



**NEW YORK STATE GAMING COMMISSION**

**REQUEST FOR PROPOSALS**

**FOR**

**NEW YORK LOTTERY  
INTERNAL CONTROL SYSTEM**

**CONTRACT # C202002**

**January 6, 2020**

PROCUREMENT WEBSITE:

[https://www.gaming.ny.gov/about/procurement\\_opp.current.php](https://www.gaming.ny.gov/about/procurement_opp.current.php)

DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS

Consistent with the public policy established by the New York State Procurement Lobbying Law, the Contract Management Specialists designated below are the only points of contact regarding matters relating to this Request for Proposals (“RFP”), unless additional points of contact are designated by them.

**ALL BIDDERS RESPONDING TO THIS RFP AND ALL COMMUNICATIONS CONCERNING THIS PROCUREMENT SHALL BE ADDRESSED IN WRITING TO EITHER OF THE CONTRACT MANAGEMENT SPECIALISTS NOTED BELOW (DESIGNATED CONTACTS):**

Stacey Relation, Contract Management Specialist 3  
Alysan Bowers, Contract Management Specialist 2

New York State Gaming Commission  
Contracts Office, 4<sup>th</sup> Floor  
One Broadway Center  
Schenectady, NY 12305  
[officer.contracting@gaming.ny.gov](mailto:officer.contracting@gaming.ny.gov)

RFP related questions shall be submitted via electronic mail to the email address above by the date specified in the Schedule of Events.

NON-BID RESPONSE

Bidders choosing not to submit a proposal in response to this RFP are requested to complete and submit **Attachment 4, Non-Bid Response**, as the information is useful to the Commission in the planning and development of future solicitations and Bidders’ lists.

Schedule of Events

The following dates are established for informational and planning purposes. The Commission reserves the right to adjust this schedule, in its sole discretion.

Event	Date
RFP Release Date	January 6, 2021
Written Questions Due 3:00 pm EDT	January 15, 2021
Commission Answers Issued	January 21, 2021
Proposal Due Date 3:00 pm EDT	February 5, 2021
Contract Start Date	Upon OSC Approval

## **PART ONE - GENERAL INFORMATION**

### **1.1 Introduction**

The New York State Gaming Commission (“Commission”), on behalf of the State of New York (“State”), and as operator of the New York Lottery, is issuing this Request for Proposals (“RFP”) to invite interested Vendors to submit Proposals for an Internal Control System (“ICS”) for the New York Lottery program. It is anticipated that one (1) contract will be awarded as a result of this RFP.

This RFP, and all activities leading toward the anticipated signing of a written agreement (the “Contract”) pursuant to this RFP, are conducted under Commission policies as enabled by New York State statutes and regulations.

In the RFP, the Commission has defined a series of objectives, requirements, and a Proposal evaluation approach that will represent its best interests in conformance with Commission policies and with New York State statutes and regulations. A submitted Proposal shall include all information and documentation requested throughout this RFP.

The contents of this RFP, any modifications, and the Proposal will become contractual obligations if a contract ensues. Failure of the Successful Bidder to accept these obligations may result in cancellation of the award.

The Commission is the only office authorized to clarify, modify, amend, alter, or withdraw the provisions of this RFP.

The Successful Bidder is expected to enter into the Contract, in the form attached as **Appendix B, Contract Form**, of this RFP. The Contract will cover a five (5) year term.

### **1.2 Background Information**

#### **1.2.1 New York State Gaming Commission**

The Commission was created by Chapter 60 of the Laws of 2012 as part of the 2012/2013 Enacted State Budget. The measure merged the New York State Division of Lottery with the New York State Racing and Wagering Board into a single state agency. The Commission became effective February 1, 2013.

The Commission regulates or provides oversight for all aspects of lawful gaming and gaming-like activity in the State, including horse racing and pari-mutuel wagering, Indian Gaming, commercial casinos, the State lottery including video lottery terminals, charitable gaming, and interactive fantasy sports, which by law, is not considered gaming. Follow the links to review statutes and rules related to the Commission: <https://www.gaming.ny.gov/statutes.php> and <https://www.gaming.ny.gov/rules.php>.

Having achieved a Level 4 certification from the World Lottery Association in 2018, the Commission is committed to operating according to responsible gaming principles and to upholding the integrity of the Commission. (Learn about WLA Responsible Gaming Certifications: <https://www.world-lotteries.org/services/responsible-gaming/principles>.)

The Commission is headquartered in Schenectady, NY.

#### **1.2.2 Division of Lottery**

The Commission’s New York Lottery continues to be North America’s largest and most profitable state lottery program, earning over \$68.1 billion in aid to education since its founding over 50 years ago. The New York Lottery program was enacted into the New York State Constitution by voters as a result of a referendum in 1966. Under Commission jurisdiction, the New York Lottery is operated by the Commission in accordance with provisions of the New York State Lottery for Education Law (Tax Article 34: <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>;) and Article 1 of New York State Pari-Mutuel Wagering and Breeding Law (<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>).

Current New York Lottery traditional products include nine (9) draw games (Powerball, Mega Millions, Quick Draw, Take5, Win4, Numbers, Lotto, Cash4Life, and Pick 10) and up to 75 instant games available for sale and

approximately 125 instant games in validation status at any given time. The New York Lottery games are in various stages of their lifecycle, with new Scratch-off games launched every 4-6 weeks, relying on approximately 15,500 licensed lottery sales agents to manage and sell its games to consumers. In addition to independently owned and corporate licensed sales agents, the Commission also offers a selection of New York Lottery games through an online subscription service.

By selling its traditional lottery games through an extensive state-wide licensed sales agent network and by subscriptions over the internet through its website ([nylottery.ny.gov](http://nylottery.ny.gov)), the New York Lottery program generates traditional lottery sales of approximately of \$8 billion annually. In the fiscal year 2018-2019, the New York Lottery's traditional games contributed \$2.51 billion to help support education in New York State.

### **1.2.3 Division of Lottery Current ICS Process Overview**

The Commission's audit of lottery transactions takes place on a Mainframe operated by the New York State Office of Information Technology Services ("ITS"). The ICS process is an audit of all transactions completed on multiple vendor systems currently located in two different data centers in different states. Each day there is a transition where data processing of the previous day is closed, and the end of day records processing begins. When jobs are completed, reports are generated and available for staff that morning. Depending on jackpot levels, the number of transactions can average anywhere from 500,000 to millions per hour.

Other business processes and programs such as annuities and prize payments, among others, are directly linked with this core business function and depend on ICS jobs to attain and certify data.

## **1.3 Minimum Qualifications**

Any Bidder submitting a Proposal in response to this RFP must meet the minimum qualifications listed below in order to have its Proposal reviewed. Information demonstrating the qualifications defined below shall be included in the Proposal response.

- A. The Bidder, at the time of its submission of a Proposal in response to this RFP, shall have two (2) or more current U.S. or Canadian clients to whom it supplies lottery internal control systems and related services.
- B. The Bidder must be an established firm with at least five (5) years demonstrated experience similar in scope to the work required under this RFP.

## **1.4 Bidder/Contractor Differentiation**

Throughout this RFP the terms "Bidder", "Vendor", "Proposer", and "Firm" may be used interchangeably in reference to the preparation and submission of the Proposal and any requirements preceding the award of the final Contract. In describing post-Contract award requirements, an effort is made to use the terms "Successful Bidder", "Contractor", "Vendor", and "Firm".

## **1.5 Headings**

The headings used in this RFP are for convenience only and shall not affect the interpretation of any provisions of this RFP.

## **1.6 Questions and Inquiries**

Questions from Bidders regarding this RFP shall be submitted via electronic mail to [Stacey.Relation@gaming.ny.gov](mailto:Stacey.Relation@gaming.ny.gov) or [Alysan.Bowers@gaming.ny.gov](mailto:Alysan.Bowers@gaming.ny.gov), no later than the date and time specified in the Schedule. **Neither faxed nor telephoned questions are acceptable.** If questions are provided via an attachment to electronic mail, the questions shall be provided in Microsoft Word format.

**Bidders are cautioned that any question or inquiry regarding the RFP shall be written in generic terms and shall not contain pricing information. The inclusion of specific information about a Bidder's pricing in an inquiry may result in the Bidder's disqualification.**

Responses to all questions, and any changes to the RFP resulting from such questions, will be communicated via published addenda, which will be posted on the Commission's website.

**Attachment 1, Bidder Acknowledgement of Addendum**, will be provided with each addendum. Bidders are required to include a signed Bidder Acknowledgement of Addendum for each addendum with their respective Proposals.

### **1.7 Material Deviations**

Material requirements of the RFP are those requirements designated as mandatory, without which an adequate analysis and comparison of Proposals is impossible, or those requirements that affect the competitiveness of Proposals or the cost to the Commission.

Proposals that do not meet all material requirements of this RFP, or that fail to provide all required and mandatory information, documents, or supporting materials, or include language that is conditional or contrary to terms, conditions, and requirements, may be rejected as nonresponsive.

The Commission, in its sole discretion, reserves the right to determine whether a Proposal meets the requirements of the RFP.

### **1.8 Non-Exclusive Rights**

Nothing in this RFP or the Contract resulting from this RFP shall preclude the Commission from purchasing other products, services, or equipment from other sources throughout the duration of the resulting Contract.

### **1.9 Confidentiality & Non-Disclosure**

The Contractor shall maintain the security, non-disclosure, and confidentiality of all information in accordance with the following clauses in the performance of its activities under the resulting Contract. The Contractor shall ensure that its officers, agents, employees, partners, and subcontractors, if any:

- (a) are fully aware of the obligations arising under the Contract,
- (b) shall take all commercially reasonable steps to ensure compliance to prevent unauthorized use, access or disclosure of New York State Confidential Information, and
- (c) shall execute the Confidentiality & Non-Disclosure Agreement attached as **Appendix S** and submit the same to the Commission before working on, or otherwise being involved in, the performance of activities under the resulting Contract.

Failure by the Contractor or its officers, agents, employees, partners or subcontractors to fully comply with these requirements shall be deemed a failure to meet the Contractor's obligations under the contract and may result in the Commission suspending, canceling and/or terminating the Contract for cause, or pursuing any other legal or equitable remedies available.

## **PART TWO - SCOPE OF WORK**

### **2.1 Scope of Work**

#### **Internal Control System (ICS) Scope of Work**

The Successful Bidder shall supply the Commission with an ICS to independently process and capture all lottery transactions from the Gaming System and Instant Ticket System utilized by the Commission, to balance and ensure the integrity of transactions processed through third-party systems. The ICS, as delivered, shall be capable of handling up to one hundred sixty thousand (160,000) sales transactions per minute on a continuous basis. The ICS shall be flexible, able to grow, and customizable to the business needs and rules of the Commission. ICS configuration shall be capable of supporting the Commission's lottery operations in real-time, 365 days per year (366 days per year in a leap year), twenty-four (24) hours per day. The ICS configuration shall consist of at least three (3) identical computer systems, including all new hardware and software. Pricing shall include all hardware and software elements of the ICS production and test systems, including hardware and software maintenance, and continuing support from the ICS Vendor.

All hardware and software components and maintenance services necessary to operate each ICS for the production and test systems shall be provided by the ICS Vendor. The ICS Vendor shall furnish, install, and maintain the production and test ICS computer hardware, operating system, ICS software, and technical and maintenance support services. The ICS Vendor shall provide and install ongoing hardware and software support, including upgrades, updates, and replacement hardware. The ICS Vendor shall be responsible for the conversion of existing data.

The ICS shall be comprised of three equal systems, one production ICS shall be located at Commission headquarters in Schenectady, New York (ICS-A) and one production ICS shall be located at designated location in Latham, New York (ICS-B) (referred to collectively as the "production ICS"). A test ICS (ICS-Test) shall be located at a third location within New York State, to be determined by the Commission. ICS-A, ICS-B, and ICS-Test make up the collective "ICS".

ICS-A and ICS-B shall operate simultaneously and independently and shall have a time-synchronizing mechanism to ensure consistent time recording and reporting of events and transactions. Each production ICS shall receive and process transactions in real time from the Gaming System and Instant Ticket System.

The ICS shall include a redundant network design and, in the event that the real-time transmission fails, the ICS shall be capable of using portable digital media as the source of ICS data. The ICS shall support the most current Multi-State Lottery Association ("MUSL") lockdown alternative technology during the term of the Contract. Backup/recovery capabilities for current or previous days' transactions shall exist to restore and reprocess in the event an error or out-of-balance situation occurs. The ICS shall support backup and restore functionality of critical files, software, and backup data, and processes to test backup and restore procedures.

A Commission-designated ICS operator shall be able to determine at any time, from ICS-A, ICS-B, or ICS-Test (if ICS-Test is used in production), that all ICSs are processing transactions in real-time. If ICS-A, ICS-B, or ICS-Test (if ICS-Test is used in production), stops processing transactions, then the stopped ICS shall automatically "catch up" to real-time processing as soon as it returns to service, without operator intervention, restoring the functionality of the ICS.

The ICS shall check the Gaming System and Instant Ticket System independently by reprocessing On-line and Instant Games ticket transactions, including, but not limited to, draw game activity, digital activity, subscriptions, sales agent account status, sales commissions, settlements, validations, inventory status changes, coupons, cancels, adjustments, promotional tickets, sales agent management and accounting activity allowing for the auditing of the daily transactions, winner selection/verification, prize payout calculations, sales summaries, and various inquiry and reconciliation activities defined by the Commission. The ICS Vendor shall meet the requirements of any multi-jurisdictional associations with which the Commission is, or becomes, affiliated.

The ICS-Test shall be used for Commission quality assurance activities. The ICS-Test shall be identical in hardware, software, and configuration to the production ICS and shall be available for use by the Commission at all times, with full support from the ICS Vendor. The ICS-Test shall have the ability to be immediately activated for production in the event of failure of ICS-A or ICS-B and shall meet all production ICS requirements when actively in use as a production ICS. .

The ICS Vendor shall not conduct software development or its own quality assurance activities on the production ICS

or on the ICS-Test, except for supporting the Commission's customer acceptance testing on the ICS-Test as directed by the Commission.

The ICS must be able to submit/receive/process all data required for game operation using the MUSL automated reporting system automated programming interface (MARS API). The ICS must also be able to send secure email reports containing all information necessary for game operation (for example, closure, notification, sales balancing, winners, etc.) to email addresses provided by the Commission. The Commission shall provide a smtp/outgoing mail server. The ICS must support secure remote administration and operation in compliance with MUSL rules.

A. Hardware. The ICS Vendor shall supply all hardware to operate the ICS in its entirety during the term of the Contract.

1. Hardware for each of ICS-A, ICS-B and ICS-Test shall include, but not be limited to, main CPU, keyboard, mouse, printer, and monitor.
2. Equipment shall have been inspected for safety and certified by an agreed upon testing laboratory and shall be in compliance with FCC regulations suitable for devices of the types proposed.
3. All equipment shall be new and unused. Equipment shall be compliant with current electronic technology manufacturing standards and be of current manufacture by the Successful Bidder or its suppliers. All hardware models and software versions installed as ICS start-up shall represent the then-current equivalent or better model or version in case a proposed offering is phased out or superseded.
4. Each ICS shall include fault-tolerant storage of at least RAID5 or equivalent.
5. Each ICS shall include fault-tolerant power supplies.

B. Application Software. The ICS Vendor shall be responsible for providing and maintaining the ICS application software that will primarily consist of updating the application software whenever the Commission implements a new lottery game or promotion, makes changes to a game, makes changes to accounting processes that would affect ICS processing, or updates the Gaming System and Instant Ticket System operating system. In addition, the Commission may require modifications to the application software in order to expedite systems balancing. A current copy of the application software, including source code and documentation, shall be provided to the Commission within five days following each successful release.

1. Written prior approval is required from the Commission before making any enhancements or modifications to any software.
2. The ICS application software shall be maintained in three separate environments: production, test, and development. Test and development shall not be on ICS-A or ICS-B.
3. The Commission and MUSL must approve the ICS software before use, and the ICS must adhere to all requirements as outlined in the most current MUSL Rule 2 and MUSL Confidential Security Standards.
4. ICS-A and ICS-B shall import and process all required data directly from the Commission's lottery systems as close to real time as possible.
5. ICS-A and ICS-B shall check that all wagers will be applied to the appropriate drawing(s).
6. ICS-A and ICS-B shall process all data from the Gaming System and produce a balancing report within twenty minutes after the relevant draw break.
7. The processes and activities to identify winners for a draw shall be completed within 30 minutes after entry of the winning numbers for each drawing.
8. At a minimum, ICS-A and ICS-B shall perform the following balancing procedures based on information and processes on the Gaming System and Instant Ticket System:
  - i. reprocess all transactions for each drawing;
  - ii. produce and compare end-of-day game reports. At a minimum, counts and amounts of all financial activity by game and sales agent shall be balanced daily, as well as balancing total validations and outstanding prize liability by game and draw;
  - iii. verify sales by game and by drawing for each sales agent;
  - iv. verify the number of prize winners at each prize level for each game;
  - v. confirm validations and outstanding prize liabilities for each game and each drawing;
  - vi. verify deferred revenue – including future sales and subscriptions;
  - vii. verify commissions, promotion credits, coupons redeemed, returns, return commissions, cancellations, unclaimed prizes, purged tickets, service fees, and adjustments;
  - viii. verify instant ticket book status;

- ix. various inquiry and reconciliation activities;
  - x. recalculation of sales agent accounting information to compare to the Gaming System and Instant Ticket System for accuracy; and
  - xi. produce reports that are automatically balanced against reports produced by the Gaming System and Instant Ticket System to verify the above items.
9. Promotional transactions that are available through the Gaming System shall be supported throughout the ICS. Promotions include, but are not limited to, free plays, BOGO, coupons, instant wins, increased payout, sampler ticket, sales agent incentives.
- C. Change Management. The ICS Vendor shall operate under a defined procedure for changes to documentation, procedures, specifications, program source and object code, and other major ICS components. Reports and/or displays shall be available to the Commission for review and approval prior to implementation. Strict performance according to the following principles of change management is required.
1. ICS components shall have version or release numbers, or unique model and serial numbers.
  2. Checksums are required for software at the time it is released for the Commission's quality assurance and shall be available at any time.
  3. Components shall be traceable, identifying the history, use, and location of a component.
  4. The ICS shall provide reports showing when and by whom a change was made and shall avoid multiple and concurrent update conflicts.
  5. The ICS shall have the ability to produce a change status report or listing.
  6. The ICS Vendor shall ensure through procedural and ICS controls that only Commission-approved changes, on a Commission-approved schedule, can be made to the application software. All changes are subject to approval by the Commission.
- D. Data Files. The ICS shall, at a minimum, produce two (2) data files each day. The first data file shall contain all accounting activity, in a summarized form for inclusion in the general ledger. The second data file shall contain detailed sales agent activity. The required content of both data files will be further defined for the Successful Bidder. The ICS Vendor shall backup data daily to be stored offline and off-site (within the United States of America) and shall retain the backup data for at least ninety (90) days past the end of the last prize claim period for any lottery game data stored.
- E. Reports. Reports generated by the ICS shall be organized and formatted like the Commission's related reports for efficient review and balancing. The ICS shall provide a daily and weekly process for balancing all transactions of the Game System and Instant Ticket System. There shall be an automated balancing process in order to reconcile sales agent game activity, weekly Electronic Funds Transfer (EFT) balances, game sales, and to identify any discrepancies, to occur at intervals specified by the Commission. Reports verifying the number of prize winners and amounts won by game, as well as audit reports for pre-draw balancing, shall be available on demand by the Commission.
- F. Communications, Connectivity and Support. Real-time monitoring of communications between the ICS and the Gaming System and Instant Ticket System shall be provided.
1. Any out-of-balance conditions, or other error, or security incident shall be reported immediately as an alert to the designated Commission employees, Gaming System and Instant Ticket vendor's employees, and ICS Vendor's employees. The ICS Vendor shall maintain an updated Commission-approved escalation procedure to ensure appropriate staff is alerted timely.
  2. The Commission's designated staff shall receive immediate notification of abnormal ICS operations and their causes, such as communication difficulties, ICS hardware failure, operating system errors, power failure, intrusion detection, or other unexpected issues impacting ICS functions.
  3. The ICS Vendor staff shall be available 24 hours per day, 365 days per year (366 days per year in a leap year) (remote availability is acceptable) to provide assistance in resolving any issues which may occur. A maximum of a ten (10) minute response time is required.
- G. Interface Files. The ability to export data in various formats required by the Commission, including, but not limited to, Excel, PDF, Word, and Comma Delimited, along with *ad hoc* reports, and to make reports available through e-mail, is required. Updated information relating to the Commission's sales agent master file, including account statuses and sales and accounting information, is also required. Interface files, as defined by the Commission,



for the purpose of daily accounting, general ledger, and tax reporting shall be included in the daily update file to the Commission's financial application.

- H. Internal Controls. The ICS Vendor shall maintain checks and controls for verifying delivery and receipt of data files to and from the systems and to comply with the most recent version of MUSL Rule 2. Internal controls shall be modified, as needed, with application or hardware modifications. The ICS Vendor shall enable the Commission to maintain absolute knowledge of all plays, redemptions, validations, or other transactions recorded on the ICS. The ICS shall not contain any unauthorized code. The ICS shall detect ICS transaction file tampering and record(s) affected.
- I. Testing and Certification. The ICS Vendor shall provide timely assistance with testing and certification of the ICS. If requested by the Commission, and, at no additional cost to the Commission, the ICS Vendor shall submit any software to an independent third-party certification firm selected by the Commission.
- J. Documentation and Training. The ICS Vendor shall be responsible for updating all documentation if any changes are made that affect the ICS. The ICS Vendor shall provide detailed documentation for any enhancements or additions for Commission approval prior to development. The ICS Vendor shall provide and maintain comprehensive ICS documentation for the Commission including, but not limited to: security standards and processes, multi-jurisdictional security standards compliance documents, configuration status reports identifying the current configuration of any ICS component, change control processes and procedures, daily balancing procedures, draw balancing procedures, data dictionaries, third-party licensing documentation.

Prior to the Commission's customer acceptance testing needed to approve startup of the ICS, the ICS Vendor shall provide detailed system specifications, flow charts, operating and balancing procedures and Commission employee training.

- K. Security. The Commission shall manage both logical and physical access to the ICS environments. The ICS Vendor must be compliant with all ITS security policies and standards, current and as updated, which are located here: <https://its.ny.gov/eiso/policies/security>.
- L. Business Continuity and Disaster Recovery. The ICS Vendor shall provide continuous, uninterrupted services and shall maintain a formal disaster recovery and business continuity plan in the event of an unintended operational interruption or disaster.
- M. Transitioning from Mainframe to ICS Vendor. The ICS Vendor shall have a detailed implementation and conversion plan to transition the auditing system from the ITS Mainframe to the ICS Vendor that identifies all tasks, estimated timeframes for the tasks, milestones, roles, and responsibilities for the ICS Vendor and Commission staff.
- N. End of Contract. Upon expiration or termination of the Contract, the ICS Vendor shall, at no cost to the Commission and upon the appointment of a successor vendor, provide the Commission and such successor vendor access to all necessary records in the ICS Vendor's possession relating to the services provided under the Contract. At the Commission's request, the ICS Vendor shall also, at no cost to the Commission, make appropriate ICS Vendor staff available to the Commission and to the successor Vendor during normal business hours to answer questions regarding such records and the services which have been provided by the ICS Vendor under the Contract. The ICS Vendor shall cooperate to the fullest extent with any successor Vendor in order to accomplish a smooth and orderly transition of services, so that the services required are uninterrupted and are not adversely impacted by the change in vendor.

## **PART THREE – THE PROPOSAL**

### **3.1 Technical and Pricing Proposals**

Part Three provides the requirements for development of the “Proposal”, consisting of Technical and Pricing Proposals, and explains the Proposal clarification process. In preparation of the Proposal, each Bidder should pay special attention to the requirements and information being requested to respond fully to the RFP. Any Proposal found to be incomplete or placing conditions in response to the requirements under this RFP may be deemed nonresponsive and removed from further consideration. **Attachment 3, Document Submittal Checklist**, is provided to assist the Bidder in including all required information and documentation.

Proposals shall address all goods and services described in the Scope of Work. In addition to the Bidder’s descriptions, certain information is requested in this Part that is of interest to the Commission and shall be included in the Proposal.

### **3.2 Business Organization**

- A. The Bidder must state the full name and address of its organization and, if applicable, any branch office or other subordinate element that will perform or assist in the performance of the work hereunder. The Bidder shall indicate whether it operates as an individual, partnership, corporation, joint venture, or other specified form of business organization. Each Bidder must state whether it is qualified and/or registered to do business in the State of New York.
- B. The Bidder must indicate the name, address (including e-mail) and telephone number of the individual from its organization that is authorized to enter into and bind the organization to the terms and conditions of its Proposal.
- C. The Bidder must demonstrate in its Technical Proposal that its organization is of sufficient size and has the qualifications required to perform the requested services as defined in this RFP. The Proposal must:
  1. indicate the organization’s hiring practices, including suitability standards, and
  2. provide a thorough description of the organization, including employee capacity to undertake and successfully carry out the proposed services.

### **3.3 Experience of the Bidder’s Organization**

#### **Organization:**

The Bidder must demonstrate in its Proposal that its organization is of sufficient size and has the qualifications required to perform the requested services defined in the RFP. The Proposal must include the following:

- A. Description of the Bidder’s organization that would be considered relevant to the successful accomplishment of the Scope of Work required herein. Include sufficient detail to demonstrate the relevance of such experience.
- B. Description of the credentials of the Bidder and examples of past projects that illustrate such.
- C. Description of the organization’s quality control program and how it will be applied to the work under a resulting contract.
- D. Identification of whether any of the experience described has been due to a subcontractor relationship and to what extent.

#### **References:**

The Proposal must name as references at least three clients relevant to the work to be performed under the Contract resulting from this RFP. References must include company name, contact person (name, title, telephone number, email

address, and mailing address). Also, each reference must include a general statement of the type of work performed for the reference. References will be used to substantiate the Technical Proposal.

### **3.4 Financial Viability**

The Bidder must submit information demonstrating the Bidder's financial viability, integrity and stability (e.g. unaudited financial statements and/or annual reports). Further, to the extent not already provided in the Vendor Responsibility Questionnaire, the Bidder shall describe key corporate personnel, ownership control, and facilities available to satisfy the requirements of the proposed Contract. This information will be used in conjunction with the Vendor Responsibility Questionnaire in determining whether the Bidder is "responsible" and therefore subject to award under this solicitation.

### **3.5 Bidder's Project Management and Staffing**

- A. Identify the full-time dedicated staff project director and other responsible individuals by name, title, and location who will work under a resulting Contract, including proposed subcontractor staff members.
- B. Provide resumes for proposed staff indicating the relevant experience of each individual; his or her role in the project; and anticipated percentage of time allocated of each individual in the proposed work effort.
- C. Provide resumes of the managing individuals describing relevant education, knowledge, training, and experience. The Commission expects that the same managers will have overall responsibility for all projects conducted pursuant to this RFP. Exceptions may be made only with the approval of the Commission.
- D. Provide evidence of any certifications or licenses (i.e. CPA, CFA) of the proposed staff relating to the work outlined in the RFP.
- E. Describe the Bidder's process for training new employees.

If applicable, the Proposal must list all subcontractors, including firm name and address, contact person, and a complete description of work to be subcontracted. Descriptive information relative to the subcontractor's organization and capabilities must be included. If the Bidder does not intend to utilize subcontractors, that position should be indicated in the Technical Proposal.

### **3.6 MWBE Diversity Practices**

In addition to requirements specified in this RFP in section 7.7 "Vendor Requirements and Procedures for Equal Employment and Business Opportunities for Minority Group Members and New York State Certified Minority/Women-Owned Businesses", each Bidder shall provide a written description of their diversity practices in the form provided as **Appendix I, Diversity Practices Questionnaire**.

Pursuant to New York State Executive Law § 310(22), "Diversity practices" shall mean the Vendor's practices and policies with respect to:

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

**Note:** Bidder responses will be scored on this section pursuant to this RFP's section 4.5 "Evaluation and Selection Criteria".

All available points will be awarded based on the answers provided in **Appendix I, Diversity Practices Questionnaire** and in **Appendix J, the proposed Utilization Plan (at J-4)**.

### 3.7 Work Plan

The Bidder must include a detailed Work Plan in its Proposal that identifies all aspects of the ICS, including specific deliverables, deliverable and implementation dates, implementation process, and ICS configuration and features, including the following:

1. Provide an overview of the proposed ICS and a description of its capability to independently process New York Lottery transactions in real-time, with the capacity of handling up to one hundred (160,000) sales transactions per minute on a continuous basis.
2. Describe how the proposed ICS shall be flexible, scalable and customizable to the business needs of the Commission and MUSL Rule 2. Business needs include but are not limited to: increased number of sales agents, new software that is more demanding of hardware functionality, increased number of lottery games or promotions offered, Gaming System and Instant Ticket System conversion.
3. Describe how real-time monitoring of communications between the ICS and other systems shall be provided and how the configuration shall be capable of supporting the Commission's New York Lottery operations in real time, 365 days per year (366 days per year in a leap year), 24 hours per day, and how the time-synchronizing mechanism will ensure consistent time recording and reporting for events and transactions.
  - a. Describe how ICS-A and ICS-B shall operate simultaneously and independently.
  - b. Explain the time-synchronizing mechanism and how it will ensure consistent time recording and reporting of events and transactions.
  - c. Describe how each production ICS shall receive and process transactions in real time.
  - d. Describe bandwidth required to ensure ICS-A, ICS-B, and ICS-Test if used in production, are functioning in real time with the Gaming System and the Instant Ticket System.
4. Describe the ICS redundant network design, and in the event the real-time transmission fails, how the ICS will be capable of using portable digital media as the source of ICS data to ensure compliance with MUSL's lockdown alternative solutions.
5. Describe backup/recovery capabilities and processes for current or previous days' transactions and restore/reprocessing functionality in the event an error or out-of-balance situation occurs. Explain how support "backup and restore" functionality includes critical files, software, and backup data, and processes to test backup and restore procedures.
6. Describe the process for how the ICS will, with minimal operator involvement, handle day-end, draw breaks, maintenance windows of the systems, cutovers between duplexed systems within data centers, and cutovers between Gaming System and Instant Ticket System data centers (i.e. Primary Data Center and Backup Data Center). Include description of operator involvement.
7. Describe how the ICS Vendor shall conduct software development and quality assurance.
8. Describe the process and tools to be provided for the Commission's designated ICS operator to determine, at any time, from ICS-A or ICS-B, or ICS-Test if used in production, that all ICSs are processing transactions in real time.
9. Describe how, if ICS-A, ICS-B, or ICS-Test, if used in production, stops processing transactions, then the stopped ICS shall automatically "catch up" to real-time processing as soon as it returns to service and without operator intervention, restoring the functionality of the ICS.
10. Describe how ICS-Test shall have the ability to be activated for production in the event of failure of ICS-A or ICS-B and how test ICS shall meet all production ICS requirements when actively functioning in production mode. Describe how risks are identified and mitigated.
11. Describe how the ICS shall submit/receive/process all data required for game operation using the MARS API and send email reports containing all information necessary for game operation (e.g., closure, notification, sales balancing, winners, etc.) to email addresses provided by the Commission. Explain how the ICS shall support secure remote administration and operation in compliance with MUSL rules.
12. Provide configuration block diagrams, down to the component level of the proposed ICS.
13. Describe how data encryption will be accomplished, including which encryption algorithm will be used, for communications between the ICS and the Gaming System and Instant Ticket System
14. Describe the hardware, methods and processes Vendor shall employ to comply with each of the requirements set forth in section 2.1 "Scope of Work", A. "Hardware".

