



RFP: C150022: CPA Services - Observation of Studio Drawings, Ball Weight Certifications, and Other Engagements

VENDOR ACKNOWLEDGEMENT OF ADDENDUM

Amendment Number: One

Date Issued: January 29, 2016

Summary: Questions and Answers
Revised Attachment 2 - Pricing Proposal
Revised Attachment 4a - Confidentiality and Non-Disclosure Agreement
Diversity Practices Scoring Guidelines and Matrix

By signing below, the bidder attests to receiving and responding to the amendment number indicated above.

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____



REQUEST FOR PROPOSALS
Certified Public Accounting Services
Observation of Studio Drawings, Ball Weight Certifications, and Other Engagements

Round 1 – Questions and Answers

Release Date: January 29, 2016

Q.1: On Page 32, the RFP notes that “Points will not be awarded based on a company’s status as a certified MWBE firm.”

(a) On page 1 of Attachment J, the RFP notes that “the Commission hereby establishes an overall goal of 30% for MWBE participation, 30% for New York State certified minority-owned business enterprises (“MBE”) participation and 15% for New York State certified women-owned business enterprises (“WBE”).”

(b) My firm is a certified WBE. In order to earn the 5 points for diversity during the evaluation, will we need to provide:

1. 30% of the work to a MBE?
2. 15% of the work to a MBE and 15% to a different WBE?
3. 15% of the work to a MBE?

A.1: (a) **Appendix J is clarified by this response. The reference to MBE should be 15%. The total goal under a resulting contract will be 30% (15% MBE/15%WBE).**

(b) **Please see attached the documents titled “How to Score Diversity Practices” and “New York State Diversity Practices Scoring Matrix”. These documents, specifically the scoring matrix, provide criteria for which points will be awarded. For example, Question 1 asks if your firm has a Chief Diversity Officer. If you answer yes, and provide details of this person and their role, 5 points will be awarded, if you answer no, zero points will be awarded. Questions 2 and 3 will be scored based on percentage of spending with New York State Certified MWBE firms, not including spending within your own firm or employees. Questions 4 and 5 refer to training and mentoring of New York State certified MWBE firms, not training and mentoring within your own firm or with your employees. Questions 6 and 7 will be scored based on how robust your firm’s procurement practices and supplier diversity practices are. In addition to these questions, your proposed utilization plan will be scored based on whether it proposes to meet the 30% MWBE goal, and how robust your plan is.**

Q.2: Page 23 of 50: 2.6(a)(ii) allows for travel expense to be reimbursed related to observation of drawings that are held at a location other than the Lottery Headquarters in

Schenectady. Question: Other than at the Lottery Headquarters, where are drawing held and how often are they held at these alternative sites?

A.2: Observations outside of the Lottery Headquarters in Schenectady are not anticipated, but depending on future promotional events, could occur. In the past five years, there have not been any off-site observations. Observations could be held in any major city in New York State, such as Buffalo or New York City.

Q.3: Under the Minimum Qualification Requirements, which must be met at the time of submission of proposal, individuals involved in the drawing observation and ball certification must reside within 50-mile radius of the Lottery Headquarters. This would be difficult and impractical for firms not located in the area but plans to house their staff within the prescribed area if they were to be awarded the contract. Can this requirement be met after the contract is awarded?

A.3: No. This requirement is firm. The RFP allows for alternatives to the company's own staff being relocated.

Q.4: a) The RFP requires a full-time project director. Must the full-time project director reside within the 50-mile radius also?

b) What do you expect that person to be doing all throughout the year?

A.4: a) No, the Project Director is not required to live within a 50-mile radius. See Minimum Qualifications – Section 1.5 – last bullet.

b) The Project Director will be responsible for all activities performed under the contract as described in Part 3 of the RFP - Scope of Work, including but not limited to scheduling, supervision of staff, on-site visits, etc.

Q.5: Page 37 of 50: 3.1(A) Observe drawings as follows: Numbers/Win4 twice a day (365 days x 5years, plus one for a leap year is 1,826 days or 3,652 drawings. Pick 10 is daily of 1,826 drawings. Take Five is daily or 1,826 drawings, Lotto is twice a week (52 weeks x 5 years x 2 times a week) or 520 drawings. Please confirm: contact requires 7,824 observations. (Plus emergency contingent service drawings : page 40 of 50).

