTE MATERIALS

- A. Remove excess soil and waste materials and dispose of it off-site or as directed by the Owner's Representative.

3.10. PROTECTION AND CLEAN-UP

- A. Protect landscape work and materials from damage due to landscape operations and operations by other contractors and trades. Treat, repair or replace damaged landscape work as directed.
- B. Immediately after planting, protect landscape areas from all traffic until established. The Contractor shall be responsible for correction of all damage done by unauthorized traffic at no additional cost.
- C. Repair and reestablish turf in disturbed and rutted areas during general project warranty period as directed by the Owner's Representative.
- D. Remove and/or replace mulch that has been displaced. Keep all paved surfaces, turf areas, and storm sewers free of mulch material.
- E. Perform maintenance work as specified under 1.4, Warranty.

3.11. TEMPORARY EROSION AND SEDIMENTATION CONTROL

- A. Provide temporary erosion and sedimentation control measures to prevent soil erosion and discharge of soil- bearing water runoff or airborne dust to adjacent properties and walkways. Temporary sediment and erosion control measures may be required within limits of the work, including any staging areas, throughout construction in conformance with the plan, and as directed by the Owner's Representative.
- B. During construction conduct operations in such a manner as to prevent or reduce to a minimum any damage to any water body from pollution by debris, sediment, chemical or other foreign material, or from the manipulation of equipment and/or materials in or near a stream or ditch flowing directly to a stream. Any water which has been used for wash purposes or other similar operations which become polluted with sewage, silt, cement, concentrated chlorine, oil, fuels, lubricants, or other impurities shall not be discharged into any water body.
- C. The Work shall consist of furnishing, installing, inspecting, maintaining, and removing soil and erosion control measures as shown on the contract documents or as ordered by the Owner's Representative during the life of the contract to provide erosion and sediment control.
- D. Temporary structural measures provide erosion control protection to a critical area for an interim period. A critical area is any disturbed, denuded slope subject to erosion. These are used during construction to prevent offsite sedimentation. Temporary structural measures shall include check dams, dust control, silt fence, or other erosion control devices or methods as required.
- E. Vegetative measures shall include mulching, protecting vegetation, seeding, sod, straw/hay bale dike, and topsoil.

- F. All erosion and sediment control devices must be maintained in working order until the site is stabilized. All preventative and remedial maintenance work, including clean out, repair, replacement, re-grading, re-seeding, or re-mulching, must be performed immediately.
- G. After final stabilization has been achieved temporary sediment and erosion controls must be removed. Areas disturbed during removal must be stabilized immediately.

H. PRODUCTS

1. SILT FENCE

- a. Filter cloth shall be brand Filter X, Firafi 100X, Stabilinka T14ON or approved equal. Posts shall be either type T or U steel or 1 1/2" hardwood minimum.
- b. When two sections of filter cloth adjoin each other, they shall be overlapped by six inches and folded.
- c. Filter cloth shall be fastened securely to each post in no less than 4 locations.
- d. Maintenance shall be performed as needed and material removed when "bulges" occur in the silt fence.
- e. Prefabricated units, if used, shall be Geofab, Envirofence, or approved equal.

2. SILT FILTRATION SOCKS

- a. Filtration socks shall be brand Filtrex Siltsoxx 12" diameter or approved equal; stakes per manufacture's recommendations.

3.12. FINAL ACCEPTANCE

- A. Planted areas will be inspected at every 1/2 mile section of completion and acceptance shall be subject to compliance with specified materials and installation requirements.
- B. Inspection to determine acceptance of planted areas will be made by the Owner's Representative upon Contractor's request. Provide notification at least ten (10) working days before requested inspection date.
  - 1. Planted areas will be accepted provided all requirements, including maintenance, have been complied with and plant materials are alive and in a healthy, vigorous condition.

END OF SECTION 329300

## SECTION 329200 - TURF AND GRASSES

### PART 4 - GENERAL

#### 4.1. SUMMARY

- A. Section Includes:
  - 1. Establishing turf.

