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REQUEST FOR PROPOSALS

FOR

Regulatory Compliance Consulting Services

C160001

January 20, 2016

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Notice to Bidders

- The Designated Contacts and Procurement Lobbying Restrictions that apply to this Request for Proposals (“RFP”) are outlined in Sections 1.10 and 1.11.
- Bidders are responsible for checking the Commission’s website for updated information relative to the procurement process and the RFP. The Commission will not be responsible for a bidder’s failure to obtain updated information.
- By submission of a Proposal in response to this RFP, the bidder agrees to the terms of the Contract in the form incorporated into the RFP, or as revised through the RFP process. As defined in Section 1.3 of the RFP, the Commission does not intend to negotiate terms of the Contract form after receipt of Proposals.
- By submission of a Proposal in response to this solicitation, the bidder agrees with all of the terms and conditions of Clause 12 of Appendix A – Equal Employment Opportunities for Minorities and Women.
 - **The EEO and M/WBE requirements are set forth in Section 2.15 and Appendix J of this RFP.**
 - **The M/WBE goal established under this RFP is 30%.**
- By submission of a Proposal in response to this solicitation, the bidder agrees to comply with the insurance requirements as defined in Section 2.14 of the RFP.
- To assist bidders in completion and submittal of the required documents, a **Technical Proposal Submittal Checklist** is incorporated into this RFP as **Attachment 3**.
- Bidders choosing not to submit a Proposal in response to this RFP are requested to submit the “**No Bid Response**” form, included in this RFP as **Appendix N**, as the information is useful to the Commission in the planning and development of future RFPs and bidders’ lists.

PART 1 – GENERAL INFORMATION

1.1 **INTRODUCTION**

The New York State Gaming Commission (the “Commission”), on behalf of the State of New York is issuing this Request for Proposals (“RFP”) to solicit Proposals from bidders seeking the award of regulatory compliance consulting services.

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

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 New York State statutes and regulations. The Proposal must include the 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.

1.2 **RESPONSIBILITIES PURSUANT TO CONTRACT AWARD**

The Bidder awarded a contract under this solicitation will perform regulatory compliance consulting services to ensure gaming facility licensees are in compliance with various regulations or license requirements. The services to be performed under a resulting contract are outlined in Part 3 of this RFP.

1.3 **FORM OF CONTRACTUAL AGREEMENT**

Following notification of award, the successful bidder will be expected to sign a contract with the Commission. The final Contract will be in the form incorporated into the RFP as **Appendix B** (the “Contract”), or as revised through the RFP amendment process. **Appendix A**, Standard Clauses for New York State Contracts, is incorporated into the Contract. The Contract will become binding and effective after approval by the Commission and the New York State Offices of the Attorney General and State Comptroller.

Every Bidder responding to this RFP must include in its Proposal a signed Contract in the form attached as **Appendix B**. 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. Therefore, any exception to the Contract must be raised in a bidder question submitted to the Commission pursuant to the Schedule and in accordance with the Question and Answer process set forth in this Part 1.

The Commission does not intend to negotiate any changes in the provisions of the Contract subsequent to the receipt of Proposals.

Failure to comply with this submission requirement will deem the Proposal non-responsive.

1.4 BACKGROUND INFORMATION

About the New York State Gaming Commission

The New York State Gaming Commission regulates all aspects of gaming and gambling activity in the state, including horse racing and pari-mutuel wagering, Class III Indian Gaming, the state lottery (including video lottery terminals) and charitable gaming.

The New York State Gaming Commission was formally created via Chapter 60 of the Laws of 2012 as part of the 2012/2013 Enacted State Budget.

The measure merged the New York State Racing and Wagering Board with the New York State Division of Lottery into a single state agency. The law also consolidated the administration of the New York Thoroughbred Breeding & Development Fund and The Agriculture & New York State Horse Breeding Development Fund into the Office of Racing Promotion and Development under the umbrella of the Gaming Commission.

The New York State Gaming Commission became effective February 1, 2013.

Gaming Commission Mission Statement

The New York State Gaming Commission's mission is to ensure that all lawful gaming and horse racing activity conducted in this State is of the highest integrity, credibility and quality. Operating in the most efficient and transparent manner, the Commission conducts the New York Lottery and serves the best interests of the public by providing responsive and effective state gaming regulation. The Commission strives to ensure that all stakeholders in the gaming and horse racing industries, including the consumers who wager on activities regulated or operated by the Commission, are treated in an equitable and responsible manner and to promote the health and safety of horses and all participants in racing. By consolidating various regulatory functions into one oversight body with broad powers, the Commission seeks to ensure fair and strict regulation of all gaming activity while reducing costs and regulatory burdens to the gaming industry. The Commission aspires to provide the regulatory structure necessary for New York gaming activity to operate effectively in a global, evolving and increasingly competitive marketplace to generate revenue for aid to education and for the support of government, and to contribute to overall economic development and job creation in New York.

About the New York State Commercial Casinos

On July 30, 2013, Governor Cuomo signed into law The Upstate New York Gaming Economic Development Act of 2013, which outlined the process and criteria for siting no more than four destination gaming resorts to create jobs, reduce unemployment in disadvantaged areas of the State, enhance the State's tourism industry and generate substantial revenue for public education and taxpayer relief. The Act provided for the Gaming Commission to award up to four Gaming Facility licenses within three Regions of the State: Hudson Valley/Catskill area, Capital Region, and Eastern Southern Tier.

On December 17, 2014 the Gaming Facility Location Board selected three Applicants and on December 21, 2015 the Gaming Facility Location Board selected one additional Applicant.

Below is a description of each of the gaming facilities to be built in New York State and under which the consulting services required under this RFP will apply.

Lago Resort & Casino

Located in Tyre, NY (Seneca County) will include at minimum:

- a. Gaming floor of no less than 90,000 square feet featuring no less than 1,950 slot machines and 84 table games, including a designated high-limit area within such gaming floor that will offer no less than 24 slot machines and four table games, a full service bar and a VIP lounge;
- b. Designated poker room within such gaming floor of no less than 2,830 square feet featuring a minimum of 10 poker tables;
- c. Hotel containing no less than 205 rooms (of which at least 135 are standard rooms, 40 are suite plus rooms, 10 are junior suites and 20 are two-bay suites), a salon, spa and fitness center;
- d. A two-level entertainment center of approximately 23,400 square feet with capacity for at least 800 people which will include a permanent stage suitable for meeting and conventions;
- e. At least four restaurants with an aggregate capacity for 565 patrons;
- f. At least two bar/lounges; and
- g. At least three retail outlets including one outlet featuring only New York and local goods.

Montreign Resort Casino

Located in Thompson, NY (Sullivan County) will include at minimum:

- a. Gaming floor of no less than an aggregate total of 90,000 square feet featuring no less than 2,150 slot machines, 102 table games and a 14 – 16 table poker room (inclusive of the poker room and VIP high-limit areas);
- b. Designated VIP/high-limit areas within such gaming floor which will offer a minimum of 26 slot machines, 8 table games, and a player's lounge with food and beverages;
- c. Hotel containing no less than 332 luxury rooms (including at least eight 1,000 – 1,200 square feet garden suites, seven 1,800 square feet, two story

- townhouse villas, and 12 penthouse-level suites), indoor pools and fitness center;
- d. A VIP floor containing 6 private VIP gaming salons, a private gaming cage, and butler service;
 - e. Multi-purpose meeting and entertainment space of no less than 27,000 square feet with seating capacity for 1,300 people and a mezzanine level that includes a minimum of 14 – 16 table poker room, access to an outdoor terrace and no less than 7,000 square feet of meeting room space;
 - f. Spa of no less than 7,500 square feet;
 - g. At least seven restaurants/food and beverage outlets (inclusive of the food court), with an aggregate capacity for at least 727 patrons;
 - h. At least four bar/lounges (including restaurant bars) with capacity for at least 141 patrons.
 - i. Adelaar Entertainment Village of no less than 50,000 but no more than 200,000 square feet with dining facilities and retail shops; and
 - j. Monster golf course.

Rivers Resort & Casino Schenectady

Located in Schenectady, NY (Schenectady County) will include at minimum:

- a. Gaming floor of approximately 51,000 square feet, which will allow for approximately 1,150 slot machines and 77 table games;
- b. Designated high-limit areas within such gaming floor, which will allow for approximately 42 high-limit slot machines, and six high-limit tables;
- c. A VIP lounge with cocktail bar and private outdoor patio or similar amenities adjacent to or near the high-limit area;
- d. Multi-purpose meeting and convention space of approximately 13,000 square feet allowing for approximately 500 people and access to an outdoor, riverfront patio;
- e. Spa or similar amenities of approximately 1,550 square feet;
- f. Restaurants, with an aggregate capacity for approximately 523 patrons, including approximately 2,900 square foot sports-themed, or other entertainment lounge; and
- g. Bar/lounges.

Rivers shall also cause to be built a hotel with amenities, which, as stated in their application, will have an attached 150-room hotel.

Tioga Downs Casino & Racing

Located in Nichols, NY (Tioga County) will include at minimum:

- a. 32,590 sq. ft. casino, including the existing and newly-expanded casino floor with a designated high limit area;
- b. 161-room hotel with a fitness center, spa and indoor and outdoor pools (with the fitness center and pools being open to hotel guests only and the spa being open to the public);
- c. 6,652 sq. ft. flexible meeting/entertainment center with pre-function, back of house and kitchen areas;
- d. 3 primary restaurants, plus various fast-food concession options located throughout the property;

- e. 7 bars/lounges including bars, restaurants with bars and outdoor terraces;
- f. Outdoor concert venue (primarily using the infield of the racetrack) having capacity for 12,000;
- g. "Event Tent" for hosting outdoor events having capacity for 200;
- h. Waterslide and plunge pool (open to the public);
- i. "Live" harness horseracing from May to September on a 5/8-mile track with a 1,225-seat grandstand; and
- j. Designated space located near the horse barns for hosting of a Farmer's Market and an Antique Market.

1.5 MINIMUM QUALIFICATIONS

Any Bidder submitting a Proposal in response to this RFP must meet the minimum qualifications listed below. Information demonstrating the qualifications defined below must be incorporated into the bidder's response to Part 4 of this RFP – Information Required from Bidders.