A.5: Frequencies are accurate, with exception to December 25, which has two drawings for Numbers/Win 4 that day but all drawings conducted on that day will start through a shift starting at 6:00 p.m.

Q.6: Page 40 of 50 : Ball weight test three times a month (3 times x 12 months x 5 years) or 180 times during the contract. Page 41: three hours required for each weighing (540 hours) please confirm the number of observations.

A.6: The ball weight observations may be performed three times per month, but on average, they are performed approximately 10 – 12 times per year. The observations typically occur around 1:00 p.m. following the mid-day drawing, and the process takes approximately three hours.

Q.7: Page 38 of 50: Note: encourages the use of interns to staff the drawings. What Colleges currently support the intern participation/component under the existing contract?

A.7: Students who are involved in the drawings typically attend State University of New York (SUNY) Albany, The College of Saint Rose (Troy, NY), Rensselaer Polytechnic Institute (RPI) (Troy, NY), and Union College (Schenectady, NY).

Q.8: Page 39 of 50: 6th bullet from the top: what are the pre-test criteria and who determines the pre-test criteria?

A.8: The Pre-test criteria have been established by the Commission and are included in the Executive Directives – Exhibit 3, Pages 2 – 4, of the RFP.

Q.9: Can proposing firms observe the procedures and process for each of the components of the scope of work prior to submitting a response?

A.9: Yes. Any bidder who wishes to observe a drawing should contact the designated contacts listed in the RFP to make arrangements.

Q.10: Page 37 of 50: Please provide the number of hours normally required to attend, observe and certify each on-site studio drawings (the Numbers/Win-4 drawings, the daily Pick 10 and Take Five drawings; and the Wednesday and Saturday Lotto drawings).

A.10: Auditors are required on-site between the hours of 10:30 a.m. and 1:00 p.m., and 6:00 p.m. and 12:00 a.m. daily. Additional time is required for ball weight observations, as stated in A.6.

Q.11: Page 37 of 50: Please provide the number of hours normally required to observe and certify, via video tape from satellite, each drawing results of multi-state lotteries (Powerball, Mega Millions and Cash4Life).

A.11: Approximately one hour. This time falls within the scheduled evening times indicated in A.10 (6:00 p.m. and 12:00 a.m.).

Q.12: Could you please provide the hours and fees incurred for each year of your incumbent's contract including traveling expenses?

A.12: The hours spent on average over the last three months for observations and certifications were:

Partner:	2.33
Manager:	4
Drawing Coordinator:	25
Intern/Staff:	282

There were no related travel expenses. If a bidder wishes to obtain the pricing proposed by the current contractor, they will need to do so via a Freedom of Information Law (FOIL) Request. Such a request shall be directed to our FOIL Officer at: gaming.sm.FoilRequests.

Q.13: Page 40 of 50: The same firm representative may not be assigned the same schedule on consecutive days. Please explain in detail.

A.13: The same staff person cannot verify the same drawings that they themselves observed the previous day. For example, if the individual #1 observes a mid-day drawing for Win 4 on Monday, individual #1 may not observe the mid-day drawing for Win 4 on Tuesday, but they may observe the evening drawing for Win 4 on Tuesday (if they had not observed the evening drawing on Monday).

Q.14: Section 2.14 Insurance Requirements:

(a) In the introduction to this section, at the end of the second paragraph, delete the sentences starting “Note:” through the end. Our policies are confidential. We would be willing to provide Certificates of Insurance to prove we have the coverage required by the Commission.

(b) In the last paragraph, delete “any material changes to the policy.”

(c) Under General Conditions:

- i. Subsection A.3 (Certificates of Insurance/Notices): delete the second paragraph and delete item b.
- ii. Delete subsection A.4 (Primary Coverage)
- iii. In subsection A.5 (Policy Renewal/Expiration, In the first sentence replace “prior to” with “after” and delete the first instance of “and/or” and everything after that in the last sentence.
- iv. In subsection A.6 (Self-Insured Retention/ Deductibles), delete the first sentence.
- v. In subsection B.1 (General Liability):
 1. In the second paragraph, delete “defense and/or”.
 2. In the fifth paragraph, delete the last sentence (The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts). This is not applicable to this contract.
 3. In the sixth paragraph, between “the” and “Professional” insert “Workers Compensation”.
 4. At the end of the seventh (last) paragraph, insert “Applicable only to the extent contractor solely caused the loss.”