#### 4.2. DEFINITIONS

- A. Finish Grade: Elevation of finished surface of planting soil.
- B. Final Acceptance: At the end of the Maintenance Period, Owner's Representative shall reinspect all lawns and meadows to determine whether Satisfactory Lawn has been achieved.
- C. Initial Acceptance: Completion of seeding or sodding, with adequacy determined by Owner's Representative. Maintenance period shall commence for 60 days after initial acceptance, and continue until Final Acceptance.
- D. Subgrade: Surface or elevation of subsoil remaining after completing excavation, or top surface of a fill or backfill immediately beneath planting soil.
- E. Subsoil: All soil beneath the topsoil layer of the soil profile, and typified by the lack of organic matter and soil organisms.
- F. Turf Soil: Native or imported topsoil, manufactured topsoil, or surface soil modified to become topsoil; mixed with soil amendments.

#### 4.3. SUBMITTALS

- A. Product Data: For each type of product indicated.
- B. Certification of Grass Seed: From seed vendor for each grass-seed monostand or mixture stating the botanical and common name and percentage by weight of each species and variety, and percentage of purity, germination, and weed seed. Include the year of production and date of packaging.

#### 4.4. PROJECT CONDITIONS

- A. Seeding Restrictions: Plant during one of the following periods. Coordinate planting periods with initial maintenance periods to provide required maintenance from date of planting completion.
  - 1. Spring Planting: April 1 to June 30.
  - 2. Fall Planting: September 1 to November 15.
- B. Weather Limitations: Proceed with planting only when existing and forecasted weather conditions permit.

#### 4.5. MAINTENANCE SERVICE

- A. Initial Lawn Maintenance Service: Provide full maintenance by skilled employees of Contractor. Maintain as required in Part 3 of this Section. Begin maintenance immediately after each area is planted and continue until acceptable lawn is established, but for not less than the following periods:
  - 1. Seeded Lawns: 60 days from date of planting completion.
    - a. When initial maintenance period has not elapsed before end of planting season, or if lawn is not fully established, continue maintenance during next planting season.

## PART 5 - PART 5 - PRODUCTS

### 5.1. SEED

- A. Grass Seed: Fresh, clean, dry, new-crop seed complying with AOSA's "Journal of Seed Technology; Rules for Testing Seeds" for purity and germination tolerances.
- B. Seed Species: Seed of grass species as follows, with not less than 95 percent germination, not less than 85 percent pure seed, and not more than 0.5 percent weed seed:
  - 1. Turf Seed Mix: Subject to compliance with requirements, provide the following:
    - a. Quick Erosion Control Cover Mix, by Ernst Seed, or approved equivalent:
      - 1. 50.0% Lolium multiflorum (Annual Ryegrass)
      - 2. 50.0% Lolium perenne, 'Blackstone' (Perennial Ryegrass, 'Blackstone')
    - b. Seeding Rate: 50 pounds per 1.0 acre

### 5.2. TURF MULCHES

- A. Fiber Mulch: Biodegradable, dyed-wood, cellulose-fiber mulch; nontoxic; free of plant-growth or germination inhibitors; with a maximum moisture content of 15 percent and a pH range of 4.5 to 6.5.
- B. Nonasphaltic Tackifier: Colloidal tackifier recommended by fiber-mulch manufacturer for slurry application; nontoxic and free of plant-growth or germination inhibitors.

## PART 6 - PART 6 - EXECUTION

### 6.1. EXAMINATION

- A. Examine areas to receive lawns and grass for compliance with requirements and other conditions affecting performance.
- B. Proceed with installation only after unsatisfactory conditions have been corrected.

### 6.2. PREPARATION

- A. Protect structures, utilities, sidewalks, pavements, and other facilities, trees, shrubs, and plantings from damage caused by planting operations.
  - 1. Protect adjacent and adjoining areas from hydroseeding and hydromulching overspray.
  - 2. Protect grade stakes set by others until directed to remove them.
- B. Provide erosion-control measures to prevent erosion or displacement of soils and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways.

### 6.3. LAWN PREPARATION

- A. Limit lawn subgrade preparation to areas to be planted.
- B. Newly Graded Subgrades: Decompect subgrade as detailed by Owner's representative. Remove stones larger than 1-1/2 inches (38 mm) in any dimension and sticks, roots, rubbish, and other extraneous matter and legally dispose of them off Owner's property.
  - 1. Thoroughly blend turf soil mix off-site before spreading.