- A) Bidder must submit evidence that it is an established firm with at least three (3) years demonstrated experience similar in scope to the work required under this RFP, such as consulting services related to New York State Laws, Rules and Regulations surrounding procurement or implementation of Article 15-A.
- B) Have experience evaluating compliance with diversity practices and Minority and Woman Owned Business utilization, procurement solicitations and contracts that promote and encourage maximum feasible MWBE participations, and compiling statistical data.
- C) Not hold an existing license or direct contract under the Commission or any of its Divisions, Bureaus, offices or regulated entities including perspective gaming facility licensees.

1.6 SCHEDULE

The following dates are established for informational and planning purposes. The Commission reserves the right to make adjustments to this schedule.

RFP Issued	January 20, 2016
First Bidders' Questions Due by 3:00 pm	February 3, 2016
Commission Responses to First Questions	February 5, 2016
Second Bidders' Questions Due by 3:00 pm	February 9, 2016
Commission Responses to Second Questions	February 11, 2016
Bidder Proposals Due by 3:00 pm	February 24, 2016
Anticipated Contract Start Date	May 16, 2016

1.7 RFP APPENDICES AND ATTACHMENTS

The following documents are incorporated into this RFP:

- Appendix A: Standard Clauses for New York State Contracts
- Appendix B: Contract Form (incorporates Appendix A)
- Appendix C: Procurement Lobbying – Bidder/Offeror Disclosure
- Appendix D: Non-Collusive Bidding Certification
- Appendix E: New York State Vendor Responsibility Questionnaire
- Appendix F: W-9 Form – Vendor Identification Number
- Appendix G: Electronic Payment Authorization
- Appendix H: Consultant Disclosure – Forms A and B
- Appendix I: Contractor Certification – Tax Law Section 5-a
- Appendix J: EEO and M/WBE Program
- Appendix K: MWBE Diversity Practices
- Appendix L: NY Subcontractors and Suppliers
- Appendix M: Use of Service-Disabled Veteran-Owned Business Enterprises
in Contract Performance
- Appendix N: No Bid Response

- Attachment 1: Bidder Acknowledgement of Addendum
- Attachment 2: Pricing Proposal Form
- Attachment 3: Technical Proposal Submittal Checklist
- Attachment 4: Links to Reference Materials
 - MWBE Article 15-A
 - MWBE Rules and Regulations
 - NYS Gaming Commission Rules and Regulations 9
NYCRR § 5311
 - Service Disabled Veteran Owned Businesses
 - Article 8 of NY Labor Law:
 - Article 9, Section 135 of the New York State Finance
Law, Wicks Law
 - New York State Business Services Center Accounts
Payable Reference Guide for Vendors

1.8 BIDDER/CONTRACTOR DIFFERENTIATION

Throughout this RFP the terms "bidder", "vendor", "proposer", "consultant" 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 term "successful bidder", "contractor", "consultant" and "firm".

1.9 HEADINGS

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

1.10 PERMISSIBLE CONTACTS

Consistent with the public policy established by the Procurement Lobbying Law, described below, the Supervisor of Contract Administration or Contract Management Specialist designated below are the only points of contact with regard to matters relating to this RFP, unless additional points of contact are designated by them.

ALL BIDDERS RESPONDING TO THIS RFP AND ALL COMMUNICATIONS CONCERNING THIS PROCUREMENT MUST BE ADDRESSED IN WRITING TO THE SUPERVISOR OF CONTRACT ADMINISTRATION OR CONTRACT MANAGEMENT SPECIALIST AS NOTED BELOW:

New York State Gaming Commission
Contracts Office
One Broadway Center
Schenectady, NY 12301-7500

Gail P. Thorpe, Supervisor of Contract Administration
gail.thorpe@gaming.ny.gov

or

Stacey Relation, Contract Management Specialist 2
stacey.relation@gaming.ny.gov

1.11 PROCUREMENT LOBBYING RESTRICTIONS

As required by the Procurement Lobbying Law (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 Office of the State Comptroller (“restricted period”) to other than designated staff members unless the contact is permitted by the statutory exceptions set forth in New York 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 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 Finance Law 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 this Contract.

The BIDDER DISCLOSURE/CERTIFICATION FORM, included with this RFP as Appendix C, must be completed and submitted with the Response.

1.12 QUESTIONS AND INQUIRIES

Questions from bidders regarding this RFP must be submitted via electronic mail no later than the date and time specified in the Schedule in Part 1 of this RFP. **Neither faxed nor telephone questions are acceptable.** If questions are provided via an attachment to electronic mail, the questions must be provided in Microsoft Word format.

Bidders are cautioned that any question or inquiry regarding the RFP must be written in generic terms and must not contain pricing information. The inclusion of specific information about a bidder's Pricing Proposal 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.

A Bidder **Acknowledgement of Addendum form**, incorporated into this RFP as **Attachment 1**, will be provided with each addendum. Bidders are required to include a signed Acknowledgement Form for each addendum with their respective Proposals.

1.13 NON-COLLUSIVE BIDDING REQUIREMENT

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

The Non-Collusive Bidding Certification Form, included in this RFP as Appendix D, must be completed and submitted with the Proposal.

1.14 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE

Bidder agrees to fully and accurately complete the NYS Vendor Responsibility Questionnaire (hereinafter the "Questionnaire"), which is available online at: http://www.osc.state.ny.us/vendrep/documents/system/welcome_package.pdf

Contractors are encouraged to complete the online form, as it will expedite Contract approval. If you do not have an online Questionnaire that is current and certified, you must complete the hardcopy Questionnaire attached as **Appendix E**. The bidder acknowledges that the State'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 contractor. 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 contractor as a result of such termination.

Unless the Questionnaire has been filed on-line, the Questionnaire included in this RFP as Appendix E must be completed and submitted with the proposal.

1.15 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). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise. This exception applies both during and after the evaluation process.

If you believe your firm's Proposal contains any such trade secrets or other confidential information, you must submit a request with your Proposal to exempt such information from disclosure. Such request must: (a) identify the specific material in the Proposal; (b) identify the location (section, page number) of such material; (c) state the reasons why the information should be exempted from disclosure.

Requests for exemption of the entire contents of a Proposal from disclosure have generally 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 a substantial injury to the competitive position of your firm.

Upon receipt of 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. The designation shall not become final until accepted by the Commission via formal letter. Once the 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 upon a FOIL request.

1.16 PROPOSALS

Bidders must submit a complete Proposal as outlined below. A Proposal that does not comply with these requirements may be deemed non-responsive.

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 in each Proposal; however, bidders should prepare their Proposals simply and economically, providing a straightforward and concise description of their abilities to satisfy the requirements of this RFP. Proposals containing preponderance of boilerplate text, are discouraged. Special bindings, colored displays, promotional material, etc., 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 non-responsive Proposal. Responses to complex RFP requirements that are stated in a form semantically equivalent to "bidder agrees to comply" may be rejected for non-responsiveness at the discretion of the Commission.

B. **Proposal Format:**

Each bidder must submit a complete Proposal in the format described below and in response to the RFP.

Each Proposal must consist of two (2) volumes: Volume 1 - Technical Proposal and Volume II - Pricing Proposal. Each Volume must be sealed separately from the other and packaged together when submitted to the Commission as defined in Item C of this section.

Volume I – Technical (non-price) Proposal:

The Technical Proposal must include a transmittal letter, signed in ink by an official authorized to bind the bidder to its provisions, and must include

Information outlined below in Item 1.

This 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 1) must 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, a **Technical Proposal Submittal Checklist** is incorporated into this RFP as **Attachment 3**. This Checklist must be completed and included with the bidder's Technical Proposal.

1. Transmittal Letter: The transmittal letter must be signed and shall contain names, addresses (physical and e-mail), 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 must also contain explicit formal agreement by the bidder to comply with all contractual provisions and contain a statement that the Proposal will remain valid at least 180 days from due date of Proposals.

2. Technical Proposal Submittal Checklist – Attachment 3
3. Acknowledgement Form (Attachment 1) of all RFP addenda.
4. Signed Contract (Appendix B) (Section 1.3).
5. Designation of proprietary information in the form described in this RFP (Section 1.15).
6. Disclosure of Litigation and Other Information (Section 1.20).
7. Conflict of Interest Disclosure (Section 1.21).
8. Certifications and representations as required by this RFP and as listed in the Technical Proposal Submittal Checklist.
9. Response to specifications and in the order provided for in Part 4 – Information Required from Bidders, including technical documentation as appendices.

Volume II – Pricing Proposal:

The Pricing Proposal must be prepared as provided in Part 4 of this RFP using the Pricing Proposal form provided as **Attachment 2 (pages 1 and**

2) of this RFP. Bidders should carefully review the basis and terms of compensation set forth. Any deviation from this format may cause the Proposal to be deemed non-responsive.

The contents of the Pricing Proposal volume must follow this outline:

1. Transmittal letter.
2. Pricing in the format provided as Attachment 2.

C. Proposal Submission:

Both Volumes of each Proposal must be submitted to the Commission as set forth below, and must be received by the date and time set forth in the Schedule in Part 1 of this RFP. Originals should be clearly marked so as to differentiate from the copies.

Technical Proposal

Both hardcopy and electronic versions of the entire Technical Proposal must be submitted as noted below and must be marked clearly to differentiate.

- **Hardcopy: Two originals and five copies.**
- **Electronic: Three USB Memory Sticks containing a PDF file.**

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

The electronic version must mirror the full Technical Proposal.

Note: If there are any differences between the hardcopy and electronic versions of the Technical Proposal, the hard copy version will be deemed to be the Proposal considered.

Pricing Proposal

Both hardcopy and electronic versions of the entire Pricing Proposal must be submitted as noted below and must be marked clearly to differentiate.

- **Hardcopy: Two originals and two copies.**
- **Electronic: Two USB Memory Sticks containing a PDF file.**

The electronic version must mirror the full Technical Proposal.

Note: If there are any differences between the hardcopy and electronic versions of the Pricing Proposal, the hard copy version will be deemed to be the Proposal considered.

Packaging the Proposals

Each Volume of the Proposal must be separately sealed and labeled to identify the Volumes. The separately, sealed, Volumes should then be packaged together and the package must contain the following identifying information on the outside of the package:

Identification label containing: "Sealed Proposal", the RFP Contract number from the RFP cover page, company or organization name, Proposal due date and time from the Schedule in Part 1 of the RFP.