A.14: (a) The Commission declines to make this change. The purpose of the “Note” in this re-bid was to inform bidders that we do not require the insurance policy upon submission of a Proposal or upon award, but have the right to request it anytime throughout the contract term. If the information is confidential, it can be designated as proprietary as provided in Section 1.15 of the RFP.

(b) The Commission declines to make this change.

(c) Items I, ii, iii: The Commission declines to make this change.

Item iv: Section 2.14.A(6) is amended to delete the first sentence, “Certificates of Insurance must indicate the applicable deductible/self-insured.”

Item v.1: The Commission declines to make this change.

Item v.2: The last sentence of the fifth paragraph: “The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts” is hereby deleted.

Item v.3: The Commission declines to make this change.

Item v.4: The Commission declines to make this change.

Q.15: Section 2.22:

(a) Subsection A. replace “only of the highest standards” with “that conform to the requirements of the Contract”.

(b) Subsection B. replace “best” with “commercially reasonable”.

A.15: (a) (b) The Commission declines to make these changes.

Q.16: Appendix B – Contracts

1. Section 7, please consider making the following changes:

(a) In subsection (b) (ix), add the following to the end: “or where required to disclose pursuant to the applicable professional standards” to allow the Contractor to disclose information in situations where required.

(b) In subsection (c), In the first sentence, between “information” and “solely” insert “and may disclose the same to its subcontractors and vendors, and in the second sentence, between “information” and “without” insert the following: “except as necessary to perform the services required by this Agreement,” to allow the contractor to perform the services contemplated in this contract.

(c) In subsection (e) replace the second instance of “written” with “tangible” to further define the items required to be returned. In addition, please clarify what is required in regards to electronic data.

2. Section 10, please consider the following changes:

In the second sentence, delete “and all”, replace “which may be” with “for death, bodily injury, or damage to tangible property, to the extent” and delete “in whole or in part” and “actual or alleged”.

3. Section 15 Please considering adding the following clauses:

(a) (f) Limitation of Liability –Notwithstanding anything else herein to the contrary, the liability of the Contractor on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Contract shall be limited to the amount of fees paid or owing to Contractor under the task issued pursuant to this Contract. In no event shall Contractor be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). This section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise and shall survive termination or expiration.

(b) (g) Management Decisions – The Commission acknowledges and agrees that Contractor’s services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the Commission. The Contractor will not perform management functions or make management decisions for the Commission.

(c) (h) Third Party Usage - Any advice, recommendations, information, deliverables or other work product provided to the Commission under this Contract is for the sole use of the Commission, and is not intended to be, and may not be, relied upon by any third party, and all advice, recommendations, information, deliverables, or other work product may be marked to so indicate. Except for disclosures that are required by law or that are expressly permitted by this Contract, the Commission will not disclose or permit access to such advice, recommendations, information, deliverables, or other work product to any third party without the Contractor’s prior written consent.

(d) (j) Electronic Communications – Contractor may communicate with the Commission by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. The Commission accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). The Commission agrees that the final hardcopy version of a document, including a deliverable, or other written communication that Contractor transmits to the Commission shall supersede any previous versions transmitted electronically by Contractor to the Commission unless no such hard copy is transmitted.

(e) (l) Use of Vendors – The Commission acknowledges that in connection with the performance of services under the Contract, Contractor may use the services of KPMG-controlled entities and/or member firms of KPMG International to complete the services required by this Contract. The Commission also acknowledges that in connection with the performance of services under the Contract, Contractor uses vendors within and without the United States to provide at Contractor’s direction administrative and clerical services to Contractor. These KPMG-controlled entities, member firms of KPMG International, and vendors (“Third Parties”) may in the performance of such services have limited access to information, including but not limited to confidential information, received by Contractor from or at the request or direction of the Commission. Contractor will have full responsibility to cause these Third Parties to comply with such conditions of confidentiality and Contractor shall be responsible for any consequences of their failure to comply. Accordingly, the Commission consents to Contractor’s disclosure to such Third Parties, and the use by such Third Parties of data and information, including but not limited to confidential information, received from or at the request or direction of the Commission for the purposes set forth herein.

(f) (m) Volume Rebates – Where Contractor is reimbursed for expenses, Contractor’s policy is to bill clients the amount incurred at the time the good or service is purchased. If Contractor subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, Contractor does not credit such payment to its clients. Instead, Contractor applies such payments to reduce its overhead costs, which costs are taken into account in determining Contractor’s standard billing rates and certain transaction charges that may be charged to clients. [Note to team: only necessary if there is a cost-reimbursable element].