- a. Delay mixing fertilizer with planting soil if planting will not proceed within a few days.
  - 2. Spread turf soil mix to a depth as noted by the Owner's Representative but not less than required to meet finish grades after light rolling and natural settlement. Do not spread if turf soil or subgrade is frozen, muddy, or excessively wet.
    - a. Spread approximately 1/2 the thickness of planting soil mix over loosened subgrade. Mix thoroughly into top 2 inches (50 mm) of subgrade. Spread remainder of turf soil mix.
  - C. Finish Grading: Grade planting areas to a smooth, uniform surface plane with loose, uniformly fine texture. Grade to within plus or minus 1/2 inch (13 mm) of finish elevation. Roll and rake, remove ridges, and fill depressions to meet finish grades. Limit finish grading to areas that can be planted in the immediate future.
  - D. Moisten prepared lawn areas before planting if soil is dry. Water thoroughly and allow surface to dry before planting. Do not create muddy soil.
  - E. Before planting, restore areas if eroded or otherwise disturbed after finish grading.
- 6.4. HYDROSEEDING
- A. Hydroseeding: Mix specified seed and fiber mulch in water, using equipment specifically designed for hydroseed application. Continue mixing until uniformly blended into homogeneous slurry suitable for hydraulic application.
    - 1. Mix slurry with nonasphaltic tackifier.
    - 2. Apply slurry uniformly to all areas to be seeded in a one-step process. Apply slurry at a rate so that mulch component is deposited at not less than 1500-lb/acre (15.6-kg/92.9 sq. m) dry weight, and seed component is deposited at not less than the specified seed-sowing rate.
- 6.5. LAWN RENOVATION
- A. Renovate existing lawn damaged by Contractor's operations, such as storage of materials or equipment and movement of vehicles.
    - 1. Reestablish lawn where settlement or washouts occur or where minor regrading is required.
    - 2. Provide new turf soil as required.
  - B. Remove sod and vegetation from diseased or unsatisfactory lawn areas; do not bury in soil.
  - C. Remove topsoil containing foreign materials resulting from Contractor's operations, including oil drippings, fuel spills, stone, gravel, and other construction materials, and replace with new topsoil.
  - D. Remove waste and foreign materials, including weeds, soil cores, grass, vegetation, and turf, and legally dispose of them off Owner's property.
  - E. Till stripped, bare, and compacted areas thoroughly to a soil depth of 6 inches.
  - F. Apply seed and protect with straw mulch as required for new lawns.
  - G. Water newly planted areas and keep moist until new lawn is established.
- 6.6. LAWN MAINTENANCE
- A. Maintain and establish seeded lawn by watering, weeding, replanting, and other operations. Replant bare or eroded areas and remulch to produce a uniformly smooth lawn. Provide materials and installation the same as those used in the original installation.

1. In areas where mulch has been disturbed by wind or maintenance operations, add new mulch and anchor as required to prevent displacement.
  - B. Watering: Provide and maintain temporary piping, hoses, and lawn-watering equipment to convey water from sources and to keep lawn uniformly moist to a depth of 4 inches (100 mm).
    1. Schedule watering to prevent wilting, puddling, erosion, and displacement of seed or mulch. Lay out temporary watering system to avoid walking over muddy or newly planted areas.
    2. Water lawn with fine spray at a minimum rate of 1 inch (25 mm) per week unless rainfall precipitation is adequate.
- 6.7. SATISFACTORY LAWNS
- A. Lawn installations shall meet the following criteria as determined by Owner's Representative:
    1. Satisfactory Seeded Lawn: At end of maintenance period, a healthy, uniform, close stand of grass has been established, free of weeds and surface irregularities, with coverage exceeding 90 percent over any 10 sq. ft. (0.92 sq. m) and bare spots not exceeding 5 by 5 inches (125 by 125 mm).
  - B. Use specified materials to reestablish lawns that do not comply with requirements and continue maintenance until lawns are satisfactory.
    1. Overseed all bare patches exceeding 5 by 5 inches with overseeding seed mix at specified rates.
    2. Contractor shall include watering until satisfactory lawns are achieved, at no additional cost to the Director.
- 6.8. CLEANUP AND PROTECTION
- A. Promptly remove soil and debris, created by lawn work, from paved areas. Clean wheels of vehicles before leaving site to avoid tracking soil onto roads, walks, or other paved areas.
  - B. Erect temporary fencing or barricades and warning signs as required to protect newly planted areas from traffic. Maintain fencing and barricades throughout initial maintenance period and remove after lawn is established.
  - C. Remove nondegradable erosion-control measures after grass establishment period.