If a delivery service is used which prohibits such markings on the envelope or package, this information must be placed on the outside of an interior envelope or package.

The address for Proposals submitted by Contract carrier, courier delivery, in person delivery, or by U. S. Postal Service is:

Gail P. Thorpe
Supervisor of Contract Administration
New York State Gaming Commission
Contracts Management Unit – 4th Floor
One Broadway Center
Schenectady, NY 12301-7500

If a Proposal is to be delivered by a method other than U.S. Postal Service, the bidder should contact the Contract Management Specialist 2 or the Supervisor of Contract Administration, identified in this RFP, prior to delivery to assure proper receipt of the Proposal. **Fax or e-mail submissions are not acceptable and will not be considered.**

D. Proposal Receipt:

If hand delivered, an individual from the Commission's Contract Administration Office will provide a receipt indicating when the Proposal is received at the Security Desk in the Commission's Lobby on the ground floor of One Broadway Center. The time indicated on this receipt will be the official time of receipt. In addition, whether hand delivered or delivered by any other method, the Commission will confirm receipt by electronic mail.

Upon receipt of a Proposal, the Pricing Proposal (**Volume II**) will be secured by the Commission's Finance Office and will not be opened (or accessible) 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 members at the start of the evaluation process.

E. Late Proposal:

A Proposal must be received by the Commission on or before the due date and time specified in the Schedule – Part 1 of this 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.

F. Joint Proposals:

Two or more firms may join together to submit a Proposal in response to this RFP. If a joint Proposal is submitted, the Proposal must define the responsibilities that each firm is proposing to undertake. Of the firms submitting a joint Proposal, one must be designated as the primary bidder. Any Contract award issued as a result of such a submission will be made exclusively to the primary bidder. A joint Proposal must designate a single authorized official from one of the firms participating in such joint Proposal to serve as the sole point of contact between the Commission and the firms that are responding together.

G. Multiple Proposals from one bidder Prohibited:

Multiple Proposals from one bidder is 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. The inclusion of options accommodates the purpose of defining alternatives through multiple Proposals.

H. Costs Associated with Preparation of Proposals:

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

1.17 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 enhance, a Proposal.

Requests for clarification may occur throughout the Proposal submission review and/or the Proposal evaluation process. Clarification responses must be in writing and must address only the information requested. Responses must be submitted to the Commission within the time stipulated at the time of the request. As applicable, clarifications will be treated as addendums to the bidder's Proposal.

1.18 SITE VISITS

The Commission may visit any site where the bidder conducts, or has conducted, operations similar to the services required in this RFP. The bidder shall cooperate in arranging and coordinating such site visits, but the bidder shall not be permitted to pay for any travel, accommodations, or other expenses of such site visits.

1.19 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 and the Federal Bureau of Investigation, 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 substantial subcontractor is a subsidiary of a parent entity, the Commission may request the above disclosures from the parent entity as the Commission may require in its sole discretion.

1.20 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 must 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 in termination of a Contract. **Such disclosures must be included in 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, must be disclosed to the Commission in a timely manner in a written statement to the Commission.

1.21 CONFLICTS OF INTEREST

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

Any Bidder awarded a contract under this RFP will have an on-going obligation to inform the Commission of any actual or apparent conflicts of interest.

1.22 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 Commission designee, at the time the change occurs or is identified. Failure to notify the Executive Director of the Commission, or Commission designee, of such a change may result in rejection of bidder's Proposal or termination of the Contract, in the sole discretion of the Commission.

1.23 CHANGE IN OWNERSHIP

If a bidder experiences a material change in ownership prior to the award of a Contract or during the term of a Contract with the Commission, the bidder is required to notify in writing the Executive Director of the Commission 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 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 bidder's Proposal or terminate a Contract.

1.24 NEWS RELEASES

A news release pertaining to this RFP or the services, evaluation, or project to which this RFP relates may not 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.

1.25 ADVERTISING

Each respondent 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.

1.26 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 Technical and Pricing Proposals in response to the RFP specifications and as defined in Part 5 of this RFP.

1.27 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 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 Proposals 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 Proposals;
- I. Use Proposal information obtained through site visits, management interviews and the State's 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. Set aside the original successful bidder if the Commission determines that the bidder is non-responsible. The Commission may then award a Contract to the responsible bidder with the next highest total combined score.

1.28 PROTEST OR APPEAL

In the event that a bidder decides to protest the award decision, the following protest procedures will be followed:

- Any protest of the award decision must be filed with the Commission, no later than ten business days following the date of written Notification of Award to the unsuccessful bidder.
- The protest must clearly state the basis for the protest and include all relevant documentation supporting such protest.
- The Commission will conduct a review of the protest and will issue a written determination to the protesting party within 15 business days of receipt of the protest. If additional time for issuance of the determination is necessary, the Commission will 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.
- If an unsuccessful bidder decides to appeal the Commission's protest determination, the unsuccessful bidder must submit such an appeal to the New York State Office of the State Comptroller (OSC), Bureau of Contracts ("BOC"), within ten business days of receipt of the Commission's final written determination. The protest appeal must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the Contract award by the Commission. A copy of the appeal must 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 must contain written affirmation that a copy of the appeal has been served as required by this paragraph.
- The appeal must be filed with: Charlotte Breeyear, Director, Bureau of Contracts – 11th Floor, New York State Office of the State Comptroller, 110 State Street, Albany, NY 12236.

- The Commission will submit an answer to the appeal to the OSC BOC simultaneously with the delivery of the Contract to the OSC BOC for its review, or within seven business days of the submission of the appeal, whichever is later. The Commission's answer to the appeal must include written affirmation that, simultaneous with the submission to OSC, the answer was transmitted to the protestor and the successful bidder(s).
- A successful bidder may, but is not required to, submit an answer to the appeal with the OSC BOC. Such answer must include written affirmation that the answer was simultaneously delivered to the Commission and the protestor and must meet the submission requirements as noted above for the Commission.
- The OSC BOC shall evaluate the merits of the protest, the Commission's determination and any response submitted by an interested party. In its review, the OSC 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 it deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted.
- The OSC BOC shall 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 2 – CONTRACTUAL PROVISIONS

2.1 **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. Any and all disputes of claims arising under this RFP or any 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; and, 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.

2.2 **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

Appendix A - Standard Clauses for New York State Contracts is attached. **Appendix A** becomes part of all New York State Contracts and is incorporated in the Contract form – **Appendix B** of this RFP.

2.3 **CONTRACT ELEMENTS**

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

- Appendix A – Standard Clauses for New York State Contracts
- Addendums to the Contract
- Contract
- Clarifications and Addendums to the RFP
- RFP
- 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.

2.4 **SEVERABILITY**

If a court of competent jurisdiction determines any portion of a Contract to be invalid, it shall be severed and the remaining portion of a Contract shall remain in effect.

2.5 **TERM OF CONTRACT**

The contract will commence upon approval of the Office of the State Comptroller and will be effective for five years.

2.6 COMPENSATION

Contractor will be compensated for services provided in accordance with the Scope of Work, defined in Part 3 of this RFP, at the hourly rates set forth in the Pricing Proposal (Attachment 2).

The pricing shall be inclusive of all costs associated with carrying out the duties described in the scope of work. The rates proposed in the Pricing Proposal shall be guaranteed for the term of the contract.

Travel is not anticipated under the scope of work and will not be compensated.

2.7 CONTRACT INVOICING AND PAYMENT

Monthly invoices shall be itemized and must be categorized by gaming facility. Each invoice must reflect the number of hours worked by each staff title consistent with the Pricing Proposal.

Payment under the Contract will be in accordance with New York State Prompt Payment Law (Article 11-A of the New York State Finance Law). 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.

Itemized invoices shall be submitted as a PDF email attachment on a monthly basis and directed to the New York State Business Service Center at accountspayable@ogs.ny.gov and copy the Commission's Finance Office at Erin.ODonovan@gaming.ny.gov. The Commission shall promptly process all payments due to the consultant that conform to the provisions of this RFP and are approved by the Commission's Contract Administrator and Finance Officer.

2.8 VENDOR IDENTIFICATION NUMBER

Substitute Form W-9: In order 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 you do not already have a Vendor ID Number, the Substitute Form W-9 must be completed and submitted directly to the Commission upon notification of award. The purpose of the Substitute Form W-9, which will capture the contractor's taxpayer identification number, business name, and business contact person, is to allow the State to establish a vendor file in the State Financial System. Note: IRS Form W-9 is not acceptable for this purpose.

The Substitute Form W-9 is included in this RFP as Appendix F.

2.9 ELECTRONIC PAYMENT (EPAY) PROGRAM

In accordance with a directive by the New York State Division of the Budget, if awarded a Contract under this RFP the contractor will be required to enroll in the Electronic Payment ("epay") Program through the OSC. Upon execution of the Contract the contractor will need to submit an Electronic Payment Authorization

Form. Additional information and procedures for enrollment into the epay program can be found at OSC's website: <http://www.osc.state.ny.us/epay>.

The Electronic Payment Authorization Form, Appendix G is included with this RFP for reference and convenience.

2.10 CONSULTANT DISCLOSURE

The contractor must comply with the requirements of New York State Finance Law Section 163(4) (g), which imposes certain reporting requirements on contractors doing business as vendors with New York State. In furtherance of these reporting requirements, the contractor agrees to complete and submit Contractor's Planned Employment report (**Appendix H – Form A**) within two (2) business days after receiving notice of a Contract award and Contractor's Annual Employment Report (**Appendix H – Form B**) by May 15th for each fiscal year (April 1 – March 31) the Contract term is in effect. Page two of each form provides the necessary addresses for submitting the form.

While the Planned Employment report (Form A) is a one-time projection of the planned employment under the upcoming Contract term, the Annual Employment Report (Form B) is a reporting of the actual employment history for the previous fiscal year.