- a. Identify manufacturer, product name, and model number, as applicable.
  - b. Describe the amount of space, power, and other environmental support required by the ICS hardware.
  - c. Describe the server-class features of the proposed hardware, such as manufacturer's designation as server-class, fault-tolerant features, use of components designed for continuous, uninterrupted use and high availability, hot swap components, etc.
  - d. Describe the process to provide ongoing hardware support, including upgrades, updates and the replacement of hardware.
15. Describe the ICS application software, methods and processes Vendor shall employ to comply with each of the requirements set forth in section 2.1 "Scope of Work", B. "Application Software".
    - a. List and describe all software not part of the ICS application software that will be installed on the ICS computers.
    - b. Describe the process for providing ongoing software support, including upgrades, updates and maintenance support.
  16. Describe change management practices and procedures and how Vendor shall comply with each of the requirements set forth in section 2.1 "Scope of Work, C. "Change Management".
  17. Describe how data files shall be produced and will meet the requirements set forth in section 2.1. "Scope of Work", D. "Data Files".
  18. Describe how reports and balancing shall be achieved in accordance with requirements set forth in section 2.1 "Scope of Work", E. "Reports".
  19. Describe how communications, connectivity and support shall be provided to comply with each of the requirements set forth in section 2.1 "Scope of Work", F. "Communications, Connectivity and Support".
    - a. Describe network connectivity and bandwidth requirements for the proposed ICS including between the ICS and the Gaming System and Instant Ticket System and bandwidth or network needs for the Commission's designated ICS operator's use.
    - b. Describe how the ICS shall monitor the data transmission process, and the connection between the ICS computers and the Gaming System and Instant Ticket System.
    - c. Describe the ICS process that will occur in the event of a network failure.
    - d. Describe alternate means that will be used to provide data to the ICS computers and the procedures and time necessary to balance sales and winners in the event data transmission to the ICS is disrupted or not functioning.
    - e. Describe the ICS's capability to log system-generated commands and operator-entered commands. Include description of any exception reports that are available when unusual or unauthorized system-generated commands and operator-generated commands may have been entered.
  20. Describe how export capabilities will meet the requirements set forth in section 2.1, "Scope of Work", G. "Interface Files".
  21. Describe internal controls and processes required per section 2.1 "Scope of Work", H. "Internal Controls".
  22. Describe testing and certification assistance as outlined in section 2.1 Scope of Work", I. "Testing and Certification".
  23. Describe the resources, process and tools to be used to manage ICS documentation, detailed ICS specifications, flow charts, operating and balancing procedures, and Commission employee training as required in section 2.1 "Scope of Work", J. "Documentation and Training".
  24. Confirm compliance with New York State Office of Information Technology ITS Security Policies. Describe any other security standards provided. See section 2.1 "Scope of Work", K. "Security".
  25. Describe how continuous, uninterrupted services shall be achieved and include an overview of Vendor's business continuity and disaster recovery plan as requested in section 2.1 "Scope of Work", L. "Business Continuity and Disaster Recovery".
  26. Provide a detailed implementation and conversion plan identifying all tasks, estimated timeframes for the tasks, milestones, roles, and responsibilities for both the Vendor and Commission staff, as required in section 2.1 "Scope of Work", M. "Transitioning from Mainframe to ICS Vendor".
  27. Describe the "end of contract" process as required in section 2.1 "Scope of Work", N. "End of Contract".

### **3.8 Pricing**

Each Bidder shall provide its Pricing Proposal through **Attachment 2, Pricing Proposal Form**, as directed on such Form and based on the Scope of Work defined in the RFP. **Alternate forms will be considered nonresponsive.**

### **3.9 Clarification Process**

The Commission may request clarification from a Bidder for the purpose of resolving any ambiguity or questioning information presented in the Proposal. Clarifications are an opportunity to explain, but not to make changes to, a Proposal. Responses shall be submitted to the Commission within the time stipulated at the time of the request. As applicable, clarifications will be treated as addenda to the Proposal.

## PART FOUR - EVALUATION AND SELECTION

### 4.1 Introduction

This section describes the evaluation and award process that will be used to determine which Proposal provides the greatest overall benefits to the State. The ability of the Commission to evaluate a Bidder's Proposal is dependent upon the completeness and proper submission of the Proposal. The failure of a Bidder to provide information requested by this RFP, to submit the Proposal according to the required format, or to respond appropriately to a clarification request or demonstration request, may result in rejection of the Bidder's Proposal or reduction in scoring during the evaluation.

### 4.2 Method of Award

The method of award under this RFP will be "Best Value", the evaluation method for awarding a Contract to the Bidder whose Proposal optimizes quality, cost, and efficiency among responsible offers. The determination of Best Value will be based on a scoring of the Technical and Pricing Proposals in response to the RFP specifications.

### 4.3 Evaluation Methodology

The Commission will conduct a comprehensive, fair, and impartial evaluation of each Proposal received in response to this RFP. An evaluation committee (the "Committee") and subject matter experts will be designated and will be comprised of Commission staff and other employees of the State of New York. The Commission reserves the right to make changes in the Committee's membership as it deems appropriate.

Scoring of the Technical Proposals will be by consensus of the Committee. Pricing Proposals will be scored following conclusion of the Technical Proposal scoring process. **The relative weight given of scores assigned to Technical and Price Proposals shall be: Technical 60%; Price 40%.**

The evaluation and award process will include the following:

- A. Pass/Fail evaluation of the minimum qualifying requirements of the Bidder as provided for in this RFP's section 1.3 "Minimum Qualifications".
- B. Review of Proposals to assess compliance with Proposal submission requirements, including responsiveness to terms, conditions, and requirements.
- C. Detailed review by the Committee of the Technical Proposals relative to proposed functions, features, services, and references.
- D. Proposal clarifications, if applicable.
- E. Scoring of Technical Proposals by the Committee using pre-defined evaluation criteria.
- F. Assessment and scoring of Pricing Proposals after finalization of the technical scoring process.
- G. Compilation of the Technical and Pricing Proposals scores of each Bidder into a summary score sheet by staff of the Commission's Contract Administration Office.
- H. Preparation of a Recommendation of Award Memorandum, on behalf of the Committee, by the Commission's Contract Management Specialist 3.
- I. Signature by the Committee Chair on behalf of the Committee, of the final Memorandum.
- J. Submission of the final Memorandum to the Commission's Executive Director for review, consideration of the Committee's recommendation and briefing of the Commissioners.
- K. Review and consideration of the award by the Commissioners.

L. Signature of the Memorandum by the Commission's Executive Director, or his or her designee, if award is made.

M. Notice of Award.

#### 4.4 Information from Other Sources

The Commission reserves the right to obtain, from sources other than the Bidder, any information concerning a Bidder, the Bidder's offerings and capabilities, and the Bidder's performance, that the Commission deems pertinent to this RFP, and to consider such information in evaluating the Bidder's Proposal. This additional pursuit of information may include, but is not limited to, the Chair of the Evaluation Committee engaging Bidders and additional experts from outside the Committee to better inform the Committee's findings.

#### 4.5 Evaluation and Selection Criteria

Proposals determined to comply with the requirements set forth in this RFP will be evaluated based on the following criteria:

##### A. Technical Proposal Evaluation – 60%

- |  |             |
|--|-------------|
| 1. Experience of the Bidder's Organization | (15 points) |
| 2. Project Management & Staffing           | (10 points) |
| 3. MWBE Diversity Practices (Appendix K)   | (5 points)  |
| 4. Work Plan                               | (30 points) |

##### B. Pricing Proposal Evaluation -- 40% (40 points)

The Bidder with the lowest price will be awarded the full points allocated to the pricing evaluation. The score for each of the remaining Bidders will be proportionate to the lowest-price Bidder.

**Note: Points awarded will be rounded to the nearest hundredth place.**

##### 4.5.1 Pricing Proposal

Utilizing the Pricing Proposal form, **Attachment 2**, each Bidder is to propose pricing based on the Scope of Work set forth in **PART TWO** of this RFP. Each **Bidder must use Attachment 2 as directed. Alternative pricing structures will be deemed nonresponsive.**

#### 4.6 Final Composite Score/Determination of Award Process

The Technical and Pricing scores will be combined to determine the final composite score for each Bidder. Award will be made to the responsive and responsible Bidder who achieves the highest composite score and is not otherwise disqualified.

#### 4.7 Notice of Award

A Contract award notification letter will be sent to the Successful Bidder, and notification letters to unsuccessful Bidders indicating that an award was made and is subject to approval by the New York State Office of the Attorney General ("OAG") and the Office of the New York State Comptroller ("OSC").

#### 4.8 Debriefings

The Commission shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to this solicitation regarding the reasons that the Bidder's response was not selected for an award. If an unsuccessful Bidder desires a debriefing, it must be requested by the unsuccessful Bidder within fifteen (15) calendar days of release by the Commission of a notice in writing or electronically that the Bidder's bid was unsuccessful.



## 4.9 Protest or Appeal

If a Bidder decides to protest the award decision, the following protest procedures shall be followed:

- A. Any protest of the award decision shall be filed with the Commission no later than ten (10) business days following the date of the Commission's written notification to the unsuccessful Bidder that an award was made.
- B. The protest shall clearly state the basis for the protest and include all relevant documentation supporting such protest.
- C. The Commission shall conduct a review of the protest and issue a written determination to the protesting party within fifteen (15) business days of receipt of the protest. If additional time for issuance of the determination is necessary, the Commission shall inform the Bidder of the delay and of the time frame within which a determination may be expected. The final written determination provided to the Bidder will constitute the Commission's final administrative determination of the protest.
- D. For an unsuccessful Bidder to appeal the Commission's final administrative determination of the Bidder's protest, the unsuccessful Bidder must submit such an appeal to the OSC's Bureau of Contracts ("BOC"), within ten (10) business days of receipt of the Commission's final administrative determination. The protest appeal shall be in writing and shall contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the Commission's award of the Contract. A copy of the appeal shall be served on the Commission, the Successful Bidder(s), and any other party that participated in the review of the protest conducted by the Commission. The unsuccessful Bidder's appeal shall contain written affirmation that a copy of the appeal has been served as required by this paragraph.
- E. The appeal shall be filed with: Director, Bureau of Contracts – 11th Floor, New York State Office of the State Comptroller, 110 State Street, Albany, NY 12236.
- F. The Commission will submit an answer to the appeal to the BOC simultaneously with the Commission's delivery of the Contract to the BOC for its review, or within seven (7) business days of the submission of the appeal, whichever is later. The Commission's answer to the appeal shall include written affirmation that, simultaneous with the submission to BOC, the answer was transmitted to the protestor and the Successful Bidder.
- G. A Successful Bidder may, but is not required to, submit to the BOC a response to the appeal. Such answer shall include written affirmation that the answer was simultaneously delivered to the Commission and the protestor and shall meet the submission requirements as noted above for the Commission.
- H. The BOC shall evaluate the merits of the protest, the Commission's determination and any response submitted by an interested party. In its review, the BOC may require the Commission, the protesting party, the Successful Bidder, or any other interested party to address additional issues raised, may obtain information from an outside source, or may determine whether the BOC deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted.
- I. The BOC will issue a written determination addressing the issues raised by the appeal. All interested parties shall be provided with a copy of the determination. The determination shall be made part of the procurement record.

## **PART FIVE - GENERAL REQUIREMENTS FOR SUBMISSION OF PROPOSALS**

### **5.1 General**

Bidders shall submit a complete Proposal in response to this RFP that satisfies the requirements set forth below. Failure to do so may render the Bidder's Proposal nonresponsive. A Document Submittal Checklist is included in this RFP as **Attachment 3, Document Submittal Checklist**.

Proposals that make extensive use of color photographs or illustrations, or that include separate brochures or marketing materials and overly elaborate embellishments are discouraged.

All Proposals submitted in response to this RFP shall be written in English, with quantities expressed using Arabic numerals and United States Dollars (\$ USD), as applicable.

### **5.2 Proposal Disclosure by Bidder**

Disclosure by a Bidder or agent of the Bidder, of Proposal contents to anyone or any entity other than the individuals listed as Designated Contacts prior to the notice of the Contract award may result in rejection of the Proposal.

### **5.3 Material Deviations**

Material requirements of the RFP are those designated as mandatory, without which an adequate analysis and comparison of Proposals is impossible, or those that affect the competitiveness of Proposals, or the cost to the Commission.

Proposals that do not meet all material requirements of this RFP or that fail to provide all required and mandatory information, documents, or supporting materials, or include language that is conditional or contrary to terms, conditions, and requirements, may be rejected as nonresponsive.

The Commission, in its sole discretion, reserves the right to determine whether a Proposal meets the material requirements of the RFP.

### **5.4 Proposal Content and Submission**

Bidders shall submit a complete Proposal as outlined below. A Proposal that does not comply with these requirements may be deemed nonresponsive.

#### **A. Proposal Content**

Each Bidder is expected to provide the Commission with information, evidence, and demonstrations that will make possible a contract award that best serves the stated interests of the Commission and the State of New York. Bidders are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, systems, processes, and procedures.

There is no limit on the number of pages. Bidders, however, should prepare their Proposals simply and economically, providing a straightforward and concise description of their abilities to satisfy the requirements of this RFP. Proposals that are of excessive length, or contain a preponderance of boilerplate text, are discouraged. Special bindings, colored displays, and other promotional materials will receive no evaluation credit. Emphasis in each Proposal should be on completeness and clarity of content.

Failure by a Bidder to provide the appropriate information or materials in response to each stated requirement or request for information may result in lower scores during the evaluation or determination of a nonresponsive Proposal. Responses to complex RFP requirements that are stated in a form semantically equivalent to "Bidder agrees to comply" may be rejected as nonresponsive at the discretion of the Commission.

## B. Proposal Format

Each Bidder shall submit a complete Proposal in the format described below.

**Each Proposal shall consist of two (2) volumes:** Volume I - Technical Proposal and Volume II - Pricing Proposal. Each volume shall be sealed separately from the other and packaged together when submitted to the Commission as defined in C. "Proposal Submission", below in this section.

### **Volume I – Technical Proposal:**

The Technical Proposal shall include a transmittal letter, signed in ink by an official authorized to bind the Bidder to its provisions, and shall include information outlined below in Item 1.

The Technical Proposal shall include descriptive and technical matter only. No pricing information shall be contained in the Technical Proposal.

**The contents of the Technical Proposal (Volume I) shall follow the outline below and include divider pages with tabs to separate the response sections, appropriate headings as represented in the RFP, and page numbers.**

To assist Bidders in their Proposal response and submittal of the required documents, **Attachment 3, Document Submittal Checklist**, is incorporated into this RFP. This checklist shall be completed and included with the Bidder's Technical Proposal.

1. Transmittal Letter: The Bidder's transmittal letter shall be signed and shall contain names, addresses (physical and email), and telephone numbers of individuals who are authorized by the Bidder to address matters related to the Proposal including, but not limited to, contractual, technical, site visit, and references. **The transmittal letter shall also contain a statement that the Proposal shall remain valid at least 180 days from the due date of Proposals.**
2. Document Submittal Checklist (Attachment 3).
3. Bidder Acknowledgement of Addendum (Attachment 1).
4. Signed Contract Form (Appendix B).
5. Certifications and representations as required by this RFP and as listed in the Document Submittal Checklist (Attachment 3).
6. Response to "Minimum Qualifications" requirements in section 1.3.
7. References.
8. Response to specifications, in the order provided for in this section, including technical documentation as appendices.

### **Volume II – Pricing Proposal:**

The Pricing Proposal shall be prepared as directed using **Attachment 2, Pricing Proposal Form**.

## C. Proposal Submission:

All volumes of the Bidder's Proposal shall be submitted to the Commission as set forth below and shall be received by the date and time set forth in the Schedule of Events. Originals should be clearly marked to differentiate from copies.

## **Technical Proposal**

The Technical Proposal shall be submitted separately from all other Proposals and clearly marked "Technical Proposal" and be submitted as noted below:

- **Electronic (non-redacted): One (1) searchable PDF file of the complete non-redacted Technical Proposal.**
- **Electronic (redacted pursuant to section 5.11 "Designation of Proprietary Information (FOIL)") containing a searchable PDF file of the complete redacted Technical Proposal.**

The electronic files shall include all Technical Proposal sections within a single file to facilitate searches for terms across the breadth of the Technical Proposal.

Technical Proposals and Redacted Technical Proposals **must** be sent to: [Officer.Contracting@gaming.ny.gov](mailto:Officer.Contracting@gaming.ny.gov). In the Subject line, please include "RFP #C202002 – Technical Proposal"

**Do not include any pricing in the Technical Proposal. Technical Proposals that contain pricing will be deemed non-responsive and removed from consideration.**

## **Pricing Proposal**

The Pricing Proposal shall be submitted separately from all other Proposals.

- **Electronic: One (1) searchable PDF file of the complete Pricing Proposal.**

Pricing Proposals **must** be sent to: [Procurement@gaming.ny.gov](mailto:Procurement@gaming.ny.gov). In the Subject line, please include "RFP #C202002 – Pricing Proposal"

The Commission is not responsible for technical, hardware, software, telephone or other communication malfunctions, errors or failures of any kind, lost or unavailable network connections, website, Internet, or ISP availability, unauthorized human intervention, traffic congestion, incomplete or inaccurate capture of entry information (regardless of cause) or failed, incomplete, garbled, jumbled or delayed computer transmissions which may limit one's ability to submit Proposals electronically, including any injury or damage to Bidder's or any other person's or entity's computer relating to or resulting from the Bidder's electronic submission of its Proposals.

Any late, illegible, incomplete, invalid, unintelligible, misdirected, or corrupted submissions will be disqualified.

## **D. Proposal Receipt**

The Commission's Contract Administration Office will provide the sender with an email confirmation indicating receipt of the Proposal.

The Pricing Proposal (**Volume II**) will not be opened until after the technical evaluation process is complete.

The Technical Proposal (**Volume I**) will remain with the Commission's Contract Administration Office for initial review of document submission as provided in this RFP and subsequently distributed to the evaluation committee at the start of the evaluation process.

## **5.5 Late Proposal**

A Proposal must be received by the Commission on or before the due date and time specified in the Schedule of Events of the RFP. The Bidder is responsible for timely receipt of its Proposal and should plan for delivery accordingly. Failure of a Bidder to submit a Proposal by the specified time may result in rejection or disqualification of the Proposal. Proposals rejected or disqualified for lateness may be returned unopened to the Bidder.

## 5.6 Joint Proposals

Two (2) or more firms may join to submit a Proposal in response to this RFP. If a joint Proposal is submitted, the Proposal shall define the responsibilities that each Firm is proposing to undertake. Of the Firms submitting a joint Proposal, the Firms shall designate within the Proposal one Firm as the primary Bidder. Any contract award issued resulting from such a submission will be made exclusively to the primary Bidder. A joint Proposal shall also designate a single authorized official from the designated primary Bidder participating in such joint Proposal to serve as the sole point of contact between the Commission and the Firms that are responding together.

## 5.7 Multiple Proposals from One Bidder Prohibited

Multiple Proposals from one Bidder are not permitted under this RFP. A Bidder shall submit only a single Proposal. However, a Bidder may, within the single Proposal, and separate from the response to the requirements of this RFP, identify options, including solicited and unsolicited products, services, and features, absent of price, which the Bidder believes may be appealing and useful to the Commission.

## 5.8 Costs Associated with Preparation of Proposals

The Commission and State of New York shall not be liable for any of the costs incurred by a Bidder in preparing or submitting a Proposal, and, therefore, the Commission and/or the State will not assume any responsibility or liability for any costs incurred by a Bidder prior to the award and approval of the Contract. The responsibilities and liabilities of the Commission and the State shall be limited to those set forth in the Contract.

## 5.9 Accuracy of Proposals

Bidders are responsible for the accuracy of their Proposals. All Bidders are directed to take extreme care in developing their Proposals. Bidders are cautioned to review their Proposals carefully prior to submittal, as requests for Proposal withdrawals of any type are not likely to be granted. All exceptions and deviations shall be noted in Proposals, and no adjustments may be made after award is issued. If a Bidder submits a Proposal ahead of the submission deadline, the Bidder may submit an amended Proposal any time prior to the Proposal Due Date indicated in the Schedule of Events.

## 5.10 Extraneous Terms

Proposals shall conform to the terms set forth in the RFP. Material deviations may render the Proposal nonresponsive and may result in the rejection of the Proposal. Extraneous terms proposed by a Bidder for consideration shall be submitted using the format and process set forth in the RFP. Any Bidder submissions on standard, pre-printed forms, such as, 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 extraneous terms accepted by the Commission, in writing, shall be expressly incorporated into the Contract. Acceptance and/or processing of a Proposal shall not constitute acceptance of extraneous terms. The Commission will not entertain any exceptions to **Appendix A, Standard Clauses for New York State Contracts**.

## 5.11 Designation of Proprietary Information (FOIL)

During the evaluation process, the content of each Proposal will be held in confidence and details of any Proposal will not be revealed, except as may be required under the New York State Freedom of Information Law ("FOIL") or other State law. Under FOIL, an agency may deny access to records containing trade secrets or information which, if disclosed, would cause substantial injury to the competitive position of a commercial enterprise. This exception applies both during and after the evaluation process.

**If Bidder believes its Proposal contains any such trade secrets or other Confidential Information, Bidder must submit a request with Bidder's Proposal to exempt such information from disclosure. Such request shall (a) identify the specific material in the Proposal Bidder believes should be exempt from disclosure; (b) identify the location (section, page number) of such material; (c) state the reasons why the information should be exempt from disclosure.**

Requests for exemption of the entire contents of a Proposal from disclosure generally have not been found to be meritorious and are discouraged. Please limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause substantial injury to the Bidder's competitive position.

For proprietary designations, the Commission's legal staff, as directed by the Designated Contacts, will review each designation and communicate with the Bidder in the determination of such designation. Any designation shall not become final until accepted by the Commission via formal letter. Once a designation is final, the Bidder will be required to submit a redacted version of the Proposal consistent with the accepted designation. The redacted version will be the material that is released in response to a relevant FOIL request.

#### **5.12 Disclosure and Investigations During Proposal Evaluation**

Subsequent to Proposal submission, the Commission may initiate investigations into the backgrounds of the Bidder and individuals or entities related to any officers, directors, members, principals, investors, owners, subcontractors, employees, or any other individuals or entities related to the Bidder, as the Commission may deem appropriate, in the discretion of the Commission. Such background investigations may include fingerprint identification by the New York State Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI"), and such additional investigation as may be required.

The Commission may reject a Proposal based upon the results of these background checks. Each Bidder is advised that any Bidder who knowingly provides false or intentionally misleading information in connection with any investigation by the Commission may cause the Proposal of such Bidder to be rejected, or a Contract to be canceled by the Commission, in the sole discretion of the Commission.

If a Bidder or a subcontractor is a subsidiary of a parent entity, the Commission may, in its sole discretion, require the above disclosures from the parent entity.

#### **5.13 Disclosure of Litigation and Other Information**

Because the Commission has a strong interest in the Successful Bidder's continuing ability to provide secure, high quality products and services, the Commission requires that a Bidder list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could materially affect the Bidder. As part of its disclosure requirement, a Bidder shall state whether the Bidder or any of the owners, officers, directors, or partners of such Bidder have ever been convicted of a felony. Failure to disclose any such matter may result in rejection of the Proposal or termination of a Contract. Such disclosures shall be included with the Proposal.

This disclosure obligation is a continuing requirement. Any such matter commencing after submission of a Proposal, and with respect to the Successful Bidder after the approval of a Contract, shall be disclosed to the Commission in a timely manner in a written statement to the Commission.

#### **5.14 Change in Financial Condition**

If a Bidder who has submitted a Proposal in response to this RFP experiences a substantial change in financial condition prior to the award of a Contract pursuant to this RFP, or if a Successful Bidder experiences a substantial change in financial condition during the term of the Contract with the Commission, the Bidder is required to notify in writing the Executive Director of the Commission, or his or her designee, at the time the change occurs or is identified. Failure to notify the Executive Director of the Commission, or his or her designee, of such a change may result in rejection of the Proposal or termination of the Contract, in the sole discretion of the Commission. **This disclosure obligation is a continuing requirement.**

#### **5.15 Change in Ownership**

If a Bidder experiences a material change in ownership prior to the award of the Contract or during the term of the Contract with the Commission, the Bidder is required to notify in writing the Executive Director of the Commission, or his or her designee, at the time the change occurs or is identified. "Material change in ownership" is defined as any merger, acquisition, assignment or change in parties who, in the aggregate, own greater than five percent (5%) of the

Bidder or the parent company of the Bidder. Failure to notify the Commission of such a change may result in the rejection of a Bidder's Proposal or termination of the Contract. The Commission reserves the right, based on its assessment of a material change in ownership, to reject a Proposal or terminate a Contract. **This disclosure obligation is a continuing requirement.**

#### **5.16 New York State Public Officers Law**

Contractors, consultants, Vendors, and subcontractors may hire former Commission employees. However, as a general rule and in accordance with New York State Public Officers Law § 73, former employees of the Commission may neither appear nor practice before the Commission, nor receive compensation for services rendered on a matter before the Commission, for a period of two (2) years following their separation from Commission service. In addition, former Commission employees are subject to a "lifetime bar" from appearing before the Commission or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with the Commission.

#### **5.17 Ethics Requirements**

The Vendor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State of New York to perform services in violation of the provisions of the New York State Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Vendor certifies that its employees and those of its subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the term of the Contract, no person who is employed by the Vendor or its subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Vendor or its subcontractors derived from this Contract. The Vendor shall identify and provide the State with notice of those employees of the Vendor and its subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Vendor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate the Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

#### **5.18 Hiring of Commission Personnel**

At all times during the Proposal evaluation period and continuing for one (1) year following either the award of the Contract, or the rejection of all Proposals, Bidders are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any Commission employee involved in the evaluation of Proposals, the Contract award, or Contract negotiations. A Bidder making such an offer or proposition may be disqualified from further consideration and its Proposal rejected.

#### **5.19 News Releases**

No public discussion or news release pertaining to this RFP or the services to which this RFP relates may be made without prior written Commission approval, and then only in accordance with express written instructions from the Commission. No outcome of the award under this procurement may be released without prior approval by the Commission and then only to persons designated by the Commission.

#### **5.20 Advertising**

Each Bidder agrees not to use the Commission's name, logos, images, nor any data or results arising from this procurement or Contract as part of any commercial advertising without prior written approval by the Commission, and then only in consultation and cooperation with the Commission.

## 5.21 State's Reserved Authority

In addition to any authority set forth elsewhere in this RFP, the Commission reserves the authority to:

- A. award a Contract for all, part, or none of the services requested by this RFP;
- B. waive any informality or technical defect if, in the judgment of the Commission, the best interest of the Commission will be so served;
- C. eliminate any non-material mandatory specification(s) that cannot be complied with by any of the prospective Bidders;
- D. amend the RFP and direct Bidders to submit Proposal modifications accordingly;
- E. change any of the scheduled dates stated herein;
- F. reject any or all bids received in response to this RFP, and reissue a modified version of this RFP;
- G. withdraw the RFP at any time, at the sole discretion of the Commission;
- H. seek clarifications and revisions to bids;
- I. use information obtained through site visits, interviews and investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the request by the Commission for clarifying information in the course of evaluation and/or selection under this RFP;
- J. disqualify any Bidder whose conduct and/or Proposal fails to conform to the requirements of this RFP;
- K. negotiate with the Successful Bidder within the scope of the RFP in the best interests of the State;
- L. request best and final offers;
- M. set aside the original Successful Bidder if the Commission determines that such Bidder is nonresponsive or non-responsible. The Commission may then award the Contract to the next highest score of a responsive and responsible Bidder; and
- N. stop the work covered by this RFP and the Contract at any time that it is deemed the Successful Bidder is unable, unwilling, or incapable of performing the work to the Commission's satisfaction. In the event of such stop, the Commission shall have the right to arrange for the completion of the work in such a manner as it may deem advisable and if the cost thereof exceeds the amount of the Successful Bidder's Proposal, the Successful Bidder and its surety shall be liable to the Commission and the State of New York for any such cost thereof. In the event the Commission stops the work as provided herein, together with the reason thereof, the Bidder shall have ten (10) business days to respond to the Commission's stop order before any such stop order shall become effective. After the ten business days have passed and/or any response received is considered, the Commission may move forward with the original stop order, or modify or withdraw its original stop order, within its discretion.

## 5.22 Default

The Commission reserves the right to cancel the Contract and to pursue any and all legal remedies provided at law, in equity, in this RFP or in the Contract for breach or nonperformance of a Contract or other infractions, whether or not such default results in the cancellation of a Contract executed pursuant to this RFP.

In addition to the remedy of Contract cancellation and all other remedies available to the Commission hereunder, in the Contract, at law or in equity, the Commission may in its sole discretion accept partial, incomplete or otherwise non-complying performance, and may deduct from the price to be paid under the Contract a sum which in the Commission's



determination reasonably reflects the difference in value between the Contract as it was to have been performed, and as it was actually performed.

The Commission shall be entitled to collect costs incurred as the result of any breach, including court costs and reasonable attorneys' fees.

### **5.23 Disputes Under the Contract**

In the event that any dispute arises between the parties with respect to the performance required of the Successful Bidder under the Contract, the Commission's Executive Director, or his or her designee, shall issue a written determination to the Successful Bidder. That interpretation shall be final, conclusive and not subject to review in all respects unless the Successful Bidder, within thirty (30) days of receipt of said writings, delivers a written appeal to the Commission's Executive Director or his duly authorized designee. The decision of the Executive Director on any such appeal shall be made within thirty (30) days and shall be final and conclusive, and the Successful Bidder shall thereafter in good faith and due diligence render such performance as the Executive Director has determined is required of the Successful Bidder. The Successful Bidder's options with respect to any such decision on appeal shall be whether 1) to accept the determination of the Executive Director as a correct and binding interpretation of the Contract, or 2) to make such claims as it may desire before the appropriate court of competent jurisdiction.