END OF SECTION 329200



NOTES:

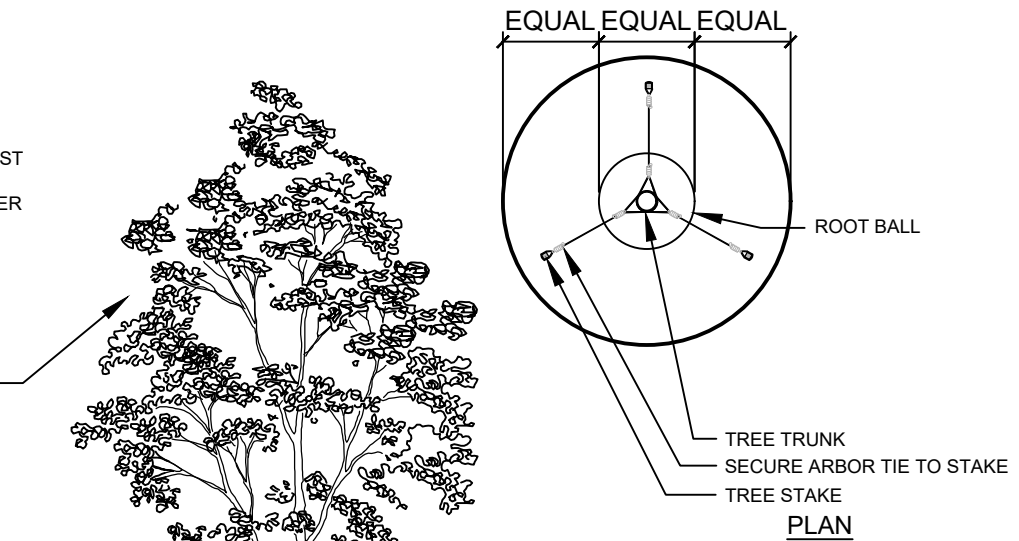
1. ALL TREES AND SHRUBS MUST BE GUARANTEED FOR EIGHTEEN (18) MONTHS AFTER INSTALLATION.

PRUNE ONLY DAMAGED BRANCHES MAINTAINING NORMAL TREE SHAPE. NEVER CUT CENTRAL LEADER AND DO NOT REMOVE THE TERMINAL BUDS OF BRANCHES THAT EXTEND TO THE EDGE OF THE CROWN

ARBOR TIE OR ACCEPTABLE EQUIVALENT

WOODEN TREE STAKES (3 MIN), 2-1/2" O.D., CEDAR OR APPROVED EQUIVALENT, EQUALLY SPACED.

REMOVE ALL ROPE FROM TRUNK AND TOP OF BALL. REMOVE BURLAP FROM THE TOP (HALF) 1/2 OF THE ROOT BALL. WHEN A WIRE BASKET IS PRESENT THE WIRE BASKET SHALL BE REMOVED FROM THE TOP HALF OF THE ROOT BALL OR AS MUCH AS POSSIBLE TO PRESERVE THE INTEGRITY OF THE ROOT BALL.



THE ROOT FLARE OF EACH TREE SHALL BE VISIBLE AT THE TOP OF THE ROOT BALL. IF NURSERY GRADE IS ABOVE THE FLARE THE CONTRACTOR SHALL CAREFULLY EXCAVATE THE TOP OF THE ROOT BALL TO EXPOSE THE ROOT FLARE. TREES WHOSE ROOT FLARE IS NOT VISIBLE SHALL BE REJECTED. DO NOT COVER THE TOP OF THE ROOT BALL WITH SOIL.