Forms A and B should be completed as follows:

- **Employment Category:** The contractor must use specific occupation titles as listed in the O*net occupational classification system found through the U.S. Department of Labor's Employment and Training Administration (www.online.onetcenter.org). The classification system provides a code for various occupational titles; the contractor should use the code that best defines the employment titles to be utilized under the Contract.
- **Number of Employees:** Enter the number of employees in the employment category employed to provide services (Form A), or who have performed services (Form B), during the reporting period, including part-time employees and employees of subcontractors.
- **Number of Hours Worked or to be Worked:** Enter the number of hours to be worked (Form A), or worked (Form B) under the employment category for the reporting period.
- **Amount payable or paid under the Contract:** Enter the estimated amount to be paid (Form A), or actually paid (Form B) for each employment category for the reporting period.
- **Scope of Contract (Form B only):** Choose the category that best describes the predominate nature of the services performed under the Contract.

2.11 TRANSITION

Upon expiration or termination of this Agreement, the Contractor shall, upon the appointment of the successor contractor, provide such successor contractor

access to all necessary records in the Contractor's possession relating to the services provided under this Agreement. At the Commission's request, the Contractor shall, at no cost to the Commission, also make appropriate staff available to the Commission and to the successor contractor during normal business hours to answer questions regarding such records and the services which have been provided by the Contractor under this Agreement. The Contractor shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that the services required are uninterrupted and are not adversely impacted by the change in contractor.

Work in progress by the contractor, at the time of transition to a successor contractor, shall remain the responsibility of the current contractor until completion of the work. Such work will be carried out in accordance with the terms and conditions, including rates, under the existing Contract.

2.12 TAX LAW SECTION 5-A

The bidder awarded a Contract pursuant to this RFP must comply with the requirements of Tax Law Section 5-a, which requires persons awarded contracts valued at more than \$100,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor, or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person has made sales delivered within New York State of more than \$300,000 during the relevant period. The OSC or other responsible approver cannot approve the Contract unless the contractor is registered with the New York State Tax Department to collect sales and compensating use taxes.

The Contract Certification forms, included in this RFP as Appendix I – ST-220-TD and Appendix I – ST-220-CA, must be filed in compliance with Tax Law Section 5-a. Any bidder awarded under this RFP will, within seven calendar days of notification of award, file ST-220-TD directly with the Tax Department at the address provided on the form and ST-220-CA with the Commission.

Bidders can visit the New York State Department of Taxation and Finance website to obtain more information:

<http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>

2.13 INSURER QUALIFICATIONS

All insurance required under this RFP must be written by company rating of "A-" or better rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted (If coverage is provided by a non-admitted carrier, an ELANY Affidavit must accompany the certificate), and authorized to do business in the State of New York, and are approved by the Commission.

Required 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.

2.14 INSURANCE REQUIREMENTS

Prior to the start of work the Contractor 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 Insurance Department 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 carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Commission to accept insurance placed with a non-authorized carrier under any circumstances.

Upon award, the Contractor shall deliver to the Commission evidence of such policies as defined below. **Note:** Although, the Commission does not require the actual insurance contract/policy upon implementation of the Contract, the Contractor must submit such insurance contract/policy, and any renewals thereof, upon the Commission's request.

Throughout the Contract period, the contractor shall notify the Commission of any material changes to the policy, or any cancellations prior to the expiration date. The carrier shall also send notification of cancellation, termination, 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 this agreement must meet the following requirements:

1. Coverage Types and Policy Limits. The types of 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 in writing by the Commission. Under certain circumstances, the Commission may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the Commission prior to the expiration or cancellation of the policy.

3. Certificates of Insurance/Notices. Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before commencing any work under this Contract. Certificates shall be mailed using the contact information provided in Part 1 of this RFP.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to the Commission.

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 Contract.
- c. Specify the Additional Insureds and Named Insureds as required herein.
- d. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance and other attachments) will be accepted.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the Commission for any claim arising from the Contractor's Work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by the Commission shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance clause contained in the Commission's own policy of insurance.

5. Policy Renewal/Expiration. At least two weeks prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Commission than the expiring policies shall be delivered to the Commission in the manner required for service of notice in Paragraph A.3 above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the Commission, the Contractor shall immediately cease Work on the Project. The Contractor shall not resume Work on the Project until authorized to do so by the Commission. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to the Commission, shall not give rise to a delay claim or any other claim against the Commission. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided to the

Commission, the Commission may withhold further Contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the Contractor, require the Surety if, any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Contractor.

6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. Subcontractors. Should the Contractor engage a Sub-contractor, the Contractor shall endeavor to impose the insurance requirements of this document on the Sub-contractor, as applicable. Required insurance limits should be determined commensurate with the work of the Sub-contractor. Proof thereof shall be supplied to the Commission.

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), covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit: \$1,000,000
- General Aggregate: \$2,000,000
- Products/Completed Operations should equal the General Aggregate limit
- Personal Advertising Injury – \$1,000,000
- Damage to Rented Premises - \$50,000
- 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 insured's; products/completed operations for a term of no less than three years, commencing upon acceptance of the work, as required by the Contract; explosion, collapse, and underground hazards; contractor means and methods; liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the policy:

- CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- CG 20 10 11 85, or, an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B)

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name the Commission as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Commission. Any other insurance maintained by the Commission shall be in excess of and shall not contribute with the Contractor's or Subcontractor's insurance, regardless of the "Other Insurance" clause contained in either party's policy of insurance.

2. Workers' Compensation. For work to be performed in New York State, 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 NYS Workers' Compensation Law.

(a) Evidence of Workers' Compensation and Employers Liability coverage must be provided on **one** of the following forms specified by the Commissioner of the Workers' Compensation Board:

(1) C-105.2 (September 2007, or most current version) – Certificate of Workers' Compensation Insurance. Bidder must request its carrier to send this form to the Commission; or

(2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund. Bidder must request that the State Insurance Fund send this form to the Commission; or

(3) GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance.

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 coverage.)

All forms must name THE NEW YORK STATE GAMING COMMISSION as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

(b) If the Contractor is legally exempt from obtaining Workers' Compensation insurance coverage, Contractor must provide: **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage*

is Not Required which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us).

- (c) If the Contractor is self-insured, Contractor must provide: **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.

3. Disability Benefits. For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Disability Benefits Law.

- (a) Evidence of Disability Benefits coverage must be provided on: **Form DB-120.1** (May 2006 or most current version), *Certificate of Insurance Coverage under the NYS Disability Benefits Law*. Bidder must request its business insurance carrier to send this form to the Commission.
- (b) If the Contractor is legally exempt from obtaining Workers' Compensation Disability insurance, Contractor must provide: **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us).
- (c) If the Contractor is self-insured, Contractor must provide: **Form DB-155**, *Certificate of Disability Benefits Self-Insurance*.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

All forms must name THE NEW YORK STATE GAMING COMMISSION as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

2.15 CONTRACTOR 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 of the terms and conditions of Clause 12 of Appendix A – Equal Employment Opportunities for Minorities and Women.

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/contractor 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 M/WBE requirements are set forth in **Appendix J** of this RFP.

The M/WBE goal established under this RFP is 30%.

Contractor's diversity practices, based on the Diversity Practices Questionnaire (Appendix K) as well as the proposed utilization plan (Appendix J) will be evaluated as part of the scoring factor as further described in Parts 4 and 5 of the RFP.

2.16 SUCCESSFUL BIDDER RESPONSIBILITIES AS PRIMARY CONTRACTOR

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

The Contractor may have subcontractors; however, the Contractor must accept full responsibility for the performance of any such subcontractor. If any part of the work is to be subcontracted, responses to this RFP must include a list of subcontractors, as provided in Part 4 of this RFP.

2.17 APPROVAL OF STAFFING

The Commission reserves the right to review and, if perceived necessary, disapprove any employee of the successful bidder who is assigned to the Commission Contract, either at Contract inception or during the term or any extension thereof.

2.18 NEW YORK STATE SUBCONTRACTORS AND SUPPLIERS

Proposers are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Subcontractor and supplier requirements are set forth in Appendix L of this RFP.

2.19 NEW YORK STATE SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Pursuant to Article 17-B of New York State Executive Law, bidders shall consider businesses certified under the New York State Service-Disabled Veteran-Owned Business program in fulfillment of the requirements of the Contract. A list of NYS certified service-disabled veteran owned businesses (SDVOBs) can be accessed at: <http://ogs.ny.gov/Core/SDVOBA.asp>.

Any contractor who willfully and intentionally fails to comply with the service-disabled veteran owned business participation requirements of these regulations as set forth in such State contract shall be liable to the contracting agency for damages, and shall provide for other appropriate remedies on account of such breach. Damages shall be calculated based on the actual cost incurred by the State agency related to the State agency's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified service-disabled veteran-owned business enterprise programmatic goals.

The SDVOB goal established under this RFP is 6%.

The "Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance" Form, included with this RFP as Appendix M, must be completed and submitted with the Response.

2.20 SUB-CONTRACT APPROVAL

The Commission must approve subcontractors and may require the successful bidder to replace subcontractors who are determined to be unacceptable upon inception or during the term or any extension thereof. Subcontractors are subject to background checks of personnel and principals, and may also require bidder licensing.

2.21 DELEGATION AND/OR ASSIGNMENT

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

2.22 CODE OF CONDUCT FOR BIDDER

The Commission 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. Due to this, Contractors associated with the Commission are expected to:

- A. Offer goods and services only of the highest standards;
- B. Use their best efforts to prevent the 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, to do so in such a manner as to avoid unfavorable publicity for the industry;

- D. Avoid promotional activities that could be interpreted as improper and result in embarrassment to the industry;
- E. Report security problems or potential security problems promptly to the Commission;
- 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;

2.23 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 failure to perform or breach of Contract the bidder must ensure 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 must provide a list of any third party's intellectual property relevant to this procurement that the bidder is currently licensed to use.

2.24 COMMISSION SECURITY REQUIREMENTS

The Contractor, 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 Contractor, 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, prior to access to any Commission site, to be given a security clearance by Commission. Anyone seeking access to a Commission site must provide their name, address, date of birth, company affiliation, and a company point of contact for employment verification, at least one week prior to any site visit. Once preliminary access approval is granted by the Commission, all visitors to a site must provide two (2) forms of valid identification, including one photo ID and written authorization that they are acting on behalf of a designated employer and/or contractor. Only after site authorization is confirmed will access to the Commission site be approved.