Pending a final judicial resolution of any such claim, the Successful Bidder shall proceed diligently and in good faith with the performance of the Contract as interpreted by the Executive Director and the Commission shall compensate the Successful Bidder pursuant to the terms of the Contract.

### **5.24 Right to Audit Successful Bidder's Operations**

The Commission reserves the right to audit the Successful Bidder's records and operations as they relate to performance under the Contract. Said audits may be conducted by the Commission's own auditors, by an independent firm, or a State of New York agency specified by the Commission. The Successful Bidder shall agree to cooperate fully with any and all audits.

### **5.25 Indemnification**

To the extent permitted by law, the Successful Bidder shall forever defend, indemnify, and hold harmless the State of New York, the Commission, and their respective commissioners, officers, agents, directors, employees, other contractors, and sales agents, and all agents, employees, officers and directors of such contractors and sales agents ("the Indemnified Parties"), from and against any and all claims, liabilities, losses, damages, costs, injuries, debts or expenses (including reasonable fees, court costs, and expenses of attorneys of the Commission's choice), which may be made, incurred, suffered, or required in whole or in part based on, arising out of, or being related to the Successful Bidder's (a) response to this RFP, (b) obligations to the State of New York or other governmental or legal authority, (c) contracts and subcontracts, and (d) products and services provided under the Contract.

All obligations to defend, indemnify, and hold harmless shall survive the termination of the Contract.

### **5.26 Authority of the Commission**

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, the assessment of liquidated damages, and the determination of payment due or to become due, the decision of the Commission shall be final and binding.

## **PART SIX - MISCELLANEOUS PROVISIONS**

### **6.1 Governing Law**

The Proposal submission process, the evaluation of Proposals, the award procedure, and any Contract resulting from this RFP, shall be governed by the laws of the State of New York and shall be interpreted according to New York State law. All disputes of claims arising under this RFP or any Proposal or Contract resulting from this RFP, other than as specifically set forth in this RFP, shall be brought exclusively in the appropriate court of the State of New York. By submitting a Proposal, a Bidder waives access to any other court or forum that may have concurrent jurisdiction within or outside New York State to hear or resolve any such dispute or claim.

### **6.2 Form of Contractual Agreement**

Every Bidder responding to this RFP shall include in its Proposal a signed Contract in the form attached as **Appendix B, Contract Form**. Signing the Contract form and submitting it as part of the Technical Proposal serves as acknowledgment and agreement to the terms of the Contract if deemed the Successful Bidder under the RFP process. **Failure to comply with this submission requirement may deem the Bidder's Proposal nonresponsive.**

Any exception to the Contract shall be raised in a Bidder question submitted to the Commission pursuant to the Schedule of Events and in accordance with the question and answer process set forth in section 1.6 "Questions and Inquiries". **The Commission does not intend, but reserves the right, to negotiate any changes in the provisions of the Contract following the receipt of Proposals.**

Following notification of award, the Successful Bidder shall sign a Contract with the Commission. The final Contract will be in the form incorporated into the RFP as **Appendix B, Contract Form**, or as revised through the RFP amendment process. **Appendix A, Standard Clauses for New York State Contracts**, becomes part of all New York State contracts and is incorporated into the Contract. The Contract will become binding and effective after approval by the Commission, OAG, and OSC.

### **6.3 Term of Contract**

The Contract shall be effective upon approval of OSC and continue for five years. The Contract term may run a shorter term, as determined by the Commission, due to causes such as, but not limited to, Contract termination or loss of statutory authority by the Commission.

### **6.4 Severability**

If a court of competent jurisdiction determines any portion of this RFP and/or the Contract to be invalid, such portion shall be severed, and the remaining portions of the RFP and/or the Contract shall remain in effect.

### **6.5 Standard Clauses for All New York State Contracts**

**Appendix A, Standard Clauses for New York State Contracts**, dated October 2019 is attached.

**Appendix A, Standard Clauses for New York State Contracts** becomes part of all New York State contracts.

### **6.6 Contract Elements**

The Contract resulting from this RFP will include the following parts:

- **Appendix A, Standard Clauses for New York State Contracts**
- Amendments to the Contract
- Contract Form (Appendix B) and appendices
- Clarifications and Addenda to the RFP
- RFP, Appendices and Attachments
- Clarifications to the Bidder's Proposal
- Bidder's Proposal

In the event of a conflict in any provisions of these documents, the order of precedence shall be as listed above from the highest to the lowest.

## **6.7 All-Inclusive**

This is an all-inclusive Contract. Unless otherwise specified, all-inclusive shall mean that the Proposal price includes, but is not necessarily limited to, all labor, material and supplies; all administrative, reporting or other requirements; and all overhead costs and profit. It shall also include parking fees and any other ancillary fees and costs, including, but not limited to, permits, licenses, and insurance. Details of services not explicitly stated in these specifications, but necessarily attendant, are deemed to be understood by the Vendor and included in the proposed pricing.

## **6.8 Compensation, Invoicing and Payment**

As the supplier of the ICS, the Successful Bidder will be an instrumental partner in the processing and verification of Lottery sales transactions. As such, for the purposes of the New York State Finance Law and Article 34 of the New York State Tax Law permitting the retention of a portion of sales revenue as compensation for services, the Successful Bidder shall be considered a "licensed lottery sales agent", a "licensed sales agent", or a "retailer".

The Successful Bidder will be compensated for services provided in accordance with the Scope of Work, defined in Part 2 of this RFP, at the rates set forth in the Pricing Proposal. The Successful bidder will not be compensated for direct unbillable expenses, such as travel, lodging and other out-of-pocket expenses that are required as a regular course of business.

Invoices shall be submitted, on a monthly basis, to the Commission's Finance Office. Payment for services will be made upon completion of the services, in accordance with the terms of this RFP, and upon receipt by the Commission of a proper invoice. Upon confirmation that the invoice conforms with the terms of the contract, the Commission shall direct the Lottery's full service lottery provider to release payment to the Successful Bidder through ACH processing from lottery sales receipts or make a direct payment to the Successful bidder.

## **6.9 Vendor Responsibilities as Primary Vendor**

The Vendor is required to assume responsibility for all contractual activities offered in the Proposal, whether or not the Vendor performs such activities. Further, the Commission will consider the Vendor to be the sole point of contact regarding contractual matters, including payment of any and all charges resulting from the Contract.

The Vendor may have subcontractors, but the Vendor shall accept full responsibility for the performance of any such subcontractor. If any part of the work is to be subcontracted, responses to this RFP shall include a list of subcontractors.

## **6.10 Approval of Staffing**

The Commission reserves the right to review and, if perceived necessary, disapprove of any employee of the Successful Bidder, who is assigned to the Contract, either at Contract inception or during the term of the Contract or any extension thereof. Although the Commission reserves the right to disapprove of the Successful Bidder's employees assigned to the Contract and may request a change in structure or staff as needed, the Successful Bidder shall be, in all ways and purposes, the employer of the Successful Bidder's staff.

## **6.11 Subcontract Approval**

Use of subcontractors is subject to Commission approval and may require the Vendor to replace subcontractors who are determined to be unacceptable, either upon inception or during the term or any extension of the Contract. Although the Commission reserves the right to disapprove of the Vendor's subcontractors assigned to the Contract and may request a change of subcontractor(s) as needed, the Vendor's subcontractors shall be, in all ways and purposes, the Vendor's subcontractors, and not those of the Commission.

The Vendor agrees not to subcontract any of its services, unless as indicated in its Proposal, without the prior written approval of the Commission. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Vendor may arrange for a portion(s) of its responsibilities under this Contract to be subcontracted to qualified, responsible subcontractors, subject to approval of the Commission. If the Vendor determines to subcontract a portion of the services, the subcontractor(s) shall be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Contract shall be fully explained by the Vendor to the Commission. As part of this explanation, the subcontractor shall submit to the Commission a completed **Appendix M, Vendor Assurance of No Conflict of Interest or Detrimental Effect**, as required by the Vendor prior to execution of this Contract (see section 7.10 "Conflicts of Interest").

The Vendor retains ultimate responsibility for all services performed under the Contract, including those subcontracted by the Vendor.

All subcontracts shall be in writing and shall contain provisions which are functionally identical to, and consistent with, the provisions of the Contract including, but not limited to, the body of the Contract, **Appendix A, Standard Clauses for New York State Contracts**, and the RFP. Unless waived in writing by the Commission, all subcontracts between the Vendor and subcontractors shall expressly name the State, through the Commission, as the sole intended third-party beneficiary of such subcontract. The Commission reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s); this right shall not make the Commission or the State a party to any subcontract, or create any right, claim, or interest in the subcontractor or proposed subcontractor against the Commission.

The Commission reserves the right, at any time during the term of the Contract, to verify that a written subcontract between the Vendor and subcontractor(s) is in compliance with all the provisions of this section and any subcontract provisions contained in the Contract.

The Vendor shall give the Commission immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor, or which may affect the performance of the Vendor's duties under the Contract. Any subcontract shall not relieve the Vendor in any way of any responsibility, duty, and/or obligation of the Contract.

If at any time during performance under the Contract total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify **Appendix E, Vendor Responsibility Questionnaire**, or the online document available at: <https://www.osc.state.ny.us/vendrep/>.

## **6.12 Delegation and/or Assignment**

No delegation of any duties under the Contract shall be binding upon the State until the Commission has given written consent to such delegation; nor shall assignments of rights to monies due, or to become due, under the Contract be permitted to any entity other than the Vendor, except by express written consent of the Commission.

## **6.13 Vendor Code of Conduct**

The Commission's New York Lottery is an extremely sensitive enterprise because of the nature of the business and because it is government operated. Therefore, it is essential that its operation, and the operation of other enterprises which would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Therefore, the Vendor associated with the Commission shall:

- A. offer goods and services only of the highest standards;
- B. use their best efforts to prevent themselves and their industry from becoming embroiled in unfavorable publicity;
- C. make sales presentations in a responsible manner, and when it is necessary to point out the superiority of their goods or services over those of their competitors, do so in such a manner as to avoid unfavorable publicity for the Commission, the State of New York, and the lottery industry;
- D. avoid promotional activities that could be interpreted as improper and result in embarrassment to the

Commission, the State of New York, and the lottery industry;

- E. report security problems or potential security problems promptly to the Commission; and
- F. not offer or give any gift, gratuity, favor, entertainment, loan, or any other thing of material monetary value to any Commission employee, or to any individual influencing the outcome of this project.

#### **6.14 Licensed Intellectual Property**

To the extent that the Bidder utilizes or relies upon the Intellectual Property Rights of a third party in fulfilling its obligations under the Contract, the Bidder will provide the Commission with whatever assurance the Commission deems necessary that the use of such third-party intellectual property is permissible. In addition, in the event of a failure to perform or a breach of Contract, the Bidder shall ensure the continued right of use of licensed intellectual property by the Commission. The Commission will not pay a fee for rights already held by the Bidder; however, if fees are incurred for the licensing of intellectual property owned by any third party relevant to the fulfillment of the services under this RFP, any fees to be paid by the Commission for use of a third party's intellectual property will be negotiated on a case by case basis. As part of its Proposal, the Bidder shall provide a list of any third party's intellectual property relevant to this procurement that the Bidder is currently licensed to use.

#### **6.15 Commission Security Requirements**

The Vendor, including its employees, officers, agents, and subcontractors, shall be required to comply with all present and future security policies of the Commission. In addition, the Vendor, its subcontractors, project managers, their employees, officers and agents, and any and all persons involved in projects and work assignments under this Contract, will be required to obtain clearance by the Commission, prior to accessing any Commission location. Anyone seeking access to a secure location of the Commission shall provide their name, address, date of birth, company affiliation, and a company point of contact for employment verification prior to any visit. Once preliminary access approval is granted by the Commission, all visitors to a secure location shall provide two (2) forms of valid identification, including one (1) photo ID, and written authorization that they are acting on behalf of the Vendor. Only after location authorization is confirmed, will access to the Commission location be approved.

##### **A. Physical Security During the Delivery of Contracted Services**

1. The Vendor shall be solely responsible for the safety and security of the project sites, facilities, and components under the Contract, with the exception that the Vendor is not responsible for overall building security at locations under the control and management of the Commission or State, local, or federal agencies. The Vendor remains responsible, however, for security of project components or equipment within such buildings (e.g., secure equipment enclosures within the space provided by such agencies). The Vendor shall be responsible for, and shall correct its failure or theft of, any components or portion of the project due to the Vendor's inadequate physical and/or information security at its cost and expense.
2. The physical security and the information security of project data shall be provided at a level commensurate with that normally established for a similar System in today's heightened security environment. All components of security shall be of suitable strength and design and shall reasonably withstand attempts to gain unauthorized access.

##### **B. Access by Personnel**

1. The Vendor, its officers, agents, subcontractors, and their employees and independent contractors, shall be required to comply with all applicable facility and information security policies and procedures of the Commission and the State in performing the Scope of Work under the Contract. Such policies and procedures shall be communicated to the Vendor as a condition precedent to Vendor's obligations under this paragraph.
2. The Vendor warrants that individuals performing work under the Contract are legally eligible to work in the United States and that such eligibility shall be maintained during the engagement while the individual is accessing any Commission site, information systems or data contained therein. In addition, prior to

accessing any Commission site, project information systems or data contained therein, the Vendor and its officers, agents, subcontractors, and their collective employees and independent contractors performing work under this RFP, shall be required to:

- a. Obtain security clearance from the Commission which may include, at the Commission's discretion, a criminal history and/or background investigation of individuals proposed to perform work under the Contract. Individuals assigned to the project by or through the Vendor shall be required to submit identifying information to the Commission.
  - b. Obtain from the Commission and prominently display on their person, Commission-issued identification cards while physically present at any Commission site.
3. When an emergency or other circumstance occurs that renders immediate compliance with the foregoing requirements impractical, the Commission may, in its sole judgment, defer an individual's compliance with the foregoing requirements and grant temporary access. Such deferment shall not be construed as a waiver of the Commission's right to subsequently require security clearance as to any individual previously granted such temporary access; provided however, that even in such circumstances, the Commission must approve such individual's access prior to such individual being granted access to a site, system, or data and the Commission may accompany such individual when on-site.
  4. The Commission reserves the right, in its sole discretion, and without liability to the Vendor's officers, agents, subcontractors, and their collective employees and independent contractors assigned to work under the Contract, to withhold approval of and refuse to permit access to an individual prior to such individual being granted access to a site, system, or data and the Commission may accompany such individual when on-site. The Commission reserves the right, in its sole discretion, and without liability to the Vendor's officers, agents, subcontractors, and their collective employees and independent contractors assigned to work under the Contract, to withhold approval of and refuse to permit access to, Commission facilities, electronic information systems or data contained therein, to any individual proposed by or through the Vendor (i) who refuses to comply with the security procedures outlined in this section, or (ii) where the Commission determines that the individual(s) may present a risk to the Commission's security interests. The Commission shall not be liable for payments or damages of any kind if the Vendor is delayed or unable to perform under the Contract resulting from the Commission's denial of access to any individual(s) pursuant to this section.

## **6.16 Ownership of Materials**

Ownership of all data, documentary material, and operating reports originated and prepared exclusively for the Commission pursuant to any Contract resulting from this RFP shall belong to the Commission.

The Successful Bidder will retain ownership of the materials originally supplied by the Successful Bidder that the Commission does not need to properly utilize the ICS created as a result of the Contract. Any equipment or materials purchased by the Commission through this Contract shall belong to the Commission unless otherwise agreed upon in writing between the Successful Bidder and the Commission.

## **6.17 Technology Provisions**

The Successful Bidder shall be compliant with all New York State information security policies and standards, which are located here: <https://its.ny.gov/eiso/policies/security>.

### **A. Federal or State Requirements**

Vendor shall comply with applicable federal and New York State (state) law regarding dissemination of personal, private and sensitive data. In the event that it becomes necessary for Vendor to receive "Confidential Information" as defined within section 8 of the Contract, which federal or state law prohibits disclosure, Vendor hereby agrees to return or destroy all such Confidential Information that has been received from the Commission when the purpose that necessitated its receipt by Vendor has been completed. In addition, Vendor agrees not to retain any Confidential Information which federal or state law prohibits from disclosure after termination of the Contract.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Vendor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Vendor, with agreement from the Commission, elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the Commission accordingly. Vendor agrees that it shall use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which federal or state law prohibits from disclosure.

Vendor agrees that it shall immediately report to the Commission the discovery of any unauthorized use or unauthorized disclosure of any such Commission information. The Commission may terminate the Contract if it determines that Vendor has violated a material term of this section. The terms of this section shall apply equally to Vendor and its agents and subcontractors, if any. Vendor agrees that all subcontractors, if any, and agents shall be made aware of and shall agree to comply with the requirements of this section.

## **B. Offshore Restrictions**

Confidential Information accessed by or provided to Vendor during the course of performing services for the Commission shall not be stored or accessed outside of the continental United States.

## **C. Access to Regulated Data**

Access to and use of sensitive and Confidential Information is limited to authorized Commission and other State agency employees and legally designated agents, for authorized business purposes only, as authorized by the Commission. To the extent that Vendor, its employees, agents, or subcontractors have access to Commission data, including, but not limited to, federal and state-regulated data, pursuant to their responsibilities under the Contract, Vendor agrees that it will abide by, and will require in writing that its employees, agents, or subcontractors shall similarly abide by any such requirements, including the execution of any documents certifying their compliance with such requirements including, but not limited to, a confidentiality and non-disclosure agreement prepared by the Commission.

## **D. General Security Provisions**

1. Vendor shall comply fully with all requirements of applicable information security standards, policies and procedures of New York State, including, but not limited to, the following standards, policies and procedures that have been adopted by the ITS:
  - Acceptable Use of Information Technology Resources Policy
  - Information Security Policy
  - Security Logging Standard
  - Information Security Risk Management Standard
  - Information Security Controls Standard
  - Sanitization/Secure Disposal Standard
  - Mobile Device Security Standard
  - Remote Access Standard
  - Secure System Development Life Cycle Standard
  - Secure Configuration Standard
  - Secure Coding Standard

ITS information security standards, policies and procedures may be found at <https://its.ny.gov/eiso/policies/security>. Vendor warrants that its employees, agents, and subcontractors are properly informed and trained regarding generally accepted information security practices and New York State information security standards, policies, and procedures.

2. Vendor shall comply fully with all Commission fingerprinting and background check requirements which are communicated to the Vendor by the Commission during the performance of the Contract.
3. Vendor shall also comply fully with all requirements of this Contract pertaining to security requirements specific to the services Vendor is providing to the Commission through the Contract. If any software application or vulnerability security scanning undertaken hereunder reveals vulnerabilities or any other

security risks attendant to the provided solution, Vendor is responsible for ensuring those vulnerabilities and risks are promptly remediated to the Commission's reasonable satisfaction. In addition to the specific security provisions required herein, Vendor shall also use commercially reasonable best efforts to address and remediate any vulnerabilities associated with the types of configuration services it is providing under the Contract.

4. Encryption. Vendor shall use industry standard information security measures, including standard encryption protocols in compliance with the ITS Encryption Standard, NYS-S14-007 (which may be found at <https://its.ny.gov/document/encryption-standard-0> ) to protect and guard the availability and security of all Commission data maintained by the Vendor. If the requirements set forth in the RFP and/or the Contract are not the same as the NYS ITS policies cited herein, the more restrictive policy shall apply. Vendor shall be strictly prohibited from using Commission data in any fashion other than that defined herein or authorized in writing by the Commission. All Commission data maintained by the Vendor shall be encrypted including, but not limited to, data in transit and data at rest.

**E. Data Ownership, Transparency, Accessibility, Location, Transport, Protection and Destruction**

1. Data Ownership. All Commission data is owned exclusively by the Commission and shall remain the property of the Commission. Vendor is permitted to use data solely for the purposes set forth in the RFP and the Contract, and for no other purpose. At no time shall the Vendor access, use, or disclose any Confidential Information (including, but not limited to, personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose. The Vendor is strictly prohibited from releasing or using data or information for any purposes other than those purposes specifically authorized by the Commission. Vendor agrees that Commission data shall not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the Vendor or otherwise passed to other contractors, agents, subcontractors or any other parties, except as expressly and specifically agreed to in writing by the Commission.
2. Migration. Vendor's services performed under this Contract shall ensure easy migration of the Commission's data including its Confidential Information under this Contract by providing its solution in a manner designed to do so. This solution may include Vendor's segregation of Commission data from processes of the software itself and maintaining the Commission's data in a format that allows the Commission to easily transfer it to an alternative application platform. Vendor shall make its application programming interfaces available to the Commission.
3. Data Access and Location. Vendor shall ensure that all Commission data related to this RFP and Contract is stored in a controlled access environment to ensure data security and integrity. All access to and storage of Commission data, physical or virtual, shall be conducted within the continental United States and have adequate security systems in place to protect against the unauthorized access to the facilities and data stored therein. The Vendor shall not send, or permit to be sent, any Commission data related to this RFP and Contract to any location outside of the continental United States. Vendor shall provide the Commission a list of the physical locations where the data is stored at any given time and shall update that list if a physical location changes. Access into and within the facilities shall be restricted through an access control system that requires positive identification as well as maintains a log of all accesses (e.g., date and time of the event, type of event, user identity, component of the information system, outcome of the event). Vendor shall have a formal procedure in place for granting computer system access to the data and to track access. Access for projects outside of those approved by the Commission is prohibited.
4. Physical Data Transport. Vendor shall use, if applicable, reputable means to physically transport Commission data. Deliveries shall be made either via hand delivery by an employee of Vendor or by restricted delivery via courier (e.g., FedEx, United Parcel Service, United States Postal Service) with shipment tracking and receipt confirmation. This requirement applies to transport between Vendor's offices, to and from subcontractors, and to the Commission.
5. Data Protection and Transmission.
  - i. Vendor shall use appropriate means to preserve and protect Commission data, including, but not limited to, use of stable storage media, regular data backups and archiving, password protection of



volumes, and data encryption. Vendor shall, in accordance with applicable law and the instructions of the Commission, maintain such data for the time period required by applicable law and agreement with the Commission, exercise due care for the protection of data, and maintain appropriate data integrity safeguards against the deletion or alteration of such data. In the event that any data is lost or destroyed because of any act or omission of the Vendor or any non-compliance with the obligations of this Contract, Vendor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, Vendor shall reimburse the Commission for any costs incurred by the Commission in correcting, recreating, restoring, or reprocessing such data or in providing assistance therewith.

ii. Vendor agrees that any and all Commission data shall be stored, processed and maintained solely on designated target devices, and that no Commission data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is encrypted and a necessary and approved component of the authorized business processes covered in the contract/agreement and or any addendum thereof, or the Vendor's designated backup and recovery processes, and is encrypted in accordance with federal and state statutes, regulations and requirements, to include requirements for data defined as confidential, financial information, personal private and sensitive information (PPSI) and personally identifying information (PII) by statute or regulations. The Vendor shall encrypt data at rest, on file storage, database storage, or on back-up media, and in transit in accordance with State and federal law, rules, regulations, and requirements. The solution shall provide the ability to encrypt data in motion and at rest in compliance with state or federal law. Vendor shall use secure means (HTTPS) for all electronic transmission or exchange of ICS, Gaming System, Instant Ticket System, user, and application data with the Commission.

6. Data Return and Destruction. At the expiration or termination of the Contract, at the Commission's option, Vendor shall provide the Commission with a copy of the Commission data, including metadata and attachments, in a mutually agreed-upon, commercially standard format and give the Commission continued access to Commission data for no less than five hundred and fifty (550) days beyond the expiration or termination of the Contract, with the actual end retention date to be mutually agreed upon. Thereafter, except for data required to be maintained by law or the Contract, Vendor shall destroy Commission data from Vendor's systems and wipe all its data storage devices to eliminate any and all Commission data from Vendor's systems. The sanitization process shall be in compliance with NYS Security Policy NYS-S13-003 (see <https://www.its.ny.gov/document/sanitizationsecure-disposal-standard>) as updated or superseded at the time the sanitization process is implemented, and, where required, Criminal Justice Information Systems' (CJIS) sanitization and disposal standards. If purging of all data storage components is not possible on the agreed-upon end retention date, Vendor shall certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures until the purge is completed, at which time Vendor shall certify to the Commission, in writing, that it has complied with the provisions of this paragraph. The Commission may withhold payment to Vendor if Commission data is not released to the Commission in accordance with the preceding sections.

#### **F. Information Security Breach and Notification Act**

Vendor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law section 899-aa and State Technology Law section 208) ("ISBNA").

#### **6.18 Force Majeure**

A Force Majeure occurrence is an event, condition, or effect that is caused by facts and circumstances that are beyond the reasonable control of such party and leads to non-performance, but that cannot be reasonably anticipated or controlled and occurs without the fault or negligence of the non-performing party. As herein used, Force Majeure includes, but is not limited to, the enactment, imposition or modification of any law which occurs, takes effect or is applied after the date of the Contract and which prohibits or materially impedes the performance of the obligations of the Commission and/or Vendor, whether caused by new or pre-existing conditions including, but not limited to, riot, sabotage, embargo, or civil or military disturbances; interruption of or delay in transportation; national emergency; acts of terrorism; inability to procure material; rationing; failure of electricity or other utilities; restrictive laws, regulations or orders, or any act or failure to act, or interference of any federal,

state or local government or governmental agency or authority; confiscation or seizure by any governmental authority; condemnations by any governmental authority; riots or insurrection; war or war-like actions; earthquakes, flood, storms, wash-outs, fire, lightning or other severe inclement weather or action of the elements, or other acts of God; explosions or other accidents; nuclear reaction or radiation; epidemic, pandemic, or other public health crisis or emergency, whether national or local; interruption or loss of internet, computer, telephone, broadcast or other communications or service; strikes, lockouts or other labor stoppage, disturbance, or disruption; or any other cause which is beyond the control of the party affected, and which, by the exercise of reasonable diligence, said party is unable to prevent delays arising as a result thereof or to predict and through advance planning avoid such delays.

Except as otherwise provided in the Contract, neither the Successful Bidder nor the Commission shall be liable to the other for any delay in, or failure of performance of, any covenant contained herein, nor shall any such delay or failure of performance constitute default hereunder, to the extent that such delay or failure is caused by a Force Majeure occurrence. The existence of such causes of delay or failure shall extend the schedule for performance to such extent as may be necessary to complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed. During a period of non-performance due to a Force Majeure occurrence, however, payments from the Commission to the Successful Bidder will be suspended.

While any such delay in or failure of performance shall not in and of itself give rise to any liability for damages; however, the Commission may elect to terminate the Contract for cause should the Commission's continuing operations, in its sole judgment, be materially threatened or harmed by reason of extended delay or failure of performance.

#### **6.19 Compliance with Association Standards**

All services, products, systems, and procedures to be employed by the Successful Bidder shall comply with the game security and operational standards current at the time of Contract performance as issued by any multi-jurisdictional association with which the Commission is, or becomes, affiliated.

## **PART SEVEN – ADDITIONAL RFP REQUIREMENTS AND CERTIFICATIONS**

### **7.1 Procurement Lobbying Restrictions**

As required by the New York State Procurement Lobbying Law (New York State's State Finance Law sections 139-j and 139-k), this RFP includes and imposes certain restrictions on communications between the Commission and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest solicitation of offers through final award and approval of the resulting Contract by the Commission and the OSC ("restricted period") to persons other than designated staff members unless the contact is permitted by the statutory exceptions set forth in New York State's State Finance Law Section 139-j (3)(a). Designated staff members are identified at the beginning of this RFP.

Commission employees are permitted to communicate with Bidders concerning this RFP only under circumstances described in the New York State Procurement Lobbying Law. Any Bidder causing or attempting to cause a violation or circumvention of those requirements may be disqualified from further consideration for selection.

Commission employees are required to obtain certain information when contacted by a Bidder during the "restricted period" and to make a determination of the responsibility of the Bidder pursuant to Sections 139-j and 139-k. A violation can result in a determination of non-responsibility which can result in disqualification for a Contract award. In the event of two determinations within a four-year period, a Bidder will be debarred for a period of four years from obtaining a governmental procurement contract award. Further information about these requirements can be found at: <http://www.ogs.ny.gov/acpl>.

The Commission reserves the right, in its sole discretion, to terminate the Contract in the event that the Commission determines that the certification filed by the Bidder in accordance with New York State's State Finance Law section 139-k was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notification to the Bidder in accordance with the written notification terms of the Contract.

**Appendix C, Bidder/Offerer Disclosure/Certification Form, shall be completed and submitted with the Proposal.**

### **7.2 Non-Collusive Bidding Requirement**

In accordance with section 139-d of New York State's State Finance Law, if the Contract is awarded based upon the submission of Proposals, the Bidder shall warrant, under penalty of perjury, that its Proposal was arrived at independently and without collusion aimed at restricting competition. Each Bidder shall further warrant that at the time the Bidder submitted its bid, an authorized and responsible person executed and delivered to the Commission a Non-Collusive Bidding Certification on the Bidder's behalf.

**Appendix D, Non-Collusive Bidding Certification form, shall be completed and submitted with the bid.**

### **7.3 New York State Vendor Responsibility Questionnaire**

Bidder agrees to fully and accurately complete the New York State Vendor Responsibility Questionnaire (hereinafter the "Questionnaire"), which is available online at: <https://www.osc.state.ny.us/vendrep/>.

Bidders are encouraged to complete the online (Internet) form, as submitting the form online will expedite Contract approval, if awarded. If the Bidder does not complete the online form and does not have an Internet Questionnaire that is current and certified, the Bidder shall complete and submit the hardcopy **Appendix E, Vendor Responsibility Questionnaire**. The Bidder acknowledges that the Commission's, OSC's, and OAG's execution of the Contract will be contingent upon the Commission's determination that the Bidder is responsible, and that the Commission will be relying upon the Bidder's responses to the Questionnaire in making that determination. The Bidder agrees that if it is determined by the Commission that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such determination, the Commission may terminate the Contract by providing ten (10) days written notification to the Bidder. In no case shall such termination of the Contract by the Commission be deemed a breach thereof, nor shall the Commission be liable for any damages for lost profits or otherwise, which may be sustained by the Bidder as a result of such termination.

**Unless the Questionnaire has been filed online, the hardcopy Questionnaire in Appendix E shall be completed and submitted with the bid.**

#### **7.4 Vendor Identification Number**

**Appendix F, Substitute Form W-9**, is incorporated into this RFP. To do business with the State of New York, each Bidder is required to obtain a NYS Vendor Identification Number for use in the Statewide Financial System (“SFS”). If the Bidder does not already have a Vendor Identification Number, the Substitute Form W-9 shall be completed and submitted directly to the Commission upon notification of award. The purpose of the Substitute Form W-9, which will capture the Vendor’s taxpayer identification number, business name, and business contact person, is to allow the State to establish a Vendor file in the SFS.

Note: IRS Form W-9 is not acceptable for this purpose.

#### **7.5 Electronic Payment (EPAY) Program**

If awarded a Contract pursuant to this RFP, the Vendor may enroll in the Electronic Payment (“ePayments”) program through the OSC. The ePayments program transfers payments directly into a Vendor’s bank account sooner than the Vendor would receive a payment by check. Upon execution of the Contract, the Vendor may submit an Electronic Payment Request. Additional information and procedures for enrollment into the ePayments program can be found at OSC’s website: <https://www.osc.state.ny.us/state-vendors/portal/enroll-vendor-self-service-portal>.

**Appendix G, Electronic Payment Request form, is included in this RFP for reference and convenience.**

#### **7.6 Tax Law Section 5-A**

The Bidder awarded the Contract pursuant to this RFP shall comply with the requirements of New York State Tax Law section 5-a, which requires businesses that are awarded contracts with New York State to certify that they are registered to collect New York State and local sales and use taxes on sales delivered to locations within New York. The OSC or other responsible approver cannot approve the Contract unless the Vendor is registered with the New York State Department of Taxation and Finance to collect sales and compensating use taxes, pursuant to this section.

**Appendix H, ST-220 Contractor Certification forms, shall be filed in compliance with New York State Tax Law section 5-a. Any Bidder awarded the Contract under this RFP shall, within seven calendar days of notification of award, file ST-220-TD directly with the New York State Department of Taxation and Finance at the address provided on the form, and file ST-220-CA with the Commission.**

Bidders can visit the New York State Department of Taxation and Finance website to obtain more information: [https://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/st/section\\_5a.htm](https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/section_5a.htm).

#### **7.7 Vendor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority/Women-Owned Businesses**

By submission of a Proposal in response to this solicitation, the Bidder agrees with all terms and conditions of Clause 12 – Equal Employment Opportunities for Minorities and Women of **Appendix A**.

In accordance with Article 15-a of the New York State Executive Law and in conformance with the regulations promulgated by the Minority and Women’s Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Bidder agrees to be bound by provisions to promote equality of economic opportunity for minority group members and women, and the facilitation of minority and women-owned business enterprise participation.

**The EEO and MWBE requirements are set forth in Appendix J, EEO and M/WBE Program.**

**The MWBE goal established under this solicitation is 0%.**

## **7.8 New York State Service-Disabled Veteran-Owned Businesses**

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

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

**The requirements under this program as they pertain to this RFP are detailed in Appendix K, Participation Opportunities for New York State Service-Disabled Veteran Owned Businesses.**

**The SDVOB goal established under this RFP is 0%.**

## **7.9 New York State Subcontractors and Suppliers**

Bidders 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, mentors, proteges, or in other partnering or supporting roles.

**Subcontractor and supplier requirements are set forth in Appendix L, Encouraging Use of New York State Businesses in Contract Performance.**

## **7.10 Conflicts of Interest**

Throughout the procurement process, Bidders shall identify and bring to the attention of the Commission, actual or apparent conflicts of interest as knowledge of such conflicts arise, as follows:

- A. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parents, subsidiaries, or affiliated firms, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Bidder or former officers and employees of the Commission, in connection with the Bidder rendering services enumerated in this RFP. If a conflict does or might exist, please describe how the Bidder would eliminate or prevent it. Identify what procedures will be followed to detect, notify the Commission of, and resolve any such conflicts.
- B. The Bidder shall disclose whether it, or any of its members, shareholders of 5% or more, parents, subsidiaries, or affiliates have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, “JCOPE”), and if so, a brief description shall be included indicating how any matter before JCOPE was resolved or whether it remains unresolved.

**In addition, the Bidder shall complete and return with its bid Appendix M, Vendor Assurance of No Conflict of Interest or Detrimental Effect.**

**This disclosure obligation is a continuing requirement.** Any Bidder awarded the Contract under this RFP will have an ongoing obligation to inform the Commission of any actual or apparent conflicts of interest.

## **7.11 Certification Of Compliance With State Finance Law § 139(I)**

By submission of this Proposal each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint Proposal 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 New York State Labor Law § 201(g). Vendor's certification of compliance with New York State's State Finance Law § 139(l) is included with this RFP as **Appendix N, Statement on Sexual Harassment**.

### **7.12 Executive Order No. 177 Certification**

The New York State Human Rights Law, found within Article 15 of the Executive Law, applies to all employers and 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(s) 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.

In accordance with Executive Order No. 177, the Bidder shall certify 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. The certification is included with this RFP as **Appendix O, Anti-Discrimination EO 177 Certification**.

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.

### **7.13 Insurer Qualifications and Insurance Requirements**

Insurer qualifications and insurance requirements are provided in **Appendix P, Insurer Qualifications and Insurance Requirements**. The Vendor shall comply with these requirements to remain responsible under the terms of the Contract resulting from this solicitation.

In the Proposal, Bidders shall provide a statement agreeing that if awarded a Contract under this solicitation, they will comply with the insurer qualifications and insurance requirements.

### **7.14 Liquidated Damages**

In the below Liquidated Damages sections, and **Appendix Q, Liquidated Damages**, the Commission and the Successful Bidder agree that it will be extremely impractical and difficult to determine actual damages sustained by the Commission. The goods and services to be provided under the Contract are not readily available on the open market. Further, any breach by the Successful Bidder will delay and disrupt the Commission's operations and will lead to damages. Therefore, the parties agree that the liquidated damages, as specified in all the sections, are reasonable and are not to be construed as a penalty.

Assessment of liquidated damages shall be in addition to, and not in lieu of, such other remedies as may be available to the Commission. Except, and to the extent expressly provided herein, the Commission shall be entitled to recover liquidated damages under each section applicable to any single incident.

#### **7.14.1 Notification of Liquidated Damage Assessment**

Upon determination that liquidated damages may be assessed, the Commission shall notify the Successful Bidder of the assessment in writing. The availability of any period for curing the cause of such liquidated damages will depend on the situation and will be in the sole discretion of the Commission.

### **7.14.2 Conditions for Cancellation of Liquidated Damage Assessments**

As determined appropriate by the Commission, the following are the conditions under which the Successful Bidder may obtain relief from the continued assessment of liquidated damages that were also previously assessed.

1. Except as waived in writing by the Commission, no liquidated damages assessed shall be terminated or suspended until the Successful Bidder issues a written notice verifying the correction of the condition(s) for which liquidated damages were assessed, and all corrections have been subjected to testing or other verification at the discretion of the Commission.
2. As appropriate, the Successful Bidder shall conduct testing of any correction, as the Commission deems necessary. Such testing shall be developed jointly by the Commission and the Successful Bidder, and shall be approved by the Commission, including the test script, test environment, and test results. A notice of correction will not be accepted until verified by the Commission.

### **7.14.3 Severability of Individual Liquidated Damages**

If any portion of the liquidated damages provisions is determined to be unenforceable in one or more applications of liquidated damages, that portion remains in effect in all applications not determined to be invalid and is severable from the invalid applications. If any portion of the liquidated damages provisions is determined to be unenforceable, the other provision or provisions shall remain in full force and effect.

### **7.14.4 Waivers of Liquidated Damages**

The Commission's waiver of any liquidated damages due the Commission shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Failure to assess liquidated damages or to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by the Commission.

### **7.14.5 Payment of Liquidated Damages**

All assessed liquidated damages shall be deducted from any monies owed the Successful Bidder by the Commission and, in the event the amount due the Successful Bidder is not sufficient to satisfy the amount of the liquidated damages, the Successful Bidder shall pay the balance to the Commission within thirty (30) calendar days of written notification. If the amount due is not paid in full, the balance will be deducted from subsequent payments to the Successful Bidder. At the Commission's sole option, the Commission may obtain payment of assessed liquidated damages through one or more claims upon the Performance Bond.

At the Commission's discretion, in lieu of monies owed or a portion thereof, the Commission may accept services, upgrades, or other tangible or intangible compensation from the Successful Bidder in satisfaction of assessed liquidated damages.

### **7.14.6 Applicability of Liquidated Damages**

The Successful Bidder shall not be required to pay liquidated damages for delays solely due to matters as enumerated in the section entitled "Force Majeure," or for time delays specifically due to, or approved by, the Commission. Liquidated damages and service levels for this implementation are documented in **Appendix Q, Liquidated Damages**.

## **7.15 Bond Requirements**

Bidders are required to obtain bonds as specified in **Appendix R, Bond Requirements**.

## **PART EIGHT – APPENDICES AND ATTACHMENTS**

### **8.1 Appendices**

This section provides a description of the Appendices associated with this RFP.

**Table 1, Table of Appendices**

Number	Appendix Title
A	Standard Clauses for New York State Contracts
B	Contract Form
C	Bidder/Offerer Disclosure/Certification Form
D	Non-Collusive Bidding Certification
E	Vendor Responsibility Questionnaire
F	Substitute Form W-9
G	Electronic Payment (ePayment) Request
H	ST-220 Contractor Certification
I	Diversity Practices Questionnaire
J	EEO and M/WBE Program
K	Participation Opportunities for New York State Service-Disabled Veteran Owned Businesses
L	Encouraging Use of New York State Businesses in Contract Performance
M	Vendor Assurance of No Conflict of Interest or Detrimental Effect
N	Statement on Sexual Harassment
O	Anti-Discrimination EO 177 Certification
P	Insurer Qualifications and Insurance Requirements
Q	Liquidated Damages
R	Bond Requirements
S	Confidentiality and Non-Disclosure Agreement

### **8.2. Attachments**

This section provides a description of the Attachments associated with this RFP.

**Table 2, Table of Attachments**

Number	Attachment Title
1	Bidder Acknowledgement of Addendum
2	Pricing Proposal Form
3	Document Submittal Checklist
4	Non-Bid Response Form



APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

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

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

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

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

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

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

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

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

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

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

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

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

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

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

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

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

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

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

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

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

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

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

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

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

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

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

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

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

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

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

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

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

NEW YORK LOTTERY INTERNAL CONTROL SYSTEM  
CONTRACT # C202002

THIS CONTRACT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the NEW YORK STATE GAMING COMMISSION, an executive agency of the State of New York having an office at One Broadway Center, Post Office Box 7500, Schenectady, New York 12301-7500 (the "Commission"), and [Contractor], having an office at [address] (the "Contractor"). The Commission is the operator of the New York Lottery program on behalf of the State of New York (the "State").

WHEREAS the Commission issued a Request for Proposals ("RFP") on January 12, 2021, soliciting proposals from qualified firms to provide a New York Lottery Internal Control System, and clarified the requirements of the RFP with Amendment One dated [ ], 2021 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [\_\_\_\_\_, 2021] (collectively, the "Proposal"), which Proposal was deemed by the Commission's Evaluation Committee to be the Best Value, from among competing proposals, as defined within the RFP;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Scope of Work. The Contractor agrees to provide the Commission with a New York Lottery Internal Control System and ongoing maintenance, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Contract with the same force and effect as if they were fully set forth herein.



2. Term. This Contract shall be effective upon approval by the New York State Office of the Attorney General (“OAG”) and the Office of the New York State Comptroller (“OSC”) and remain in effect for five years.

3. Compensation. In full consideration for all goods and services specified in the RFP and the Proposal, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal. No minimum amount is guaranteed by this Contract, and the Contractor shall not have any right to make a claim therefor. Expenditures under this Contract shall not exceed [\$XXXXXXXX].

(a) For purposes New York State Finance Law and Article 34 of the New York State Tax Law, the goods and services specified in the RFP and the Proposal qualify the Contractor to be considered a licensed lottery sales agent, permitting the compensation for services through the retention of a portion of sales revenue.

(b) Payments to the Contractor will be directed by the Commission based on invoices submitted to the Commission’s Finance Office. Upon verification of invoice against approved amounts and performance, the Commission will direct payment to the Contractor either (a) by the Commission directly or (b) by the Lottery’s full service lottery provider from lottery receipts through ACH processing. The Commission understands and agrees that it shall be responsible for the Lottery’s full service lottery provider’s failure to make payment to Contractor as provided herein and that it shall pay Contractor directly in event of such failure.

4. Approvals Required. This Contract, and any extension of the term of this Contract or any amendment of the provisions of this Contract, shall not be effective and binding upon the Commission, the State, or the Contractor unless and until approved by the OAG and OSC. The Commission agrees to exercise its best efforts to obtain such approval.

5. Mutual Cooperation. The objective of this Contract is to provide a Lottery Internal Control System and ongoing maintenance to the Commission as set forth in this Contract. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish this objective.

6. Termination and Suspension.

(a) In addition to the bases referenced in the RFP, the Commission shall have the right to terminate this Contract for convenience or for any of the following causes:

(i) a material breach by the Contractor of any of the provisions of this Contract;

(ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;

(iii) a good faith determination by the Commission that continuation of the Contract could place the integrity of the Commission in jeopardy; or

(iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Executive Director of the Commission, would be prejudicial to public confidence in the New York Lottery or the Commission;

(v) in the judgment of the Commission, a real or potential conflict of interest cannot be cured; or

(vi) the refusal by the Contractor or any of its directors, officers, or employees to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract, when called before a grand jury, head of a state department, the Commission, a temporary state commission or other state agency, or the

organized crime task force in a department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any such transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority.

If the Contract is cancelled or terminated based on the grounds listed in 6.(a)(vi), above, such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the state or any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal, and to provide also that any and all contracts made with the State or any public department, agency or official thereof, since the effective date of this Contract, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the State without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the State for goods delivered or work done prior to the cancellation or termination shall be paid.

(b) In the event that the Commission decides to exercise the right to terminate this Contract for cause, the Commission shall give the Contractor written Notice of Intention to Terminate for Cause (“Notice”). Such Notice shall state clearly and specifically the cause for which termination is sought, and the Contractor shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Commission in which case such Notice shall be deemed withdrawn and a nullity. If termination is sought because of a criminal conviction as described in subparagraph (iv) of Paragraph (a) of this section 6, the cause for termination shall be deemed to be cured if the

Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

(c) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Commission officials or staff, the Contract may be terminated by the Commission's Executive Director, or his or her designee, at the Contractor's expense where the Contractor is determined by the Executive Director, or his or her designee, to be non-responsible or nonresponsible. In such event, the Executive Director, 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.

(d) The Executive Director of the Commission, 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 Executive Director of the Commission, or his or her designee, issues a written notice authorizing a resumption of performance under the Contract.

#### 7. Conflict of Interest.

(a) The Contractor has provided a form ("Vendor Assurance of No Conflict of Interest or Detrimental Effect") signed by its authorized executive or legal representative attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State, and that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

(b) The Contractor hereby covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the Commission immediately of any actual or potential conflicts of interest.

(c) In conjunction with any subcontract under this Contract, the Contractor shall obtain and deliver to the Commission, prior to entering into a subcontract, a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form signed by an authorized executive or legal representative of each subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Commission a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form from each of its subcontractors, prior to entering into a subcontract.

(d) The Commission and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The Commission will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the Commission, a real or potential conflict of interest cannot be cured.

#### 8. Confidentiality and Non-Disclosure.

(a) For the purposes of this section, "Confidential Information" means any information not generally known to the public, whether oral or written, that the Commission identifies as confidential and discloses to the Contractor so that the Contractor can provide services to the Commission pursuant to this Contract. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans,

drawings, specifications, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Commission deems confidential. The Commission will identify written Confidential Information by marking it with the word "Confidential" and will identify oral Confidential Information as confidential at the time of disclosure to the Contractor.

(b) Confidential Information does not include information that, at the time of Commission's disclosure to the Contractor:

(i) is already in the public domain or becomes publicly known through no act of the Contractor;

(ii) is already known by the Contractor free of any confidentiality obligations;

(iii) is information that the Commission has approved in writing for disclosure; or

(iv) is required to be disclosed by the Contractor pursuant to law or applicable professional standards, so long as the Contractor provides the Commission with notice of such disclosure requirement and an opportunity to defend prior to any such disclosure.

(c) The Contractor may use Confidential Information solely for the purposes of providing services to the Commission pursuant to this Contract. The Contractor shall not make copies of any written Confidential Information, except as necessary to perform the services required by this Contract, without the express written permission of the Commission. The Commission's disclosure of Confidential Information to the Contractor shall not convey to the Contractor any right or interest in such Confidential Information and the Commission shall retain all right and title to such Confidential Information at all times.

(d) The Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. The Contractor shall safeguard Confidential Information with at least

the same level of care and security, using all reasonable and necessary security measures, devices and procedures that the Contractor uses to maintain its own confidential information.

(e) Upon written request by the Commission, the Contractor shall return all written Confidential Information to the Commission.

9. Records Retention. Records required by this Contract to be retained by the Contractor shall be retained for the periods specified in Appendix A, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of the Contractor.

10. Notices. All notices required by this Contract shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Commission:

Executive Director  
New York State Gaming Commission  
One Broadway Center  
Post Office Box 7500  
Schenectady NY 12301-7500

Cc: General Counsel  
New York State Gaming Commission  
One Broadway Center  
Schenectady, NY 12305

(b) As to the Contractor:

Contact:  
Company Name:  
Address:

11. Relationship. The relationship of the Contractor to the Commission arising out of this Contract shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission or the State, and that it will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the Commission or the State , including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, and the Contractor alone shall be responsible for the work of its personnel and its subcontractors' personnel, the direction thereof, and their compensation. Nothing in this Contract shall impose any liability or duty on the Commission or the State on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation insurance, and the Contractor hereby agrees to defend, indemnify, and hold harmless the Commission and the State against any such liabilities.

12. Documents Incorporated. Appendix A, Standard Clauses for New York State Contracts, dated October 2019, the RFP, and the Proposal are hereby incorporated herein and made a part hereof.



13. Order of Precedence. Any conflict between the provisions of this Contract and the documents incorporated herein shall be resolved according to the following order of precedence below, from the highest to the lowest.

- (a) Appendix A – Standard Clauses for New York State Contracts;
- (b) Any amendments to the Contract;
- (c) Contract;
- (d) RFP, Appendices, Attachments, and Exhibits;
- (e) Clarifications to the Vendor Proposal; and
- (f) Vendor Proposal.

14. Miscellaneous Provisions.

(a) A waiver of enforcement of any provision of this Contract shall not constitute a waiver of any other provision of this Contract nor shall it preclude the affected party from subsequently enforcing such provision.

(b) This instrument and the documents incorporated herein represent the entire agreement between the Commission and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

(c) The headings contained in this Contract are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Contract.

(d) The Contractor shall at all times during the Contract term remain responsible. If requested by the Executive Director of the Commission, or his or her designee, the Contractor agrees 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.

(e) The Executive Director of the Commission 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 Executive Director of the Commission or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

CONTRACTOR

NEW YORK STATE  
GAMING COMMISSION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

NEW YORK STATE OFFICE  
OF THE ATTORNEY GENERAL  
Letitia James

OFFICE OF THE NEW YORK STATE  
COMPTROLLER  
Thomas P. DiNapoli

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Acknowledgement Required of the Contractor is on the following page:*

### Acknowledgement

#### ACKNOWLEDGEMENT BY INDIVIDUAL

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

\_\_\_\_\_  
 Notary Public

#### ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of \_\_\_\_\_ and that he/she executed the foregoing instrument in the firm name of \_\_\_\_\_, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of \_\_\_\_\_, for the uses and purposes mentioned therein.

\_\_\_\_\_  
 Notary Public

#### ACKNOWLEDGEMENT BY CORPORATION

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he he/she signed his/her name thereto by like order.

\_\_\_\_\_  
 Notary Public

**BIDDER/OFFERER DISCLOSURE/CERTIFICATION FORM**

**CONTRACT/PROJECT DESCRIPTION:** Lottery Internal Control System

**CONTRACT/PROJECT NUMBER:** #C202002

**RESTRICTED PERIOD FOR THIS PROCUREMENT:** January 6, 2021 through approval of the Office of the State Comptroller.

**PERMISSABLE CONTACTS:** Stacey Relation and Alysan Bowers

1. CONTACTS - Contractor affirms that it understands and agrees to comply with the procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law §§ 139-j and 139-k.  I agree

2. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS Pursuant to Procurement Lobbying Law (SFL §139-j)

(a) 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?

Yes  No

If yes, please answer the following question:

(b) Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

Yes  No

(c) If "Yes" was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

Yes  No

If "Yes", please provide details regarding the finding of non-responsibility:

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

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

Basis of Finding of Non-Responsibility (attach additional sheets if necessary):

3. Has any 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?

Yes  No

If yes, provide details:

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

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: (add additional pages if necessary)

4. TERMINATION CLAUSE:

Contractor certifies that all information provided to the Agency with respect to State Finance Law §§139 (j) and 139 (k) is complete true and accurate. If found to be in violation of State Finance Law §§139 (j) and 139 (k), the contract will result in termination.

I agree

**Name of Contractor's Firm/Company:** \_\_\_\_\_

**Contractor Address:** \_\_\_\_\_  
\_\_\_\_\_

**Contractor's signature:** \_\_\_\_\_  
*I understand that my signature represents that I am signing and responding to both certifications listed above*

**Print Name:** \_\_\_\_\_

**Occupation of Person signing this form:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Non-Collusive Bidding Certification  
Required By Section 139-D of the State Finance Law**

**By submission of this bid, bidder and each person signing on behalf of bidder certifies, under penalty of perjury, that to the best of his/her knowledge and belief:**

**[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;**

**[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and**

**[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.**

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:**

**[AFFIX ADDEDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]**

**Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_ as the act and deed of said corporation.**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Signature**



The submission of the attached Vendor Responsibility Questionnaire is required with your bid.

You must include your ten-digit Vendor ID identifier number issued by New York State. Please insert the Vendor ID number on the top right corner of pages 2-10 of the questionnaire.

If you have previously submitted a New York State Vendor Questionnaire that was signed less than one year ago in connection with another State solicitation or contract, and there are no material changes to that questionnaire, you may submit an Affidavit of No Change along with a copy of the previously completed Vendor Questionnaire.

You are encouraged to complete the questionnaire online. By doing so, you will not be required to complete the questionnaire for future contracts with New York State agencies, so long as you certify the information every six months.

If you are interested in completing the online questionnaire, please visit the following website for additional information:

<https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire>

If you have filed your questionnaire online, please sign below and return only this page with your bid.

-----

Complete the below only if you have filed your questionnaire online, otherwise, please complete the attached questionnaire.

\_\_\_\_\_  
Contractor Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

**COMPLETION & CERTIFICATION**

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

**NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)**

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the OSC Help Desk at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us) or call 866-370-4672.

**DEFINITIONS**

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at [www.osc.state.ny.us/vendrep/documents/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/definitions.pdf). These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

**RESPONSES**

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

**REPORTING ENTITY**

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

**ASSOCIATED ENTITY**

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

**STRUCTURE OF THE QUESTIONNAIRE**

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>I. LEGAL BUSINESS ENTITY INFORMATION</b>			
<u>Legal Business Entity Name</u> *		<u>EIN</u> (Enter 9 digits, without hyphen)	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone ext.	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u> )		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u> )		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If ‘No,’ indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available.			
<input type="checkbox"/> United States    State    _____			
<input type="checkbox"/> Other            Country    _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” Enter <u>DUNS</u> Number			

\*All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” which can be found at [www.osc.state.ny.us/vendrep/documents/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/definitions.pdf).



**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**I. LEGAL BUSINESS ENTITY INFORMATION**

1.4 If the <u>Legal Business Entity</u> 's <u>Principal Place of Business</u> is not in New York State, does the <u>Legal Business Entity</u> maintain an office in New York State? (Select "N/A," if <u>Principal Place of Business</u> is in New York State.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
--	--

If "Yes," provide the address and telephone number for one office located in New York State.

1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise</u> (MBE), <u>Women-Owned Business Enterprise</u> (WBE), <u>New York State Small Business</u> (SB) or a federally certified <u>Disadvantaged Business Enterprise</u> (DBE)? If "Yes," check all that apply: <input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE) <input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE) <input type="checkbox"/> <u>New York State Small Business</u> (SB) <input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

Name	Title	Percentage Ownership <i>(Enter 0% if not applicable)</i>

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**II. REPORTING ENTITY INFORMATION**

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

Legal Business Entity

*Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)*

Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF “REPORTING ENTITY” AND “ORGANIZATIONAL UNIT” FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

*Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)*

**IDENTIFYING INFORMATION**

a) Reporting Entity Name

Address of the Primary Place of Business (street, city, state, zip code)

Telephone

ext.

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

Yes  No

If “Yes,” enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity.

*For each person, include name and title. Attach additional pages if necessary.*

Name

Title

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**INSTRUCTIONS FOR SECTIONS III THROUGH VII**

For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

**III. LEADERSHIP INTEGRITY**

*Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:*

3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other

For each “Yes” or “Other” explain:

**IV. INTEGRITY – CONTRACT BIDDING**

*Within the past five (5) years, has the reporting entity:*

4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**V. INTEGRITY – CONTRACT AWARD**

*Within the past five (5) years, has the reporting entity:*

- |   |  |
|---|--|
| 5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ?     | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

**VI. CERTIFICATIONS/LICENSES**

*Within the past five (5) years, has the reporting entity:*

- |   |  |
|---|--|
| 6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

**VII. LEGAL PROCEEDINGS**

*Within the past five (5) years, has the reporting entity:*

- |  |  |
|--|--|
| 7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious</u> or <u>willful</u> ?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.5 Other than previously disclosed:<br>a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or<br>b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY</b>	
8.0 Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.1 Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.2 Within the past five (5) years, have any <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant’s name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.3 In the last seven (7) years, has the <u>Reporting Entity</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as “Initiated,” “Pending” or “Closed.” Provide answer below or attach additional sheets with numbered responses.	
8.4 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal, state or local tax laws</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
8.5 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide the years the <u>Reporting Entity</u> failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.6 During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s)</u> completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
a) If “Yes,” did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes” to 8.6 a), provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**IX. ASSOCIATED ENTITIES**

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.  
(See definition of "associated entity" for additional information to complete this section.)*

9.0 Does the Reporting Entity have any Associated Entities?

Yes  No

Note: All questions in this section must be answered if the Reporting Entity is either:

- An Organizational Unit; or
- The entire Legal Business Entity which controls, or is controlled by, any other entity(ies).

If "No," SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.

9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:

Yes  No

- a) Any business-related activity; or
- b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?

If "Yes," provide an explanation of the issue(s), the individual involved, his/her title and role in the Associated Entity, his/her relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).

9.2 Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over \$50,000?

Yes  No

If "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

9.3 Within the past five (5) years, has any Associated Entity:

a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?

Yes  No

b) Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity?

Yes  No

c) Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract?

Yes  No

d) Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of \$500,000?

Yes  No

e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?

Yes  No

f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity?

Yes  No

g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?

Yes  No

For each "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**X. FREEDOM OF INFORMATION LAW (FOIL)**

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If "Yes," indicate the question number(s) and explain the basis for the claim.

**XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE**

Name	Telephone	Fax
	ext.	
Title	Email	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**Certification**

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State contracting entities in making responsibility determinations regarding an award of a contract or approval of a subcontract; (2) recognizes that the Office of the State Comptroller (OSC) will rely on information disclosed in the questionnaire in making responsibility determinations and in approving a contract or subcontract; (3) acknowledges that the New York State contracting entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (4) acknowledges that intentional submission of false or misleading information may constitute a misdemeanor or felony under New York State Penal Law, may be punishable by a fine and/or imprisonment under Federal Law, and may result in a finding of non-responsibility, contract suspension or contract termination.

**The undersigned certifies that he/she:**

- is knowledgeable about the Reporting Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Reporting Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State will rely on the information disclosed in the questionnaire when entering into a contract with the Reporting Entity; and
- is under obligation to update the information provided herein to include any material changes to the Reporting Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State contracting entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Officer \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Reporting Entity Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ ;

\_\_\_\_\_ Notary Public





**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER  
SUBSTITUTE FORM W-9:  
REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION**

**TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.**

**Part I: Vendor Information**

1. Legal Business Name:	2. Business name/disregarded entity name, if different from Legal Business Name:
3. Entity Type (Check one only): <input type="checkbox"/> Individual Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Corporation <input type="checkbox"/> Not For Profit <input type="checkbox"/> Trusts/Estates <input type="checkbox"/> Federal, State or Local Government <input type="checkbox"/> Public Authority <input type="checkbox"/> Disregarded Entity <input type="checkbox"/> Other _____	
<input type="checkbox"/> <b>Exempt Payee</b>	

**Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type**

1. Enter your TIN here: (*DO NOT USE DASHES*)  
See instructions.

--	--	--	--	--	--	--	--	--	--

2. Taxpayer Identification Type (check appropriate box):  
 Employer ID No. (EIN)    Social Security No. (SSN)    Individual Taxpayer ID No. (ITIN)    N/A (Non-United States Business Entity)

**Part III: Address**

1. Physical Address: Number, Street, and Apartment or Suite Number	2. Remittance Address: Number, Street, and Apartment or Suite Number
City, State, and Nine Digit Zip Code or Country	City, State, and Nine Digit Zip Code or Country

**Part IV: Certification and Exemption from Backup Withholding**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (TIN), and
2. I am a U.S. citizen or other U.S. person, and
3. (Check one only):  
 **I am not subject to backup withholding.** I am (a) exempt from back up withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding), or  
 **I am subject to backup withholding.** I have been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, and I have not been notified by the IRS that I am no longer subject to back withholding.

**Sign Here:**

Signature	Title	Date
Print Preparer's Name	Phone Number	Email Address

**Part V: Vendor Primary Contact Information – Executive Authorized to Represent the Vendor**

Primary Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Email Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

**DO NOT SUBMIT FORM TO IRS — SUBMIT FORM TO NYS ONLY AS DIRECTED**

## NYS Office of the State Comptroller Instructions for Completing Substitute Form W-9

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New York State (NYS) must obtain your correct Taxpayer Identification Number (TIN) to report income paid to you or your organization. NYS Office of the State Comptroller uses the Substitute Form W-9 to obtain certification of your TIN in order to ensure accuracy of information contained in its payee/vendor database and to avoid backup withholding.<sup>1</sup> We ask for the information on the Substitute Form W-9 to carry out the Internal Revenue laws of the United States. You are required to give us the information.

Any payee/vendor who wishes to do business with New York State must complete the Substitute Form W-9. Substitute Form W-9 is the only acceptable documentation. We will not accept IRS Form W-9.

### ***Part I: Vendor Information***

1. **Legal Business Name:** For individuals, enter the name of the person who will do business with NYS as it appears on the Social Security card or other required Federal tax documents. An organization should enter the name shown on its charter or other legal documents that created the organization. Do not abbreviate names.
2. **Business name/disregarded entity name, if different from Legal Business Name:** Enter your DBA name or another name your entity is known by.
3. **Entity Type:** Check the Entity Type doing business with New York State.