3" DEPTH SHREDDED BARK MULCH, UNIFORMLY SPREAD. MULCH SHALL NOT BE IN CONTACT WITH THE TRUNK OF THE TREE

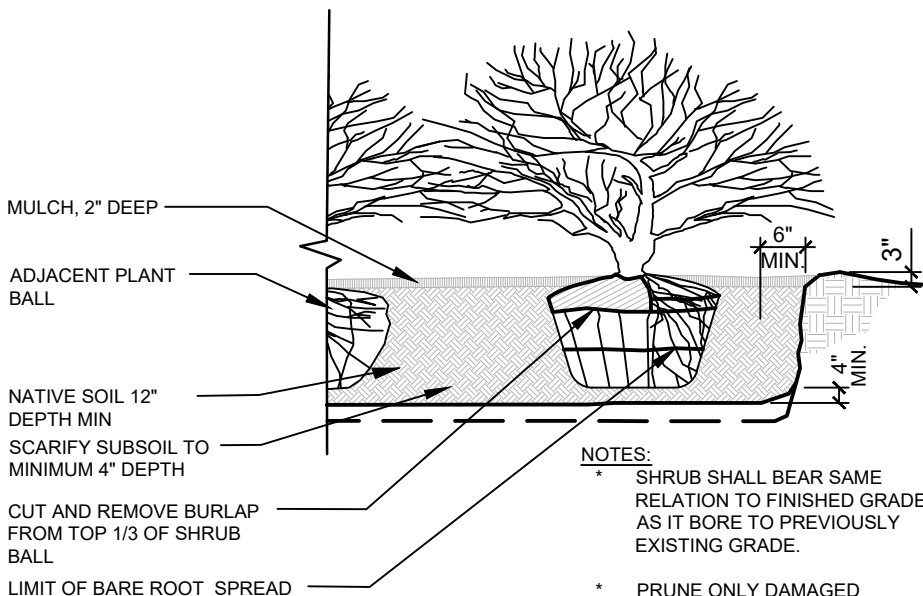
EXCAVATE TREE PIT TO DEPTH OF ROOT BALL, MINIMUM 3 TIMES THE DIAMETER OF THE ROOT BALL AND BACKFILL WITH NATIVE SOIL.

PLACE ROOT BALL ON UNEXCAVATED OR TAMPED SOIL.

SECTION

TREE PLANTING DETAIL

NTS



NOTES:

\* SHRUB SHALL BEAR SAME RELATION TO FINISHED GRADE AS IT BORE TO PREVIOUSLY EXISTING GRADE.