A. Physical Security During the Delivery of Contracted Services

- (i) The Contractor shall be solely responsible for the safety and security of the project sites, facilities, and components under this Contract, with the exception that the Contractor is not responsible for overall building security at locations under the control and management of Commission, State, local or federal agencies. The Contractor 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 Contractor shall be responsible for and shall correct its failure or theft of any components or portion of the project due to the Contractor's inadequate physical and/or information security at its cost and expense.

(ii) 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 site security shall be of suitable strength and design, and shall reasonably withstand attempts to gain unauthorized access.

B. Access by Personnel

(i) The Prime Contractor, 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 this RFP. Such policies and procedures shall be communicated to the Contractor as a condition precedent to Contractor's obligations under this paragraph.

(ii) The Contractor warrants that each individual performing work under this RFP is legally eligible to work in the United States and that such eligibility shall be maintained at all times 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 Contractor, and its officers, agents, sub-contractors, 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 each individual proposed to perform work under the Contract. Each individual assigned to the project by or through the Contractor 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 at all times while physically present at any Commission site.

(iii) When an emergency or other circumstances occur which render 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 shall approve such individual's access prior to such individual accessing a site, system or data and the Commission may accompany such individual at all times when on-site.

(iv) The Commission reserves the right, in its sole discretion, and without liability to the Contractor'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 prior to such individual accessing a site, system or data and the Commission may accompany such individual at all times when on-site. The Commission reserves the right, in its sole discretion, and without liability to the Contractor'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 Contractor (A) who refuses to comply with the security procedures outlined in this section, or (B) where the Commission determines that the individual 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 Contractor is delayed or unable to perform under the Contract as a result of the Commission's denial of access to any individual(s) pursuant to this section.

PART 3- SCOPE OF WORK

3.1 SCOPE

The successful respondent to this Request For Proposal (RFP) shall, under the direction of the Commission's Director of Regulation and Compliance, perform the services described in this section to ensure that Gaming Facility Licensees and their Prime Contractors comply with Article 15-A of the Executive Law, Article 8 of the Labor Law, and section 135 of the State Finance Law. Such services shall include:

A. Compliance with Article 15-A of the Executive Law

Pursuant to section 1346(6) of the Racing, Pari-Mutuel Wagering and Breeding Law, Gaming Facility Licensees are subject to the provisions of Article 15-A of the Executive Law governing state agencies, and must satisfy the obligations of state agencies under Article 15-A of the Executive Law, the rules and regulations promulgated thereunder, and the regulations promulgated by the Commission under Title 9 of the New York Codes, Rules and Regulations ("NYCRR") within time limits defined by the Commission or Rule. In order to ensure Gaming Facility Licensee compliance, and that of their Prime Contractors, with such statutory and regulatory provisions, the successful respondent shall:

1. Assist in the development of Annual Goal Plans for Each Gaming Facility Licensee

The successful respondent shall, for each Gaming Facility Licensee, assist with development of a goal plan on an annual basis during such time and in a form as directed by the Commission. Annual goal plans provided by each Gaming Facility Licensee shall include, but not be limited to, information on the total expenditures estimated to be made by each Gaming Facility Licensee in the year that is the subject of the annual goal plan, a goal for the utilization of Minority and Women-Owned Business Enterprises ("MWBES") in such Gaming Facility Licensee's contracting activities, and a description of the strategy that each Gaming Facility Licensee shall undertake to achieve such goal. To assist with development of the annual goal plans, the successful respondent will be required to prepare a detailed analysis of those contracts expected to be awarded by each Gaming Facility Licensee for construction, construction-related services, non-construction-related services, and commodities to determine the maximum feasible goal for the utilization of MWBEs as prime contractors, subcontractors, and suppliers. The successful respondent will also assist the Gaming Facility Licensee in identifying certified MBE and WBE firms available and enlist the aid of the Division to provide goods and services and in creating a list to reference for all program participants from the New York State M/WBE Directory.

Annual goal plans are subject to approval by the Commission, pursuant to 9 NYCRR § 5311.3, and the successful respondent shall be required to take prompt action to assist Gaming Facility Licensees to remedy any submitted annual goal plan determined by the Commission to be deficient.

2. Assist in Determination of Contract-Specific Goals for the Utilization of MWBEs and Submit Contracts for Approval

The successful respondent shall develop protocols and procedures to ensure that all procurement solicitations and contracts, over \$25,000 for goods and services, and over \$100,000 for construction and construction-related services, by Gaming Facility Licensees are approved by the Commission prior to being released or executed. In addition, in conjunction with submitting each procurement solicitation and contract to the Commission for review, the successful respondent shall assist in determining goals for the utilization of MWBEs. Such goals shall be determined based upon the criteria set forth in 5 NYCRR § 142.2, and shall be stated in each procurement solicitation and contract in accordance with language to be provided to the successful respondent by the Commission.

A summary of the consultant's review of solicitations and contracts shall be provided to the Commission within three (3) business days of receipt of the documents.

3. Manage MWBE Utilization and Compliance for Each Contract

The successful respondent shall monitor all contracts entered into by the Gaming Facility Licensee, or its Prime Contractor, that include a goal for the utilization of MWBEs throughout the term of each contract. Specific duties shall include, but not be limited to:

- Assisting Gaming Facility Licensees, and their Prime Contractors, as necessary, in developing a strategy for MWBE outreach and inclusion;
- Collecting MWBE utilization plans from Prime Contractors pursuant to 5 NYCRR § 142.4;
- Monitoring payments to MWBEs and assisting in the resolution of any disputes between Gaming Facility Licensees and MWBEs, and Prime Contractors and MWBEs, included on the utilization plans of each;
- Ensuring that all contract expenditures and payments to MWBE subcontractors and suppliers, by Gaming Facility Licensees and their Prime Contractors, are entered into the New York State Contract System in a timely and accurate manner as directed by the Director of Regulation and Compliance;
- Engaging with Gaming Facility Licensees and their Prime Contractors in cases where the successful respondent determines that such Gaming Facility Licensee and Prime Contractors are unlikely to meet the goals for MWBE utilization applicable to their contracts, and providing technical support to assist each;
- The successful respondent will review each solicitation document and contract to ensure it meets the language requirements set by the Commission and will communicate such to the Commission and the Division of Minority and Women's Business Development. No procurement contract shall be effective unless and until such procurement contract has been reviewed and approved by the Commission;
- Such other duties as the Commission shall prescribe.

In instances where a Prime Contractor submits a request for a waiver of an MWBE goal assigned to a contract pursuant to 5 NYCRR § 142.7, the successful respondent shall

be responsible for ensuring that the Prime Contractor has fully documented its good faith efforts to include MWBEs on the contract, developing a recommendation as to whether the waiver request should be approved, and submitting the complete waiver request package to the Commission. Upon evaluation of the waiver request by the Commission, the successful respondent shall communicate the approval or denial of the waiver request to the Gaming Facility Licensee and the Prime Contractor and assist each party to the contract with enforcing the terms of any consequences for the failure of either to make a good faith effort to include MWBEs in the performance of the contract.

4. Manage EEO Record Collection and Reporting

As required by Article 15-A of the Executive Law, the Equal Employment Opportunities (“EEO”) work force utilization report is to be completed by each prime contractor, and any subcontractors to such prime contractors, performing work on a state contract as that term is defined in Article 15-A of the Executive Law.

The reports shall include the total number of employees in each occupational category for all payrolls completed in the reporting period applicable to each contract.

The consultant shall ensure timely reporting and submission of the workforce utilization reports in such form as is required by the Commissioner by the 15th day following each quarter end.

5. Reporting and Recordkeeping

The successful respondent shall assist each Gaming Facility Licensee in developing a recordkeeping system to ensure that all relevant records pertaining to each Gaming Facility Licensee’s annual goal plan are maintained and may be made available to the Commission within a reasonable period of time upon the Commission’s request. The successful respondent is required to make quarterly reports to the Commission on the efforts of each Gaming Facility Licensee to achieve the goal for MWBE utilization which establishes each respective annual goal plan. Quarterly reports shall be provided at such time and in such manner as directed by the Commission and shall include, but not necessarily be limited to, expenditures made by Gaming Facility Licensees to Prime Contractors and the payments by such Prime Contractors to MWBE subcontractors and suppliers.

6. Monitoring Overall Gaming Facility Licensee Utilization and Issuing Required Notices

The successful respondent shall, on an ongoing basis, monitor the efforts of each Gaming Facility Licensee to achieve MWBE utilization goals established by the annual goal plans of each respective Gaming Facility Licensee. In the event that the successful respondent determines that a Gaming Facility Licensee cannot achieve the MWBE utilization goals established in its annual goal plan, the successful respondent shall notify the Commission accordingly. Such notification shall include a description of the good faith efforts of the Gaming Facility Licensee to meet the MWBE utilization goals established in its annual goal plan, as described in 9 NYCRR § 5311.5. The successful respondent shall assist each Gaming Facility Licensee, as necessary, in

providing additional information to the Commission and modifying such Gaming Facility Licensee's annual goal plans pursuant to 9 NYCRR § 5311.6 and 9 NYCRR 5311.7.

B. Establishment of Workforce Enhancement Standards

The successful respondent shall assist each Gaming Facility Licensee in developing and implementing annual workforce diversity plans pursuant to 9 NYCRR § 5312.2. In addition, the successful respondent shall assist each Gaming Facility Licensee with preparing an annual assessment of its efforts to achieve its workforce diversity plans. Such annual assessment shall be submitted at such time and in such manner as directed by the Commission.

C. Additional Services

The consultant may be responsible for reviewing contracts for compliance with the requirements below:

1. Prevailing Wage Rates

As provided under Article 8 of New York State Labor Law, contractors and subcontractors must pay the prevailing rate of wage and supplements (fringe benefits) to all workers under a public work contract. Employers must pay the prevailing wage rate set for the locality where the work is performed. Prevailing wage is the pay rate set by law for work on public work projects. This applies to all laborers, workers or mechanics employed under a public work contract. The Bureau of Public Work administers Articles 8 and 9 of the New York State Labor Laws which stipulates that Public Works contracts:

- Obtain a Prevailing Rate Schedule;
- Include the schedule in the specifications for the contract;
- Make the schedule a part of the awarded contract;
- Submit a 'Notice of Contract Award' (PW-16) when the contract is awarded;
- Collect and maintain certified payroll records; and
- Submit a 'Notice of Completion / Cancellation of Project' (PW-200) when the contract is completed or if it is cancelled.