### ***Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type***

The TIN provided must match the name in the “Legal Business Name” box to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, refers to IRS W-9 instructions for additional information. For other entities, it is your employer identification number (EIN). If you do not have a number or if the account is in more than one name, refer to IRS W-9 instructions for additional information.

1. **Taxpayer Identification Number:** Enter your nine-digit Social Security Number, Individual Taxpayer Identification Number (ITIN) or Employer Identification Number (EIN).
2. **Taxpayer Identification Type:** Check the type of identification number provided.

### ***Part III: Address***

1. **Physical Address:** Enter the location of where your business is physically located.
2. **Remittance Address:** Enter the address where payments should be mailed.

### ***Part IV: Certification and Exemption from Backup Withholding***

Check the appropriate box indicating your exemption status from backup withholding. Individuals and sole proprietors are not exempt from backup withholding. Corporations are exempt from backup withholding for certain types of payments. Refer to IRS Form W-9 instructions for additional information. The signature should be provided by the individual, owner, officer, legal representative, or other authorized person of the entity listed on the form. Certain exceptions to the signature requirement are listed in the IRS instructions for form W-9.

### ***Part V: Vendor Primary Contact Information***

Please provide the contact information for an executive at your organization. This individual should be the person who makes legal and financial decisions for your organization.

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<sup>1</sup> According to IRS Regulations, OSC must withhold 28% of all payments if a payee/vendor fails to provide OSC its certified TIN. The Substitute Form W-9 certifies a payee/vendor's TIN.



## NYS Office of the State Comptroller

### Instructions for Electronic Payment (ePayment) Request

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**Please Note: For your protection, we will not accept email or fax to enroll or change electronic payment information. Failure to provide the requested information may delay or prevent the receipt of payments through the Electronic Payment (ePayment) Program.**

**Notification Required under Personal Privacy Protection Law:** The information provided on this form is required under Section 109 of the New York State Finance Law, as well as the New York State and Federal tax laws (See New York State Tax Law § 674, 26 USC §6041). This information will be provided only to the designated financial institution(s) and/or their agent(s) for the purpose of processing payments, and for other official business of the Office of the State Comptroller. No further disclosure of this information will be made unless such disclosure is authorized or required by law. The information provided is maintained in New York State's 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.

#### Part I: NYS Vendor Information

**Vendor ID (Required):** The NYS Vendor ID is a ten-character identifier issued by the Vendor Management Unit when the vendor is registered in the Vendor File.

**Legal Business Name (Required):** The name of the person or business as it appears on the Social Security card or other required Federal tax documents. Do not abbreviate names.

**Remittance Address:** The Remittance Address is the default address where payments will be delivered if the payment fails to process electronically.

#### Part II: Type of ePayment Request

**Select one of the following options (Required):**

**New Enrollment** – Please complete all information in Part III and IV and attach an original voided check. If you do not attach an original voided check the financial institution must complete Part IV and V.

**Change ePayment Bank Information** – Please complete all information in Part III and IV and attach an original voided check. If you do not attach an original voided check the financial institution must complete Part IV and V.

**Cancel ePayments** – Please complete all information in Part III. To cancel, the payee's authorized vendor contact must provide this form or signed written notification (including all information in Part III) to the address provided on the front of this form. Notification may be submitted via mail, fax (518-402-4212) or email (epayments@osc.state.ny.us).

#### Part III: Vendor Certification

**Authorized Vendor Contact Signature (Required):** The signature of the contact person at the vendor submitting the request. This should be someone who can make financial and/or legal decisions for the entity or the Vendor's Primary Contact on their NYS Vendor Record.

**Vendor Contact Name (Required):** Print the name of the contact person at the vendor. This should be someone who can make financial and/or legal decisions for the entity or the Vendor's Primary Contact on their Vendor Record.

**Title (Required):** Contact's title

**Email Address (Required):** Contact's email address

**Phone Number (Required):** Contact's phone number

#### Part IV: Financial Institution Information

**Name of Financial Institution (Required):** Name of the bank that the account is with.

**Type of Account:** Savings or Checking Account

**Bank Routing Number/ABA# (Required):** Nine-digit number identifying the financial institution the account belongs to.

**Account Number (Required):** Vendor's Bank Account Number

#### Part V: Financial Institution Certification

**Institution Officer Signature (Required):** Signature of the Institution Officer at the bank certifying the banking information provided on this form.

**Institution Officer Name (Required):** Name of the Institution Officer at the bank completing this section of the form.

**Title (Required):** Institution Officer's title

**Phone Number (Required):** Institution Officer's phone number

**Email Address (Required):** Institution Officer's email address



# Contractor Certification

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

# ST-220-TD

(4/15)

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

Contractor name			
Contractor's principal place of business		City	State ZIP code
Contractor's mailing address (if different than above)		City	State ZIP code
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )	
Covered agency or state agency	Contract number or description	Covered agency telephone number ( )	
Covered agency address	City	State	ZIP code
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?			
Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>			

### General information

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

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

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


Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0826**

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?


 Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

### Telephone assistance

**Sales Tax Information Center:** (518) 485-2889  
To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

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

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

**Complete Sections 1, 2, and 3 below. Make only one entry in each section.**

**Section 1 – Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 – Affiliate registration status**

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

**Section 3 – Subcontractor registration status**

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

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)









# Contractor Certification to Covered Agency

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

# ST-220-CA

(12/11)

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

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

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

(sign before a notary public)

(title)

## Instructions

### General information

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

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

### When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally appeared \_\_\_\_\_,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
\_he resides at \_\_\_\_\_,
Town of \_\_\_\_\_,
County of \_\_\_\_\_,
State of \_\_\_\_\_; and further that:

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

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

Notary Public

Registration No.

Privacy notification

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

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

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

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

This information is maintained by the Manager of Document Management,
NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone
(518) 457-5181.

Need help?

Visit our Web site at www.tax.ny.gov
• get information and manage your taxes online
• check for new online services and features

Telephone assistance
Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with
hearing and speech disabilities using a TTY): (518) 485-5082

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

## **APPENDIX I**

### **Diversity Practices**

**I.1: Diversity Practices Questionnaire**

**I.2: How to Score Diversity Practices**

**I.3: Diversity Practices Scoring Matrix**

## Diversity Practices Questionnaire (Response worth up to 5 Technical Points)

**Note: Points will not be awarded based on your company's status as a certified MWBE firm; monies spend within your own firm; or training provided to your own employees. All points awarded will be based on the information provided in response to the questions herein pertaining to efforts made toward New York State certified MWBE firms.**

I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? **Yes** or **No**

If Yes, provide the name, title, description of duties assigned to the position and evidence of initiatives performed by this individual or individuals.

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

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup>

4. Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? **Yes** or **No**

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

<sup>1</sup> Do not include onsite project overhead.

<sup>2</sup> Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

5. Is your company participating in a government approved minority- and women-owned business enterprises focused mentor protégé program? **Yes or No**

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? **Yes or No**

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprises supplier diversity program? **Yes or No**

If Yes, provide documentation of program activities and a copy of policy or program materials.

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

**Signature of Owner/Official** \_\_\_\_\_

**Printed Name of Signatory** \_\_\_\_\_

**Title** \_\_\_\_\_

**Name of Business** \_\_\_\_\_

**Address** \_\_\_\_\_

**City, State, Zip** \_\_\_\_\_

## How to Score Diversity Practices

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs.

This guide provides instructions on how to determine whether diversity practices should be scored on your procurement, step-by-step instructions as to how to apply diversity practices, and suggestions as to how to customize diversity practices to the particular needs of your organization.

### *Is My Procurement Subject to Diversity Practices?*

Diversity practices are intended to be applied on procurements in which procurement personnel exercise their subjective judgment in selecting one or more successful contractors on the basis of best value, NOT on procurements that are awarded based upon lowest price. The following checklist illustrates when diversity practices should be scored as part of a procurement:

1. Is the procurement based upon best value (RFP or RFQ)?    Yes     No
2. Is the anticipated award \$250,000 or greater?                                    Yes     No
3. Is scoring for diversity practices practical, feasible, and                                    Yes     No   
appropriate?

If the answer to all three questions is “Yes,” the procurement should be scored for diversity practices. If the answer to questions 1 or 2 is “No,” no further action is needed and the procurement should not be scored for diversity practices. If the answer to question 3 is “No,” such determination should be documented in writing and diversity practices should not be scored. For more information on when a procurement is subject to diversity practices, please see the frequently asked questions below.

### Frequently Asked Questions

*May I score diversity practices and award points to contractors that are MWBEs based upon their MWBE certification on the same procurement?* No. Procurements may award points to contractors based upon their efforts to collaborate with and promote MWBEs (diversity practices) OR award points to contractors based upon whether they are certified as MWBEs (quantitative factor), but may not score for both. Procurements may not be scored for diversity practices when a quantitative factor is applied.

*When is it NOT practical, feasible, or appropriate to score diversity practices?* In circumstances where MWBE firms are not available to participate as subcontractors or suppliers in the industry

that is the subject of the procurement, contractors' ability to implement diversity practices may be too minimal to score respondents to an RFP or an RFQ. However, it is important to note that diversity practices should be scored when MWBEs are available to participate as subcontractors or suppliers in the industry, even if such subcontracting or supplying opportunities do not exist on the specific project that is the subject of your procurement.

Additionally, certain methods of identifying contractors may not be conducive to scoring for diversity practices. For example, where an RFQ is to be used to identify the availability of contractors and inform the contents of a future RFP, it may be appropriate to defer scoring of diversity practices until the RFP used to select the successful contractor or contractors is ultimately released.

*Should I score for diversity practices where multiple vendors will be selected via a procurement, and the award to each of them is anticipated to be less than \$250,000?* Yes. Diversity practices should be scored where the aggregated spending via a procurement is expected to equal or exceed \$250,000, even if the amount allocated to each successful contractor is less than \$250,000.

#### *Scoring for Diversity Practices*

Once you determine to score diversity practices as part of a procurement, you must identify the number of points you intend to allocate to contractors' diversity practices and include appropriate language in your RFP or RFQ, score the diversity practices of contractors using the diversity practices matrix, and weight each score in accordance with the percentage of points allocated to diversity practices.

Where an organization determines to score diversity practices as part of determining best value on a procurement, the RFP or RFQ in question should include the following: (1) a provision indicating that diversity practices will be scored, (2) the maximum number of points that may be awarded based upon respondents' diversity practices, and (3) a diversity practices questionnaire that respondents may provide as part of their response to the RFP or RFQ. A sample provision indicating that diversity practices will be scored is provided below:

[Name of Agency] has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement shall be required to include as part of their response to this procurement, as described in [Section ###] herein, forms [Diversity Form Numbers].

The diversity practices questionnaire provided by the Division of Minority and Women's Business Development provides eight questions for respondents to answer. Your organization may include additional questions, as discussed in more detail on page 5. The following provides a guide to scoring responses to each of the questions.

### Question 1

Question 1 solely addresses whether the respondent employs a chief diversity officer. In order to receive points for a response to question 1, a respondent should provide all of the information requested, including evidence of initiatives performed by the chief diversity officer. Merely identifying a chief diversity officer without providing the requested information should result in a score of zero.

### Questions 2 and 3

These questions direct respondents to provide information on the share of expenditures that the respondents made with MWBEs. Only the prior fiscal year of a respondent should be taken into account when assigning a score to questions 2 and 3. Any additional data that respondents provide illustrating expenditures made with MWBEs in other fiscal years should be disregarded.

In addition, any data regarding expenditures made to businesses certified as MWBEs by an entity other than the State of New York should be disregarded. Expenditures made to businesses with certifications other than MWBE, such as Disadvantaged Business Enterprises and Service-Disabled Veteran-owned Business Enterprises, are not to be considered in this analysis.

### Question 4

Respondents may score points in response to question 4 by identifying industry-specific technical training of MWBEs. Technical training is specific to the industry in question, and does not include generic training in skills that are transferrable across industries. Examples of trainings that do not qualify as technical training include trainings in managerial skills and leadership, effective communication, and professional development and networking. Examples of technical training topics include the use, installation, or safe handling of particular products, the use of industry-specific IT, and industry-specific sales and customer service strategies.

In assessing the robustness of a respondent's technical training, you should take into account the duration of the technical training program, the number of MWBEs served, and the total number of hours devoted to technical training of MWBEs. The characteristics of a robust technical training program will vary based upon the nature of the industry and the associated opportunities for MWBE training. However, characteristics of technical training programs fitting the "minimum" scoring criterion will typically be that the respondent has been providing technical training for one year or less, that the respondent has provided fewer than one hundred hours of technical training, or that the respondent has provided technical training to only one MWBE firm in a contracting area for which there is significant MWBE availability.

### Question 5

In order for a respondent to receive points for its response to question 5, the respondent must provide documentation demonstrating its participation in a mentor-protégé program approved by a governmental entity. Such governmental entity need not necessarily be the State of New York.



Appropriate documentation of the existence of a mentor-protégé program will vary based upon the approving governmental entity. Only documents generated by a governmental entity should be accepted to demonstrate the existence of a mentor-protégé program.

A robust mentor-protégé program must include the following elements:

- The mentee must be able to meaningfully participate in the delivery of contract requirements.
- For services contracts: at least one element of the scope must be performed by the MWBE with the Prime serving as mentor. Multi-year contracts must have a plan in place to expose the MWBE to each element of the scope through the lifetime of the contract.
- Mentor and mentee must enter into an agreement, approved by a governmental entity, which outlines the expectations of each party.
- Specific metrics must be identified which will be used to measure the effectiveness and success of the Mentor/Protégé relationship.

#### Question 6

Question 6 evaluates both the existence of MWBE goals on the part of the respondent in its own contracting, and the respondent's achievement of these goals. Whether a goal is robust depends on the availability of MWBEs in the industry in question. One tool to assist you in determining the availability of MWBE firms in the industry is the New York State Contract System MWBE Directory <<https://ny.newnycontracts.com/>>. This analysis should, to the extent possible, be based upon subcontracting activities that are available in the industry in which the respondent is engaged, not solely the availability of MWBE subcontractors for the procurement being made by your organization.

Once you have evaluated the robustness of the goal, you must take into account the share of the goal that the respondent has achieved. A respondent should only receive a robust score if the respondent has achieved a significant portion of an appropriate goal; achieving a small percentage of a robust goal should not entitle a respondent to a robust score.

#### Question 7

Question 7 considers whether a respondent has an immersive, formal program to promote the use of MWBEs as suppliers. A formal supplier diversity program must be documented via a program policy manual or similar document describing the requirements for participation and elements of the program, as well as documentation of program activities.

Characteristics of a supplier diversity program meeting the minimum requirement for the respondent to be awarded points could include a supplier diversity program with weak verification procedures focused solely on creating a list of diverse suppliers from which the respondent may procure goods or services. A robust supplier diversity program may be characterized by rigorous verification of MWBE status, plans for outreach to MWBE suppliers, and training and education programs designed to increase the capacity of MWBE suppliers.

## Question 8

The final question considers the use of MWBEs on the procurement for which diversity practices are being scored. This is the only criterion that considers the circumstances of the procurement exclusively, without regard to the respondent's other activities to promote MWBEs. The robustness of a utilization plan is to be assessed based upon the availability of MWBEs to perform as subcontractors and suppliers to the respondent on the procurement. As with question 6, you should refer to the MWBE Directory in order to determine the availability of MWBEs.

### Determine the Weighted Score

Once you have added the scores for all eight questions for a respondent, multiply that score based upon the weight you have assigned to diversity practices on the procurement. For example, if diversity practices account for 8% of the available points on your RFP and a respondent achieves a total score of 50 points for diversity practices on the diversity practices matrix, that respondent's weighted score is the product of 50 points and .08, or 4 points.

### *Customizing Diversity Practices*

The eight questions reflected on the diversity practices questionnaire constitute the minimum required to assess the diversity practices of respondents. You may add additional questions to the diversity practices questionnaire to customize it to your procurement activities. In order to determine whether additional fields may be useful, consider some of the following questions:

- Are there particular resources or skills needed to serve as a subcontractor or supplier in the industry?
- Are there technical or financial barriers to entry in the industry?
- Could respondents facilitate MWBE training and participation in the industry in ways not reflected on the questionnaire?
- Are there specific types of MWBE subcontractors or suppliers that are particularly underutilized in the industry in question?

In the case that you decide to include additional questions on the diversity practices questionnaire, you must revise the diversity practices matrix accordingly to reflect any points to be awarded to respondents for additional questions.

## New York State Diversity Practices Scoring Matrix

Questions

INFORMATION ONLY

Q1 - CDO or other person tasked with function					Yes	No	Total
					5 pts	0 pts	[ ]
Q2 - Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	20 pts	14 pts	10 pts	6 pts	2 pts	0pts	[ ]
Q3 - Percentage of overhead expenses paid to M/WBEs	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	16 pts	10 pts	7 pts	4 pts	1 pts	0pts	[ ]
Q4 - M/WBE Training			Robust	Moderate	Minimum	None	
			16 pts	8 pts	4 pts	0 pts	[ ]
Q5 - M/WBE Mentoring			Robust	Moderate	Minimum	None	
			12 pts	8 pts	4 pts	0 pts	[ ]
Q6 - Written M/WBE goals included in the Company's procurements			Robust	Moderate	Minimum	No	
			20 pts	12 pts	6 pts	0 pts	[ ]
Q7 - Formal Supplier Diversity Program			Robust	Moderate	Minimum	No	
			6 pts	4 pts	2 pts	0 pts	[ ]
Q8 - Utilization Plan			Robust	Moderate	Minimum	No	
			5 pts	3 pts	1 pts	0 pts	[ ]

**Total Diversity Score  
(Max 100 pts)**

**Weighted Score (Up to  
10% of Technical)**

## **APPENDIX J**

### **EEO and M/WBE Program**

**J: Contractor Requirements and Procedures for Business Participation Opportunities for EEO and M/WBE Program**

**J-1: Work Force Employment Utilization Report Instructions**

**J-2: Work Force Employment Staffing Plan**

**J-3: Work Force Employment Periodic Report**

**J-4: MWBE Utilization Plan Form**

**J-5: MWBE Quarterly Subcontracting/Supplier Activity Report**

**J-6: MWBE Quarterly Subcontracting/Supplier Activity Report Business Information Report**

**J-7: MWBE Request for Waiver Form**

**PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**

**I. General Provisions**

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

**II. Contract Goals**

For purposes of this solicitation, the Commission hereby establishes an overall goal of **0%** for MWBE participation, based on the current availability of qualified MBEs and WBEs.

- A. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- B. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be

applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25percent of the total value of the contract.

- C. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
  2. Any responses by MWBEs to the Contractor’s outreach;
  3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Commission with MWBEs; and,
  5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

### **III. Equal Employment Opportunity (“EEO”)**

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement to the Commission within seventy-two (72) hours after the date of the notice by the Commission 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 Commission 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. Form J-2- Staffing Plan

To ensure compliance with this Section, 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, as directed by the Commission.

#### D. Form J-3 - 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 Commission on a quarterly basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.

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

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

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by the Commission, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Commission, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Commission shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

#### **V. Waivers**

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Commission. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Commission shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If the Commission, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, the Commission may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

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

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to the Commission by the 10<sup>th</sup> day following the end of each quarter during the term of the Contract.

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



- A. Where the Commission determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Commission liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Commission, the Contractor shall pay such liquidated damages to the Commission within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

**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**

**EEO**

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:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from the Commission and solicit bids from them directly.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

- (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**

\_\_\_\_\_percent Minority and Women's Business Enterprise Participation

\_\_\_\_\_percent Minority Business Enterprise Participation

\_\_\_\_\_percent Women's Business Enterprise Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### **Instructions for Submitting the Workforce Utilization Report**

The Workforce Utilization Report (“Report”) is to be submitted on a monthly basis for construction contracts, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor’s and/or subcontractor’s total workforce, information on the contractor’s and/or subcontractor’s total workforce may be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to [Michele.june@gaming.ny.gov](mailto:Michele.june@gaming.ny.gov) within ten (10) days following the end of each month or quarter, whichever is applicable.

### **Instructions for Completing the Workforce Utilization Report**

1. **REPORTING ENTITY:** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **FEDERAL EMPLOYER IDENTIFICATION NUMBER:** Enter the Federal Employer Identification Number (FEIN) assigned by the IRS. Contractors utilizing their social security number in lieu of an FEIN should leave this field blank.
3. **CONTRACTOR NAME and CONTRACTOR ADDRESS:** Enter the primary business address for the entity completing the Report.
4. **CONTRACT NUMBER:** Enter the number of the contract to which the Report applies.
5. **REPORTING PERIOD:** Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report. Only select one box.
6. **WORKFORCE IDENTIFIED IN REPORT:** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
7. **OCCUPATION CLASSIFICATIONS and SOC JOB TITLE:** Select the occupation classification and job title that best describes each group of employees performing work on the state contract under columns A and B.
8. **EEO JOB TITLE and SOC CODE:** These fields will populate automatically based upon the Occupation Classifications and SOC Job Titles selected. Do not modify the results generated in these fields.
9. **NUMBER OF EMPLOYEES and NUMBER OF HOURS:** Enter the number of employees and total number of hours worked by such employees for each job title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
10. **TOTAL COMPENSATION:** Enter the total compensation paid to all employees for each job code, and each gender and racial/ethnic group, identified in the Report. Contractors and subcontractors should report only compensation for work on the contract paid to employees during the period covered by the Report. Compensation should include only sums which must be reported in Box 1 of IRS Form W2.
11. **PREPARER’S INFORMATION:** Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

## Race/Ethnic Identification

1

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group with which he or she most closely identifies. No person may be counted in more than one race/ethnic group. In determining an employee's race or ethnicity, a contractor may rely upon an employee's self-identification, employment records, or, in cases where an employee refuses to identify his or her race or identity, observer identification. The race/ethnic categories for this Report are:

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

## Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact [Michele.june@gaming.ny.gov](mailto:Michele.june@gaming.ny.gov), 518-388-2134.

**WORK FORCE EMPLOYMENT STAFFING PLAN**

Project/RFP Title \_\_\_\_\_ Location of Contract \_\_\_\_\_  
 Contractor/Firm Name \_\_\_\_\_ Address \_\_\_\_\_  
 County \_\_\_\_\_ Zip \_\_\_\_\_  
 State \_\_\_\_\_ Zip \_\_\_\_\_

Check applicable categories (1) Staff Estimates include: Contract/Project Staff \_\_\_ Total Work Force \_\_\_ Subcontractors \_\_\_  
 (2) Type of Contract: Construction Consultants \_\_\_ Commodities \_\_\_ Services/Consultants \_\_\_

Total Anticipated Work Force											Total Percent Minority Employees	Total Percent Female Employees
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
<b>TOTALS</b>												

Company Official's Name \_\_\_\_\_ Title \_\_\_\_\_  
 Company Official's Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Telephone Number \_\_\_\_\_



# EEO-1 JOB CLASSIFICATION GUIDE, 2014

## (Effective beginning with the 2014 EEO-1 survey)

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Exec/Senior Offs & Mgrs.	Chief Executives *** (See Details in Bottom Note)	11-1011	0010
First/Mid Offs & Mgrs.	General and Operations Managers	11-1021	0020
First/Mid Offs & Mgrs.	Advertising and Promotions Managers	11-2011	0040
First/Mid Offs & Mgrs.	Marketing Managers	11-2021	0050
First/Mid Offs & Mgrs.	Sales Managers	11-2022	0050
First/Mid Offs & Mgrs.	Public Relations and Fundraising Managers	11-2031	0060
First/Mid Offs & Mgrs.	Administrative Services Managers	11-3011	0100
First/Mid Offs & Mgrs.	Computer and Information Systems Managers	11-3021	0110
First/Mid Offs & Mgrs.	Financial Managers	11-3031	0120
First/Mid Offs & Mgrs.	Industrial Production Managers	11-3051	0140
First/Mid Offs & Mgrs.	Purchasing Managers	11-3061	0150
First/Mid Offs & Mgrs.	Transportation, Storage, and Distribution Managers	11-3071	0160
First/Mid Offs & Mgrs.	Compensation and Benefits Managers	11-3111	0135
First/Mid Offs & Mgrs.	Human Resources Managers	11-3121	0136
First/Mid Offs & Mgrs.	Training and Development Managers	11-3131	0137
First/Mid Offs & Mgrs.	Farmers, Ranchers, and Other Agricultural Managers	11-9013	0205
First/Mid Offs & Mgrs.	Construction Managers	11-9021	0220
First/Mid Offs & Mgrs.	Education Administrators, Preschool and Childcare Center/Program	11-9031	0230
First/Mid Offs & Mgrs.	Education Administrators, Elementary and Secondary School	11-9032	0230
First/Mid Offs & Mgrs.	Education Administrators, Postsecondary	11-9033	0230
First/Mid Offs & Mgrs.	Education Administrators, All Other	11-9039	0230
First/Mid Offs & Mgrs.	Architectural and Engineering Managers	11-9041	0300
First/Mid Offs & Mgrs.	Food Service Managers	11-9051	0310
First/Mid Offs & Mgrs.	Funeral Service Managers	11-9061	0430
First/Mid Offs & Mgrs.	Gaming Managers	11-9071	0330
First/Mid Offs & Mgrs.	Lodging Managers	11-9081	0340
First/Mid Offs & Mgrs.	Medical and Health Services Managers	11-9111	0350
First/Mid Offs & Mgrs.	Natural Sciences Managers	11-9121	0360
First/Mid Offs & Mgrs.	Postmasters and Mail Superintendents	11-9131	0430
First/Mid Offs & Mgrs.	Property, Real Estate, and Community Association Managers	11-9141	0410
First/Mid Offs & Mgrs.	Social and Community Service Managers	11-9151	0420
First/Mid Offs & Mgrs.	Emergency Management Directors	11-9161	0425
First/Mid Offs & Mgrs.	Managers, All Other	11-9199	0430
First/Mid Offs & Mgrs.	Morticians, Undertakers, and Funeral Directors	39-4031	4465
Professionals	Agents and Business Managers of Artists, Performers, and Athletes	13-1011	0500
Professionals	Buyers and Purchasing Agents, Farm Products	13-1021	0510
Professionals	Wholesale and Retail Buyers, Except Farm Products	13-1022	0520
Professionals	Purchasing Agents, Except Wholesale, Retail, and Farm Products	13-1023	0530



<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Professionals	Claims Adjusters, Examiners, and Investigators	13-1031	0540
Professionals	Insurance Appraisers, Auto Damage	13-1032	0540
Professionals	Compliance Officers	13-1041	0565
Professionals	Cost Estimators	13-1051	0600
Professionals	Human Resources Specialists	13-1071	0630
Professionals	Farm Labor Contractors	13-1074	0630
Professionals	Labor Relations Specialists	13-1075	0630
Professionals	Logisticians	13-1081	0700
Professionals	Management Analysts	13-1111	0710
Professionals	Meeting, Convention, and Event Planners	13-1121	0725
Professionals	Fundraisers	13-1131	0726
Professionals	Compensation, Benefits, and Job Analysis Specialists	13-1141	0640
Professionals	Training and Development Specialists	13-1151	0650
Professionals	Market Research Analysts and Marketing Specialists	13-1161	0735
Professionals	Business Operations Specialists, All Other	13-1199	0740
Professionals	Accountants and Auditors	13-2011	0800
Professionals	Appraisers and Assessors of Real Estate	13-2021	0810
Professionals	Budget Analysts	13-2031	0820
Professionals	Credit Analysts	13-2041	0830
Professionals	Financial Analysts	13-2051	0840
Professionals	Personal Financial Advisors	13-2052	0850
Professionals	Insurance Underwriters	13-2053	0860
Professionals	Financial Examiners	13-2061	0900
Professionals	Credit Counselors	13-2071	0910
Professionals	Loan Officers	13-2072	0910
Professionals	Tax Examiners and Collectors, and Revenue Agents	13-2081	0930
Professionals	Tax Preparers	13-2082	0940
Professionals	Financial Specialists, All Other	13-2099	0950
Professionals	Computer and Information Research Scientists	15-1111	1005
Professionals	Computer Systems Analysts	15-1121	1006
Professionals	Information Security Analysts	15-1122	1007
Professionals	Computer Programmers	15-1131	1010
Professionals	Software Developers, Applications	15-1132	1020
Professionals	Software Developers, Systems Software	15-1133	1020
Professionals	Web Developers	15-1134	1030
Professionals	Database Administrators	15-1141	1060
Professionals	Network and Computer Systems Administrators	15-1142	1105
Professionals	Computer Network Architects	15-1143	1106
Professionals	Computer User Support Specialists	15-1151	1050
Professionals	Computer Network Support Specialists	15-1152	1050
Professionals	Computer Occupations, All Other	15-1199	1107

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Professionals	Actuaries	15-2011	1200
Professionals	Mathematicians	15-2021	1240
Professionals	Operations Research Analysts	15-2031	1220
Professionals	Statisticians	15-2041	1240
Professionals	Mathematical Technicians	15-2091	1240
Professionals	Mathematical Science Occupations, All Other	15-2099	1240
Professionals	Architects, Except Landscape and Naval	17-1011	1300
Professionals	Landscape Architects	17-1012	1300
Professionals	Cartographers and Photogrammetrists	17-1021	1310
Professionals	Surveyors	17-1022	1310
Professionals	Aerospace Engineers	17-2011	1320
Professionals	Agricultural Engineers	17-2021	1340
Professionals	Biomedical Engineers	17-2031	1340
Professionals	Chemical Engineers	17-2041	1350
Professionals	Civil Engineers	17-2051	1520
Professionals	Computer Hardware Engineers	17-2061	1400
Professionals	Electrical Engineers	17-2071	1410
Professionals	Electronics Engineers, Except Computer	17-2072	1410
Professionals	Environmental Engineers	17-2081	1420
Professionals	Health and Safety Engineers, Except Mining Safety Engineers and Inspectors	17-2111	1430
Professionals	Industrial Engineers	17-2112	1430
Professionals	Marine Engineers and Naval Architects	17-2121	1440
Professionals	Materials Engineers	17-2131	1450
Professionals	Mechanical Engineers	17-2141	1460
Professionals	Mining and Geological Engineers, Including Mining Safety Engineers	17-2151	1520
Professionals	Nuclear Engineers	17-2161	1530
Professionals	Petroleum Engineers	17-2171	1520
Professionals	Engineers, All Other	17-2199	1530
Professionals	Animal Scientists	19-1011	1600
Professionals	Food Scientists and Technologists	19-1012	1600
Professionals	Soil and Plant Scientists	19-1013	1600
Professionals	Biochemists and Biophysicists	19-1021	1610
Professionals	Microbiologists	19-1022	1610
Professionals	Zoologists and Wildlife Biologists	19-1023	1610
Professionals	Biological Scientists, All Other	19-1029	1610
Professionals	Conservation Scientists	19-1031	1640
Professionals	Foresters	19-1032	1640
Professionals	Epidemiologists	19-1041	1650
Professionals	Medical Scientists, Except Epidemiologists	19-1042	1650
Professionals	Life Scientists, All Other	19-1099	1650
Professionals	Astronomers	19-2011	1700