\* PRUNE ONLY DAMAGED BRANCHES MAINTAINING NORMAL SHRUB FORM

SHRUB PLANTING DETAIL

NTS



# **Parks, Recreation and Historic Preservation**

## **Invitation for Bids**

### **C003620 - West River Shoreline Enhancement**

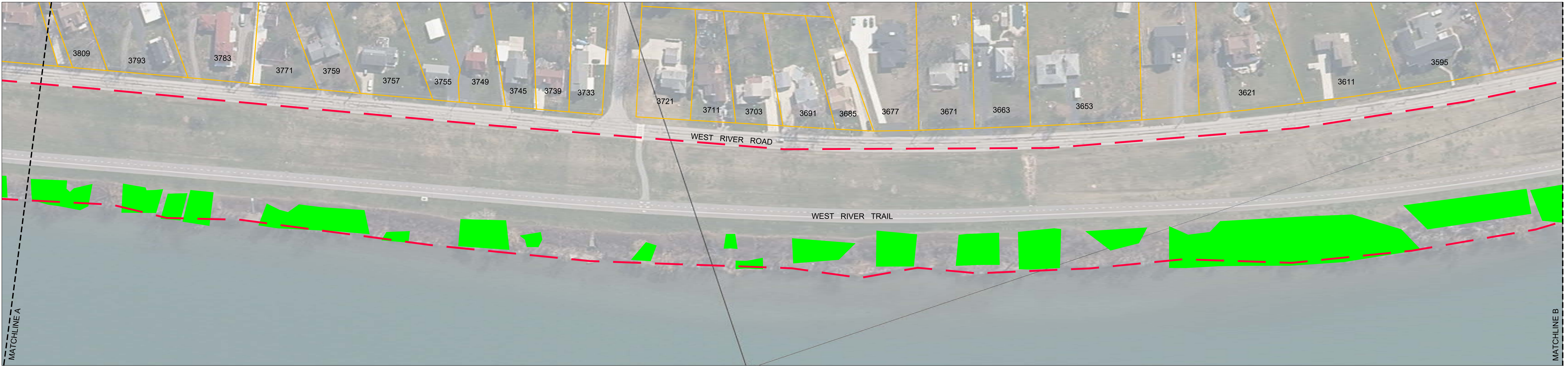
**August 15, 2022**

## **Exhibit B**

### **Invasive Treatment Maps**

<b>Designated Contact(s)</b>
Eric Zeissler, Guenevere Palmatier <a href="mailto:ServiceContracts@parks.ny.gov">ServiceContracts@parks.ny.gov</a> Office of Parks, Recreation and Historic Preservation Contract Unit 625 Broadway, 2 <sup>nd</sup> Floor Albany, NY 12207









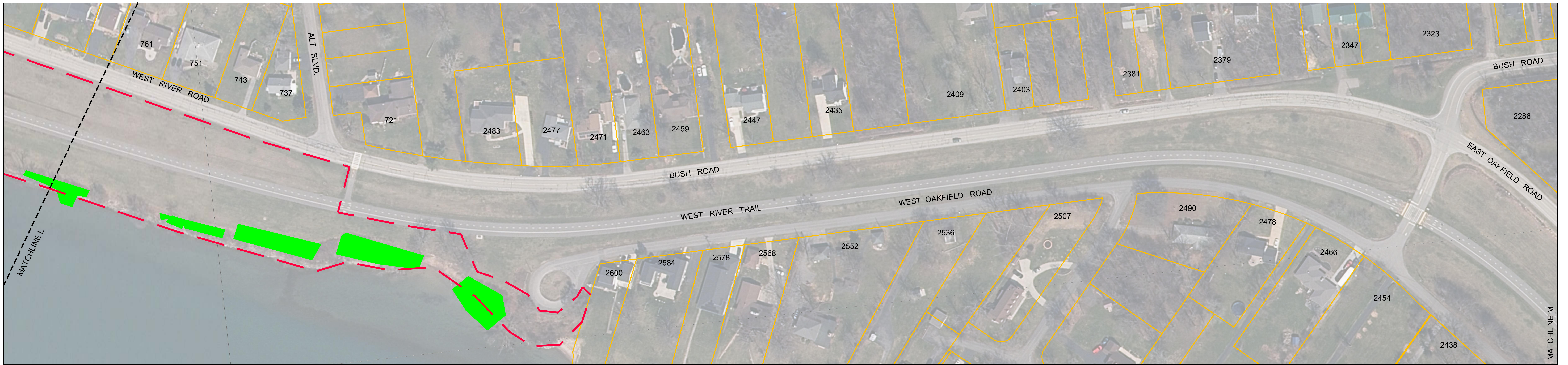
















# **Parks, Recreation and Historic Preservation**

## **Invitation for Bids**

### **C003620 - West River Shoreline Enhancement**

**August 15, 2022**

# **Exhibit C**

## **Proposed Project Schedule**

<b>Designated Contact(s)</b>
Eric Zeissler, Guenevere Palmatier <a href="mailto:ServiceContracts@parks.ny.gov">ServiceContracts@parks.ny.gov</a> Office of Parks, Recreation and Historic Preservation Contract Unit 625 Broadway, 2 <sup>nd</sup> Floor Albany, NY 12207



## Appendix A

Table 2. Proposed Schedule

Tentative Project Timeline																													
	FY 22-23					FY 23-24										FY 24-25													
Month-Year:	N-22	D-22	J-23	F-23	M-23	A-23	M-23	J-23	J-24	A-23	S-23	O-23	N-23	D-23	J-24	F-24	M-24	A-24	M-24	J-24	J-24	A-24	S-24	O-24	N-24	D-24	J-25	F-25	M-25
Project Task/Phase																													
Woody Approach 1			Tree Cutting Guidelines <sup>1</sup>																										
Woody Approach 2																													
Common Reed Approach 1																													
Common Reed Approach 2																													
Seeding																													
Plant Installation																													

<sup>1</sup> There will be reduced invasive species control during bird nesting season. A subcontractor or the regional biologist will need to check for nesting birds/bats during this time prior to treatments.