2. Wicks Law

Section 135 of the New York State Finance Law requires State entities to bid specific separate multiple prime contracts for certain public work projects where the total cost of the public work exceeds:

- a. \$3 million in Bronx, Kings, New York, Queens and Richmond counties;
- b. \$1.5 million in Nassau, Suffolk and Westchester counties; and
- c. \$0.5 million in all other counties

For projects within these thresholds, Wicks Law requires that the contract documents be subdivided into the following major prime contracts to permit separate and independent

bidding and award: (a) Construction; (b) Heating Ventilation and Air Conditioning (HVAC); (c) Plumbing; (d) Electrical.

For projects with costs below the thresholds above, a single contract may be utilized which includes the work of multiple trades. Such contracts are referred to as Wicks Exempt.

Note: In rare instances this requirement can be waived using a Project Labor Agreement.

PART – 4 INFORMATION REQUIRED FROM BIDDERS

In preparation of the Proposal, each bidder should pay special attention to the requirements and information being requested in order 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 non-responsive and removed from further consideration.

4.1 BUSINESS ORGANIZATION

The Proposal must include the information listed below.

1. 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 they are qualified and/or registered to do business in the State of New York.
2. Indicate the name, address (including e-mail) and telephone number of the individual from your organization that is authorized to enter into and bind the organization to the terms and conditions of its Proposal.
3. Provide a company organizational chart by staff title.
4. Provide information demonstrating the bidders' financial viability, integrity and stability, for example; financial statements or revenues.
5. 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 procurement.

4.2 EXPERIENCE OF THE BIDDER'S 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. Include sufficient detail to demonstrate the relevance of such experience.

The Proposal must include the following:

- Description of the bidder's organization that would be considered relevant to the successful accomplishment of the scope of work required herein, including employee capacity to undertake and successfully carry out the proposed services.

- The credentials of the organization and examples of past projects that illustrate such.
- Whether any of the experience described has been due to a subcontractor relationship and to what extent (prime and subcontractor roles and responsibilities).
- Detailed description of the organization's experience relative to the services outlined in Section 3.1.A and 3.1.B.
- A list of public works projects, if any, that the organization has reviewed, along with the duties and responsibilities of the firm on the projects (Section 3.1.C).
- Description of the organization's quality control program and how it will be applied to the work under a resulting contract.

4.3 REFERENCES

The firm must include at least three references relevant to any of the requested services. References must include company name, contact person (name, title, phone number, email address and mailing address) and include a general statement of the type of engagement performed for this reference.

If submitting a joint proposal, include an additional three references for the joint firm. If utilizing a subcontractor, include an additional three references for the subcontractor.

The Commission reserves the right to contact references as many times as is necessary and to contact as many references as is necessary to obtain a complete understanding of the bidder's performance and experience. The Committee also reserves the right to request additional or alternative references to those provided in the Proposal, as needed.

References will be used to substantiate the technical proposal.

4.4 CONFLICTS OF INTEREST

Bidders must address the issue of potential conflicts of interest which might create the opportunity for improper use of the information or resources provided in this or in any other contract with the State of New York. Failure to disclose an existing or potential conflict of interest in the bidder's proposal shall be sufficient cause for disqualification of a proposal or cancellation of a contract. If no conflict of interest exists, the bidder must attest to that in its response.

Each bidder must:

- Fully disclose all relationships that exist between it and all related or independent entities which might have any relationship with certified MWBE firms that may provide work for the Commission or its contractors.
- Fully disclose all relationships that exist between it and gaming facility licensees.
- Provide a detailed explanation of its corporate structure and of its relationship to any other corporate entities within the same corporate family which have an existing relationship with the State of New York.
- Provide a detailed explanation of how any relationship that might create the appearance of possible opportunities for improper activities will be modified to guarantee that no improper activity can take place.

NOTE: Relevant to bidder response to Sections 4.5 and 4.6 below.

When considering your response to Section 4.5, Project Management and Staffing, and Section 4.6, Work Plan, assume that each gaming facility licensee will have approximately forty (40) solicitations as well as resulting contracts for each quarter in the first contract year. When developing your proposal, please consider assigned staff accordingly.

This assumption is an estimation of the work that may be required under a resulting contract and is provided to guide the bidder in providing a response as well as for the Commission's evaluation of the organization's ability to perform the services, including the dedication of staffing.

The number of solicitations issued, resulting contracts, subcontracts, reports, data entry, etc. required throughout the contract term will vary by each facility, and will fluctuate over time. There is no guaranteed minimum or maximum work to be performed under the resulting contract.

4.5 PROJECT MANAGEMENT AND STAFFING

The Proposal must include the information listed below.

- A. Identify all staff (name and title/position), including a full time dedicated staff project director, principal supervisory and management staff, and other personnel to be used under an ensuing Contract. 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.

Note: If staff is "To Be Determined", bidder must indicate the staff title and the qualifications and attributes required for the position.

- B. Provide resumes (not biographies) for all proposed staff indicating the relevant experience of each individual. **Biographies do not provide sufficient information to allow for adequate evaluation of the individual's capabilities.**
- C. Indicate the role each staff will have in the project and the anticipated percentage of time allocated for each individual in the proposed work effort.
- Note:** staff **levels** provided in response to this section must agree with staff **levels** provided in Attachment 2, Pricing Proposal. **Do not provide any cost information in this section.**
- D. Indicate the organization's hiring practices, including suitability standards.
- E. Describe the organization's training philosophy and training process for new employees.
- F. If applicable, list all subcontractors, to be utilized, 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 too should be indicated in the Technical Proposal.

4.6 WORK PLAN

Describe your firm's approach to planning, organization, implementation, and management of a project in accordance with the requirements outlined in this RFP. Such factors shall include, but not be limited to: communication, approach to problem solving, tracking, internal controls, and quality improvement.

Discuss specific outreach activities the organization will perform to assist in the Commission's utilization efforts through the gaming facility licensees.

Describe the organizations approach to measurement of progress in relation to each gaming facility licensee meeting the MWBE goals.

Discuss your firm's procedures and guidelines for collecting, reviewing and monitoring utilization reports, as well as resolving payment discrepancies reported by MWBE firms.

Discuss your firm's procedures and guidelines for MWBE utilization in the following situations:

- a. When utilization reports are delinquent or inadequate.
- b. When a contractor or subcontractor fails to meet the utilization goals.

4.7 MWBE PLAN AND DIVERSITY PRACTICES

In addition to requirements specified in Section 2.15 of this RFP, each bidder must provide their Diversity Practices in the form provided in this RFP in **Appendix K**.

Pursuant to § 310(22) of Article 15A of New York State Executive Law, "Diversity Practices" shall mean the contractor's practices and policies with respect to:

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

Note: Bidders will be scored on this section pursuant to Part 5 of this RFP. All available points will be awarded based upon the proposed Utilization Plan (**Appendix J**) and the answers provided on the Diversity Practices Questionnaire (**Appendix K**). **Points will not be awarded based on a company's status as a certified MWBE firm.**

4.8 PRICING PROPOSAL

Utilizing **Attachment 2**, Pricing Proposal form, the bidder must provide a list of job titles and associated hourly rates for all personnel to be utilized under the Contract. Attachment 2 provides for hourly rates for each year of the contract term. The hourly rate associated with each job title will remain firm. Only titles/rates provided in the Pricing Proposal firm may be used throughout the Contract term. Payment will not be made for any title/rate utilized but not provided for in the Proposal.

Bidders must use Attachment 2 for their Pricing Proposal. Alternate forms will be considered non-responsive.

PART 5 – EVALUATION AND SELECTION

5.1 **INTRODUCTION**

This section describes the evaluation 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.

5.2 **EVALUATION METHODOLOGY**

The Commission will conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. In making a selection, the Commission will be represented by an Evaluation Committee (the "Committee") comprising Commission staff members. The Commission reserves the right to make changes in the Committee's membership as necessary.

Scoring of the Technical Proposals will be by consensus of the Committee. The Pricing Proposals will be scored by one or more individuals from the Commission's Finance Office designated by the Committee. **The relative weight of Technical to Price will be: Technical 60%; Price 40%.**

5.3 **EVALUATION AND AWARD STEPS**

The evaluation and award process will comprise all of the following:

- A. Pass/Fail evaluation of the minimum qualifying requirements of the bidder as provided for in Part 1 of this RFP.
- 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, using the requirements and criteria defined in this RFP.
- D. Proposal clarifications, if applicable.
- E. Scoring of Technical Proposals by the Committee.
- F. Assessment and scoring of Pricing Proposals after finalization of the technical scoring process and by one or more individuals from the Finance Office.

- G. Compilation, by staff of the Contract Administration Office, of the technical and pricing score of each bidder into a summary score sheet.
- H. Preparation of a Recommendation of Award Memorandum, on behalf of the Committee, by the Supervisor of Contract Administration. Signature by the Committee Chair on behalf of the Committee, of the final Memorandum.
- I. Submission of the Memorandum to the Commission Executive Director for review and acceptance of the Committee's recommendation and briefing of the Commission.
- J. Review and acceptance of the award by the Commissioners.
- K. Signature of the Memorandum by Commission Executive Director.
- L. Notice of Award.

5.4 INFORMATION FROM OTHER SOURCES

The Commission reserves the right to obtain from sources other than the bidder, 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 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.

5.5 EVALUATION & SELECTION CRITERIA

Proposals determined to comply with the requirements set forth in this RFP and submission requirements outlined in Part 4 – Information Required from Bidders – of this RFP will be evaluated based on the following criteria:

- A. Technical Evaluation - 60%
 - Experience of the Bidder's Organization (20 points)
 - Project Management & Staffing (15 points)
 - MWBE Diversity Practices (Appendix K) (5 points)
 - Work Plan (20 points)
- B. Pricing Evaluation - 40%

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 bidder.

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

5.6 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.

5.7 NOTICE OF AWARD

A Contract award notification letter will be sent to the successful bidder and unsuccessful bidders indicating award subject to approval by the Office of the Attorney General and Office of the State Comptroller.

No public discussion or news releases relating to this RFP or the resulting Contract shall be made by any bidder without the prior approval of the Commission.