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Professionals	Physicists	19-2012	1700
Professionals	Atmospheric and Space Scientists	19-2021	1710
Professionals	Chemists	19-2031	1720
Professionals	Materials Scientists	19-2032	1720
Professionals	Environmental Scientists and Specialists, Including Health	19-2041	1740
Professionals	Geoscientists, Except Hydrologists and Geographers	19-2042	1740
Professionals	Hydrologists	19-2043	1740
Professionals	Physical Scientists, All Other	19-2099	1760
Professionals	Economists	19-3011	1800
Professionals	Survey Researchers	19-3022	1860
Professionals	Clinical, Counseling, and School Psychologists	19-3031	1820
Professionals	Industrial-Organizational Psychologists	19-3032	1820
Professionals	Psychologists, All Other	19-3039	1820
Professionals	Sociologists	19-3041	1860
Professionals	Urban and Regional Planners	19-3051	1840
Professionals	Anthropologists and Archeologists	19-3091	1860
Professionals	Geographers	19-3092	1860
Professionals	Historians	19-3093	1860
Professionals	Political Scientists	19-3094	1860
Professionals	Social Scientists and Related Workers, All Other	19-3099	1860
Professionals	Substance Abuse and Behavioral Disorder Counselors	21-1011	2000
Professionals	Educational, Guidance, School, and Vocational Counselors	21-1012	2000
Professionals	Marriage and Family Therapists	21-1013	2000
Professionals	Mental Health Counselors	21-1014	2000
Professionals	Rehabilitation Counselors	21-1015	2000
Professionals	Counselors, All Other	21-1019	2000
Professionals	Child, Family, and School Social Workers	21-1021	2010
Professionals	Healthcare Social Workers	21-1022	2010
Professionals	Mental Health and Substance Abuse Social Workers	21-1023	2010
Professionals	Social Workers, All Other	21-1029	2010
Professionals	Health Educators	21-1091	2025
Professionals	Probation Officers and Correctional Treatment Specialists	21-1092	2015
Professionals	Community Health Workers	21-1094	2025
Professionals	Community and Social Service Specialists, All Other	21-1099	2025
Professionals	Clergy	21-2011	2040
Professionals	Directors, Religious Activities and Education	21-2021	2050
Professionals	Religious Workers, All Other	21-2099	2060
Professionals	Lawyers	23-1011	2100
Professionals	Judicial Law Clerks	23-1012	2105
Professionals	Administrative Law Judges, Adjudicators, and Hearing Officers	23-1021	2100
Professionals	Arbitrators, Mediators, and Conciliators	23-1022	2100

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Professionals	Judges, Magistrate Judges, and Magistrates	23-1023	2100
Professionals	Business Teachers, Postsecondary	25-1011	2200
Professionals	Computer Science Teachers, Postsecondary	25-1021	2200
Professionals	Mathematical Science Teachers, Postsecondary	25-1022	2200
Professionals	Architecture Teachers, Postsecondary	25-1031	2200
Professionals	Engineering Teachers, Postsecondary	25-1032	2200
Professionals	Agricultural Sciences Teachers, Postsecondary	25-1041	2200
Professionals	Biological Science Teachers, Postsecondary	25-1042	2200
Professionals	Forestry and Conservation Science Teachers, Postsecondary	25-1043	2200
Professionals	Atmospheric, Earth, Marine, and Space Sciences Teachers, Postsecondary	25-1051	2200
Professionals	Chemistry Teachers, Postsecondary	25-1052	2200
Professionals	Environmental Science Teachers, Postsecondary	25-1053	2200
Professionals	Physics Teachers, Postsecondary	25-1054	2200
Professionals	Anthropology and Archeology Teachers, Postsecondary	25-1061	2200
Professionals	Area, Ethnic, and Cultural Studies Teachers, Postsecondary	25-1062	2200
Professionals	Economics Teachers, Postsecondary	25-1063	2200
Professionals	Geography Teachers, Postsecondary	25-1064	2200
Professionals	Political Science Teachers, Postsecondary	25-1065	2200
Professionals	Psychology Teachers, Postsecondary	25-1066	2200
Professionals	Sociology Teachers, Postsecondary	25-1067	2200
Professionals	Social Sciences Teachers, Postsecondary, All Other	25-1069	2200
Professionals	Health Specialties Teachers, Postsecondary	25-1071	2200
Professionals	Nursing Instructors and Teachers, Postsecondary	25-1072	2200
Professionals	Education Teachers, Postsecondary	25-1081	2200
Professionals	Library Science Teachers, Postsecondary	25-1082	2200
Professionals	Criminal Justice and Law Enforcement Teachers, Postsecondary	25-1111	2200
Professionals	Law Teachers, Postsecondary	25-1112	2200
Professionals	Social Work Teachers, Postsecondary	25-1113	2200
Professionals	Art, Drama, and Music Teachers, Postsecondary	25-1121	2200
Professionals	Communications Teachers, Postsecondary	25-1122	2200
Professionals	English Language and Literature Teachers, Postsecondary	25-1123	2200
Professionals	Foreign Language and Literature Teachers, Postsecondary	25-1124	2200
Professionals	History Teachers, Postsecondary	25-1125	2200
Professionals	Philosophy and Religion Teachers, Postsecondary	25-1126	2200
Professionals	Graduate Teaching Assistants	25-1191	2200
Professionals	Home Economics Teachers, Postsecondary	25-1192	2200
Professionals	Recreation and Fitness Studies Teachers, Postsecondary	25-1193	2200
Professionals	Vocational Education Teachers, Postsecondary	25-1194	2200
Professionals	Postsecondary Teachers, All Other	25-1199	2200
Professionals	Preschool Teachers, Except Special Education	25-2011	2300
Professionals	Kindergarten Teachers, Except Special Education	25-2012	2300

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Professionals	Elementary School Teachers, Except Special Education	25-2021	2310
Professionals	Middle School Teachers, Except Special and Career/Technical Education	25-2022	2310
Professionals	Career/Technical Education Teachers, Middle School	25-2023	2310
Professionals	Secondary School Teachers, Except Special and Career/Technical Education	25-2031	2320
Professionals	Career/Technical Education Teachers, Secondary School	25-2032	2320
Professionals	Special Education Teachers, Preschool	25-2051	2330
Professionals	Special Education Teachers, Kindergarten and Elementary School	25-2052	2330
Professionals	Special Education Teachers, Middle School	25-2053	2330
Professionals	Special Education Teachers, Secondary School	25-2054	2330
Professionals	Special Education Teachers, All Other	25-2059	2330
Professionals	Adult Basic and Secondary Education and Literacy Teachers and Instructors	25-3011	2340
Professionals	Self-Enrichment Education Teachers	25-3021	2340
Professionals	Teachers and Instructors, All Other	25-3099	2340
Professionals	Archivists	25-4011	2400
Professionals	Curators	25-4012	2400
Professionals	Museum Technicians and Conservators	25-4013	2400
Professionals	Librarians	25-4021	2430
Professionals	Audio-Visual and Multimedia Collections Specialists	25-9011	2550
Professionals	Farm and Home Management Advisors	25-9021	2550
Professionals	Instructional Coordinators	25-9031	2550
Professionals	Education, Training, and Library Workers, All Other	25-9099	2550
Professionals	Art Directors	27-1011	2600
Professionals	Craft Artists	27-1012	2600
Professionals	Fine Artists, Including Painters, Sculptors, and Illustrators	27-1013	2600
Professionals	Multimedia Artists and Animators	27-1014	2600
Professionals	Artists and Related Workers, All Other	27-1019	2600
Professionals	Commercial and Industrial Designers	27-1021	2630
Professionals	Fashion Designers	27-1022	2630
Professionals	Floral Designers	27-1023	2630
Professionals	Graphic Designers	27-1024	2630
Professionals	Interior Designers	27-1025	2630
Professionals	Merchandise Displayers and Window Trimmers	27-1026	2630
Professionals	Set and Exhibit Designers	27-1027	2630
Professionals	Designers, All Other	27-1029	2630
Professionals	Actors	27-2011	2700
Professionals	Producers and Directors	27-2012	2710
Professionals	Athletes and Sports Competitors	27-2021	2720
Professionals	Coaches and Scouts	27-2022	2720
Professionals	Umpires, Referees, and Other Sports Officials	27-2023	2720
Professionals	Dancers	27-2031	2740
Professionals	Choreographers	27-2032	2740

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Professionals	Music Directors and Composers	27-2041	2750
Professionals	Musicians and Singers	27-2042	2750
Professionals	Entertainers and Performers, Sports and Related Workers, All Other	27-2099	2760
Professionals	Radio and Television Announcers	27-3011	2800
Professionals	Public Address System and Other Announcers	27-3012	2800
Professionals	Broadcast News Analysts	27-3021	2810
Professionals	Reporters and Correspondents	27-3022	2810
Professionals	Public Relations Specialists	27-3031	2825
Professionals	Editors	27-3041	2830
Professionals	Technical Writers	27-3042	2840
Professionals	Writers and Authors	27-3043	2850
Professionals	Interpreters and Translators	27-3091	2860
Professionals	Media and Communication Workers, All Other	27-3099	2860
Professionals	Photographers	27-4021	2910
Professionals	Camera Operators, Television, Video, and Motion Picture	27-4031	2920
Professionals	Film and Video Editors	27-4032	2920
Professionals	Chiropractors	29-1011	3000
Professionals	Dentists, General	29-1021	3010
Professionals	Oral and Maxillofacial Surgeons	29-1022	3010
Professionals	Orthodontists	29-1023	3010
Professionals	Prosthodontists	29-1024	3010
Professionals	Dentists, All Other Specialists	29-1029	3010
Professionals	Dietitians and Nutritionists	29-1031	3030
Professionals	Optometrists	29-1041	3040
Professionals	Pharmacists	29-1051	3050
Professionals	Anesthesiologists	29-1061	3060
Professionals	Family and General Practitioners	29-1062	3060
Professionals	Internists, General	29-1063	3060
Professionals	Obstetricians and Gynecologists	29-1064	3060
Professionals	Pediatricians, General	29-1065	3060
Professionals	Psychiatrists	29-1066	3060
Professionals	Surgeons	29-1067	3060
Professionals	Physicians and Surgeons, All Other	29-1069	3060
Professionals	Physician Assistants	29-1071	3110
Professionals	Podiatrists	29-1081	3120
Professionals	Occupational Therapists	29-1122	3150
Professionals	Physical Therapists	29-1123	3160
Professionals	Radiation Therapists	29-1124	3200
Professionals	Recreational Therapists	29-1125	3210
Professionals	Respiratory Therapists	29-1126	3220
Professionals	Speech-Language Pathologists	29-1127	3230

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Professionals	Exercise Physiologists	29-1128	3245
Professionals	Therapists, All Other	29-1129	3245
Professionals	Veterinarians	29-1131	3250
Professionals	Registered Nurses	29-1141	3255
Professionals	Nurse Anesthetists	29-1151	3256
Professionals	Nurse Midwives	29-1161	3258
Professionals	Nurse Practitioners	29-1171	3258
Professionals	Audiologists	29-1181	3140
Professionals	Health Diagnosing and Treating Practitioners, All Other	29-1199	3260
Professionals	Animal Trainers	39-2011	4340
Professionals	Sales Engineers	41-9031	4930
Professionals	Agricultural Inspectors	45-2011	6010
Professionals	Construction and Building Inspectors	47-4011	6660
Professionals	Airline Pilots, Copilots, and Flight Engineers	53-2011	9030
Professionals	Commercial Pilots	53-2012	9030
Professionals	Transportation Inspectors	53-6051	9410
Technicians	Architectural and Civil Drafters	17-3011	1540
Technicians	Electrical and Electronics Drafters	17-3012	1540
Technicians	Mechanical Drafters	17-3013	1540
Technicians	Drafters, All Other	17-3019	1540
Technicians	Aerospace Engineering and Operations Technicians	17-3021	1550
Technicians	Civil Engineering Technicians	17-3022	1550
Technicians	Electrical and Electronics Engineering Technicians	17-3023	1550
Technicians	Electro-Mechanical Technicians	17-3024	1550
Technicians	Environmental Engineering Technicians	17-3025	1550
Technicians	Industrial Engineering Technicians	17-3026	1550
Technicians	Mechanical Engineering Technicians	17-3027	1550
Technicians	Engineering Technicians, Except Drafters, All Other	17-3029	1550
Technicians	Surveying and Mapping Technicians	17-3031	1560
Technicians	Agricultural and Food Science Technicians	19-4011	1900
Technicians	Biological Technicians	19-4021	1910
Technicians	Chemical Technicians	19-4031	1920
Technicians	Geological and Petroleum Technicians	19-4041	1930
Technicians	Nuclear Technicians	19-4051	1930
Technicians	Social Science Research Assistants	19-4061	1965
Technicians	Environmental Science and Protection Technicians, Including Health	19-4091	1965
Technicians	Forensic Science Technicians	19-4092	1965
Technicians	Forest and Conservation Technicians	19-4093	1965
Technicians	Life, Physical, and Social Science Technicians, All Other	19-4099	1965
Technicians	Audio and Video Equipment Technicians	27-4011	2900
Technicians	Broadcast Technicians	27-4012	2900

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Technicians	Radio Operators	27-4013	2900
Technicians	Sound Engineering Technicians	27-4014	2900
Technicians	Media and Communication Equipment Workers, All Other	27-4099	2900
Technicians	Medical and Clinical Laboratory Technologists	29-2011	3300
Technicians	Medical and Clinical Laboratory Technicians	29-2012	3300
Technicians	Dental Hygienists	29-2021	3310
Technicians	Cardiovascular Technologists and Technicians	29-2031	3320
Technicians	Diagnostic Medical Sonographers	29-2032	3320
Technicians	Nuclear Medicine Technologists	29-2033	3320
Technicians	Radiologic Technologists	29-2034	3320
Technicians	Magnetic Resonance Imaging Technologists	29-2035	3320
Technicians	Emergency Medical Technicians and Paramedics	29-2041	3400
Technicians	Dietetic Technicians	29-2051	3420
Technicians	Pharmacy Technicians	29-2052	3420
Technicians	Psychiatric Technicians	29-2053	3420
Technicians	Respiratory Therapy Technicians	29-2054	3420
Technicians	Surgical Technologists	29-2055	3420
Technicians	Veterinary Technologists and Technicians	29-2056	3420
Technicians	Ophthalmic Medical Technicians	29-2057	3420
Technicians	Licensed Practical and Licensed Vocational Nurses	29-2061	3500
Technicians	Medical Records and Health Information Technicians	29-2071	3510
Technicians	Opticians, Dispensing	29-2081	3520
Technicians	Orthotists and Prosthetists	29-2091	3535
Technicians	Hearing Aid Specialists	29-2092	3535
Technicians	Health Technologists and Technicians, All Other	29-2099	3535
Technicians	Occupational Health and Safety Specialists	29-9011	3540
Technicians	Occupational Health and Safety Technicians	29-9012	3540
Technicians	Athletic Trainers	29-9091	3540
Technicians	Genetic Counselors	29-9092	3540
Technicians	Healthcare Practitioners and Technical Workers, All Other	29-9099	3540
Technicians	Air Traffic Controllers	53-2021	9040
Technicians	Airfield Operations Specialists	53-2022	9040
Sales Workers	First-Line Supervisors of Retail Sales Workers	41-1011	4700
Sales Workers	First-Line Supervisors of Non-Retail Sales Workers	41-1012	4710
Sales Workers	Cashiers	41-2011	4720
Sales Workers	Gaming Change Persons and Booth Cashiers	41-2012	4720
Sales Workers	Counter and Rental Clerks	41-2021	4740
Sales Workers	Parts Salespersons	41-2022	4750
Sales Workers	Retail Salespersons	41-2031	4760
Sales Workers	Advertising Sales Agents	41-3011	4800
Sales Workers	Insurance Sales Agents	41-3021	4810



<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Sales Workers	Securities, Commodities, and Financial Services Sales Agents	41-3031	4820
Sales Workers	Travel Agents	41-3041	4830
Sales Workers	Sales Representatives, Services, All Other	41-3099	4840
Sales Workers	Sales Representatives, Wholesale and Manufacturing, Technical and Scientific Products	41-4011	4850
Sales Workers	Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products	41-4012	4850
Sales Workers	Demonstrators and Product Promoters	41-9011	4900
Sales Workers	Models	41-9012	4900
Sales Workers	Real Estate Brokers	41-9021	4920
Sales Workers	Real Estate Sales Agents	41-9022	4920
Sales Workers	Telemarketers	41-9041	4940
Sales Workers	Door-to-Door Sales Workers, News and Street Vendors, and Related Workers	41-9091	4950
Sales Workers	Sales and Related Workers, All Other	41-9099	4965
Administrative Support Workers	Social and Human Service Assistants	21-1093	2016
Administrative Support Workers	Paralegals and Legal Assistants	23-2011	2145
Administrative Support Workers	Court Reporters	23-2091	2160
Administrative Support Workers	Title Examiners, Abstractors, and Searchers	23-2093	2160
Administrative Support Workers	Legal Support Workers, All Other	23-2099	2160
Administrative Support Workers	Library Technicians	25-4031	2440
Administrative Support Workers	Teacher Assistants	25-9041	2540
Administrative Support Workers	Medical Transcriptionists	31-9094	3646
Administrative Support Workers	First-Line Supervisors of Office and Administrative Support Workers	43-1011	5000
Administrative Support Workers	Switchboard Operators, Including Answering Service	43-2011	5010
Administrative Support Workers	Telephone Operators	43-2021	5020
Administrative Support Workers	Communications Equipment Operators, All Other	43-2099	5030
Administrative Support Workers	Bill and Account Collectors	43-3011	5100
Administrative Support Workers	Billing and Posting Clerks	43-3021	5110
Administrative Support Workers	Bookkeeping, Accounting, and Auditing Clerks	43-3031	5120
Administrative Support Workers	Gaming Cage Workers	43-3041	5130
Administrative Support Workers	Payroll and Timekeeping Clerks	43-3051	5140
Administrative Support Workers	Procurement Clerks	43-3061	5150
Administrative Support Workers	Tellers	43-3071	5160

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Administrative Support Workers	Financial Clerks, All Other	43-3099	5165
Administrative Support Workers	Brokerage Clerks	43-4011	5200
Administrative Support Workers	Correspondence Clerks	43-4021	5350
Administrative Support Workers	Court, Municipal, and License Clerks	43-4031	5220
Administrative Support Workers	Credit Authorizers, Checkers, and Clerks	43-4041	5230
Administrative Support Workers	Customer Service Representatives	43-4051	5240
Administrative Support Workers	Eligibility Interviewers, Government Programs	43-4061	5250
Administrative Support Workers	File Clerks	43-4071	5260
Administrative Support Workers	Hotel, Motel, and Resort Desk Clerks	43-4081	5300
Administrative Support Workers	Interviewers, Except Eligibility and Loan	43-4111	5310
Administrative Support Workers	Library Assistants, Clerical	43-4121	5320
Administrative Support Workers	Loan Interviewers and Clerks	43-4131	5330
Administrative Support Workers	New Accounts Clerks	43-4141	5340
Administrative Support Workers	Order Clerks	43-4151	5350
Administrative Support Workers	Human Resources Assistants, Except Payroll and Timekeeping	43-4161	5360
Administrative Support Workers	Receptionists and Information Clerks	43-4171	5400
Administrative Support Workers	Reservation and Transportation Ticket Agents and Travel Clerks	43-4181	5410
Administrative Support Workers	Information and Record Clerks, All Other	43-4199	5420
Administrative Support Workers	Cargo and Freight Agents	43-5011	5500
Administrative Support Workers	Couriers and Messengers	43-5021	5510
Administrative Support Workers	Police, Fire, and Ambulance Dispatchers	43-5031	5520
Administrative Support Workers	Dispatchers, Except Police, Fire, and Ambulance	43-5032	5520
Administrative Support Workers	Meter Readers, Utilities	43-5041	5530
Administrative Support Workers	Postal Service Clerks	43-5051	5540
Administrative Support Workers	Postal Service Mail Carriers	43-5052	5550
Administrative Support Workers	Postal Service Mail Sorters, Processors, and Processing Machine Operators	43-5053	5560
Administrative Support Workers	Production, Planning, and Expediting Clerks	43-5061	5600

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Administrative Support Workers	Shipping, Receiving, and Traffic Clerks	43-5071	5610
Administrative Support Workers	Stock Clerks and Order Fillers	43-5081	5620
Administrative Support Workers	Weighers, Measurers, Checkers, and Samplers, Recordkeeping	43-5111	5630
Administrative Support Workers	Executive Secretaries and Executive Administrative Assistants	43-6011	5700
Administrative Support Workers	Legal Secretaries	43-6012	5700
Administrative Support Workers	Medical Secretaries	43-6013	5700
Administrative Support Workers	Secretaries and Administrative Assistants, Except Legal, Medical, and Executive	43-6014	5700
Administrative Support Workers	Computer Operators	43-9011	5800
Administrative Support Workers	Data Entry Keyers	43-9021	5810
Administrative Support Workers	Word Processors and Typists	43-9022	5820
Administrative Support Workers	Desktop Publishers	43-9031	5940
Administrative Support Workers	Insurance Claims and Policy Processing Clerks	43-9041	5840
Administrative Support Workers	Mail Clerks and Mail Machine Operators, Except Postal Service	43-9051	5850
Administrative Support Workers	Office Clerks, General	43-9061	5860
Administrative Support Workers	Office Machine Operators, Except Computer	43-9071	5900
Administrative Support Workers	Proofreaders and Copy Markers	43-9081	5910
Administrative Support Workers	Statistical Assistants	43-9111	5920
Administrative Support Workers	Office and Administrative Support Workers, All Other	43-9199	5940
Craft Workers	First-Line Supervisors of Construction Trades and Extraction Workers	47-1011	6200
Craft Workers	Boilermakers	47-2011	6210
Craft Workers	Brickmasons and Blockmasons	47-2021	6220
Craft Workers	Stonemasons	47-2022	6220
Craft Workers	Carpenters	47-2031	6230
Craft Workers	Carpet Installers	47-2041	6240
Craft Workers	Floor Layers, Except Carpet, Wood, and Hard Tiles	47-2042	6240
Craft Workers	Floor Sanders and Finishers	47-2043	6240
Craft Workers	Tile and Marble Setters	47-2044	6240
Craft Workers	Cement Masons and Concrete Finishers	47-2051	6250
Craft Workers	Terrazzo Workers and Finishers	47-2053	6250
Craft Workers	Paving, Surfacing, and Tamping Equipment Operators	47-2071	6300
Craft Workers	Pile-Driver Operators	47-2072	6320
Craft Workers	Operating Engineers and Other Construction Equipment Operators	47-2073	6320

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Craft Workers	Drywall and Ceiling Tile Installers	47-2081	6330
Craft Workers	Tapers	47-2082	6330
Craft Workers	Electricians	47-2111	6355
Craft Workers	Glaziers	47-2121	6360
Craft Workers	Insulation Workers, Floor, Ceiling, and Wall	47-2131	6400
Craft Workers	Insulation Workers, Mechanical	47-2132	6400
Craft Workers	Painters, Construction and Maintenance	47-2141	6420
Craft Workers	Paperhangers	47-2142	6430
Craft Workers	Pipelayers	47-2151	6440
Craft Workers	Plumbers, Pipefitters, and Steamfitters	47-2152	6440
Craft Workers	Plasterers and Stucco Masons	47-2161	6460
Craft Workers	Reinforcing Iron and Rebar Workers	47-2171	6500
Craft Workers	Roofers	47-2181	6515
Craft Workers	Sheet Metal Workers	47-2211	6520
Craft Workers	Structural Iron and Steel Workers	47-2221	6530
Craft Workers	Solar Photovoltaic Installers	47-2231	6765
Craft Workers	Elevator Installers and Repairers	47-4021	6700
Craft Workers	Fence Erectors	47-4031	6710
Craft Workers	Hazardous Materials Removal Workers	47-4041	6720
Craft Workers	Highway Maintenance Workers	47-4051	6730
Craft Workers	Rail-Track Laying and Maintenance Equipment Operators	47-4061	6740
Craft Workers	Septic Tank Servicers and Sewer Pipe Cleaners	47-4071	6765
Craft Workers	Segmental Pavers	47-4091	6765
Craft Workers	Construction and Related Workers, All Other	47-4099	6765
Craft Workers	Derrick Operators, Oil and Gas	47-5011	6800
Craft Workers	Rotary Drill Operators, Oil and Gas	47-5012	6800
Craft Workers	Service Unit Operators, Oil, Gas, and Mining	47-5013	6800
Craft Workers	Earth Drillers, Except Oil and Gas	47-5021	6820
Craft Workers	Explosives Workers, Ordnance Handling Experts, and Blasters	47-5031	6830
Craft Workers	Continuous Mining Machine Operators	47-5041	6840
Craft Workers	Mine Cutting and Channeling Machine Operators	47-5042	6840
Craft Workers	Mining Machine Operators, All Other	47-5049	6840
Craft Workers	Rock Splitters, Quarry	47-5051	6940
Craft Workers	Roof Bolters, Mining	47-5061	6940
Craft Workers	Roustabouts, Oil and Gas	47-5071	6800
Craft Workers	Helpers--Extraction Workers	47-5081	6940
Craft Workers	Extraction Workers, All Other	47-5099	6940
Craft Workers	First-Line Supervisors of Mechanics, Installers, and Repairers	49-1011	7000
Craft Workers	Computer, Automated Teller, and Office Machine Repairers	49-2011	7010
Craft Workers	Radio, Cellular, and Tower Equipment Installers and Repairs	49-2021	7020
Craft Workers	Telecommunications Equipment Installers and Repairers, Except Line Installers	49-2022	7020

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Craft Workers	Avionics Technicians	49-2091	7030
Craft Workers	Electric Motor, Power Tool, and Related Repairers	49-2092	7040
Craft Workers	Electrical and Electronics Installers and Repairers, Transportation Equipment	49-2093	7100
Craft Workers	Electrical and Electronics Repairers, Commercial and Industrial Equipment	49-2094	7100
Craft Workers	Electrical and Electronics Repairers, Powerhouse, Substation, and Relay	49-2095	7100
Craft Workers	Electronic Equipment Installers and Repairers, Motor Vehicles	49-2096	7110
Craft Workers	Electronic Home Entertainment Equipment Installers and Repairers	49-2097	7120
Craft Workers	Security and Fire Alarm Systems Installers	49-2098	7130
Craft Workers	Aircraft Mechanics and Service Technicians	49-3011	7140
Craft Workers	Automotive Body and Related Repairers	49-3021	7150
Craft Workers	Automotive Glass Installers and Repairers	49-3022	7160
Craft Workers	Automotive Service Technicians and Mechanics	49-3023	7200
Craft Workers	Bus and Truck Mechanics and Diesel Engine Specialists	49-3031	7210
Craft Workers	Farm Equipment Mechanics and Service Technicians	49-3041	7220
Craft Workers	Mobile Heavy Equipment Mechanics, Except Engines	49-3042	7220
Craft Workers	Rail Car Repairers	49-3043	7220
Craft Workers	Motorboat Mechanics and Service Technicians	49-3051	7240
Craft Workers	Motorcycle Mechanics	49-3052	7240
Craft Workers	Outdoor Power Equipment and Other Small Engine Mechanics	49-3053	7240
Craft Workers	Bicycle Repairers	49-3091	7260
Craft Workers	Recreational Vehicle Service Technicians	49-3092	7260
Craft Workers	Tire Repairers and Changers	49-3093	7260
Craft Workers	Mechanical Door Repairers	49-9011	7300
Craft Workers	Control and Valve Installers and Repairers, Except Mechanical Door	49-9012	7300
Craft Workers	Heating, Air Conditioning, and Refrigeration Mechanics and Installers	49-9021	7315
Craft Workers	Home Appliance Repairers	49-9031	7320
Craft Workers	Industrial Machinery Mechanics	49-9041	7330
Craft Workers	Maintenance Workers, Machinery	49-9043	7350
Craft Workers	Millwrights	49-9044	7360
Craft Workers	Refractory Materials Repairers, Except Brickmasons	49-9045	7330
Craft Workers	Electrical Power-Line Installers and Repairers	49-9051	7410
Craft Workers	Telecommunications Line Installers and Repairers	49-9052	7420
Craft Workers	Camera and Photographic Equipment Repairers	49-9061	7430
Craft Workers	Medical Equipment Repairers	49-9062	7430
Craft Workers	Musical Instrument Repairers and Tuners	49-9063	7430
Craft Workers	Watch Repairers	49-9064	7430
Craft Workers	Precision Instrument and Equipment Repairers, All Other	49-9069	7430
Craft Workers	Maintenance and Repair Workers, General	49-9071	7340
Craft Workers	Wind Turbine Service Technicians	49-9081	7630
Craft Workers	Coin, Vending, and Amusement Machine Servicers and Repairers	49-9091	7510
Craft Workers	Commercial Divers	49-9092	7630