(g) (n) Commission Vendors and Conflicts – The Commission is aware that Contractor may be providing assurance, tax and/or advisory services to other actual or potential vendors of the Commission. Contractor will perform an internal search for any potential client conflicts relating to any of the Commission’s vendors identified by the Commission as having a role in connection with Contractor’s performance of this Contract. The Commission hereby agrees that a vendor’s status as a Contractor client does not impact Contractor’s engagement to perform this Contract. Contractor will advise the Commission of any conflicts of interest that could prevent it from performing the Contract. However, Contractor is a large firm that is engaged by new clients on a daily basis and as a result it cannot guarantee that, following its conflict search, an engagement for any other related party will not be accepted somewhere else in Contractor’s firm. Should any new information come to Contractor’s attention, Contractor will promptly inform the Commission. Contractor shall perform this Contract in accordance with applicable professional standards.

(h) (o) Ownership of Materials - The Contractor retains all ownership rights in any proprietary methodologies, methods, processes, or procedures of the Contractor that pre-exist or were developed outside the scope of this Contract. If any such property of Contractor is contained in any of the deliverables hereunder, the Contractor grants to the Commission a royalty-free, paid-up, non-exclusive, perpetual license to use such Contractor intellectual property in connection with the Commission’s use of the deliverables

4. In in notary signature block, replace “corporation” with “company” in both instances as our firm is not a corporation.

A.16: 1(a) Subsection (b) (iv) [not “(ix)”] will now read:

(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 opportunity to defend prior to any such disclosure.

(b) Subsection (c) will now read:

The Contractor may use Confidential Information solely for the purposes of providing services to the Commission pursuant to this Agreement. The Contractor shall not make copies of any written Confidential Information except as necessary to perform the services required by this Agreement,” without the express written permission of the Commission. ...

(c) The Commission declines to make this change.

2. The Commission declines to make this change.

3. The Commission declines to make these changes.

4. Such change will be made upon signing of a final contract dependent upon the successful bidder. This change is not relevant to the Proposal response.

Q.17: Appendix J Section Business Participation Opportunities for MWBEs: The goal percentages are missing from this section. Please clarify what the percentages are.

A.17: The participation goal under this RFP is 30% (15%MBE/15%WBE).

Q.18: Attachment 4a: Confidentiality and Non-Disclosure Agreement:

1. In Item 3:

- a. please clarify if this is regarding hard copies only. Please clarify requirements related to soft (electronic) copies.
- b. in the second sentence after "Information" insert ", except for the purpose of preparing proposals,".
- c. delete the fourth sentence.

2. In item 4, delete "and necessary" as it is unclear what would constitute "necessary".

3. (a) In item 5, please clarify if "written" means hard copy data. Please also clarify requirements regarding electronic data.

(b) In addition, please insert the following "Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirements set forth by this paragraph."

4. In item 8, in the third sentence, in (a) after information insert "during this pre-award process." to limit this agreement. The confidentiality requirements for conduct of the contract should be outlined in the contract.

5. In in notary signature block, replace "corporation" with "company" in both instances as our firm is not a corporation.

A.18: 1. (a) As provided in Section 1.2 of the RFP, only those bidders who submit an Intent to Bid Form and Confidentiality and Non-disclosure Agreement will receive the Confidential information referenced to as Exhibits 1 – 6 in Attachment 4a. The Commission has determined that this information is required for completion of the Technical Proposals and also will be relevant to work to be performed if awarded a contract. As provided in Section 1.2, "The Exhibits will be contained on a password protected disc and sent via overnight parcel."

(b) This change will be made. See Revised Confidentiality and Non-disclosure Agreement with this Q & A Summary.

(c) The Commission declines to make this change.

2. The Commission declines to make this change.

3. (a) (b) Item 5 is amended to reflect the changes requested. See revised Confidentiality and Non-Disclosure Agreement with this Q & A Summary.

4. The Commission declines to make this change.

5. See A.16.4.

Pricing Proposal Other Engagements

Enter the staff titles that may be used for "Other Engagements" as defined in Sections 3.1.C and 4.9.B of the RFP. Enter the hourly rate for each position for each contract year. Payment will be made based on the rates provided, for actual hours worked.