5.8 DEBRIEFINGS

At the time of award notification, bidders will be advised of the opportunity for a debriefing by the Commission. Information shared during the debriefings will be in accordance with the FOIL.

APPENDIX A

Standard Clauses for NYS Contracts

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 \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). 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 because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. 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 (2NYCRR 105.4).

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

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

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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.

APPENDIX B

Contract (incorporates Appendix A)

REGULATORY COMPLIANCE CONSULTING SERVICES
C160001

THIS AGREEMENT made this _____ day of _____, 2016 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").

WHEREAS the Commission issued a Request for Proposals ("RFP") on January 20, 2016 soliciting proposals from qualified firms to provide Regulatory Compliance Consulting services, and clarified the requirements of the RFP with Questions and Answers dated February 5, 2016 and February 11, 2016 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [_____, 2016] (collectively, the "Proposal"), which received the highest total combined score from among competing proposals by the Commission's evaluation team;

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

1. Scope of Services. The Contractor agrees to provide the Commission with Regulatory Compliance Consulting Services, as more fully set forth in the RFP and the Proposal. Both the

RFP and the Proposal are hereby incorporated into this Agreement with the same force and effect as if they were fully set forth herein.

2. Term. This Agreement shall be effective upon approval of the Office of the New York State Comptroller, 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 Agreement and the Contractor shall not have any right to make a claim therefor. Expenditures under this contract shall not exceed [XXXXXX].

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

5. Mutual Cooperation. The objective of this Agreement is to provide Regulatory Compliance Consulting Services to the Commission as set forth in this Agreement. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective.

6. Termination.

(a) The Commission shall have the right to terminate this Agreement for convenience or for any of the following causes:

- (i) a material breach by the Contractor of any of the provisions of this Agreement;
- (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 Lottery or the Commission.

(b) In the event that the Commission decides to exercise the right to terminate this Agreement for cause, the Commission shall give the Contractor advance 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) The Commission reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Commission may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Agreement.

(d) 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 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. 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.

7. 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 Agreement. 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 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 confidentially 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 so long as the Contractor provides the Commission with notice of such disclosure requirement and 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 Agreement. The Contractor shall not make copies of any written Confidential Information 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 to 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.

8. Records Retention. Records required by this Agreement 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.

9. Notices. All notices required by this Agreement 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 of the Commission
One Broadway Center
Post Office Box 7500
Schenectady NY 12301-7500

(b) As to the Contractor:

Company Name:
Address:

10. Liability and Indemnification. The Contractor shall be responsible for all damages to life and property due to activities of the Contractor, as well as the subcontractors (if any), agents or employees of the Contractor in connection with performance of services under this agreement. The Contractor shall indemnify, defend, and save harmless the Commission and the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

- (a) The Contractor, its officers, employees, agents, successors and assigns,
and/or
- (b) A Subcontractor, its officers, employees, agents, successors and assigns.

11. Relationship. The relationship of the Contractor to the Commission arising out of this Agreement 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 by reason hereof, and that it will not by reason hereof, 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, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement 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, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

12. Force Majeure. A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, Force Majeure means fire, explosion, action of the elements, governmental interference, rationing 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.

Neither the Contractor nor the Commission shall be liable to the other for any delay in or failure of performance under the contract resulting from this RFP due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contracting Officer to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

13. Documents Incorporated. Appendix A, Standard Clauses for New York State Contracts dated January 2014, the RFP, and the Proposal are hereby incorporated herein to the same force and effect as if set forth at length hereat.

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

- (a) Appendix A – Standard Clauses for New York State Contracts;
- (b) Any amendments to the Agreement;
- (c) Agreement;

- (d) Request for Proposal and any clarifying responses by the Commission;
- (e) Vendor Proposal and any clarifying responses by the vendor.

15. Miscellaneous Provisions.

(a) 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.

(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 Agreement are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Agreement.

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

(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 Agreement as of the day and year first above written.

[CONTRACTOR NAME]

NEW YORK STATE
GAMING COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTORNEY GENERAL

COMPTROLLER
Thomas P. DiNapoli

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX C

**Procurement Lobbying
Bidder/Offeror Disclosure/Certification Form**

BIDDER/OFFERER DISCLOSURE/CERTIFICATION FORM

CONTRACT/PROJECT DESCRIPTION: Regulatory Compliance Consulting Services

CONTRACT/PROJECT NUMBER: #C160001

RESTRICTED PERIOD FOR THIS PROCUREMENT: January 20, 2016 through approval of the Office of the State Comptroller.

PERMISSABLE CONTACTS: Stacey Relation and Gail Thorpe

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):

(d) 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)

3. 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: _____

APPENDIX D

Non-Collusive Bidding Certification

**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 _____, 2016 as the act and deed of said corporation.

Title

Signature

APPENDIX E

NYS Vendor Responsibility Questionnaire



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

John A. Crotty, Commissioner
Peter J. Moschetti, Jr., Commissioner
John J. Poklemba, Commissioner
Barry Sample, Commissioner
Todd R. Snyder, Commissioner

Robert Williams, Executive Director
Edmund C. Burns, General Counsel

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:

<http://www.osc.state.ny.us/vendrep/documents/welcomepkg.pdf>

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 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. 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**

I. LEGAL BUSINESS ENTITY INFORMATION			
<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.

**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:
a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or
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**

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY	
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

APPENDIX F

Substitute Form W-9



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):

- Individual Sole Proprietor
 Partnership
 Limited Liability Co.
 Corporation
 Not For Profit
 Trusts/Estates
 Federal, State or Local Government
 Public Authority
 Disregarded Entity
 Other _____

Exempt Payee

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:

2. Remittance Address:

Number, Street, and Apartment or Suite Number

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

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.¹ 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.

¹ 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.

APPENDIX G

Electronic Payment Request

NYS Office of the State Comptroller Instructions for Electronic Payment (ePayment) Request

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

APPENDIX H

Consultant Disclosure

Form A: State Consultant Services – Contractor’s Planned Employment

Form B: State Consultant Services – Contractor’s Annual Employment

FORM A

**New York State Consultant Services
Contractor's Planned Employment**
From Contract Start Date Through the End of the Contract Term

State Agency Name: NYS Gaming Commission
 State Agency Department ID: 20050 Agency Business Unit:
 Contractor Name: Contract Number:
 Contract Start Date: / / Contract End Date: / /

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
Total this Page	0.00	0.00	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature: _____

Date Prepared: / /

FORM B

**New York State Consultant Services
Contractor's Annual Employment Report**
Report Period: April 1, to March 31,

Contracting State Agency Name: NYS Gaming Commission
 Contract Number: _____ Agency Business Unit: 20050
 Contract Term: / / to / / Agency Department ID:
 Contractor Name:
 Contractor Address:
 Description of Services Being Provided:

Scope of Contract (Choose one that best fits):
 Analysis Evaluation Research Training
 Data Processing Computer Programming Other IT consulting
 Engineering Architect Services Surveying Environmental Services
 Health Services Mental Health Services
 Accounting Auditing Paralegal Legal Other Consulting

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this Page	0.00	0.00	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature: _____

Date Prepared: / /

(Use additional pages, if necessary)

The State Consulting Services Annual Employment Report (this Form B) will be due no later than May 15th following each fiscal year the contract is in effect. The completed Report must be submitted to OSC, DCS, and the Gaming Commission at the addresses provided below.

OSC: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

DCS: NYS Department of Civil Service
Empire State Plaza
Albany, NY 12239

Gaming Commission: NYS Gaming Commission
Finance Office
One Broadway Center
Schenectady, NY 12305
Attn: Gail Thorpe

By email: gail.thorpe@gaming.ny.gov

If you have any questions regarding this requirement under the Consultant Disclosure Law, please contact Gail Thorpe via email or at (518) 388-3329.

APPENDIX I

Sales & Use Tax (Section 5-a – Tax Law)

ST-220-CA: Contractor Certification to Covered Agency

ST-220-TD: Contractor Certification to Tax Department



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.



Contractor Certification

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

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

Contractor name				
Contractor's principal place of business		City	State	ZIP code
Contractor's mailing address (if different than above)		City	State	ZIP code
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		Contractor's telephone number ()	
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

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



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

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



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

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

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

Section 1 – Contractor registration status

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

Section 2 – Affiliate registration status

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

Section 3 – Subcontractor registration status

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

(Mark an X in the appropriate box and complete the accompanying statement.)

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

Notary Public
Registration No. _____

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: List of MWBE Contractors Quarterly Subcontracting/Supplier Activity Report of Certified MWBE Enterprises Utilized

J-7: MWBE Request for Waiver Form

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

II. Contract Goals

- A. For purposes of this solicitation, the Commission hereby establishes an overall goal of 30% for MWBE participation, based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

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

- C. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document “good faith efforts” to provide meaningful

participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Commission for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated thereunder by the Division of Minority and Women's Business Development of the New York State Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. The Contractor shall comply with the following provisions of Article 15-A:
1. Each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the 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 Subcontractor does not have an existing EEO policy statement, the Commission may provide the Contractor or Subcontractor a model statement (see Form – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other

agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

C. 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, but no later than the time of award of the contract.

D. Form J-3- Workforce Employment Utilization Report ("Workforce Report")

1. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report, in such format as shall be required by the Commission on a quarterly basis during the term of the contract.
2. Separate forms shall be completed by Contractor and any Subcontractor.
3. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

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

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.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 use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Commission shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness.

V. Waivers

- A. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the Commission.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Commission shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Commission, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the 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 Bidder may arrange to provide such evidence via a non-electronic method to the Commission by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where the Commission determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the 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 by the Commission unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Commission.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

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

M/WBE

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

- (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 bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____30% Minority and Women's Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % 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 shall be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to Stacey.relation@gaming.ny.gov within ten (10) days of the end of each month or quarter, whichever is applicable.

Instructions for Completing the Workforce Utilization Report

1. Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. Enter the number of the contract that the Report applies to along with the name and address of the contractor or subcontractor for which the Report has been prepared.
3. Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report.
4. 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.
5. Verify that job titles are provided under the column titled “SOC Job Title” for each employee whose work will be reflected on the Report. If a necessary job title is not included, please add the corresponding job category, title and corresponding job code to the “EEO 1 Job Categories” “SOC Job Title” and “SOC Job Code” columns from the list of job categories, SOC titles, and SOC codes reflected on the attached Classification Guide.
6. In the first group of boxes, identify the number of hours worked by persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
7. In the second group of boxes, identify the number of persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
8. 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

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 to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However,

no person should be counted in more than one race/ethnic group. The race/ethnic categories for this 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 Stacey Relation at Stacey.relation@gaming.ny.gov.

WORK FORCE EMPLOYMENT STAFFING PLAN

Project/RFP Title _____ Location of Contract _____
 County _____ Zip _____
 Contractor/Firm Name _____ Address _____
 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												
TOTALS												

Company Official's Name _____ Title _____
 Company Official's Signature _____ Date _____
 Telephone Number _____

Reporting Entity

Contractor Subcontractor

Contractor Name

Contractor Address

Contract Number

Reporting Period - Select One

<input type="checkbox"/> January 1 - March 31	<input type="checkbox"/> April 1 - June 30
<input type="checkbox"/> July 1 - September 30	<input type="checkbox"/> October 1 - December 31
<input type="checkbox"/> January	<input type="checkbox"/> February <input type="checkbox"/> March
<input type="checkbox"/> April	<input type="checkbox"/> May <input type="checkbox"/> June
<input type="checkbox"/> July	<input type="checkbox"/> August <input type="checkbox"/> September
<input type="checkbox"/> October	<input type="checkbox"/> November <input type="checkbox"/> December

Workforce Identified in Report

Workforce Utilized in Performance of Contract
 Contractor/Subcontractor's Total Workforce

EEO 1 Job Categories	SOC Job Title	SOC Job Code	Hours worked by Race/Ethnic Identification During Reporting Period										
			White		Black/African American		Hispanic/Latino		Asian/Native Hawaiian or Other Pacific Islander		Native American/Alaskan Native		
			Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	
ONET Occupation Code	https://www.onetonline.org/												
	e.g.; Lawyers	(23-1011)											
TOTAL EMPLOYEES													

Preparer's Name:

Preparer's Title:

Date:

By checking this box, I certify that I personally completed this document and I adopt the name typed above as my electronic signature under the NYS Electronic Signatures and Records Act, with like legal force and effect as if I had physically signed the document.

**INSTRUCTIONS FOR COMPLETING THE NEW YORK STATE LOTTERY'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 Division of the Lottery has established a goal of 30% 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 Lottery 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 Lottery 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 Lottery'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
--	--------------------------	---------------	------

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

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.	
Offerer/Contractor Name:	Federal Identification No.:
Address:	Solicitation/Contract No.:
City, State, Zip Code:	M/WBE Goals: MBE % WBE %
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.	
Contractor is requesting a:	
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	
PREPARED BY (Signature):	Date:
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.	
Name and Title of Preparer (Printed or Typed):	Telephone Number:
	Email Address:
Submit with the bid or proposal or if submitting after award submit to: NYS Gaming Commission Attn: Stacey Relation One Broadway Center Schenectady, NY 12301	***** GAMING COMMISSION USE ONLY *****
	REVIEWED BY:
	DATE:
	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.

APPENDIX K

Diversity Practices

K.1: Diversity Practices Questionnaire

K.2: How to Score Diversity Practices

K.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?¹

4. Does your company provide technical training² 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.

¹ Do not include onsite project overhead.

² 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 _____

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)**

APPENDIX L

Subcontractors and Suppliers

APPENDIX M

Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance



Attachment

Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at:

http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and

functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

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

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

Bidders/proposers can demonstrate their commitment to the use of SDVOBs by responding to the questions below and including the responses with their bid/proposal:

Are you a bidder/proposer that is a NYS-certified SDVOB? Yes No If yes, what is your DSDVBD Control #?

Will NYS-certified SDVOBs be used in the performance of this contract? Yes No

If yes, identify the NYS-certified SDVOBs that will be used below (if more than 4 identified, please attach an additional form):

NYS-Certified SDVOB 1:

Name

Address

Control #	Contract #	Total % Work Performed	\$ Amount
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Nature of Participation

NYS-Certified SDVOB 3:

Name

Address

Control #	Contract #	Total % Work Performed	\$ Amount
-----------	------------	------------------------	-----------

Nature of Participation

NYS-Certified SDVOB 2:

Name

Address

Control #	Contract #	Total % Work Performed	\$ Amount
-----------	------------	------------------------	-----------

Nature of Participation

NYS-Certified SDVOB 4:

Name

Address

Control #	Contract #	Total % Work Performed	\$ Amount
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Nature of Participation

Contractor will report on **actual** participation by each SDVOB during the term of the contract to the contracting agency/authority on a quarterly basis according to policies and procedures set by the contracting agency/authority.

NOTE: Information about set asides for SDVOB participation in public procurement can be found at: <http://www.ogs.ny.gov/Core/SDVOBA.asp>, which provides guidance for State agencies in making determinations and administering set asides for procurements from SDVOBs.

APPENDIX N

Non-Bid Response



NON-BID RESPONSE

RFP: C160001 Regulatory Compliance Consulting Services

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:

_____ Other: _____

This form may be emailed to: diane.seaburg@gaming.ny.gov, or mailed to:

New York State Gaming Commission
Contract Unit, 4th Floor
One Broadway Center
Schenectady, NY 12305

Please be advised that **no response** may result in removal of your company from our bidders' List.

ATTACHMENTS

- Attachment 1: Bidder Acknowledgement of Addendum**
- Attachment 2: Pricing Proposal Form**
- Attachment 3: Technical Proposal Submittal Checklist**
- Attachment 4: Links to Reference Materials**



RFP: C160001 – Regulatory Compliance Consulting Services

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: _____



RFP: C160001 - Regulatory Compliance Consulting Services

PRICING PROPOSAL

Enter the staff titles under each category of Senior, Mid-level or Junior/Clerical, then enter the hourly rate for each title per contract year. Rates proposed for each will be effective for the contract term, and may not be changed. You may expand this form to include as many titles as necessary.

Title Specify staff title under each level	Hourly Rate Year 1	Hourly Rate Year 2	Hourly Rate Year 3	Hourly Rate Year 4	Hourly Rate Year 5
Senior					
Mid-level					
Junior/Clerical					

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____



RFP – C160001 - Regulatory Compliance Consulting Services

DOCUMENT SUBMITTAL CHECKLIST

Submissions Required:

Description of Document	RFP	Submittal Requirements	Checklist
Contract Form (Appendix B) (incorporates Appendix A)	§1.1 & §1.3	With Proposal (must be signed)	
Procurement Lobbying BODC Form (Appendix C)	§1.11	With Proposal	
Non-Collusive Bidding Certification (Appendix D)	§1.13	With Proposal	
NYS Vendor Responsibility Questionnaire (Appendix E)	§1.14	With Proposal	
Designation of Proprietary Information	§1.15	With Proposal and With Phase Two Proposal, as defined in RFP	
Technical & Pricing Proposals	§1.16	Submit Technical and Pricing Proposals Separately as Defined in RFP	
Conflicts of Interest (Exhibit 8a)	§1.21	With Proposal	
Equal Employment Opportunity (EEO) (Appendix I) <ul style="list-style-type: none"> Policy Statement Staffing Plan (I-2) 	§2.15.A	Policy Statement: with Proposal; I-2: proposed staffing plan – with Proposal	
Minority and Women-Owned Business Enterprise Program (Appendix I) <ul style="list-style-type: none"> Proposed Utilization Plan 	§2.15.B	Proposed Utilization Plan, including estimated value – with Proposal	
Use of Service-Disabled Veteran- Owned Business Enterprises in Contract Performance (Appendix M)	§2.19	With Proposal	
Diversity Practices Questionnaire (Appendix K)	§4.7	With Proposal	

Submissions Required Subsequent to Award:

Description of Document	RFP	Submittal Requirements	Checklist
W-9 (Appendix F)	§2.8	Upon notification of award	

E-pay (Appendix G)	§2.9	Upon notification of award	
Consultant Disclosure (Appendix H)	§2.10	Form A: Within 2 Business Days of Notification of Award. Form B: Annually by May 15.	
Sales & Use Tax (Appendix H) <ul style="list-style-type: none"> ST220-CA (submit to Lottery) ST220-TD (submit to DTF) 	§2.11	Within seven calendar days of notification of award	
Insurance Documentation	§2.14	Documentation as required in §2.13	
Equal Employment Opportunity (EEO) (Appendix I) <ul style="list-style-type: none"> Utilization Report (I-3) 	§2.15.A	I-3: quarterly if devoted staff; semi-annually if entire staff.	
Minority and Women-Owned Business Enterprise Program (Appendix I) <ul style="list-style-type: none"> Utilization Plan Form (I-4) Quarterly Activity Report (I-5) 	§2.15.B	I-4: Utilization Plan - within 14 days after notification of award; I-5: 10 days following the end of the previous quarter.	

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____

Attachment 4

Links to Reference Materials

MWBE Article 15-A

http://esd.ny.gov/MWBE/Data/NYS_EXECUTIVE_LAW_ARTICLE_15-A.pdf

MWBE Rules and Regulations

http://esd.ny.gov/MWBE/Data/01282015_OFFICIAL_COMPILATION_OF_MWBE_REG_S.pdf

NYS Gaming Commission Rules and Regulations 9 NYCRR § 5311

[https://www.gaming.ny.gov/pdf/New%20York%20State%20Gaming%20Commission%20rules%20Chapter%20IV,%20Subchapter%20B%20\(Gaming,%20Casino%20Gaming\)%20updated%202015-10.pdf](https://www.gaming.ny.gov/pdf/New%20York%20State%20Gaming%20Commission%20rules%20Chapter%20IV,%20Subchapter%20B%20(Gaming,%20Casino%20Gaming)%20updated%202015-10.pdf).

Service Disabled Veteran Owned Businesses

<http://www.veterans.ny.gov/business>

Article 8 of NY Labor Law:

<http://codes.lp.findlaw.com/nycode/LAB/8>

Article 9, Section 135 of the New York State Finance Law, commonly known as the "Wicks Law"

<http://codes.lp.findlaw.com/nycode/STF/9/135>

New York State Business Services Center Accounts Payable Reference Guide for Vendors

<https://bsc.ogs.ny.gov/content/vendor-information>