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Craft Workers	Fabric Menders, Except Garment	49-9093	7630
Craft Workers	Locksmiths and Safe Repairers	49-9094	7540
Craft Workers	Manufactured Building and Mobile Home Installers	49-9095	7550
Craft Workers	Riggers	49-9096	7560
Craft Workers	Signal and Track Switch Repairers	49-9097	7630
Craft Workers	Installation, Maintenance, and Repair Workers, All Other	49-9099	7630
Craft Workers	Structural Metal Fabricators and Fitters	51-2041	7740
Craft Workers	Machinists	51-4041	8030
Craft Workers	Model Makers, Metal and Plastic	51-4061	8060
Craft Workers	Patternmakers, Metal and Plastic	51-4062	8060
Craft Workers	Tool and Die Makers	51-4111	8130
Craft Workers	Prepress Technicians and Workers	51-5111	8250
Craft Workers	Print Binding and Finishing Workers	51-5113	8256
Craft Workers	Shoe and Leather Workers and Repairers	51-6041	8330
Craft Workers	Sewers, Hand	51-6051	8350
Craft Workers	Tailors, Dressmakers, and Custom Sewers	51-6052	8350
Craft Workers	Upholsterers	51-6093	8450
Craft Workers	Cabinetmakers and Bench Carpenters	51-7011	8500
Craft Workers	Furniture Finishers	51-7021	8510
Craft Workers	Model Makers, Wood	51-7031	8550
Craft Workers	Patternmakers, Wood	51-7032	8550
Craft Workers	Woodworkers, All Other	51-7099	8550
Craft Workers	Nuclear Power Reactor Operators	51-8011	8600
Craft Workers	Power Distributors and Dispatchers	51-8012	8600
Craft Workers	Power Plant Operators	51-8013	8600
Craft Workers	Stationary Engineers and Boiler Operators	51-8021	8610
Craft Workers	Water and Wastewater Treatment Plant and System Operators	51-8031	8620
Craft Workers	Jewelers and Precious Stone and Metal Workers	51-9071	8750
Craft Workers	Dental Laboratory Technicians	51-9081	8760
Craft Workers	Medical Appliance Technicians	51-9082	8760
Craft Workers	Ophthalmic Laboratory Technicians	51-9083	8760
Craft Workers	Etchers and Engravers	51-9194	8910
Craft Workers	Crane and Tower Operators	53-7021	9510
Craft Workers	Dredge Operators	53-7031	9520
Craft Workers	Excavating and Loading Machine and Dragline Operators	53-7032	9520
Craft Workers	Loading Machine Operators, Underground Mining	53-7033	9520
Operatives	Graders and Sorters, Agricultural Products	45-2041	6040
Operatives	First-Line Supervisors of Production and Operating Workers	51-1011	7700
Operatives	Aircraft Structure, Surfaces, Rigging, and Systems Assemblers	51-2011	7710
Operatives	Coil Winders, Tapers, and Finishers	51-2021	7720
Operatives	Electrical and Electronic Equipment Assemblers	51-2022	7720

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Operatives	Electromechanical Equipment Assemblers	51-2023	7720
Operatives	Engine and Other Machine Assemblers	51-2031	7730
Operatives	Fiberglass Laminators and Fabricators	51-2091	7750
Operatives	Team Assemblers	51-2092	7750
Operatives	Timing Device Assemblers and Adjusters	51-2093	7750
Operatives	Assemblers and Fabricators, All Other	51-2099	7750
Operatives	Bakers	51-3011	7800
Operatives	Butchers and Meat Cutters	51-3021	7810
Operatives	Meat, Poultry, and Fish Cutters and Trimmers	51-3022	7810
Operatives	Slaughtering and Meat Packers	51-3023	7810
Operatives	Food and Tobacco Roasting, Baking, and Drying Machine Operators and Tenders	51-3091	7830
Operatives	Food Batchmakers	51-3092	7840
Operatives	Food Cooking Machine Operators and Tenders	51-3093	7850
Operatives	Food Processing Workers, All Other	51-3099	7855
Operatives	Computer-Controlled Machine Tool Operators, Metal and Plastic	51-4011	7900
Operatives	Computer Numerically Controlled Machine Tool Programmers, Metal and Plastic	51-4012	7900
Operatives	Extruding and Drawing Machine Setters, Operators, and Tenders, Metal and Plastic	51-4021	7920
Operatives	Forging Machine Setters, Operators, and Tenders, Metal and Plastic	51-4022	7930
Operatives	Rolling Machine Setters, Operators, and Tenders, Metal and Plastic	51-4023	7940
Operatives	Cutting, Punching, and Press Machine Setters, Operators, and Tenders, Metal and Plastic	51-4031	7950
Operatives	Drilling and Boring Machine Tool Setters, Operators, and Tenders, Metal and Plastic	51-4032	7960
Operatives	Grinding, Lapping, Polishing, and Buffing Machine Tool Setters, Operators, and Tenders, Metal and Plastic	51-4033	8000
Operatives	Lathe and Turning Machine Tool Setters, Operators, and Tenders, Metal and Plastic	51-4034	8010
Operatives	Milling and Planing Machine Setters, Operators, and Tenders, Metal and Plastic	51-4035	8220
Operatives	Metal-Refining Furnace Operators and Tenders	51-4051	8040
Operatives	Pourers and Casters, Metal	51-4052	8040
Operatives	Foundry Mold and Coremakers	51-4071	8100
Operatives	Molding, Coremaking, and Casting Machine Setters, Operators, and Tenders, Metal and Plastic	51-4072	8100
Operatives	Multiple Machine Tool Setters, Operators, and Tenders, Metal and Plastic	51-4081	8220
Operatives	Welders, Cutters, Solderers, and Brazers	51-4121	8140
Operatives	Welding, Soldering, and Brazing Machine Setters, Operators, and Tenders	51-4122	8140
Operatives	Heat Treating Equipment Setters, Operators, and Tenders, Metal and Plastic	51-4191	8150
Operatives	Layout Workers, Metal and Plastic	51-4192	8220
Operatives	Plating and Coating Machine Setters, Operators, and Tenders, Metal and Plastic	51-4193	8200
Operatives	Tool Grinders, Filers, and Sharpeners	51-4194	8210
Operatives	Metal Workers and Plastic Workers, All Other	51-4199	8220
Operatives	Printing Press Operators	51-5112	8255
Operatives	Laundry and Dry-Cleaning Workers	51-6011	8300
Operatives	Pressers, Textile, Garment, and Related Materials	51-6021	8310
Operatives	Sewing Machine Operators	51-6031	8320

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Operatives	Shoe Machine Operators and Tenders	51-6042	8340
Operatives	Textile Bleaching and Dyeing Machine Operators and Tenders	51-6061	8400
Operatives	Textile Cutting Machine Setters, Operators, and Tenders	51-6062	8400
Operatives	Textile Knitting and Weaving Machine Setters, Operators, and Tenders	51-6063	8410
Operatives	Textile Winding, Twisting, and Drawing Out Machine Setters, Operators, and Tenders	51-6064	8420
Operatives	Extruding and Forming Machine Setters, Operators, and Tenders, Synthetic and Glass Fibers	51-6091	8460
Operatives	Fabric and Apparel Patternmakers	51-6092	8460
Operatives	Textile, Apparel, and Furnishings Workers, All Other	51-6099	8460
Operatives	Sawing Machine Setters, Operators, and Tenders, Wood	51-7041	8530
Operatives	Woodworking Machine Setters, Operators, and Tenders, Except Sawing	51-7042	8540
Operatives	Chemical Plant and System Operators	51-8091	8630
Operatives	Gas Plant Operators	51-8092	8630
Operatives	Petroleum Pump System Operators, Refinery Operators, and Gaugers	51-8093	8630
Operatives	Plant and System Operators, All Other	51-8099	8630
Operatives	Chemical Equipment Operators and Tenders	51-9011	8640
Operatives	Separating, Filtering, Clarifying, Precipitating, and Still Machine Setters, Operators, and Tenders	51-9012	8640
Operatives	Crushing, Grinding, and Polishing Machine Setters, Operators, and Tenders	51-9021	8650
Operatives	Grinding and Polishing Workers, Hand	51-9022	8650
Operatives	Mixing and Blending Machine Setters, Operators, and Tenders	51-9023	8650
Operatives	Cutters and Trimmers, Hand	51-9031	8710
Operatives	Cutting and Slicing Machine Setters, Operators, and Tenders	51-9032	8710
Operatives	Extruding, Forming, Pressing, and Compacting Machine Setters, Operators, and Tenders	51-9041	8720
Operatives	Furnace, Kiln, Oven, Drier, and Kettle Operators and Tenders	51-9051	8730
Operatives	Inspectors, Testers, Sorters, Samplers, and Weighers	51-9061	8740
Operatives	Packaging and Filling Machine Operators and Tenders	51-9111	8800
Operatives	Coating, Painting, and Spraying Machine Setters, Operators, and Tenders	51-9121	8810
Operatives	Painters, Transportation Equipment	51-9122	8810
Operatives	Painting, Coating, and Decorating Workers	51-9123	8810
Operatives	Semiconductor Processors	51-9141	8965
Operatives	Photographic Process Workers and Processing Machine Operators	51-9151	8830
Operatives	Adhesive Bonding Machine Operators and Tenders	51-9191	8850
Operatives	Cleaning, Washing, and Metal Pickling Equipment Operators and Tenders	51-9192	8860
Operatives	Cooling and Freezing Equipment Operators and Tenders	51-9193	8965
Operatives	Molders, Shapers, and Casters, Except Metal and Plastic	51-9195	8920
Operatives	Paper Goods Machine Setters, Operators, and Tenders	51-9196	8930
Operatives	Tire Builders	51-9197	8940
Operatives	Production Workers, All Other	51-9199	8965
Operatives	Aircraft Cargo Handling Supervisors	53-1011	9000
Operatives	First-Line Supervisors of Helpers, Laborers, and Material Movers, Hand	53-1021	9000
Operatives	First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators	53-1031	9000



<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Operatives	Flight Attendants	53-2031	9050
Operatives	Ambulance Drivers and Attendants, Except Emergency Medical Technicians	53-3011	9110
Operatives	Bus Drivers, Transit and Intercity	53-3021	9120
Operatives	Bus Drivers, School or Special Client	53-3022	9120
Operatives	Driver/Sales Workers	53-3031	9130
Operatives	Heavy and Tractor-Trailer Truck Drivers	53-3032	9130
Operatives	Light Truck or Delivery Services Drivers	53-3033	9130
Operatives	Taxi Drivers and Chauffeurs	53-3041	9140
Operatives	Motor Vehicle Operators, All Other	53-3099	9150
Operatives	Locomotive Engineers	53-4011	9200
Operatives	Locomotive Firers	53-4012	9200
Operatives	Rail Yard Engineers, Dinkey Operators, and Hostlers	53-4013	9200
Operatives	Railroad Brake, Signal, and Switch Operators	53-4021	9230
Operatives	Railroad Conductors and Yardmasters	53-4031	9240
Operatives	Subway and Streetcar Operators	53-4041	9260
Operatives	Rail Transportation Workers, All Other	53-4099	9260
Operatives	Sailors and Marine Oilers	53-5011	9300
Operatives	Captains, Mates, and Pilots of Water Vessels	53-5021	9310
Operatives	Motorboat Operators	53-5022	9310
Operatives	Ship Engineers	53-5031	9300
Operatives	Bridge and Lock Tenders	53-6011	9420
Operatives	Parking Lot Attendants	53-6021	9350
Operatives	Traffic Technicians	53-6041	9420
Operatives	Transportation Attendants, Except Flight Attendants	53-6061	9415
Operatives	Transportation Workers, All Other	53-6099	9420
Operatives	Conveyor Operators and Tenders	53-7011	9560
Operatives	Hoist and Winch Operators	53-7041	9560
Operatives	Industrial Truck and Tractor Operators	53-7051	9600
Operatives	Packers and Packagers, Hand	53-7064	9640
Operatives	Gas Compressor and Gas Pumping Station Operators	53-7071	9650
Operatives	Pump Operators, Except Wellhead Pumpers	53-7072	9650
Operatives	Wellhead Pumpers	53-7073	9650
Operatives	Mine Shuttle Car Operators	53-7111	9750
Operatives	Tank Car, Truck, and Ship Loaders	53-7121	9750
Operatives	Material Moving Workers, All Other	53-7199	9750
Labors and Helpers	First-Line Supervisors of Landscaping, Lawn Service, and Groundskeeping Workers	37-1012	4210
Labors and Helpers	Landscaping and Groundskeeping Workers	37-3011	4250
Labors and Helpers	Pesticide Handlers, Sprayers, and Applicators, Vegetation	37-3012	4250
Labors and Helpers	Tree Trimmers and Pruners	37-3013	4250
Labors and Helpers	Grounds Maintenance Workers, All Other	37-3019	4250
Labors and Helpers	Nonfarm Animal Caretakers	39-2021	4350

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Labors and Helpers	First-Line Supervisors of Farming, Fishing, and Forestry Workers	45-1011	6005
Labors and Helpers	Animal Breeders	45-2021	6050
Labors and Helpers	Agricultural Equipment Operators	45-2091	6050
Labors and Helpers	Farmworkers and Laborers, Crop, Nursery, and Greenhouse	45-2092	6050
Labors and Helpers	Farmworkers, Farm, Ranch, and Aquacultural Animals	45-2093	6050
Labors and Helpers	Agricultural Workers, All Other	45-2099	6050
Labors and Helpers	Fishers and Related Fishing Workers	45-3011	6100
Labors and Helpers	Hunters and Trappers	45-3021	6100
Labors and Helpers	Forest and Conservation Workers	45-4011	6120
Labors and Helpers	Fallers	45-4021	6130
Labors and Helpers	Logging Equipment Operators	45-4022	6130
Labors and Helpers	Log Graders and Scalers	45-4023	6130
Labors and Helpers	Logging Workers, All Other	45-4029	6130
Labors and Helpers	Construction Laborers	47-2061	6260
Labors and Helpers	Helpers--Brickmasons, Blockmasons, Stonemasons, and Tile and Marble Setters	47-3011	6600
Labors and Helpers	Helpers--Carpenters	47-3012	6600
Labors and Helpers	Helpers--Electricians	47-3013	6600
Labors and Helpers	Helpers--Painters, Paperhangers, Plasterers, and Stucco Masons	47-3014	6600
Labors and Helpers	Helpers--Pipelayers, Plumbers, Pipefitters, and Steamfitters	47-3015	6600
Labors and Helpers	Helpers--Roofers	47-3016	6600
Labors and Helpers	Helpers, Construction Trades, All Other	47-3019	6600
Labors and Helpers	Helpers--Installation, Maintenance, and Repair Workers	49-9098	7610
Labors and Helpers	Helpers--Production Workers	51-9198	8950
Labors and Helpers	Automotive and Watercraft Service Attendants	53-6031	9360
Labors and Helpers	Cleaners of Vehicles and Equipment	53-7061	9610
Labors and Helpers	Laborers and Freight, Stock, and Material Movers, Hand	53-7062	9620
Labors and Helpers	Machine Feeders and Offbearers	53-7063	9630
Labors and Helpers	Refuse and Recyclable Material Collectors	53-7081	9720
Service Workers	Home Health Aides	31-1011	3600
Service Workers	Psychiatric Aides	31-1013	3600
Service Workers	Nursing Assistants	31-1014	3600
Service Workers	Orderlies	31-1015	3600
Service Workers	Occupational Therapy Assistants	31-2011	3610
Service Workers	Occupational Therapy Aides	31-2012	3610
Service Workers	Physical Therapist Assistants	31-2021	3620
Service Workers	Physical Therapist Aides	31-2022	3620
Service Workers	Massage Therapists	31-9011	3630
Service Workers	Dental Assistants	31-9091	3640
Service Workers	Medical Assistants	31-9092	3645
Service Workers	Medical Equipment Preparers	31-9093	3655
Service Workers	Pharmacy Aides	31-9095	3647

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Service Workers	Veterinary Assistants and Laboratory Animal Caretakers	31-9096	3648
Service Workers	Phlebotomists	31-9097	3649
Service Workers	Healthcare Support Workers, All Other	31-9099	3655
Service Workers	First-Line Supervisors of Correctional Officers	33-1011	3700
Service Workers	First-Line Supervisors of Police and Detectives	33-1012	3710
Service Workers	First-Line Supervisors of Fire Fighting and Prevention Workers	33-1021	3720
Service Workers	First-Line Supervisors of Protective Service Workers, All Other	33-1099	3730
Service Workers	Firefighters	33-2011	3740
Service Workers	Fire Inspectors and Investigators	33-2021	3750
Service Workers	Forest Fire Inspectors and Prevention Specialists	33-2022	3750
Service Workers	Bailiffs	33-3011	3800
Service Workers	Correctional Officers and Jailers	33-3012	3800
Service Workers	Detectives and Criminal Investigators	33-3021	3820
Service Workers	Fish and Game Wardens	33-3031	3840
Service Workers	Parking Enforcement Workers	33-3041	3840
Service Workers	Police and Sheriff's Patrol Officers	33-3051	3850
Service Workers	Transit and Railroad Police	33-3052	3850
Service Workers	Animal Control Workers	33-9011	3900
Service Workers	Private Detectives and Investigators	33-9021	3910
Service Workers	Gaming Surveillance Officers and Gaming Investigators	33-9031	3930
Service Workers	Security Guards	33-9032	3930
Service Workers	Crossing Guards	33-9091	3940
Service Workers	Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers	33-9092	3955
Service Workers	Transportation Security Screeners	33-9093	3945
Service Workers	Protective Service Workers, All Other	33-9099	3955
Service Workers	Chefs and Head Cooks	35-1011	4000
Service Workers	First-Line Supervisors of Food Preparation and Serving Workers	35-1012	4010
Service Workers	Cooks, Fast Food	35-2011	4020
Service Workers	Cooks, Institution and Cafeteria	35-2012	4020
Service Workers	Cooks, Private Household	35-2013	4020
Service Workers	Cooks, Restaurant	35-2014	4020
Service Workers	Cooks, Short Order	35-2015	4020
Service Workers	Cooks, All Other	35-2019	4020
Service Workers	Food Preparation Workers	35-2021	4030
Service Workers	Bartenders	35-3011	4040
Service Workers	Combined Food Preparation and Serving Workers, Including Fast Food	35-3021	4050
Service Workers	Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	35-3022	4060
Service Workers	Waiters and Waitresses	35-3031	4110
Service Workers	Food Servers, Nonrestaurant	35-3041	4120
Service Workers	Dining Room and Cafeteria Attendants and Bartender Helpers	35-9011	4130
Service Workers	Dishwashers	35-9021	4140

<b>EEO-1 Job Group</b>	<b>Job Title/Description of Standard Occupational Classification (SOC)</b>	<b>Six-Level SOC Job Code</b>	<b>Four-Digit Census Code</b>
Service Workers	Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	35-9031	4150
Service Workers	Food Preparation and Serving Related Workers, All Other	35-9099	4130
Service Workers	First-Line Supervisors of Housekeeping and Janitorial Workers	37-1011	4200
Service Workers	Janitors and Cleaners, Except Maids and Housekeeping Cleaners	37-2011	4220
Service Workers	Maids and Housekeeping Cleaners	37-2012	4230
Service Workers	Building Cleaning Workers, All Other	37-2019	4220
Service Workers	Pest Control Workers	37-2021	4240
Service Workers	Gaming Supervisors	39-1011	4300
Service Workers	Slot Supervisors	39-1012	4300
Service Workers	First-Line Supervisors of Personal Service Workers	39-1021	4320
Service Workers	Gaming Dealers	39-3011	4400
Service Workers	Gaming and Sports Book Writers and Runners	39-3012	4400
Service Workers	Gaming Service Workers, All Other	39-3019	4400
Service Workers	Motion Picture Projectionists	39-3021	4410
Service Workers	Ushers, Lobby Attendants, and Ticket Takers	39-3031	4420
Service Workers	Amusement and Recreation Attendants	39-3091	4430
Service Workers	Costume Attendants	39-3092	4430
Service Workers	Locker Room, Coatroom, and Dressing Room Attendants	39-3093	4430
Service Workers	Entertainment Attendants and Related Workers, All Other	39-3099	4430
Service Workers	Embalmers	39-4011	4460
Service Workers	Funeral Attendants	39-4021	4460
Service Workers	Barbers	39-5011	4500
Service Workers	Hairdressers, Hairstylists, and Cosmetologists	39-5012	4510
Service Workers	Makeup Artists, Theatrical and Performance	39-5091	4520
Service Workers	Manicurists and Pedicurists	39-5092	4520
Service Workers	Shampooers	39-5093	4520
Service Workers	Skincare Specialists	39-5094	4520
Service Workers	Baggage Porters and Bellhops	39-6011	4530
Service Workers	Concierges	39-6012	4530
Service Workers	Tour Guides and Escorts	39-7011	4540
Service Workers	Travel Guides	39-7012	4540
Service Workers	Childcare Workers	39-9011	4600
Service Workers	Personal Care Aides	39-9021	4610
Service Workers	Fitness Trainers and Aerobics Instructors	39-9031	4620
Service Workers	Recreation Workers	39-9032	4620
Service Workers	Residential Advisors	39-9041	4640
Service Workers	Personal Care and Service Workers, All Other	39-9099	4650

\*\*\* NOTE: Executive/Senior Level Officials and Managers include individuals who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products or services, within the parameters approved by boards of directors or other governing bodies. Residing in the highest levels of organizations, these executives plan, direct or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the CEO. Examples

of these kinds of managers are: chief executive officers, chief operating officers, chief financial officers, line of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

**INSTRUCTIONS FOR COMPLETING THE NEW YORK STATE GAMING COMMISSION'S  
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM  
VENDOR/CONTRACTOR'S MWBE UTILIZATION PLAN FORM**

As mandated by Article 15-A of the Executive Law and the new subtitle N of 9 NYCRR 540 et seq, the New York State Gaming Commission (the "Commission") has established a goal of 0% participation by New York State Certified Minority and Women owned Business Enterprise (MWBE) as subcontractors/suppliers in this contract. Contractors must submit the attached MWBE Utilization Plan Form indicating how they will intend to comply with the established goals.

For the directory of New York State certified MWBE's, please visit the New York State's Division of Minority and Women-owned Business Development website at:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

**Completion of the Form:**

The Commission will complete all the un-shaded areas including: agency information, contract details, and summary of allocation of MWBE utilization and related value.

The contractor will complete the remaining, shaded, areas. It is important that the contractor provide detailed contact information including: name, phone number and email address.

Within the utilization section of the form, the contractor must list the names and addresses of all subcontractors or suppliers that will be utilized during this contract. The following items should be completed for each vendor listed:

- Subcontractor's Federal ID#;
- Subcontractor information as follows:
  - By checking the appropriate boxes, indicate whether the subcontractors are "SUB" or "SUP", minority-owned business enterprise "MBE" or women-owned business enterprise "WBE", and if they are NYS Certified.
- Brief description of the work the subcontractor's will provide.

Note: additional sheets may be used if necessary.

**Attestation and Form Acceptance**

The preparer must attest to the information provided by signing in the appropriate space; in addition, print the name of the contractor, provide telephone number, and date.

The last section, bottom right, will be completed by the Commission upon its review of the form. The contractor will be notified of the acceptance or deficiency of the MWBE Utilization Plan Form.

If assistance is required in completing this form or locating a New York State certified vendor to utilize as subcontractors or suppliers, please contact the Commission's Contracts Officer at (518) 388-3329.

**NEW YORK STATE GAMING COMMISSION  
VENDOR/CONTRACTOR'S MINORITY AND WOMEN-OWNED BUSINESS UTILIZATION PLAN FORM**

AGENCY NAME \_\_\_\_\_  
 AGENCY CONTACT \_\_\_\_\_  
 AGENCY PHONE \_\_\_\_\_

CONTRACTOR NAME AND ADDRESS	CHECK APPROPRIATE BOX		DATE SUBMITTED		TOTAL VALUE OF CONTRACT		
	<input type="checkbox"/> SUPPLIER <input type="checkbox"/> CONTRACTOR		CONTRACTOR'S FID#		CONTRACT EFFECTIVE DATES		
PROJECT DESCRIPTION	GOALS MBE WBE		JOB NUMBER (IF APPLICABLE)		CONTRACT NUMBER		
MWBE SUBCONTRACTOR/SUPPLIER NAME & ADDRESS	CHECK ONE	SUBCONTRACTOR/SUPPLIER TAXPAYER/FEDERAL ID #	MBE (CHECK)	WBE (CHECK)	NYS CERTIFIED (CHECK)	DESCRIPTION OF WORK	\$ VALUE OF CONTRACT
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		

	<u>\$ AMOUNT</u>	<u>% OF TOTAL</u>
(A) TOTAL CONTRACT BID AMOUNT:	_____	_____
(B) TOTAL SUBCONTRACTS FOR COMMODITIES AND SERVICES TO MBE'S:	_____	_____
(C) TOTAL SUBCONTRACTS FOR COMMODITIES AND SERVICES TO WBE'S:	_____	_____

CONTRACTOR'S ATTESTATION: MY FIRM PROPOSES TO USE THE MWBE'S LISTED ON THIS FORM.

PREPARED BY: (SIGNATURE OF CONTRACTOR)	PRINT NAME OF CONTRACTOR	TELEPHONE NUMBER	DATE
--	--------------------------	------------------	------

FOR OFFICE USE ONLY
REVIEWED BY:
DATE:
MWBE FIRMS CERTIFIED:
MWBE FIRMS NOT CERTIFIED:

NOTICE: this report is required pursuant to Executive Law; failure to report will result in noncompliance.

**NEW YORK STATE GAMING COMMISSION  
 MWBE CONTRACT COMPLIANCE PROGRAM  
 CONTRACTOR'S QUARTERLY SUBCONTRACTING/SUPPLIER ACTIVITY REPORT  
 FOR THE PERIOD OF \_\_\_\_\_**

1. NAME AND ADDRESS:	2. PROJECT/CONTRACT GOALS:	3. DATE SUBMITTED	4. CONTRACT NO: _____
	MBE _____		JOB NO.: _____
	WBE _____		LOCATION/REGION: _____
FEDERAL ID/SOCIAL SECURITY NO.*	5. PROJECT WORK DESCRIPTION:*		6. CONTRACT EFFECTIVE DATES:*

**SUBCONTRACTING/SUPPLIER ACTIVITY REPORT**

7. REPORT SUBCONTRACTOR'S SUPPLIERS AWARDED/PURCHASED THIS QUARTER	# AWARDED THIS PERIOD	AMOUNT AWARDED THIS PERIOD	# AWARDED TO NYS CERTIFIED		TOTAL DOLLAR AMOUNT AWARDED THIS PERIOD TO NYS CERTIFIED		PERCENTAGE	
			MBE	WBE	MBE	WBE	MBE	WBE
DOLLAR RANGE: \$0-\$24,000								
\$25,000 +								
TOTAL								

PREPARED BY: (SIGNATURE OF CONTRACTOR)	PRINT NAME OF CONTRACTOR	TELEPHONE NO.	DATE
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This report is required by contract specifications. Failure to report will result in noncompliance with contract specifications.

\*Delete information if reported on previous submittal.





**REQUEST FOR WAIVER FORM**

<b>INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.</b>	
<b>Offerer/Contractor Name:</b>	<b>Federal Identification No.:</b>
<b>Address:</b>	<b>Solicitation/Contract No.:</b>
<b>City, State, Zip Code:</b>	<b>M/WBE Goals: MBE      %      WBE      %</b>
By submitting this form and the required information, the offerer/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.	
<b>Contractor is requesting a:</b>	
1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial	
2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial	
<b>PREPARED BY (Signature):</b>	<b>Date:</b>
SUBMISSION OF THIS FORM CONSTITUTES THE OFFERER/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.	
<b>Name and Title of Preparer (Printed or Typed):</b>	<b>Telephone Number:</b>
	<b>Email Address:</b>
<b>Submit with the bid or proposal or if submitting after award submit to:</b>  NYS Gaming Commission Attn: Stacey Relation One Broadway Center Schenectady, NY 12301	***** GAMING COMMISSION USE ONLY *****
	<b>REVIEWED BY:</b>
	<b>DATE:</b>
	Waiver Granted: <input type="checkbox"/> YES      MBE: <input type="checkbox"/> WBE: <input type="checkbox"/>  <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ *Comments:

## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

**When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 10, as listed below.. Copies of the following information and all relevant supporting documentation must be submitted along with the request:**

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

**Note: Unless a Total Waiver has been granted, the offerer or contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract.**



One Broadway Center, Schenectady, NY 12305  
[www.gaming.ny.gov](http://www.gaming.ny.gov)

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

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

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

### **I. Contract Goals**

- A. The Commission hereby establishes an overall goal of **0%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: [https://ogs.ny.gov/veterans/Docs/CertifiedNYS\\_SDVOB.pdf](https://ogs.ny.gov/veterans/Docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to Michele June, [Michele.june@gaming.ny.gov](mailto:Michele.june@gaming.ny.gov). Additionally, following Contract execution, Contractor is encouraged to contact the Commission to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

### **II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or,

if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Commission.

- C. The Commission will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of Commission acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the Commission a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Commission to be inadequate, the Commission shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by the Commission, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. The Commission may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If the Commission determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Commission shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### **III. Request for Waiver**

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Commission for guidance.**
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by

supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Commission at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the Commission shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Commission, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If the Commission, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the Commission may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to Michele.june@gaming.ny.gov.

#### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Commission with certified SDVOBs whom the Commission determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

#### **V. Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to the Commission during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available at <https://ogs.ny.gov/veterans/>, and should be completed by the Contractor and

submitted to the Commission, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [Michele.june@gaming.ny.gov](mailto:Michele.june@gaming.ny.gov).

#### **VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.





### **Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The Firm offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment,

hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title:

Signature:

Date:

This form must be signed by an authorized executive or legal representative.

### **Statement on sexual harassment**

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.

Contractor certifies that this statement provided to the Agency with respect to State Finance Law §139 (l) is complete, true and accurate.

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**Authorized Signatory**

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**Signature**

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**Title**

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**Company Name**

***Anti-Discrimination EO 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. 3

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.

Contractor:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

## **INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS**

### **Insurer Qualifications**

All insurance required under this RFP must be written by an insurance company with a current rating of "A-" or better as rated by A.M. Best & Co. and a record of successful continuous operation, that is licensed, admitted, and authorized to do business and issue relevant insurance in the State of New York, and that is approved by the Commission.

Required insurance coverage and limits must be put into effect as of the effective date of the Contract and must remain in effect throughout the term of the Contract, as determined by the Commission.

### **Insurance Requirements**

Prior to the start of work the Contractor<sup>1</sup> shall procure at its sole cost and expense, and shall maintain in force at all times during the term of the Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York (Admitted Carriers). The Commission may, at its sole discretion, accept policies of insurance written by a non-authorized insurance carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed ELANY Affidavit; provided that nothing herein shall be construed to require the Commission to accept insurance placed with a non-authorized insurance carrier under any circumstances.

Upon award, the Contractor shall deliver to the Commission evidence of such insurance coverage as defined below, including a copy of the relevant policy if requested, to the Commission's satisfaction. In the event there is a claim asserted that is covered by insurance, the Contractor shall make available for inspection to the Commission upon the Commission's request, at Commission headquarters, during reasonable business hours, any applicable insurance policy required by this Contract.

Throughout the Contract period, the Contractor shall notify the Commission of any material changes to the insurance policy coverages, or any cancellations prior to the expiration date. The insurance carrier shall also send notification to the Commission of cancellation or termination of the policy, or failure to renew any policy in accordance with the policy provisions when practicable.

### **General Conditions**

A. ***Conditions Applicable to Insurance.*** All policies of insurance required by the RFP and Contract must meet the following requirements:

***1. Coverage Types and Policy Limits.*** The types of insurance coverage and policy limits required from the Contractor are specified in Paragraph B below – "Specific Coverages and Limits".

***2. Policy Forms.*** Policies must be written on an ***occurrence*** basis, except as may be otherwise specifically provided herein or agreed to in writing by the Commission.

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<sup>1</sup> Within the RFP, Contractor is also referred to as "Bidder", "Successful Bidder", "Firm", and "Vendor".

**3. Certificates of Insurance/Notices.** Contractor shall provide a valid and complete Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before commencing any work under this Contract. Certificates shall be mailed to the Commission using the contact information provided for the Designated Contacts identified in the RFP. Upon request by the Commission, copies of the full insurance policy shall be provided to the Commission by the Contractor.

Certificates of Insurance shall:

- a. Be in the form approved by the Commission.
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the RFP and the Contract.
- c. Specify the Additional Insureds as required herein.
- d. Be signed by an authorized representative of the insurance carrier or producer.

**4. Primary Coverage.** All insurance policies, including, but not limited to, umbrella liability and excess liability policies, shall provide that the required coverage shall apply on a primary and not on either an excess or contributing basis as to any other insurance that may be available to the Commission. Any other insurance maintained by the Commission (including, but not limited to, self-insurance) shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in the Contractor's insurance policy(ies) and/or in any policies of insurance, or any self-insurance, maintained by the Commission or the State of New York.

**5. Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal, or replacement of coverage that complies with the insurance requirements set forth in the RFP and any Contract resulting from the RFP shall be delivered to the Commission. If, at any time during the term of any Contract resulting from the RFP, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the RFP, the resulting Contract, or proof thereof is not provided to the Commission, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by the Commission.

**6. Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Policies shall be written to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Additionally, policies shall include an endorsement that the policies will not be canceled, materially changed, or not renewed without at least fifteen (15) days' prior written notice to the Commission.

**7. Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the Commission contact identified in the Contract Award Notice after renewal or upon request by the Commission. This requirement means that the Contractor shall provide

any applicable insurance documents to the Commission as soon as possible, but in no event later than the following time periods:

- For certificates of insurance: five business days from request or renewal, whichever is later;
- For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;
- For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
- For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Commission, but fails to provide the documents within the timeframes above, the Commission shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days from the Commission's original request.

**8. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within any self-insured retention or deductible.

**9. Subcontractors.** Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. An Additional Insured endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and shall be provided to the Commission upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required pursuant to this section had the subcontractor obtained insurance policies to provide such defense and indemnity. Proof of insurance or self-insured status shall be supplied to the Commission.

**10. Waiver of Subrogation.** For all liability policies, except Professional Liability and the workers' compensation insurance required below, the 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 State of New York, the Commission, and their respective commissioners, officers, agents, and employees. If such waiver is reasonably unobtainable, (i) an express agreement from the insurer that such policy shall not be invalidated if the Contractor waives or has

waived before the casualty, any right of recovery against the State of New York, the Commission, and their respective commissioners, officers, agents, and employees or (ii) any other form of permission by the insurer, deemed acceptable by the Commission, for the release of the State of New York, the Commission, and their respective commissioners, officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage and evidencing coverage on the Certificate of Insurance are also acceptable.

**11. Additional Insured.** In each of the liability policies, excluding Professional Liability, required below, the Contractor shall cause coverage to be included for ongoing and completed operations, including, but not limited to, during any products and completed operations phases, naming as Additional Insureds the following:

the State of New York, the New York State Gaming Commission, and their respective commissioners, officers, agents, and employees.

Any such endorsement must specify that coverage is available to the Additional Insureds without limiting the scope of coverage available based on the source of negligent conduct otherwise covered under the pertinent insurance policy. In other words, the "Additional Insured" coverage conferred should be the same as if the Additional Insureds were included as Named Insureds on the insurance policy. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to defend and indemnify pursuant to this Attachment had the Contractor obtained such insurance policies.

**12. Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided 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 upon request.

**B. Specific Coverages and Limits.** The types of insurance and minimum policy limits shall be as provided below.

1. **General Liability.** Commercial General Liability Insurance (CGL) shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract). The limits under such policy shall not be less than the following:

- Each Occurrence limit: \$5,000,000
- General Aggregate: \$6,000,000
- Products/Completed Operations should equal the General Aggregate limit



- Personal Advertising Injury           \$1,000,000
- Property Damage                       \$1,000,000
- Medical Expense                       \$5,000

Coverage shall include, but not be limited to, the following: premises liability; independent contractors; blanket contractual liability, including tort liability of another assumed in a Contract; defense and/or indemnification obligations, including obligations assumed under this Contract; cross-liability for additional insureds; products/completed operations for a term of no less than three years, commencing upon acceptance of the Contractor's and any subcontractor's work, as required by the Contract; and liability resulting from Section 240 or Section 241 of the New York State Labor Law.

2. **Professional Errors and Omissions.** The Contractor shall procure and maintain during, and for a period of one year after completion of, this Contract, Professional Errors and Omissions Insurance in the amount of \$50,000,000 issued to and covering damage for liability imposed on the Contractor by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render services required by this Contract.

Said insurance shall provide coverage for damages arising from computer-related services including but not limited to the following:

- Consulting;
- Data processing;
- Programming;
- System integration;
- Hardware or software development;
- Installation;
- Distribution or maintenance;
- Systems analysis or design;
- Training, staffing or other support services;
- Manufactured, distributed, licensed, marketed or sold cloud computing services; and
- Any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold.

The insurance policy shall include coverage for third-party fidelity including cyber theft, if such coverage is not provided for in a separate Data Breach and Privacy/Cyber Liability policy.

3. **Property Insurance.** The Contractor must maintain insurance on all buildings, furniture, fixtures, computer and communications equipment used in operating and supporting the System in an amount equal to or greater than the actual replacement cost thereof. Coverage must include a Property Floater to insure personal property including, but not limited to, contents, equipment, and mobile items, against fire, theft, collision flood, etc. The State of New York, the Commission, and sales agents licensed by the Commission will not be responsible for insuring any equipment included in or associated with the System.

4. **Business Automobile Liability.** The Contractor shall maintain liability insurance arising out of the use of automobiles in connection with performance under this Contract for owned, leased, non-owned, and/or hired vehicles with limits of not less than \$2,000,000 for each occurrence.
5. **Crime Insurance.** The Contractor must maintain crime insurance with a limit of not less than \$5,000,000 protecting the State of New York and the Commission against losses resulting from fraudulent or dishonest acts by the Contractor, any subcontractors, or any officer, employee or agent of the Contractor or any subcontractors.
6. **Data Breach and Privacy/Cyber Liability.** The Contractor must maintain insurance covering the failure to protect confidential information and failure of the security of the Contractor's computer systems due to the actions of the Contractor, any subcontractors, or any officer, employee or agent of the Contractor or any subcontractors, which results in unauthorized access to confidential data. Said insurance shall be maintained with a limit of not less than \$50,000,000.

Said insurance shall provide coverage for damages arising from, but not limited to, the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
  - Disclosure or use of personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
  - Privacy notification costs;
  - Regulatory defense and penalties;
  - Computer network systems attacks;
  - Introduction, implementation, or spread of malicious software code;
  - Unauthorized access and use of computer systems;
  - Website media liability; and
  - Cyber theft of customers' property, including, but not limited to, money and securities.
7. **Workers' Compensation and Disability.** For work to be performed in New York State, the Contractor shall provide and maintain insurance coverage during the life of this Contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law ([www.wcb.ny.gov](http://www.wcb.ny.gov)).

Evidence of New York State Workers' Compensation and Employers Liability coverage and New York State Disability Benefits coverage, or exemption from coverage, must be provided on **one** of the following forms specified by the Commissioner of the New York State Workers' Compensation Board. For forms and guidance, the Board's website is:

[http://www.wcb.ny.gov/content/main/forms/Forms\\_EMPLOYER.jsp](http://www.wcb.ny.gov/content/main/forms/Forms_EMPLOYER.jsp)

A. Workers' Compensation and Employers Liability Coverage:

- **Form CE-200** - Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required); or
- **Form C-105.2** (September 2015, or most current version) – Certificate of Workers' Compensation Insurance, sent to the Commission by the Contractor's insurance carrier upon request; or
- **Form U-26.3** – Certificate of Workers' Compensation Insurance from the New York State Insurance Fund. Contractor must request that the State Insurance Fund send this form to the Commission; or
- **Form SI-12** – Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office; or
- **Form GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

B. Disability Benefits:

- **Form CE-200** - Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required); or
- **Form DB-120.1** (September 2015 or most current version) - Certificate of Insurance Coverage under the New York State Disability Benefits Law. Contractor must request its business insurance carrier send this form to the Commission.
- **Form DB-155**, Certificate of Disability Benefits Self-Insurance.

**All forms must name THE NEW YORK STATE GAMING COMMISSION as the Entity Requesting Proof of Coverage (i.e., the entity being listed as the Certificate Holder).**

**All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier. (ACORD forms are NOT acceptable proof of Workers' Compensation insurance coverage).**

## LIQUIDATED DAMAGES

All monetary values referenced are in U.S. dollars.

1. Installation and Implementation	Liquidated Damages Assessed
<p>The Successful Bidder shall install and implement the ICS in accordance with the ICS Implementation and Conversion Plan mutually agreed to by the Commission and the Successful Bidder. The ICS shall be fully functional at Go-Live.</p>	<p>The Commission may assess Liquidated Damages of five thousand dollars (\$5,000) per day, or a fraction of a day thereof, if the ICS is not functioning in its role with the Gaming System and Instant Ticket System as of the date specified in the ICS Implementation and Conversion Plan or as of the amended date agreed to by the Commission and the Successful Bidder.</p>
<p><b>2. Entire System Down</b></p> <p>The Successful Bidder's hardware, software or connections shall produce accurate and complete reports in the required timeframes to balance sales and winning tickets and/or conduct a drawing.</p>	<p>The Commission may assess Liquidated Damages five thousand dollars (\$5,000) for the first hour, or fraction of an hour thereof, and ten thousand dollars (\$10,000) for each subsequent hour, or a fraction of an hour thereof, that the Commission is unable to produce required reports.</p>
<p><b>3. Failure of Production ICS</b></p> <p>The Successful Bidder's ICS-A and ICS-B shall each operate simultaneously, and independently and shall each receive and process transactions in real time from the Gaming System and Instant Ticket System.</p>	<p>The Commission may assess Liquidated Damages of twenty thousand dollars (\$20,000) per day, or a fraction of a day thereof, when either ICS-A or ICS-B is unavailable due to Successful Bidder's hardware, software, or connection malfunction. ICS-Test may replace ICS-A or ICS-B for this assessment if fully operational.</p>
<p><b>4. Failure of Test ICS</b></p> <p>The Successful Bidder shall ensure ICS-Test is available at all times for Commission use.</p>	<p>The Commission may assess Liquidated Damages of five thousand dollars (\$5,000) per day, or fraction of a day thereof, when ICS-Test is unavailable due to Successful Bidder's hardware, software, or connection malfunction.</p>
<p><b>5. Failure to Produce Software Changes</b></p> <p>The Successful Bidder shall modify existing software (e.g. new games, enhancements, upgrades) in accordance with the timeline established and agreed to by the Commission and the Successful Bidder.</p>	<p>The Commission may assess Liquidated Damages of one hundred thousand dollars (\$100,000) for each day, or fraction of a day thereof, of delay that the modification or additional game is not installed for a multi-jurisdictional software change.</p> <p>The Commission may assess Liquidated Damages of fifty thousand dollars (\$50,000) for each day, or fraction thereof, of delay that the modification</p>

	<p>or additional game is not installed for an in-state software change.</p> <p>The Commission may assess Liquidated Damages of one thousand dollars (\$1,000) per day, or fraction of a day thereof, that the modified or additional software is not installed for an administrative change.</p> <p>The Successful Bidder is not obligated to pay Liquidated Damages if the Commission independently opts to release the modification or install at a time later than the original agreed-upon schedule. In this scenario, the revised modification or installation date would be used for any Liquidated Damages assessment related to the modification or installation.</p>
<p><b>6. Unauthorized Modifications</b></p> <p>The Successful Bidder shall not modify any ICS software or hardware without the prior written consent of the Commission. “Modify” does not include replacement of a system component with an essentially similar working component in the event of necessary maintenance.</p>	<p>If the Successful Bidder modifies any ICS software or hardware without the prior written approval of the Commission, the Commission may issue a written order that the modification be removed and that the ICS be restored to its previous operating state at the Successful Bidder’s expense. The Commission may assess Liquidated Damages of ten thousand dollars (\$10,000) per day, or fraction of a day thereof, for which the Successful Bidder’s modification has not been reversed, corrected, or otherwise addressed to the Commission’s satisfaction.</p>
<p><b>7. Unauthorized Access or Compromise</b></p> <p>The Successful Bidder shall preclude personnel who are not authorized by the Commission from accessing, modifying, or otherwise interfering with the ICS, designated secure areas, or any Commission data or software.</p>	<p>The Commission may assess Liquidated Damages of ten thousand dollars (\$10,000) per person, per incident, in addition to any other damages that may occur as a result of such unauthorized access or compromise. An “incident” is each act of access, modification, or interference with the ICS, designated secure areas, or any Commission data or software.</p>
<p><b>8. Failure to Report Incidents</b></p> <p>The Successful Bidder shall immediately report significant incidents related to the operation of the ICS to the Commission, either in person or by telephone within one hour of the discovery of the</p>	<p>If the Successful Bidder fails to report any incidents as required, the Commission may assess Liquidated Damages as follows:</p>

<p>incident, followed by written notice of the incident addressed to the Commission’s Director of the Division of Lottery, Director of Lottery Games Operations and Lottery Security Director within 24 hours. At a minimum, the Successful Bidder shall provide the required notice for each of the following types of incidents:</p> <ul style="list-style-type: none"> <li>(i) System takeovers;</li> <li>(ii) Communications failures preventing ICS from operating properly;</li> <li>(iii) Operator errors deemed affecting ICS functionality</li> <li>(iv) Missing data;</li> <li>(v) Emergency software or hardware changes;</li> <li>(vi) Security violations;</li> <li>(vii) Other conditions as defined by a memorandum of understanding between the Successful Bidder and the Commission; or</li> <li>(viii) Any systems, staff, programming or out-of-balance situation which may cause the general public to become alarmed and/or which may damage the integrity of public image of the Commission.</li> </ul>	<p>For failure to notify the Commission in person or by telephone, two thousand five hundred dollars (\$2,500) per hour, or fraction of an hour thereof, not reported, until an incident is correctly reported.</p> <p>For failure to notify the Commission in writing, five hundred (\$500) per day, or fraction of a day thereof, not reported, until an incident is correctly reported.</p>
<p><b>9. Failure to Comply</b></p> <p>The Successful Bidder shall comply with all requirements or obligations contained in the RFP, the Proposal and the Contract, and all clarifications and amendments to these documents. The Successful Bidder shall provide all products, services, data, and documents as obligated under the RFP, the Proposal, and the Contract. Any reference herein to the RFP, the Proposal, or the Contract, shall necessarily refer to the requirements and obligations of the other documents as well, as applicable, and all of these documents and their requirements are incorporated herein.</p>	<p>To the extent not specified elsewhere in this Appendix, if the Successful Bidder fails to satisfy any requirement or obligation not otherwise addressed by the other Liquidated Damages provisions in this Appendix, the Commission may assess Liquidated Damages of one thousand dollars (\$1,000) per day or per incident (at the Commission’s discretion) until the failure is rectified.</p>

## BONDS

All required bonds must be issued by companies which are “A” or higher rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted, and authorized to do business in the State of New York, and are approved by the Commission.

### PROPOSAL VALIDITY AND PROPOSAL BOND

Proposals must remain valid for a period of one-hundred and eighty (180) days.

Each Vendor must submit a Proposal Bond with the Proposal. The Proposal Bond must be acceptable to the Commission in form and substance, and issued by a qualified issuer as described below, in the amount of two hundred fifty thousand dollars (\$250,000). This bond will guarantee the availability of the goods and services at the price(s) quoted in the Proposal for a period of eighteen (18) months after submission of the Proposal. In lieu of the Proposal Bond, the Commission will accept a certified check from the Vendor in this amount. The check or Proposal Bond shall be made payable to the “New York State Gaming Commission”.

The check or Proposal Bond will be returned to an unsuccessful Vendor upon the approval of the Contract. The check or Proposal Bond of the Successful Vendor will be retained by the Commission until the Contract is signed and approved, and until the Commission is furnished with an acceptable Performance Bond. The check or Proposal Bond will be forfeited to the Commission if the Successful Vendor fails to timely submit the Performance Bond or other security, as required, or fails to sign the Contract when required to do so by the Commission.

### LITIGATION BOND

Each Bidder must submit with the Proposal a litigation Bond in the amount of one million dollars (\$1,000,000). A claim upon the Bond may be made by the Commission if:

The Bidder sues the Commission, the State of New York, or any of their respective officers, employees, representatives, other contractors, or sales agents with regard to any matter relating to this RFP, determination of responsiveness of Bidders or the award of a contract pursuant to this RFP; and the Commission or other defendant is the prevailing party in such suit.

The purpose of the Bond is to permit the Commission or other defendants to recover damages, including the cost of appeal described in RFP Section 5.23 “Disputes Under the Contract”, relative to the additional cost during implementation or conversion delay, and including reasonable attorneys' fees, expenses, and court costs resulting from such litigation. The Litigation Bond shall remain in effect for a period of two (2) years from the date of submission of the Proposal.

### PERFORMANCE BOND

Upon notification of the Contract award, the Successful Vendor will be required to obtain a Performance Bond or other acceptable form of security in the amount of two million five hundred thousand dollars (\$2,500,000). The Performance Bond shall be maintained throughout the term of any resulting Contract or any extension thereof. The Performance Bond may be paid in full or in part to the Commission if the Successful Vendor defaults in the performance of the Contract or has occasioned uncompensated liquidated damages.

The Performance Bond may be assessed liquidated damages if payment for liquidated damages have not been received by the Commission within thirty (30) calendar days of written notice to the

Successful Vendor that the damages have been incurred.

Other forms of security may be acceptable but are subject to the Commission's discretion. Failure to post a replacement security within seven (7) days after notice that the proposed security is inadequate shall be grounds for immediate termination of the Contract.

Along with its Proposal, each Vendor must include a letter from a qualified surety company or agent acting on behalf of such surety stating that the Vendor will be able to secure a Performance Bond in the amount required by the RFP.

#### **FIDELITY BOND**

Upon notification of award and prior to Contract approval, the Successful Vendor must obtain a Fidelity Bond in the amount of five million dollars (\$5,000,000) covering any loss to the Commission due to any fraudulent or dishonest act on the part of the Successful Vendor's officers, employees, agents or subcontractors. Such an event, in the sole discretion of the Commission, could be grounds for termination of the Contract, whether or not the losses arising as a result thereof were paid under the Fidelity Bond.



## CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

**THIS CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT** is between the State of New York (“State”), acting by and through the New York State Gaming Commission (the “Commission”) having its principal place of business at One Broadway Center, Schenectady, New York 12305, and \_\_\_\_\_ (“Consultant”), an officer, agent, employee, partner, or subcontractor of \_\_\_\_\_ (“Contractor”) with its principal place of business at \_\_\_\_\_ (“this Agreement”). This Agreement is signed in relation to the provision by the Contractor and the Consultant of services to the Commission under Contract Number \_\_\_\_\_ (hereinafter “the Engagement”).

**1. Definitions.** For the purposes of this Agreement, the following terms shall be defined as follows:

### **I. Confidential Information**

“Confidential Information” shall be defined to include any data and/or information (oral, visual, or written) of which the Consultant becomes aware during the course of performing services under or as part of the Engagement, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or the source(s) of information (e.g., the Commission, other state agencies, state employees, electronic systems, or third party contractors) provided to Consultant, or which Consultant obtains, discovers, derives or otherwise becomes aware of as a result of the Engagement other than:

- (a) information that is previously rightfully known to Consultant without restriction on disclosure;
- (b) information that is or becomes, from no act or failure to act on the part of the Consultant, generally known in the relevant industry or in the public domain; or
- (c) information that is independently developed by Consultant without the use of Confidential Information.

### **II. Authorized Person**

“Authorized Person” shall be defined as a person authorized by the Commission as having a need to receive, possess, store, access, view and/or use Confidential Information for an Authorized Use.

### **III. Authorized Use**

“Authorized Use” shall be defined as the use of Confidential Information by Consultant or Authorized Persons, solely for the purpose of performing the Engagement.

## **2. Term**

Consultant’s obligations under this Agreement shall commence upon the execution of this Agreement or the start of the Engagement, whichever occurs first, and shall survive in perpetuity.

## **3. Duty to Protect Confidential Information**

Consultant agrees not to disclose Confidential Information to anyone, except as provided in this Agreement. In addition, Consultant shall safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. Consultant shall notify the Commission immediately upon becoming aware that confidential information is in the possession of or has been disclosed to an unauthorized person or entity.

#### **4. Press Releases**

Consultant shall not issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding his/her Engagement - nor shall Consultant authorize or permit any other person or entity to do so - without the Commission's prior written approval. Consultant shall immediately refer any media requests or other requests for information to the Commission.

#### **5. Use Restriction**

Consultant shall not receive, possess, store, access, view and/or use Confidential Information for any purpose other than an Authorized Use. Consultant shall not permit unauthorized persons or entities to gain access to Confidential Information and shall not divulge methods of accessing Confidential Information to unauthorized persons.

#### **6. Security Obligations Regarding Confidential Information**

Consultant agrees to comply with the following security obligations as well as any other such obligations conveyed to him/her during the course of the Engagement in accordance with the Engagement's scope of work:

- a. Unless otherwise authorized by the Commission, Confidential Information may not be stored on personal (non-Commission) computing or other electronic or mobile storage devices, or taken or removed in any form from the Commission.
- b. Consultant shall comply with all federal and state laws.
- c. Consultant shall comply with all Commission policies and procedures including but not limited to those that provide for accessing, protecting, and preserving State assets.
- d. Consultant shall take no action to intrude upon, disrupt, or deny services to the Commission.
- e. Consultant shall use only those access rights granted by the Commission.

#### **7. Certification by Consultant of Return of Confidential Information**

Upon termination of the Engagement, Consultant shall return Confidential Information stored in a tangible format to the Commission, or destroy such Confidential Information that Consultant possesses in a format that cannot be returned, and further agrees to submit to the Commission, on Contractor's letterhead, a Certification of Return or Destruction of Confidential Information certifying that all copies of Confidential Information have been returned or destroyed.

#### **8. Termination**

Consultant's Authorized Use of Confidential Information shall terminate automatically upon the first to occur of any of the following: (a) breach of this Agreement; (b) completion or termination of Consultant's participation in the Engagement; or, (c) termination of Contract Number \_\_\_\_\_ between the Contractor and the Commission.

#### **9. Compliance**

Should Consultant breach this Agreement, the State shall have all equitable and legal rights to pursue criminal prosecution and to seek civil redress directly from Consultant as an individual, for such breach, to prevent further breaches, and to be fully compensated (including litigation costs and reasonable attorney fees) for losses or damages resulting from such breach, whether the compensation sought is for damages or for injunctive relief, within the Commission's discretion. In the event of a breach by Consultant, Consultant agrees to be held jointly and severally liable for any monetary or equitable damages incurred by the Commission, regardless of the number of

third parties involved in such breach or the resulting damages, unless and until another source of reimbursement has paid or otherwise acted to cure the damages incurred, with the complete curing of damages being determined by the Commission. Curing of monetary damages does not negate the Commission’s rights to pursue criminal prosecution related to a breach and its effects, when applicable.

**10. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

**11. Miscellaneous**

- a. The parties acknowledge that each has had an opportunity to retain an attorney to review the terms and conditions of this Agreement. No provision hereof shall be interpreted against the interests of one party solely because such provision was drafted by such party or by the attorney for such party.
- b. A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.
- c. This Agreement may be executed in counterparts, each of which shall be deemed an original. Executed copies of this Agreement may be sent by facsimile (fax) or as PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date indicated below their respective signatures herein:

<p>CONSULTANT</p> <p>By: _____</p> <p style="text-align: center;">Signature</p> <p>_____</p> <p style="text-align: center;">Printed Name</p> <p>_____</p> <p style="text-align: center;">Title</p> <p>_____</p> <p style="text-align: center;">Date</p>	<p>NEW YORK STATE GAMING COMMISSION</p> <p>By: _____</p> <p style="text-align: center;">Signature</p> <p>_____</p> <p style="text-align: center;">Printed Name</p> <p>_____</p> <p style="text-align: center;">Title</p> <p>_____</p> <p style="text-align: center;">Date</p>
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*The required Acknowledgment for Confidentiality & Non-Disclosure Agreement (for Consultant) is found on the following page:*



## **ATTACHMENTS**

- Attachment 1: Bidder Acknowledgement of Addendum**
- Attachment 2: Pricing Proposal Form**
- Attachment 3: Document Proposal Submittal Checklist**
- Attachment 4: Non-Bid Response Form**



**RFP: C202002 – Lottery Internal Control System**

**BIDDER ACKNOWLEDGEMENT OF ADDENDUM**

Amendment Number: \_\_\_\_\_

Date Issued: \_\_\_\_\_

Summary:

By signing below, the bidder attests to receiving and responding to the amendment number indicated above.

FIRM NAME: \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_

Enter the total cost for each deliverable and service line below. The bidder with the lowest Grand Total will be awarded all available points for Pricing. All other bidders will be awarded a proportionate amount of Pricing points.

<u>Deliverables</u>	<u>Price USD</u>
1. ICS Hardware and System Software including installation and all testing	\$ _____
2. All application software, including specification development, customization, and internal testing	\$ _____
3. Project delivery implementation including conversion and acceptance testing until Go-Live	\$ _____
4. Training and documentation	\$ _____
<u>Ongoing Cost</u>	
1. Annual price for all other contracted support, documentation, hardware and software maintenance starting at Go Live	\$ _____ x 5 Years \$ _____
 <b>Grand Total: \$ _____</b>	

<i>Please include the following information to verify the Entity for which this Proposal is being made:</i>
Company Name:
Signature:
FEIN:



# Gaming Commission

One Broadway Center, Schenectady, NY 12305  
[www.gaming.ny.gov](http://www.gaming.ny.gov)

## RFP – C202002 Lottery Internal Control System

### DOCUMENT SUBMITTAL CHECKLIST

#### Submissions Required with Proposal:

Description of Document	RFP	Submittal Requirements	Checklist
Transmittal Letter	§5.4	With Proposal	
Bidder Acknowledgement of Addendum (Attachment 1)	§1.6	With Proposal, if applicable	
Document Submittal Checklist (Attachment 3)	§5.4	With Proposal	
Contract Form (Appendix B) (incorporates Appendix A)	§6.2	Must be signed—With Proposal	
Bidder/Offerer Disclosure/Certification Form (Appendix C)	§7.1	With Proposal	
Non-Collusive Bidding Certification (Appendix D)	§7.2	With Proposal	
NYS Vendor Responsibility Questionnaire (Appendix E)	§7.3	With Proposal, unless filed online	
Diversity Practices Questionnaire (Appendix I)	§3.6	With Proposal	
Work Force Employment Staffing Plan (Appendix J-2)	§7.7	With Proposal	
MWBE Utilization Plan Form (Appendix J-4) <ul style="list-style-type: none"> <li>• Proposed Plan</li> </ul>	§3.6	Proposed plan, including estimated percentage—With Proposal	
Participation Opportunities for New York State Service-Disabled Veteran Owned Businesses (Appendix K)	§7.8	With Proposal	
Encouraging Use of New York State Businesses in Contract Performance (Appendix L)	§7.9	With Proposal	
Vendor Assurance of No Conflict of Interest or Detrimental Effect (Appendix M)	§7.10	With Proposal	
Statement on Sexual Harassment (Appendix N)	§7.11	With Proposal	



Anti-Discrimination EO 177 Certification (Appendix O)	§7.12	With Proposal	
Insurer Qualifications and Insurance Requirements (Appendix P) <ul style="list-style-type: none"> <li>Compliance Statement</li> </ul>	§7.13	Include a statement of compliance with the insurer qualifications and insurance requirement—With Proposal	
Bond Requirements (Appendix R) <ul style="list-style-type: none"> <li>Proposal Bond</li> <li>Litigation Bond</li> </ul>	§7.15	With Proposal	
Designation of Proprietary Information (FOIL)	§5.11	With Proposal	
Disclosure of Litigation	§5.13	With Proposal	
References	§3.3	With Proposal	
Technical & Pricing Proposals	§5.4	Submit Technical and Pricing Proposals Separately as Defined in RFP	

**Submissions Required Subsequent to Award:**

Description of Document	RFP	Submittal Requirements	Checklist
Substitute Form W-9 (Appendix F)	§7.4	Upon notification of award	
Electronic Payment (ePayment) Request (Appendix G)	§7.5	Upon notification of award	
ST-220 Contractor Certification forms (Appendix H) <ul style="list-style-type: none"> <li>ST220-TD (submit to DTF)</li> <li>ST220-CA (submit to Commission)</li> </ul>	§7.6	Within seven calendar days of notification of award	
EEO and M/WBE Program Equal Employment Opportunity Policy Statement (Appendix J)	§7.7	Within 72 hours of notice of award	
Workforce Employment Periodic Report (Appendix J-3)	§7.7	Quarterly	
MWBE Utilization Plan Form (Appendix J-4)	§7.7	Within 14 days after notification of award	
MWBE Quarterly Subcontracting/Supplier Activity Report (Appendix J-5)	§7.7	Within 10 days following the end of the previous quarter	
Insurer Qualifications and Insurance Requirements (Appendix P)	§7.13	Upon notification of award provide insurance certificates	
Bond Requirements (Appendix R) <ul style="list-style-type: none"> <li>Performance Bond</li> <li>Fidelity Bond</li> </ul>	§7.15	Upon notification of award	
Confidentiality and Non-Disclosure Agreement (Appendix S)	§1.9	Following award	

FIRM NAME: \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_



**NON-BID RESPONSE**

RFP: C202002 Lottery Internal Control System

If your company will not be submitting a response to the RFP, it would be helpful in the preparation of future bidding opportunities to understand why your company is not submitting a proposal. Please help us by selecting your reason from the choices below or selecting "Other" with a brief explanation.

\_\_\_\_\_ Although the bid is within the scope of our business, and we are interested in principle, at present, we are unable to respond, due to other commitments.

\_\_\_\_\_ The services / products described in the subject RFP are not within our area of expertise.

\_\_\_\_\_ We do not have the staffing / resources available at this time to provide the services requested.

\_\_\_\_\_ There were certain requirements or restrictions stated in the RFP that preclude our company from bidding. Those requirements are:

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\_\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_

**This form may be emailed to: [officer.contracting@gaming.ny.gov](mailto:officer.contracting@gaming.ny.gov), or mailed to:**

New York State Gaming Commission  
Contract Unit, 4<sup>th</sup> Floor  
One Broadway Center  
Schenectady, NY 12305

Please be advised that **no response** may result in removal of your company from our bidders' List.