Staff Titles	June 1, 2016 - May 31, 2017	June 1, 2017- May 31, 2018	June 1, 2018- May 31, 2019	June 1, 2019 - May 31, 2020	June 1, 2020- May 31, 2021
Dedicated Project Director					
Senior Staff					
Mid-level Staff					
Junior Staff					

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

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)**

**NEW YORK STATE GAMING COMMISSION
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

Bidder: _____

Bidder Representative: _____
(Name/Title)

Address: _____

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

The New York State Gaming Commission, Division of Lottery, an executive agency of the State of New York with its principal place of business located at One Broadway Center, Post Office Box 7500, Schenectady, New York, 12301-7500 (the "Commission"), issued a Request for Proposals (the "RFP") for C150022 for Certified Public Accounting (CPA) Services. To assist with the preparation of proposals, the Commission will provide relevant data (the "Data") to potential bidders ("Bidder"). Such Data includes certain confidential and proprietary information relative to the Commission's operations; therefore, it is critical and essential to the Commission that such information be secured and held confidential by the Bidder. Therefore, in order to receive the Data, the Bidder must agree with and accept this Confidentiality and Non-Disclosure Agreement (the "Agreement"). By signature of this Agreement, the Bidder agrees to keep the Data secure and confidential in accordance with the terms and conditions of this Agreement.

The parties agree as follows:

1. **Confidential Information.** "Confidential Information" means any information not generally known to the public, whether oral or written, to which access is provided to Bidder by the Commission for the business purposes set forth above and which is claimed confidential by the disclosing party, the Commission, at the time of disclosure.
2. **Exempt Information.** Information not subject to this Agreement is any Confidential Information, or any other information, whether oral or written, which at the time of disclosure: (a) is already in the public domain or becomes publicly known through no act of the Bidder, the receiving party; (b) is already known by the Bidder free of any confidentiality obligations; (c) is information that the Commission has approved in writing for disclosure; or (d) is required to be disclosed by the Bidder pursuant to law so long as the Bidder provides the Commission with notice of such requirement and opportunity to defend prior to any such disclosure.
3. **Permitted Use.** Bidder may use Confidential Information solely for the purposes of participation in this RFP process or for Lottery business if awarded a contract under this RFP process. Bidder

shall not make copies of any written Confidential Information, except for the purpose of preparing Proposals, without the express written permission of the Commission. The Commission's disclosure of Confidential Information to the Bidder shall not convey to the Contractor any right to or interest in such Confidential Information and the Commission shall retain all right and title to such Confidential Information at all times.

Bidder shall identify by name, title and location, individuals that will have access to such Confidential Information and the purpose for such access and attach such list to this Agreement. Bidder will need prior written approval from the Commission in the event that Bidder deems it necessary to provide access to other parties to Confidential Information. The Commission may deny such additional access.

4. **Protections.** Bidder 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.
5. **Return of Confidential Information.** Upon written request by the Commission, the Contractor shall return all Confidential Information to the Commission or certify in writing that the Confidential Information in its possession has been destroyed.

Note: Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirements set forth by this paragraph.

6. **Limitations.** Neither party shall be liable to the other hereunder for amounts representing loss of profits, loss of business or indirect, consequential, or punitive damages of the other party in connection with the provision or use of Confidential Information to the other party. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in the Information except as provided herein.
7. **Media Releases.** All media releases and public announcements or disclosures by the Bidder relating to this Agreement shall be coordinated with and approved by the Commission in writing prior to the release thereof.
8. **Miscellaneous.** Any notices required by this Agreement shall be given in hand, sent by first class mail, via facsimile or by e-mail to the applicable addresses set forth herein. The parties' obligations under this Agreement shall survive the completion of the RFP process, and shall bind the parties' employees, subcontractors, agents, heirs, successors and assigns. The parties agree that this Agreement is (a) the complete and exclusive statement between the parties with respect to the protection of the relevant Confidential Information; (b) may only be modified in writing by authorized representatives of the parties; and (c) shall be governed by the laws of the State of New York.
9. **Agreement Term.** The effective date of this agreement shall be February 11, 2016, the date on which the Data will be released to the Bidder, and shall continue unless the Data is returned or destroyed as provided in paragraph 5 of this Agreement.

IN WITNESS WHEREOF, the Commission and Bidder have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the date first set forth above.

BIDDER

NEW YORK STATE GAMING COMMISSION

By: _____

By: _____

Name:

Name:

Title:

Title:

Bidder Firm Name:

Federal Tax Identification #: