



**REQUEST**

**FOR**

**PROPOSALS**

**FOR**

**VIDEO LOTTERY TERMINAL & CENTRAL SYSTEM  
TESTING**

**January 11, 2011  
(Re-issue of November 5, 2010 RFP)**

**C100006**

## PART 1 – GENERAL INFORMATION

### 1.1 INTRODUCTION

The New York State Division of Lottery (the "Lottery"), on behalf of the State of New York, is issuing this Request for Proposals ("RFP") to solicit Proposals from Vendors seeking the award of a contract for acceptance testing of a central system supporting video lottery gaming terminals and terminal gaming software.

The Lottery is the only office authorized to clarify, modify, amend, alter or withdraw the provisions of this RFP. Every Vendor responding to this RFP must include in its Proposal a signed agreement in the form attached as **Appendix J** of this RFP. This agreement will become binding and effective after approval by the Lottery and the NYS Offices of the Attorney General and State Comptroller.

In the RFP the Lottery has defined a series of objectives, requirements, and a proposal evaluation approach that will represent its best interests in conformance with Lottery policies, State regulations and New York State statutes. The contents of this RFP, any modifications, and the proposal will become contractual obligations if a contract ensues. Failure of the successful vendor to accept these obligations may result in cancellation of the award.

### 1.2 BACKGROUND INFORMATION

**Central System:** The Central System is the hardware, software, and network components which link and support all video lottery terminals located at video gaming facilities with the central data center located in Schenectady. The Lottery utilizes a finite pool central determination design for most games. The system records player wager details; randomizes, stores and distributes game play results to site controllers at Lottery gaming facilities; and performs accounting and security functions. Recently an Electronic Table game (ETG) pilot was begun. The ETG's use more traditional Random Number Generator ("RNG") SAS based devices which required the addition of a SAS interface to the system.

**Site Controller:** Site controllers (Servers) are installed at each facility to issue wager results to individual games and record all gaming transactions that occur on the VLT's. Separate servers are used for SAS / ETG transactions.

**Video Lottery Terminals:** Video lottery terminals (VLT's) are gaming devices connected to the site controllers at each facility in order to record wagering activity and receive play results. Additionally, ETG's are connected to the site controllers and operate more like traditional SAS based gaming devices. All video lottery games must include the following elements: consideration for an entry; an outcome determined by chance; a prize; (electronic) tickets; and availability to multiple participants.

To play video lottery, a player inserts paper currency, a redemption ticket (voucher) or other Lottery approved representative of value into a video lottery terminal entitling the player to purchase one or more wagers. The player determines the amount to be played or the price of the wager to be purchased. With respect to each offered game, the player makes a choice by touching the dedicated display, a panel of buttons designated for such purposes, or some other similar interface, selecting the number of credits and other choices to determine the total amount wagered. This could include the number of "lines" played, bonus features, number of individual selections made, etc.

Upon completion of play at a video lottery terminal, the player may cause the printing of a redemption ticket that may be used at another video lottery terminal or presented for verification and payment at the validation terminal or kiosk at the video lottery gaming agent facility it was received, or through the Lottery

### 1.3 MINIMUM QUALIFICATIONS

A Proposer must have ten years of gaming industry testing experience with staff of at least 50; must be independent and licensed in at least ten jurisdictions; must employ full-time staff that are competent collectively in the following categories:

- Mathematics
- Electrical and software engineering
- Compliance
- Accounting system and communication protocols
- Quality assurance

### 1.4 SCHEDULE

The following dates are established for informational and planning purposes. The Lottery reserves the right to change any of the dates.

RFP Issued	January 11, 2011
First Vendors' Questions Due 4:00 pm	January 18, 2011
Lottery Responses to First Questions	January 25, 2011
Vendor Proposals Due – 4:00 pm	February 8, 2011
Apparent Winning Proposal Designated	March 1, 2011

### 1.5 VENDOR/CONTRACTOR DIFFERENTIATION

Throughout this RFP the terms "vendor", "proposer", "bidder", and "offerer" 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 vendor."

1.6 HEADINGS

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

1.7 PERMISSIBLE CONTACTS

Consistent with the public policy established by the Procurement Lobbying Law, described below, the Contracting Officer and Finance Officer designated below are the only points of contact with regard to all contractual matters relating to the services described in this RFP, unless additional points of contact are designated by the Contracting or Finance Officer.

**ALL VENDORS RESPONDING TO THIS RFP AND ALL COMMUNICATIONS CONCERNING THIS PROCUREMENT MUST BE ADDRESSED IN WRITING TO THE CONTRACTING OFFICER OR FINANCE OFFICER AS NOTED BELOW:**

New York State Division of Lottery  
Finance Office  
One Broadway Center  
Schenectady, NY 12301-7500  
Contractingofficer@lottery.ny.gov  
Gail P. Thorpe, Contracting Officer  
(518) 388-3329  
or  
Deborah L. Martino, Finance Officer  
(518) 388-3325

1.8 PROCUREMENT LOBBYING RESTRICTIONS

Pursuant to New York State Finance Law Sections 139-j and 139-k, this RFP includes and imposes certain restrictions on communications between the Lottery and a proposer during the procurement process. A proposer is restricted from making contacts from the earliest solicitation of offers through final award and approval of the resulting contract by the Lottery 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 in Section 1.6 of this RFP. Lottery employees are also required to obtain certain information when contacted during the "restricted period" and to make a determination of the responsibility of the proposer/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, an offeror 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.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

The Lottery reserves the right to terminate the contract in the event that the Lottery determines that the certification filed by the proposer in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete. Upon such determination, the Lottery may exercise its termination right by providing written notification to the proposer in accordance with the written notification terms of this contract.

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

1.9 RESTRICTIONS ON COMMUNICATIONS WITH LOTTERY STAFF

Questions or comments concerning this procurement must be addressed in writing to the Contracting or Finance Officer, as directed below and as provided in Section 1.7 of this RFP. Lottery employees are permitted to communicate with vendors concerning this RFP only under circumstances described in the New York State Procurement Lobbying Law. Any vendor causing or attempting to cause a violation or circumvention of those requirements may be disqualified from further consideration for selection.

1.10 PRE-OFFERING MEETING

There will be no pre-offering meeting for this solicitation.

1.11 QUESTIONS AND INQUIRIES

Questions from vendors regarding this RFP must be submitted in writing, either by e-mail or standard mail and, must be delivered to the Contracting or Finance Officer no later than the date and time specified in Section 1.4 of this RFP. **Neither faxed questions nor telephone questions are acceptable.** Responses to all questions will be provided to all prospective bidders and posted to the Lottery's website ([www.nylottery.org](http://www.nylottery.org)). Since the Lottery expects to use email to respond to questions, Vendors must include with their questions an email address to which responses can be directed. It is required that e-mail questions be provided in Microsoft Word format.

Vendors are cautioned that an RFP inquiry should be written in generic terms and must not contain cost information. The inclusion of specific cost in an inquiry may result in the Vendor's disqualification.

**Any changes to the RFP resulting from such requests will be communicated via published addenda, which will be posted on the Lottery's website. Written acknowledgement of all addenda issued prior to the Proposal due date shall become part of the Vendor's Proposal reply. A form for such acknowledgement will be provided with each addendum; such form is incorporated into this RFP as Attachment 1.**

1.12 NON-COLLUSIVE BIDDING REQUIREMENT

In accordance with Section 139-d of the New York State Finance Law, each Vendor must warrant, under penalty of perjury, that its Proposal was arrived at independently and without collusion aimed at restricting competition. Each Vendor further warrants that, at the time the Vendor submitted its Proposal, an authorized and responsible person executed and delivered to the Lottery a Non-Collusive Bidding Certification on contractor's behalf.

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

1.13 FREEDOM OF INFORMATION LAW (FOIL)

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the New York State Freedom of Information Law 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 bid/proposal contains any such trade secrets or other proprietary information, you must submit a request with your proposal to exempt such information from disclosure. Such request must be in writing, must state the reasons why the information should be exempted from disclosure and must be provided at the time of submission of the subject information.** Requests for exemption of the entire contents of a bid/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. **Pricing information may not be designated as proprietary or confidential.**

1.14 PROPOSALS

Vendors must submit a complete Proposal as described below. A proposal that does not comply with these requirements may be deemed non-responsive. The

Proposal must be separated into two (2) volumes as defined below in Item D – Proposal Format.

A. Form of Proposals:

The proposal must be prepared on 8 1/2" x 11" paper stock and appropriate electronic medium. The preferred electronic medium is a data CD or DVD, with the proposal content in a searchable Microsoft Word or PDF format.

B. Proposal Contents:

Each vendor is expected to provide the Lottery with information, evidence and demonstrations that will make possible a contract award that best serves the stated interests of the Lottery.

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

Failure by a vendor to provide the appropriate information or materials in response to each stated requirement or request for information may result in lower scores in the competitive evaluation or in a determination that a Proposal is non-responsive. Responses to complex RFP requirements that are stated in a form semantically equivalent to "vendor agrees to comply" may be rejected for non-responsiveness at the discretion of the Lottery.

C. Material Deviations:

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

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

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

D. Proposal Format:

Each Vendor must submit a complete Technical and Financial Proposal in the format described below and in response to the requirements described in Part 3 – Scope of Work and Deliverables and Part 4 – Information Required from Vendors – Proposal.

The Proposal must be submitted in two (2) separate (Technical and Financial) volumes as defined below and both the technical and financial proposal must be signed in ink by an official authorized to bind the Vendor to its provisions and must include a statement as to the period during which the entire Proposal remains valid. This period must be at least 180 days from the due date for responses to this RFP.

**Volume I – Technical (non-price) Proposal:**

The Technical Proposal shall include descriptive and technical matter only and must be appropriately labeled on the outside of the enclosure with the Vendor's name and address and the words "Video Lottery Terminal and Central System Testing."

Each section of the proposal must be clearly identified with appropriate headings and responses should be separated by tabs in the order presented below. Ensure that each proposal submittal is complete, including signatures and attachments as required throughout this RFP.

Two (2) originals and five (5) copies of the Technical Proposal must be delivered to the Lottery's Contracting Officer. In addition, two (2) electronic versions of the entire Technical Proposal must be submitted on CD or DVD using a Microsoft Word or PDF file. The electronic versions must include all proposal sections within a single file to facilitate searches for terms across the breadth of the Proposal. If there are any differences between the hardcopy and electronic versions of the technical proposal, the hard copy version will be given priority.

The contents of the technical volume of the Proposal must follow this outline, employing divider pages with tabs to separate the response sections:

1. Transmittal Letter: The transmittal letter shall contain names, addresses (including e-mail), and telephone numbers of individuals who are authorized by the Vendor to address matters related to the Proposal including, but not limited to, contractual, technical, site

visit, and background investigation issues. The transmittal letter must also include confirmation of the Vendor to comply with all contractual provisions.

2. Acknowledgement of all RFP addenda in the form provided in **Attachment 1**.
3. Litigation Bond (see Section 1.18).
4. Disclosure of Litigation and Other Information (see Section 1.20).
5. Response to specifications and in the order provided for in Part 4 – Information Required from Vendors - Proposal, including technical documentation as appendices.
6. Designation of proprietary information in the form described in Section 1.13 of this RFP.
7. Submission of certifications and representations as required by the RFP.
8. To assist vendors in completion and submittal of the required forms, a Document Submittal Checklist is incorporated into this RFP as **Attachment 3**; this Checklist must be included with the vendor's Technical Proposal.

**In addition to the submission requirements outlined above, the Vendor must provide a redacted version of the Technical Proposal (redacting information designated as proprietary per Section 1.13 of this RFP) on CD or DVD.**

#### **Volume II – Financial Proposal:**

The Financial Proposal must be prepared in the form provided in **Attachment 2** of this RFP. Vendors should carefully review the basis and terms of reimbursement set forth; any deviation from this format may deem the Proposal non-responsive.

Two (2) originals and one copy of the Financial Proposal must be delivered to the Lottery's Contracting Officer. One copy of the Financial Proposal in the form of a CD or DVD, or other approved electronic media, must also be provided. If there are any differences between the hard copy and electronic versions of the Financial Proposal, the hard copy version will be given priority.

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

1. Signed Transmittal letter.
2. Pricing in the format provided as **Attachment 2** of this RFP.

**NOTE: fax and e-mail submissions are not acceptable and will not be considered.**

E. Proposal Submission:

Both the Technical and the Financial Proposals must be submitted to the Lottery as described below, and be received by the date and time specified in Section 1.4 - Schedule. Originals should be clearly marked so as to differentiate from the copies.

VENDORS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS ON THE OUTSIDE OF EACH ENVELOPE:

"Sealed Proposal" label, "Technical Proposal," "Financial Proposal," as applicable, the words "Video Lottery Terminal & Central System Testing", company or organization name, due date and time. 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 Finance Office address for Proposals submitted by contract carrier, courier delivery, personal delivery or by United States Postal Service is:

Gail P. Thorpe, Contracting Officer  
New York State Division of the Lottery  
Finance Office  
One Broadway Center  
Schenectady, NY 12305

**Fax or e-mail submissions are not acceptable and will not be considered.**

F. Proposal Receipt and Opening:

If proposals are to be delivered by a method other than U.S. Postal Service, the bidder should contact the Contracting or Finance Officer prior to delivery to assure proper receipt of the proposal. If hand delivered, the Lottery will provide a time stamped receipt indicating when the proposal

was received at the Security Desk in the Lobby. This will be the official time of receipt. If delivered by other than hand delivery, the Lottery will confirm receipt of any Proposal by electronic mail.

Upon receipt of Proposal, the Financial Proposal will be secured by the Lottery's Internal Auditor and will not be opened until after the Technical Evaluation process is complete. Technical Proposals will be distributed to the Evaluation Committee members at the start of the evaluation process.

G. Late Proposals:

Proposals must be received by the Lottery Finance Office on or before the due date and time specified. Vendors are responsible for timely receipt of their proposals and should plan for delivery accordingly. Failure of a vendor 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 vendor.

G. 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 shall define the responsibilities that each firm is proposing to undertake. Of the firms submitting a joint Proposal, one must be designated as the primary vendor. Any contract award issued as a result of this submission will be made exclusively to the primary vendor. The proposal must designate a single authorized official from one of the joint firms to serve as the sole point of contact between the Lottery and the joint responding firms.

H. Multiple Proposals from one Vendor Prohibited:

A vendor shall submit a single proposal only. Within the single proposal, and separate from the response to the requirements of this RFP, the vendor may identify options and features that the vendor believes may be appealing and useful to the Lottery. The inclusion of options accommodates the purpose of defining alternatives through multiple proposals.

I. Costs Associated with Preparation of Proposals:

Neither the Lottery nor the State shall be liable for any of the costs incurred by a Vendor in preparing or submitting a Proposal. The State of New York assumes no responsibility or liability for costs incurred by a Vendor prior to the issuance of a formal contract. The only obligations of the State are as specified in the contract.

1.15 CLARIFICATION PROCESS

The Lottery may request clarification from a Vendor for the purpose of resolving ambiguities or questioning information presented in the Proposals. Clarifications are an opportunity to explain, but not to enhance, the Proposal. The Lottery may request clarifications throughout the Proposal evaluation process. Clarification responses shall be in writing and shall address only the information requested. Responses shall be submitted to the Lottery within the time specified at the time of the request. As applicable, clarifications will be treated as addendums to the Vendor's Proposal.

1.16 SITE VISITS

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

1.17 PROPOSAL VALIDITY

Proposals must remain valid for a period of 180 days.

1.18 LITIGATION BOND

This procurement is not subject to a litigation bond.

1.19 DISCLOSURE AND INVESTIGATIONS DURING PROPOSAL EVALUATION

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

The Lottery may reject a Proposal based upon the results of these background checks. The Vendor is advised that any person who knowingly provides false or intentionally misleading information in connection with any investigation by Lottery may cause the Proposal to be rejected, or a subsequent contract to be canceled.

If the Vendor or a substantial subcontractor is a subsidiary of a parent entity, the Lottery may request the above disclosures from the parent entity as necessary.

1.20 DISCLOSURE OF LITIGATION AND OTHER INFORMATION

Since the Lottery has a strong interest in the successful Vendor's continuing ability to provide secure, high quality services, the Lottery requires that Vendors list and summarize pending or threatened litigation, administrative or regulatory proceedings or similar matters that could materially affect the Vendor. As part of this disclosure requirement, Vendors must state whether they or any owners, officers, directors, or partners have ever been convicted of a felony. Failure to disclose such matters may result in rejection of the Proposal or in termination of a contract. Such disclosures must be included in the Proposal.

This is a continuing disclosure requirement; any such matter commencing after submission of a Proposal and, with respect to the successful Vendor after the approval of a contract, must be disclosed in a timely manner in a written statement to the Lottery.

1.21 CHANGE IN FINANCIAL CONDITION

If a Vendor 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 Vendor experiences a substantial change in financial condition during the term of a contract with the Lottery, the Director of the Lottery must be notified in writing at the time the change occurs or is identified. Failure to notify the Lottery of such a change may result in rejection of Vendor's Proposal or termination of the contract.

1.22 CHANGE IN OWNERSHIP

If a Vendor experiences a material change in ownership prior to contract award or during the term of a contract with the Lottery, the Lottery must be notified in writing 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 comprise ownership greater than 5% of the Vendor or the parent company of the Vendor. Failure to notify the Lottery of such a change may result in the rejection of a Vendor's Proposal or termination of the contract. The Lottery reserves the right, based on its assessment of a material change in ownership, to reject the Vendor's Proposal or terminate the contract.

1.23 NEWS RELEASES

A Vendor may not issue a news release pertaining to this RFP or the services, evaluation, or project to which it relates without prior written Lottery approval, and then only in accordance with express written instructions from the Lottery.

1.24 ADVERTISING

Each respondent agrees not to use the New York Lottery'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 Lottery, and then only in cooperation with the Lottery.

1.25 AWARD

In determination of awards, the qualifications of the bidder, the conformity with the specifications of services to be supplied and the performance and delivery terms will be considered. The contract award will be based on "Best Value," the evaluation method for awarding a contract to the Vendor whose Proposal optimizes quality, cost, and efficiency among responsible offers. The determination will be based on a scoring of Technical and Financial Proposals as defined in Part 5.

1.26 STATE'S RESERVED RIGHTS

In addition to any rights articulated elsewhere in this RFP, the Lottery reserves the right 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 Lottery's judgment, the best interest of the Lottery will be so served.
- C. Eliminate any non-material mandatory specification(s) that cannot be complied with by any of the prospective bidders;
- D. Amend the RFP and direct bidders to submit proposal modifications accordingly;
- E. Change any of the scheduled dates stated herein;
- F. Reject any or all Proposals received in response to this RFP, and reissue a modified version of this RFP;
- G. Withdraw the RFP at any time, at its sole discretion;
- 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 Lottery's request for clarifying

information in the course of evaluation and/or selection under this RFP;

- J. Disqualify any bidder whose conduct and/or proposal fail to conform to the requirements of the RFP;
- K. Negotiate with the successful offeror within the scope of the RFP in the best interests of the State;
- L. Set aside the original successful offeror if it is determined that the offeror is non-responsible. The Lottery may then award a contract to the responsible offeror with the next highest total combined score;
- M. Set aside the award to the successful offeror should the Lottery be unsuccessful in finalizing an Agreement with that offeror within a time frame acceptable to the Division; such time frame is to be determined solely by the Lottery based on the best interests of the State. The Lottery may then award a contract to the offeror with the next highest total combined score.

#### 1.27 RFP Appendices and Attachments

The following documents are incorporated into this RFP:

- Appendix A: Standard Clauses for NYS Contracts
- Appendix B: NYS Vendor Responsibility Questionnaire
- Appendix C: Consultant Disclosure
- Appendix D: Equal Employment Opportunity
- Appendix E: Minority and Women-Owned Business Enterprise Program
- Appendix F: Non-Collusive Bidding Certification
- Appendix G: Procurement Lobbying – Bidder/Offerer Disclosure
- Appendix H: MacBride Fair Employment Principles
- Appendix I: Sales & Use Tax Contractor Certification
- Appendix J: Contract Form

- Attachment 1: Vendor Acknowledgement of Addendum
- Attachment 2: Financial Proposal Form
- Attachment 3: Document Submittal Checklist

#### 1.28 PROTEST OR APPEAL

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

- Any protest of the award decision must be filed with the Lottery's Contracting Officer, no later than ten (10) business days following the date of written Notification of Award to the unsuccessful Proposer.
- The formal protest must clearly state the basis for the protest and include all relevant documentation supporting such protest.
- The Lottery will conduct a review of the protest and will issue a written determination to the protesting party within fifteen (15) business days of receipt of the protest. If additional time for issuance of the determination is necessary, the Lottery will inform the Proposer of the delay and of the time frame within which a determination may be expected. The final written determination provided to the Proposer constitutes the Lottery's final determination in the protest proceeding.
- If the unsuccessful proposer decides to appeal the Lottery's protest determination, the unsuccessful proposer must file such appeal with the New York State Office of the State Comptroller (OSC) within ten (10) business days of receipt of the Lottery's written determination. The appeal must be in writing and must be served on the Lottery, the successful bidder, and any other party that participated in the protest conducted by the Lottery; the unsuccessful proposer's appeal must contain written affirmation that a copy of the appeal has been served as directed above.
- The protest appeal to the OSC Bureau of Contracts 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 Lottery. The protest must be filed with: Charlotte Breyear, Director, Bureau of Contracts – 11th Floor, New York State Office of the State Comptroller, 110 State Street, Albany, NY 12236.
- The Lottery will file an answer to the appeal with the OSC Bureau of Contracts simultaneously with the delivery of the contract to the OSC Bureau of Contracts for its review, or within seven (7) business days of the filing of the appeal, whichever is later. The Lottery's answer to the appeal must include written affirmation that, simultaneous to the filing with OSC, the answer was delivered to the protestor and the successful Proposer.
- The successful proposer may, but is not required to, file an answer to the appeal with the OSC Bureau of Contracts. Such filing must include written affirmation that the answer was simultaneously delivered to the Lottery and the protester and must meet the filing requirements as noted above for the Lottery.
- The OSC Bureau of Contracts shall evaluate the merits of the protest, the Lottery's determination and any response submitted by an interested party. In this review the OSC Bureau of Contracts may require the Lottery, the protesting

party, the successful proposer, 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 Bureau of Contracts 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.

#### 1.29 TRANSITION

It is contemplated that the Lottery, approximately twelve (12) months prior to the expiration of the contract resulting from this RFP, will award a new contract for testing services. The parties understand and agree that the Lottery may utilize part of the last year of the contract resulting from this RFP or any renewal or extension thereof for conversion to the replacement testing provider. The vendor agrees to cooperate fully and in good faith in such conversion. Any transition or conversion to another vendor shall not interfere with the vendor's ability to fulfill the contract and shall not reduce or diminish the vendor's compensation pursuant to the contract.

## PART 2 – CONTRACTUAL PROVISIONS

### 2.1 GOVERNING LAW

The Proposal process, 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 law. Any and all litigation arising under this RFP or any contract resulting hereunder shall be instituted in the appropriate court of the State of New York; and, by submitting a proposal, a Vendor is deemed to waive access to any other court which may have concurrent jurisdiction within or outside New York State.

### 2.2 STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

**Appendix A**, a listing of the State of New York Standard Contract Clauses is attached. **Appendix A** becomes part of all New York State contracts. By submitting a Proposal a Vendor agrees to be bound by all provisions of **Appendix A**.

### 2.3 TERM OF CONTRACT

The term of the contract will be five years upon approval by the New York State Offices of the Attorney General and the State Comptroller.

### 2.4 BASIS FOR PAYMENT

The video lottery central system provider and each of the video lottery terminal providers shall compensate the contractor for all work performed by the contractor for such central system or terminal provider based on the pricing in the Vendor's Financial Proposal, Attachment 2. Costs related to consulting with the Lottery on standards and questions pertaining to testing will be included in the fees paid by the video lottery central system provider and each of the terminal providers. No payment will be made by the Lottery under the contract resulting from this solicitation.

### 2.5 NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE

Vendor agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as **Appendix B** (hereinafter the "Questionnaire"). The vendor acknowledges that the State's execution of the contract will be contingent upon the Lottery's determination that the vendor is responsible, and that the Lottery will be relying upon the vendor's responses to the Questionnaire in making that determination. The vendor agrees that if it is determined by the Lottery that the vendor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such determination, the Lottery 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 Lottery be deemed a breach thereof, nor shall the Lottery be liable for any damages for lost profits or otherwise, which may be sustained by the contractor as a result of such termination.

**The NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE, included in this RFP as Appendix B, must be completed and submitted with the proposal.**

## 2.6 OMNIBUS PROCURMENT ACT COMPLIANCE

If the contract is for \$1 million or more, by entering into the contract the contractor agrees (i) to make reasonable efforts to encourage the participation of New York State business enterprises as subcontractors and suppliers on the contract and retain documentation of such efforts to be provided to the State upon request; (ii) to comply with the federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (iii) to make reasonable efforts to provide notification to New York State residents of employment opportunities on the contract through listing any such positions with the Job Service Division of the New York State Department of Labor or providing such notification in such a manner as is consistent with existing collective bargaining contracts or agreements and to retain documentation of such efforts to be provided to the State upon request; and (iv) to cooperate with the State of New York in seeking to obtain offset credits from foreign countries as a result of the contract.

## 2.7 STIPULATION REGARDING NORTHERN IRELAND

In compliance with Section 174-b of the New York State Finance Law, the contractor must stipulate that the contractor and any legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (i) has no business operations in Northern Ireland; or (ii) shall take lawful steps in good faith to conduct any business operations such person or persons has or have in Northern Ireland in accordance with the MacBride Fair Employment Principles (as set forth in Section 174-b of the New York State Finance Law) and shall permit independent monitoring of compliance with such principles.

**The NORTHERN IRELAND STIPULATION FORM, included in this RFP as Appendix H, must be completed and submitted with the proposal.**

## 2.8 TAX LAW SECTION 5-A

The vendor 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 Office of the State Comptroller (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 forms listed below must be filed in compliance with Tax Law Section 5-a. Contractors can visit the New York State Department of Taxation and Finance website to obtain more information:

[http://www.tax.state.ny.us/pdf/publications/sales/pub223\\_606.pdf](http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf).

**Appendix I – ST-220-TD**

[http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_fill_in.pdf)

**Appendix I – ST-220-CA**

[http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf)

**NOTE: ST-220-TD is to be filed directly with the Tax Department at the address provided on the form; ST-220-CA is to be filed with the Lottery as part of the vendor's Proposal submission.**

2.9 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES.

In accordance with Article 15-a of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) 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 offeror/contractor agrees to be bound by the following provisions to promote equality of economic opportunity for minority group members and women, and the facilitation of minority and women-owned business enterprise participation.

A. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS

By submission of a Proposal in response to this solicitation, the offeror agrees with all of the terms and conditions of Clause 12 of Appendix A – Equal Employment Opportunities for Minorities and Women. In addition, as part of the Proposal, each respondent must submit a copy of the

respondent's Equal Employment Opportunity ("EEO") Policy. If the respondent does not already have an EEO Policy in effect, then an EEO Policy must be adopted and a copy of the new policy must be submitted.

**Proposal and contract requirements:**

1. Each Proposal must include a Staffing Plan (**Appendix D-2**) describing the work force expected to be used on the contract. **Appendix D-1 provides instructions for completion of the Staffing Plan.** If it is impossible to describe the portion(s) of the respondent's work force that will be devoted to performing the contract, then the staffing plan must describe the respondent's total work force. The staffing plan must show the ethnic backgrounds, sex, and federal occupational categories of the members of the work force.
2. During the term of the contract, the contractor will be required to submit periodically, as defined below, to the Lottery a Work Force Utilization Report (**Appendix D-3**) showing the work force actually used in performing the contract, categorized by ethnic background, sex, and Federal occupational categories.

If the Staffing Plan provides for only the work force devoted to this contract, quarterly reporting is required. If the Staffing Plan includes the respondent's total work force, semi-annual reporting is required.

3. All of the foregoing equal employment and affirmative action requirements are applicable to all subcontracts related to this contract. The successful vendor shall include in every subcontract in connection with this contract the requirement that subcontractors shall undertake or continue existing programs of affirmative action and, when requested, provide to the contractor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this contract.
4. The contractor will be required to follow the EEO Policy throughout the term of the contract.

**B. MINORITY/WOMEN-OWNED BUSINESS PARTICIPATION**

It is the policy of New York State to maximize the opportunities for the participation of New York State business enterprises, including minority and women owned business enterprises as offerors, subcontractors and suppliers for its procurement contracts. Information on the availability of New York State subcontractors and suppliers can be found in the Directory of Certified Minority and Women-Owned Business Enterprises available from the New York State Department of Economic Development, <http://www.empire.state.ny.us/Small and Growing Businesses/mwbe.asp>

In accordance with Article 15-a of the New York State Executive Law and Subtitle N of 9 NYCRR 540 et seq, the Division of the Lottery has established a goal of 3% participation by New York State Certified Minority Owned Business Enterprises and 3% participation by New York State Certified Women Owned Business Enterprises as sub-contractors/suppliers in this proposed contract. Attached to this RFP is a copy of the Minority and Women Owned Business Utilization Plan Form (**Appendix E-2**), which must be completed as directed below. Instructions for completing the Utilization Plan Form are contained in **Appendix E-1**.

**Proposal and contract requirements:**

1. Proposers must include a summary of their MBE/WBE utilization plans in their Proposals. **The utilization plans must describe anticipated participation of Certified Minority and Women Owned Business Enterprises during the term of the contract. To provide the utilization plans the proposer may use the Utilization Plan Form (Appendix E-2) or similar format as long as the required information is present.** The plans shall include the business name of the supplier/sub-contractor, a description of the proposed products or services to be provided, contact information for a representative of the supplier/sub-contractor, and the estimated value of the payments over the term of this contract.
2. The successful vendor must submit the complete Utilization Plan within fourteen (14) days after notification of the contract award for review and acceptance by the Lottery.
3. The contact information for the designated officer who will be assigned the responsibility and authority to monitor the MWBE program for this contract shall also be provided in **Appendix E-2**.
4. Any modifications or changes to the agreed participation by certified Minority or Women-Owned Business Enterprises (MWBEs), over the term of the contract, must be reported via a revised **Appendix E-2**.
5. During the term of the contract, the successful vendor will be required to submit to the Lottery a **Quarterly Activity Report (Appendix E-3, Parts 1 & 2)** showing MWBE's actually used in performing the contract; this information shall be broken down by subcontractor/supplier and dollar amount of purchase/service. **The Quarterly Activity Report must be received by the Lottery 10 calendar days following the end of the previous quarter. The State's fiscal year is April 1 through March 31; the quarterly end dates are: June 30, September 30, December 31, and March 31.**

2.10 WORKER'S COMPENSATION REQUIREMENTS  
PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE  
REQUIREMENTS: (ACORD forms are NOT acceptable proof of workers'  
compensation coverage.)

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, contractors shall:

A) Be legally exempt from obtaining workers' compensation insurance coverage; or

B) Obtain such coverage from insurance carriers; or

C) Be a Board-approved self-insured employer or participate in an authorized self-insurance plan. Contractors seeking to enter into contracts with the State of New York shall provide one of the following forms to the Lottery at the time of Proposal submission:

1) **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](http://www.wcb.state.ny.us)); or

2) *Certificate of Workers' Compensation Insurance:*

3) **Form C-105.2 (9/07)** if coverage is provided by the contractor's insurance carrier, **contractor must request its carrier** to send this form to the Lottery; or

4) **Form U-26.3** if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the Lottery; or

5) *Certificate of Workers' Compensation Self-Insurance - Form SI-12*, available from the New York State Workers' Compensation Board's Self-Insurance Office; or

6) *Certificate of Participation in Workers' Compensation Group Self-Insurance Form GSI-105.2*, available from the contractor's Group Self-Insurance Administrator. **All forms must name THE NEW YORK STATE LOTTERY, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

PROOF of COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, contractors shall:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from insurance carriers; or
- C) Be a Board-approved self-insured employer.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Lottery** at the time of bid submission or shortly after the opening of bids:

A) **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](http://www.wcb.state.ny.us)); or

B) **Form DB-120.1**, *Certificate of Disability Benefits Insurance*. Contractor must request its business insurance carrier to send this form to the Lottery; or

C) **Form DB-155**, *Certificate of Disability Benefits Self-Insurance*. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form. **All forms must name THE NEW YORK STATE LOTTERY as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

2.11 PROOF OF INSURABILITY

Each Proposal must include proof of insurance or insurability for all the insurance coverages required in the RFP or contract.

2.12 HIRING OF LOTTERY PERSONNEL

At all times during the proposal evaluation period and continuing for one year following either the award of a contract or the rejection of all Proposals, Vendors are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any Lottery employee involved in the evaluation of proposals, the contract award, or contract negotiations. A Vendor making such an offer or proposition may be disqualified from further consideration.

## 2.13 SUCCESSFUL VENDOR RESPONSIBILITIES AS PRIMARY CONTRACTOR

The successful Vendor will assume sole responsibility and liability for delivery, installation and maintenance of all equipment, software and support services offered in its Proposal and for the provision of all other goods and services offered in or acquired by its Proposal, and will directly make such representations and warranties to the Lottery to which the Lottery and the successful Vendor may agree, whether or not the successful Vendor is the manufacturer, producer or direct provider of the equipment, software or services.

The successful Vendor is not permitted to utilize subcontractors for testing services. If any subcontractors are utilized for services other than testing services, the successful vendor must accept full responsibility for and will be strictly liable to the Lottery for any such subcontractor's performance. The Lottery will consider the successful Vendor to be the sole point of contact with regard to all contractual matters.

## 2.14 APPROVAL OF STAFFING

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

## 2.15 SUBCONTRACT APPROVAL

The Lottery must approve subcontractors and may require the successful vendor 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 Vendor licensing.

## 2.16 DELEGATION AND/OR ASSIGNMENT

No delegation of any duties under this contract shall be binding upon the state until the Lottery 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 firm other than contractor, except by express written consent of the Lottery.

## 2.17 CODE OF CONDUCT FOR VENDOR

The Lottery is an extremely sensitive enterprise because of the nature of the business and because it is government operated; therefore, it is essential that its operation, and the operation of other enterprises which would be linked to it in

the public mind, avoid not only impropriety but also the appearance of impropriety. Due to this, contractors associated with the Lottery 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 which could be interpreted as improper and result in embarrassment to the industry;
- E. Report security problems or potential security problems only to the New York Lottery Director of Video Gaming, , the Lottery's Deputy Directors or the Lottery's Director.
- F. Not offer or give any gift, gratuity, favor, entertainment, loan or any other thing of material monetary value to any Lottery employee, or to any individual influencing the outcome of this project.

## 2.18 LOTTERY 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 Lottery. 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 Lottery site, to be given a security clearance by Lottery. Anyone seeking access to a Lottery site must provide his or her 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 Lottery, 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 or contractor. Only after site authorization is confirmed will access to the Lottery 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 Lottery, 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 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 Lottery 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 the 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 contract term while the individual is accessing any Lottery site, information systems or data contained therein. In addition, prior to accessing any Lottery 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 Lottery, which may include, at the Lottery'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 Lottery.

(b) Obtain from the Lottery and prominently display on their person, Lottery issued identification cards at all times while physically present at any Lottery site.

(iii) When an emergency or other circumstances occur which render immediate compliance with the foregoing requirements impractical, the Lottery 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 Lottery's right to subsequently require security clearance as to any individual previously granted such temporary access; provided however, that even in such circumstances, the Lottery shall approve such individual's access prior to such individual accessing a site, system or data and the Lottery may accompany such individual at all times when on-site.

(iv) The Lottery 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 this RFP, to withhold approval of and refuse to permit access prior to such individual accessing a site, system or data and the Lottery may accompany such individual at all times when on-site. The Lottery reserves the authority, 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 Lottery 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 Lottery determines that the individual may present a risk to the Lottery's security interests. The Lottery shall not be liable for payments or damages of any kind if the Contractor is delayed or unable to perform under this RFP as a result of the Lottery's denial of access to any individual(s) pursuant to this section.

## 2.19 FORM OF CONTRACTUAL AGREEMENT

The successful vendor will be expected to sign a contractual agreement with the Lottery in the form attached to this RFP as **Appendix J** (the "Contract"). The Lottery does not intend to negotiate any changes in the provisions of the contract form subsequent to award. **Any exception to the contract form must be raised in a vendor question submitted to the Lottery pursuant to the schedule set forth in Section 1.4 of this RFP and in accordance with Section 1.11 of this RFP.**

## 2.20 CONTRACT ELEMENTS

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

- Appendix A – Standard Terms for all New York State Contracts
- Addendums to the Contract
- Contract
- Clarifications and Addendums to the RFP
- RFP
- Clarifications to the Vendor's Proposal

- Vendor's Proposal

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

#### 2.21 SEVERABILITY

In the event that any one or more of the provisions of the contract shall for any reason be declared unenforceable, such provision will not have any effect on the validity of the remainder of this Agreement.

#### 2.22 SURETY AND INSURER QUALIFICATIONS

All required bonds and insurance must be issued by companies which are "A" or higher rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted, and authorized to do business in the State of New York, and are approved by the Lottery. 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 Lottery. The successful vendor must submit copies of each required insurance contract, and any renewals thereof, to the Lottery upon the Lottery's request. The insurance policies must provide thirty (30) days' advance written notice to the Lottery of cancellation, termination or failure to renew any policy.

#### 2.23 FIDELITY BOND

Upon notification of award and prior to contract approval, the successful vendor must obtain a fidelity bond in the amount of one million dollars (\$1,000,000) covering any loss to the Lottery due to any fraudulent or dishonest act on the part of the successful vendor's officers, employees, agents or subcontractors. Such an event, in the sole discretion of the Lottery, could be grounds for termination of the contract, whether or not the losses arising as a result thereof were paid under the fidelity bond.

## PART 3- SCOPE OF WORK AND DELIVERABLES

### 3.1 WORK AND DELIVERABLES

Contractor shall provide deliverables, services, staff, and all other things necessary to complete the requirements of the contract.

### 3.2 SCOPE/DELIVERABLES

The Vendor will be required to test the central system and all gaming related equipment (games, validation terminals, redemption kiosks, etc.) against a set of standards developed by the Vendor based on industry guidelines and New York specific requirements.

If a full regression test of the central system is required the acceptance test must utilize a multiple business day scripted scenario that will include all system and management reports for all games, showing that all data are properly maintained and that appropriate controls and accounting principles are observed. In addition, for those test days where no apparent errors have been uncovered, all necessary report balancing and cross checking and verification will be completed and documented by the contractor.

The Vendor must test all video lottery terminal hardware and software, central system, and associated equipment submitted to it by the Lottery and vendors. All testing of video lottery terminals, software, central system, and associated equipment will be performed at a mutually agreeable location provided by the successful vendor.

Prior to the start of a test, the contractor will provide the complete test plan and documentation relating to all the features and functions to be tested as well as specific game and play related options to the Lottery for review and approval. During the testing process itself, any apparent errors or discrepancies will be reported to the Lottery not less than weekly.

As part of the regular contractor provided reports, the contractor at a minimum will include current status of testing, any corrections received and the results of re-testing them, as well as any outstanding problems at that time. The Lottery has the sole authority to determine whether or not an apparent problem or deviation is a real one and may authorize acceptance of such, as well as authorize delaying of certain portions of the test. The successful vendor will maintain a list of deferred items and will provide the list to the Lottery on a quarterly basis.

Upon completion of the testing process, the contractor will provide a final report to the Lottery identifying all those functions that have met the testing requirements as well as any that have not. This final report will be included in the

Lottery sign-off and acceptance of the video lottery gaming system and video lottery terminal gaming hardware and software and, therefore, must be comprehensive as well as accurate. Over the last 12 months, the current testing vendor issued approximately 220 certification letters – 194 game related, 20 system related, and 7 for redemption units.

### 3.3 CONTRACTOR RESPONSIBILITIES

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 Lottery 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. If any part of the work is to be subcontracted, responses to this RFP must include a list of subcontractors, as defined in Part 4 of this RFP.

### 3.4 LOTTERY RESPONSIBILITY

The Lottery will provide guidance on prioritization of test efforts and will approve all exceptions to test guidelines.

### 3.5 PROJECT CONTROL

The contractor will carry out this project under the direction and control of the Video Lottery Product Manager.

### 3.6 REPORTS

The Vendor will provide detailed approval certifications for software and hardware that has successfully passed testing.

## **PART – 4 INFORMATION REQUIRED FROM VENDORS - PROPOSAL**

In preparation of the proposals, vendors should pay special attention to the requirements and information being requested in order to respond fully to the RFP. Proposals found to be incomplete or placing conditions in response to the requirements, may be deemed non-responsive and removed from further consideration.

### **4.1 BUSINESS ORGANIZATION**

- A. State the full name and address of your organization and, if applicable, any branch office or other subordinate element that will perform or assist in the performance of the work hereunder. Indicate whether it operates as an individual, partnership, corporation, joint venture, or other specified form of business organization. Proposers must state whether they are qualified and/or registered to do business in the State of New York.
- B. Indicate the name, address 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 your proposal.

### **4.2 FINANCIAL VIABILITY**

Vendors must provide audited Financial Statements for the most recent two fiscal years.

### **4.3 EXPERIENCE OF THE VENDOR'S ORGANIZATION**

General Requirements:

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

- Thorough description of the organization, including employee capacity to undertake and successfully carry out the proposed services.
- Resumes of the managing partner(s) describing relevant education, knowledge, training, and experience. The State 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 State.
- Description of how the organization's quality assurance program will be applied to this Proposal.

- ISO certification is desired. Provide copies of certificates for all ISO accreditations achieved.

Due to the unique and highly specialized nature of testing central system and supporting video lottery gaming terminals and video lottery terminal gaming software, experience of the type required in this document in an electronic gaming environment (central determinate and SAS) is a prerequisite to successful completion of the work.

Describe the prior experience of the bidding organization (including any proposed subcontractors) which you consider relevant to the successful accomplishment of the work required herein. Include sufficient description and detail to demonstrate the relevance of such experience, specifically as related to central system supporting video lottery gaming terminals and video lottery terminal gaming software.

If the Vendor's organization (including any proposed subcontractors) has performed work for vendors now active or seeking to become active in the provision and/or management of video lottery gaming systems in North America, disclose the nature of such work and when performed. It is incumbent on the Vendor to clearly demonstrate that such work has no real or perceived effect on the bidder's independence and impartiality in the performance of the work required herein.

References:

The Proposal must include at least three references relevant to the work to be performed under the contract resulting from this RFP. References must include company name, contact person (name, title, telephone number, email address, and mailing address). Also, include a general statement of the type of work performed for this reference. References will be used to substantiate the Technical Proposal

#### 4.4 PROJECT MANAGEMENT AND STAFFING

Identify the responsible official(s), project director and other responsible individuals by name, title, and location who will work under a resulting contract, including proposed subcontractor staff members.

Identify the role and anticipated percentage of time allocated of each individual in the proposed work effort. A resume indicating the relevant experience of each individual and his or her role in the project must be provided.

#### 4.5 SUBCONTRACTORS

List all subcontractors, including firm name and address, contact person, and a complete description of any non-testing services to be subcontracted. Include descriptive information relative to the subcontractor's organization and capabilities. If the vendor does not intend to utilize subcontractors, that should be indicated in the technical proposal response.

#### 4.6 TESTING

The Vendor must describe in detail the tests to be performed by the vendor as well as the steps taken and the time required to perform such tests for various types of testing – new themes on previously approved platforms; new game platforms; central system upgrades; etc.. The Vendor must also describe any and all resources needed from the Lottery, central system provider, and video lottery terminal providers including but not limited to equipment, tables, source code, reports, communication lines, and protocols. The Vendor is responsible for developing the process and plan, and may include automated test input as well as manual. The Lottery, central system provider, video lottery terminal providers, and vendor will coordinate the necessary methods and data formats that will allow such test input. While automated test input may be used to help in the simulation of system volume, and to help ensure that all games and functions are thoroughly tested, it cannot be proposed as a total replacement for actual input at the player terminal. All test scripts and planned input must be available to the Lottery for review prior to use.

The Vendor must describe how the test will be conducted while complying with the operation of video lottery gaming in New York State as defined in Section 1.2 and various Interface Control Documents (ICD) that will be made available from Multimedia Games after signing a Non-Disclosure Agreement (NDA) for the ICD's.

#### 4.7 TEST PLAN

Provide a work plan for accomplishing the projects defined in the RFP including a detailed description of the manner in which each of the tasks described in Section 4.6 above will be accomplished. The description must identify each major event, task, or decision point in your work plan, as well as the time estimated to complete each major component. Identify the role and anticipated percentage of time allocated of each individual in the proposed work effort. Time estimates must include allowances for Lottery review (which shall be promptly provided) and up to three (3) revisions of written material. Also include relative to Section 4.6, a brief discussion of the subject matter of each subsection including important considerations, alternatives or methodologies, as applicable, which clearly demonstrates your understanding of the work effort required.

#### 4.8 FINANCIAL PROPOSAL

The Financial Proposal must include hourly rates for the various staff and managerial levels who will be performing billable work under this contract. The rates must be fixed for the five year term of the contract. If any services are to be provided at fixed rates these should also be provided. Additionally, estimates of the number of hours required from each staff position for testing new themes on previously approved platforms; new game platforms; and significant central system upgrades must be provided and will be used to evaluate total costs to the Lottery. Travel to New York Lottery video gaming facilities, when required, will be reimbursed at cost by the appropriate video lottery provider.

#### 4.9 COMPLIANCE WITH REQUIREMENTS

Contractor must state compliance with the requirements outlined in the RFP and submit completed forms as required.

#### 4.10 ADDITIONAL INFORMATION AND COMMENTS

Include any other information that is believed to be pertinent but not specifically asked for elsewhere.

## 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 Lottery to evaluate a Vendor's Proposal is dependent upon the completeness and proper submission of the proposal. The failure of a Vendor 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 Vendor's Proposal or reduction in scoring during the evaluation.

### 5.2 EVALUATION METHODOLOGY

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

Scoring of the technical proposals will be by consensus of the Evaluation Committee. The financial proposals will be scored by one or more individuals from the Finance Office designated by the Evaluation Committee and will be based on a pre-determined formula as defined further in this Part. The relative weight of technical to cost will be: technical [80%]; cost [20%].

### 5.3 EVALUATION STEPS

The evaluation and award process will be comprised of all of the following:

- A. Pass/Fail evaluation of minimum qualifying requirements of the Vendor as provided for in Section 1.3 of the RFP.
- B. Review of Proposals to assess compliance with Proposal submission requirements, including responsiveness to terms, conditions and requirements.
- C. Detailed evaluation of proposed functions, features, services, and references, using the requirements and criteria defined in this RFP.
- D. Proposal clarifications.
- E. Scoring of Technical Proposals by the Evaluation Committee.

- F. Assessment and scoring of Financial Proposals after finalization of the technical scoring process and by one or more individuals from the Finance Office designated by the Evaluation Committee.
- G. Compilation by the Contracting Officer or Finance Officer of the technical scores and financial score into a summary score sheet.
- H. Recommendation to the Lottery Director of the apparent winner.
- I. Acceptance by Lottery Director of recommendation of award.
- J. Notice of Award.

#### 5.4 INFORMATION FROM OTHER SOURCES

The Lottery reserves the right to obtain from sources other than the Vendor, information concerning a Vendor, the Vendor's offerings and capabilities, and the Vendor's performance, that the Lottery deems pertinent to this RFP and to consider such information in evaluating the Vendor's proposal. This may include, but is not limited to, the Chairperson of the Evaluation Committee engaging consultants and additional experts from outside the Evaluation Committee to better inform the Evaluation Committee's findings, as well as references from other lotteries and gaming jurisdictions.

In addition, as provided in Section 4.3, references will be checked regarding the Vendor's past experience. The Evaluation Committee will select an equal number of current or previous clients for each Vendor. The Lottery 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 Vendor's performance and experience.

#### 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 Vendors – Proposal – of this RFP will be evaluated based on the following criteria:

- A. Technical Evaluation [80%]
  - Corporate Experience (15 points)
  - Management/Staffing (30 points)
  - Testing/Test Plan (35 points)

B. Financial Evaluation [20%]

The Vendor with the lowest cost, based on the Financial Proposal Form, Attachment 2, will be awarded the full points allocated to the financial evaluation. The score for each of the remaining Vendors will be proportionate to the lowest cost bidder based on a pre-determined formula.

5.6 FINAL COMPOSITE SCORE

The technical and financial scores will be combined to determine the final composite score for each bidder. Award will be made to the bidder who achieves the highest composite score and who is deemed financially viable and responsible.

5.7 NOTICE OF AWARD

A proposal award notification letter will be sent to the successful offeror and unsuccessful offerors indicating a conditional 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 Agreement shall be made by any offeror or their agent without the prior approval of the Lottery.

5.8 DEBRIEFINGS

At the time of award notification, offerors will be advised of the opportunity for a debriefing by the Lottery regarding the evaluation of that offeror's proposal. Information relative to other Vendor Proposals and agency scoring of those Proposals is subject to the Freedom of Information Law (Article 6 of the Public Officers Law).



**Vendor Acknowledgement of Addendum**

RFP: Video Lottery Terminal & Central System Testing

Amendment Number: \_\_\_\_\_

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

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

Bidder Name: \_\_\_\_\_

Company: \_\_\_\_\_

Financial Proposal Form

Testing New Themes on Previously Approved Platforms

Staff Type	Rate per Hour	Hours	TOTAL
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Testing New Game Platforms

Staff Type	Rate per Hour	Hours	TOTAL
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**Significant Central System Upgrades**

Staff Type	Rate per Hour	Hours	TOTAL
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Fixed Rate

Fixed cost for hardware certification letter (if any)

\_\_\_\_\_

Fixed cost for final testing certification letter (if any)

\_\_\_\_\_

## Document Submittal Checklist

Document	Section of RFP	Received	Comment
Technical Proposal (with original signature and in the form defined in the RFP)	§1.14 & Part 4		
Financial Proposal (in the form defined in the RFP)	§1.14 & §4.8		
Vendor Statement that the Proposal will remain valid at least 180 days from due date of Proposals	§1.17		
Vendor Acknowledgement of Addendums if applicable	§1.11		
Freedom of Information Law - Designation of Proprietary Information	§1.13		
Non-Collusive Bidding Certificate ( <b>Appendix F</b> )	§1.12		
Procurement Lobbying Bidder/Offeror Disclosure/Certification Form ( <b>Appendix G</b> )	§1.8		
NYS Vendor Responsibility Questionnaire ( <b>Appendix B</b> )	§2.5		
Equal Employment Opportunity (EEO) <ul style="list-style-type: none"> <li>• Policy Statement (<b>Appendix D</b>)</li> <li>• Staffing Plan (<b>D-2</b>)</li> </ul>	§2.9		
Minority and Women-Owned Business Enterprise Program ( <b>Appendix E</b> ) <ul style="list-style-type: none"> <li>• Summary of MBE/WBE Utilization Plan</li> <li>• Demonstrated experience meeting or exceeding MWBE goals</li> </ul>	§2.9		
Workers Compensation Proof of Compliance with Workers' Compensation and Disability Benefits	§2.10		
MacBride Fair Employment Principals (Northern Ireland Stipulation Form) ( <b>Appendix H</b> )	§2.7		
Sales & Use Tax ( <b>Appendix I</b> ) <ul style="list-style-type: none"> <li>• ST220-CA (submit to Lottery)</li> <li>• ST220-TD (submit to DTF)</li> </ul>	§2.8		

Vendor \_\_\_\_\_

**APPENDIX A**

**Standard Clauses for NYS Contracts**

**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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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).

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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital 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.

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) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office 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 State Finance Law §165. (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  
 30 South Pearl St -- 7<sup>th</sup> Floor  
 Albany, New York 12245  
 Telephone: 518-292-5220  
 Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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  
 30 South Pearl St -- 2nd Floor  
 Albany, New York 12245  
 Telephone: 518-292-5250

Fax: 518-292-5803  
<http://www.empire.state.ny.us>

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. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**APPENDIX B**

**NYS Vendor Responsibility Questionnaire**

**For-Profit Business Entity**

**Not-for-Profit Business Entity**

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

BUSINESS ENTITY INFORMATION				
Legal Business Name			EIN	
Address of the Principal Place of Business/Executive Office			Phone Number	Fax Number
E-mail		Website		
<b>Authorized Contact for this Questionnaire</b>				
Name:			Phone Number	Fax Number
Title			Email	
List any other DBA, Trade Name, Other Identity, or EIN used in the last five (5) years, the state or county where filed, and the status (active or inactive): (if applicable)				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS	
<b>1.0 Business Entity Type – Please check appropriate box and provide additional information:</b>	
a) <input type="checkbox"/> Corporation (including PC)	Date of Incorporation
b) <input type="checkbox"/> Limited Liability Co. (LLC or PLLC)	Date Organized
c) <input type="checkbox"/> Limited Liability Partnership	Date of Registration
d) <input type="checkbox"/> Limited Partnership	Date Established
e) <input type="checkbox"/> General Partnership	Date Established                      County (if formed in NYS)
f) <input type="checkbox"/> Sole Proprietor	How many years in business?
g) <input type="checkbox"/> Other	Date Established
If Other, explain:	
1.1 Was the Business Entity formed in New York State? <span style="float: right;"><input type="checkbox"/> Yes   <input type="checkbox"/> No</span>	
If 'No' indicate jurisdiction where Business Entity was formed:	
<input type="checkbox"/> United States      State      _____	
<input type="checkbox"/> Other                      Country      _____	
1.2 Is the Business Entity currently registered to do business in New York State with the Department of State? Note: <i>Select 'Not Required' if the Business Entity is a Sole Proprietor or General Partnership</i> <span style="float: right;"><input type="checkbox"/> Yes   <input type="checkbox"/> No <input type="checkbox"/> Not required</span>	
If 'No' explain why the Business Entity is not required to be registered in New York State.	
1.3 Is the Business Entity registered as a Sales Tax Vendor with the New York State Department of Taxation and Finance? <span style="float: right;"><input type="checkbox"/> Yes   <input type="checkbox"/> No</span>	
If 'No', explain and provide detail, such as "not required", "application in process", or other reason for not being registered.	
1.4 Is the Business Entity publicly traded? <span style="float: right;"><input type="checkbox"/> Yes   <input type="checkbox"/> No</span>	

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

**I. BUSINESS CHARACTERISTICS**

CIK Code or Ticker Symbol <input style="width: 50px;" type="text"/>		
1.5 Is the responding Business Entity a Joint Venture? <i>Note: If the Submitting Business Entity is a Joint Venture, also submit a questionnaire for each Business Entity comprising the Joint Venture</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
1.6 Does the Business Entity have a DUNS Number?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Enter DUNS Number		
1.7 Is the Business Entity's Principal Place of Business/Executive Office in New York State? If 'No', does the Business Entity maintain an office in New York State?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
Provide the address and telephone number for one New York office.		
1.8 Is the Business Entity a New York State Certified Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE), New York State Small Business or a Federally Certified Disadvantaged Business Enterprise (DBE)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'Yes', check all that apply: <input type="checkbox"/> New York State Certified Minority Owned Business Enterprise (MBE) <input type="checkbox"/> New York State Certified Women Owned Business Enterprise (WBE) <input type="checkbox"/> New York State Small Business <input type="checkbox"/> Federally Certified Disadvantaged Business Enterprise (DBE)		
1.9 Identify Business Entity Officials and Principal Owners. For each person, include name, title and percentage of ownership, if applicable. <i>Attach additional pages if necessary.</i>		
Name	Title	Percentage Ownership ( <i>Enter 0% if not applicable</i> )

**II. AFFILIATES AND JOINT VENTURE RELATIONSHIPS**

2.0 Does the Business Entity have any Affiliates? <i>Attach additional pages if necessary.</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN ( <i>If available</i> )	Affiliate's Primary Business Activity
Explain relationship with the Affiliate and indicate percent ownership, if applicable (enter N/A, if not applicable):		
Are there any Business Entity Officials or Principal Owners that the Business Entity has in common with this Affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name	Position/Title with Affiliate	
2.1 Has the Business Entity participated in any Joint Ventures within the past three (3) years? <i>Attach additional pages if necessary</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name:	Joint Venture EIN ( <i>If available</i> ):	Identify parties to the Joint Venture:

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

<b>III. CONTRACT HISTORY</b>	
3.0 Has the Business Entity held any contracts with New York State government entities in the last three (3) years? If "Yes" attach a list including the Contract Number, Agency Name, Contract Amount, Contract Start Date, Contract End Date, and the Contract Description.	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>IV. INTEGRITY – CONTRACT BIDDING</b>	
<i>Within the past five (5) years, has the Business Entity or any Affiliate</i>	
4.0 been suspended or debarred from any government contracting process or been disqualified on any government procurement?	<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 finding of non-responsibility by a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 had a low bid rejected on a government contract for failure to make good faith efforts on any Minority Owned Business Enterprise, Women Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements 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 government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer above provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, 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.	

<b>V. INTEGRITY – CONTRACT AWARD</b>	
<i>Within the past five (5) years, has the Business Entity or any Affiliate</i>	
5.0 been suspended, cancelled or terminated for cause on any government contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract?	<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 government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, 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.	

<b>VI. CERTIFICATIONS/LICENSES</b>	
<i>Within the past five (5) years, has the Business Entity or any Affiliate</i>	
6.0 had a revocation, suspension or disbarment 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 Minority Owned Business Enterprise, Women Owned Business Enterprise or federal certification of Disadvantaged Business Enterprise status, for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, 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.	

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

<b>VII. LEGAL PROCEEDINGS</b>	
<b>Within the past five (5) years, has the Business Entity or any Affiliate</b>	
7.0 been the subject of an investigation, whether open or closed, by any government entity 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, judgment 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 serious or willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 had a government entity find a willful prevailing wage or supplemental payment violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 had any New York State Labor Law violation deemed willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 entered into a consent order with the New York State Department of Environmental Conservation, or a Federal, State or local government enforcement determination involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.6 other than the previously disclosed: (i) Been subject to the imposition of a fine or penalty in excess of \$1,000 imposed by any government entity as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination; or (ii) Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, 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.	

<b>VIII. LEADERSHIP INTEGRITY</b>	
<b>NOTE: If the Business Entity is a Joint Venture Entity, answer 'N/A - Not Applicable' to questions 8.0 through 8.4.)</b>	
<b>Within the past five (5) years has any individual previously identified, any other Business Entity Leader not previously identified, or any individual having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation with New York State been subject to</b>	
8.0 a sanction imposed relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.2 an indictment, grant of immunity, judgment, or conviction of any business related conduct constituting a crime including, but not limited to, fraud, extortion, bribery, racketeering, price fixing, bid collusion or any crime related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.3 a misdemeanor or felony charge, indictment or conviction for: (i) any business-related activity including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price fixing or collusive bidding; or (ii) any crime, whether or not business related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.4 a debarment from any government contracting process?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
For each "Yes" answer provide an explanation of the issue(s), the individual involved, the government entity involved, the relationship to the submitting Business Entity, relevant dates, 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**

<b>IX. FINANCIAL AND ORGANIZATIONAL CAPACITY</b>	
<b>9.0 Within the past five (5) years, has the Business Entity or any Affiliates received a formal unsatisfactory performance assessment(s) from any government entity on any contract?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, 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.	
<b>9.1 Within the past five (5) years, has the Business Entity or any Affiliates had any liquidated damages assessed over \$25,000?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, 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.	
<b>9.2 Within the past five (5) years, has the Business Entity or any Affiliates had any liens, claims or judgments (not including UCC filings) over \$25,000 filed against the Business Entity which remain undischarged or were unsatisfied for more than 90 days?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the lien holder or claimant's name, the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
<b>9.3 In the last seven (7) years, has the Business Entity or any Affiliates initiated or been the subject of any bankruptcy proceedings, whether or not closed, regardless of the date of filing, or is any bankruptcy proceeding pending?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide the Business Entity involved, the relationship to the submitting Business Entity, 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.	
<b>9.4 During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any tax returns required by federal, state or local tax laws?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide the Business Entity involved, the relationship to the submitting Business Entity, the taxing jurisdiction (federal, state or other), the type of tax, the liability years, the tax liability amount the Business Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
<b>9.5 During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any New York State unemployment insurance returns?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide the Business Entity involved, the relationship to the submitting Business Entity, the years the Business Entity 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.	
<b>9.6 During the past three (3) years, has the Business Entity or any Affiliates had any government audits?</b> If "yes" did any audit reveal material weaknesses in the Business Entity's system of internal controls? If "Yes", did any audit reveal non-compliance with contractual agreements or any material disallowance (if not previously disclosed in 9.6)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, 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.	

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

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

**10.0** 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.

Yes  No

Indicate the question number(s) and explain the basis for the claim.

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

**Certification**

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the State of New York or its agencies or political subdivisions in making a determination regarding an award of contract or approval of a subcontract; acknowledges that the State or its agencies or political subdivisions may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; and acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the question set in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of their knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments; if applicable;
- understands that New York State will rely on information disclosed in this questionnaire when entering into a contract with the Business Entity; and
- is under obligation to update the information provided herein to include any material changes to the Business 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 state's contracting entity or the Office of the State Comptroller 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 \_\_\_\_\_

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

Address \_\_\_\_\_

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

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

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

## **APPENDIX C**

### **Consultant Disclosure**

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

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





**This report is due by May 15, 2009.** Thereafter, the State Consulting Services Annual Employment Reports will be due no later than May 15<sup>th</sup> of each succeeding fiscal year. The completed State Consulting Services Annual Employment Report (Form B) must be submitted to:

OSC by mail:	NYS Office of the State Comptroller Bureau of Contracts 110 State Street, 11 <sup>th</sup> Floor Albany, NY 12236 Attn: Consultant Reporting By fax: (518) 474-8030 or (518) 473-8808
DCS by mail:	NYS Department of Civil Service Alfred E. Smith Office Building Albany, NY 12239 Attn: Counsel's Office
Lottery by mail:	NY Lottery Finance One Broadway Center Schenectady, NY 12305 By fax: (518) 388-3334 By email: <a href="mailto:gthorpe@lottery.state.ny.us">gthorpe@lottery.state.ny.us</a>

If you have any questions regarding this requirement of Consultant Disclosure Law please contact Gail Thorpe at (518) 388-3329. For more information and forms in PDF or MS Word format you can visit <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>

## **APPENDIX D**

### **Equal Employment Opportunity (EEO) Policy Statement**

**Appendix D-1: Instructions**

**Appendix D-2: Staffing Plan**

**Appendix D-3: Work Force Employment Utilization Quarterly Report**

**WORK FORCE EMPLOYMENT UTILIZATION REPORT  
SERVICE and/or CONSULTANT FIRMS  
INSTRUCTIONS FOR COMPLETION**

**PURPOSE:** The *Work Force Employment Utilization Report for Services and/or Consultant Firms* is prepared by all contractors, and subcontractors if any, providing services (skilled or non-skilled) or professional consulting services to a state agency to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the *contract specific work force* can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific work force *cannot* be separated out, the contractor's *total work force* is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

**GENERAL INFORMATION:**

1. **Name of contracting state agency** and state agency code (five-digit code).
2. **Reporting period** covered by report (mm/dd/yy to mm/dd/yy); **check** to indicate **Quarterly** or **Semi-Annual Report**.
3. **Contractor firm name** (prime contractor on summary report submitted to agency) and **address** (including city name, state and zip code); **check** if the contractor is a NOT-FOR-PROFIT.
4. **Type of Report:** **check** to indicate whether report covers (i) the **Contract Specific Work Force** or (ii) the **Company's Total Work Force** (in the event the contract specific work force cannot be separated out).
5. Contractor **Federal Employer Identification number** or payee identification number (prime contractor i.d. on summary report); **check** to indicate prime or subcontractor report.
6. **Contract Amount** is dollar amount based on terms of the contract.
7. **Contract number** is the agency assigned number given to the contract (seven digits).
8. **Location of work** including county and zip code where work is performed.
9. Indicate **Product or Service provided** by contractor (brief description).
10. **Contract start date** is month/day/year work on contract actually began.
11. Contractor's **estimate of the percentage of work completed** at the end of this reporting period.

**FEDERAL OCCUPATIONAL CATEGORIES:** The contractor's work force is broken down and reported by the nine **Federal Occupational Categories (FOC's)** consistent with the Federal government's EEO-1 categories for the private sector labor force. These are: *Officials and Managers, Professionals, Technicians, Sales, Office & Clerical (Administrative Support), Craft Workers, Operatives, Laborers and Service Workers*. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

**TOTAL NUMBER OF EMPLOYEES:** Record the *total number of all persons employed* in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total work force, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) thru (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race;
- **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands;
- **Native American or Alaskan Native:** all persons having origins in any of the original peoples in North America.

**TOTAL % MINORITY =** sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

**TOTAL % FEMALE =** total number of female employees in the FOC (column 2) divided by the total number of all employees in that FOC (column 1 + column 2).

**TOTALS:** column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

**SUBMISSION:** The work force utilization report is to be completed by both prime and subcontractors and **signed and dated** by an *authorized representative* before submission. This **Company Official's name, official title and telephone number** should be printed or typed where indicated on the bottom of the form.

The **prime contractor** shall complete a report for its own work force, **collect** reports completed by each subcontractor, and **prepare a summary report for the entire combined contract work force**. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N of the NYCRR* pursuant to *Article 15-A of the Executive Law*.

**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**

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

Company Official's Name \_\_\_\_\_ Title \_\_\_\_\_

Company Official's Signature \_\_\_\_\_ Date \_\_\_\_\_

Telephone Number \_\_\_\_\_

**WORK FORCE EMPLOYMENT UTILIZATION PERIODIC REPORT  
SERVICES AND/OR CONSULTANT FIRMS**

Agency NYS Division of the Lottery /code 20050 Reporting Period Check one  Quarterly  Semi-Annual Report

Contractor/Firm Name \_\_\_\_\_ Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Type of Report  Contract Specific Work Force  Total Work Force  Check if NOT-FOR-PROFIT

Federal Id/Payee Id. No. \_\_\_\_\_ Contract No. \_\_\_\_\_

Check One  Prime Contractor  Subcontractor  Product/Service Provided \_\_\_\_\_

Contract Amount \_\_\_\_\_ Contract Start Date \_\_\_\_\_ Percent of Job Completed \_\_\_\_\_

Federal Occupational Category	Number of Employees						Total Percent Minority Employees	Total Percent Female Employees					
	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic				Asian or Pacific Islander		Native American/Alaskan Native		
	Male	Female	Male	Female	Male	Female			Male	Female	Male	Female	
Officials/Admin													
Professionals													
Technicians													
Sales Workers													
Office & Clerical													
Craft Workers													
Operatives													
Laborers													
Service Workers													
<b>TOTALS</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

## **APPENDIX E**

### **Minority and Women-Owned Business Enterprise Program**

**Appendix E-1: Instructions**

**Appendix E-2: Utilization Plan**

**Appendix E-3, Part 1: Quarterly Subcontracting/Supplier Activity Report**

**Appendix E-3, Part 2: Quarterly Report Detail**

**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 3% participation by New York State Certified Minority owned Business Enterprise (MWBE) and 3% participation by New York State Certified Women Owned Business Enterprise (WBE) 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: [http://www.nylovesbiz.com/Small\\_and\\_Growing\\_Businesses/mwbe.asp](http://www.nylovesbiz.com/Small_and_Growing_Businesses/mwbe.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 DIVISION OF THE LOTTERY  
 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			
	SUPPLIER	CONTRACTOR		CONTRACTOR'S FID#	CONTRACT EFFECTIVE DATES		
PROJECT DESCRIPTION	GOALS		JOB NUMBER (IF APPLICABLE)	CONTRACT NUMBER			
	MBE	WBE					
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

(A) TOTAL CONTRACT BID AMOUNT: \_\_\_\_\_ \$ AMOUNT % OF TOTAL  
 (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) \_\_\_\_\_ 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 DIVISION OF THE LOTTERY  
MWBE CONTRACT COMPLIANCE PROGRAM  
CONTRACTOR'S QUARTERLY SUBCONTRACTING/SUPPLIER ACTIVITY REPORT  
FOR THE PERIOD OF \_\_\_\_\_**

1. NAME AND ADDRESS:    	2. PROJECT/CONTRACT GOALS: MBE _____ WBE _____	3. DATE SUBMITTED _____	4. CONTRACT NO: JOB NO.: _____ LOCATION/REGION: _____
FEDERAL ID/SOCIAL SECURITY NO.* _____		5. PROJECT WORK DESCRIPTION:* _____	
6. CONTRACT EFFECTIVE DATES:* _____			

<b>SUBCONTRACTING/SUPPLIER ACTIVITY REPORT</b>					
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
			MBE	WBE	
DOLLAR RANGE: \$0-\$24,000					
\$25,000 +					
<b>TOTAL</b>					

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.



**APPENDIX F**

**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 \_\_\_\_\_, 2009 as the act and deed of said corporation.

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**APPENDIX G**

**Bidder/Offerer Disclosure/Certification Form**



**APPENDIX H**

**MacBride Fair Employment Principals**

**Northern Ireland Stipulation**

### **NORTHERN IRELAND STIPULATION**

In compliance with section 165.5 of the State Finance Law, every bidder or proposer is required to stipulate regarding activities in Northern Ireland by responding to the following questions with regard to the bidder or proposer or any legal entity in which the bidder or proposer holds a 10% or greater ownership interest or any individual or legal entity that holds a 10 % interest in the bidder or proposer.

1. Does such person have business operations in Northern Ireland?

YES

NO

2. If the answer to question 1 is YES, will the person take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principals relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland and permit independent monitoring of compliance with such principals?

YES

NO

## **APPENDIX I**

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

**ST-220-TD: Contractor Certification to Tax Department**

**ST-220-CA: Contractor Certification to Covered Agency**



# Contractor Certification

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

# ST-220-TD

(6/06)

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)			
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	Contract number or description	Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address	Covered agency telephone number		

### General information

Section 5-a of the Tax Law, 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 a Form ST-220-CA, 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.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*, available at [www.nystax.gov](http://www.nystax.gov). Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

**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**

### 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 Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

### Need help?



**Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



**Fax-on-demand forms:** 1 800 748-3676



**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

**Sales Tax** Information Center: 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

**Hearing and speech impaired** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



**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, please call 1 800 972-1233.

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.

Make only one entry in each section below.

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

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

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

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







# Contractor Certification to Covered Agency

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

# ST-220-CA

(6/06)

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

Contractor name				<i>For covered agency use only</i>	
Contractor's principal place of business				City	State
				ZIP code	<i>Contract number or description</i>
Contractor's mailing address (if different than above)					
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					<i>Covered agency telephone number</i>

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. This publication is available on our Web site, by fax, or by mail. (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.

If you have questions, please call our information center at 1 800 698-2931.

**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.
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Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
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, please call 1 800 972-1233.

**APPENDIX J**

**Contract Form**

VIDEO LOTTERY TERMINAL & CENTRAL SYSTEM TESTING  
CONTRACT # C100006

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between the NEW YORK STATE DIVISION OF THE LOTTERY, 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 "Lottery"), and [name of company] having an office at [address of company] (the "Contractor").

WHEREAS the Lottery issued a Request for Proposals on November 5, 2010 soliciting proposals from qualified firms for acceptance testing for a central system supporting video lottery gaming terminals and video gaming software, and clarified the requirements of the Request for Proposals with a list of Questions and Answers dated November 29, 2010 and December 17, 2010 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Financial Proposal dated January [ ], 2011 (collectively, the "Proposal"), which received the highest total combined score from among competing proposals by the Lottery'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 furnish the Lottery with professional services to conduct acceptance testing of video lottery gaming software and the video lottery gaming central computer system, 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. Contractor shall exercise professional skill, care, and diligence in the performance of its obligations under this Agreement. Contractor hereby accepts such engagement upon the provisions of the RFP and the Proposal except as modified by this Agreement.

2. Term. This Agreement shall be for a term of five (5) years commencing as of the date of approval by the State Comptroller.

3. Compensation.

In full consideration for all goods and services specified in the RFP and the Proposal, the Contractor agrees to accept compensation in accordance with the prices set forth in the Proposal from the video lottery central system provider and each of the video lottery terminal providers for all work performed by the Contractor for such central system or terminal provider. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor.

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 Lottery, the State of New York, or the Contractor unless and until approved by the Attorney General and the State Comptroller. The Lottery agrees to exercise its best efforts to obtain such approval.

5. Mutual Cooperation. The objective of this Agreement is to conduct acceptance testing of video lottery gaming software and video lottery gaming central computer system. 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 Lottery 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 Lottery that continuation of the contract could place the integrity of the Lottery 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 Director of the Lottery, would be prejudicial to public confidence in the Lottery.

(b) In the event that the Lottery decides to exercise the right to terminate this Agreement for cause, the Lottery 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 Lottery 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 Lottery 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 Lottery may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Agreement.

#### 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 Lottery identifies as confidential and discloses to the Contractor so that the Contractor can provide services to the Lottery 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 Lottery deems confidential. The Lottery 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 Lottery 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 Lottery 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 Lottery 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 Lottery pursuant to this Agreement. The Contractor shall not make copies of any written Confidential Information without the express written permission of the Lottery. The Lottery'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 Lottery 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 Lottery, the Contractor shall return all written Confidential Information to the Lottery.

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 Lottery:

Director of the Lottery

NYS Division of the Lottery

One Broadway Center

Post Office Box 7500

Schenectady NY 12301-7500

(b) As to the Contractor:

[Name and 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 New York Lottery, 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 Lottery 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 Lottery 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 Lottery 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 Lottery 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 Lottery and the State against any such liabilities.

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

13. 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 – Standards Terms for New York State Contracts;
- (b) Any amendments to the Agreement;
- (c) Agreement;
- (d) Request for Proposal and any clarifying responses by the Lottery;
- (e) Vendor Proposal and any clarifying responses by the vendor.

14. 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 Lottery 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.

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

NYS Agency Contract No. C100006

In addition to the acceptance of this Agreement, my signature below certifies that copies of this signature page will be attached to all other exact copies of this contract.

[CONTRACTOR]

NEW YORK STATE  
DIVISION OF THE LOTTERY

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

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

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

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

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

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

ATTORNEY GENERAL

COMPTROLLER

Thomas P. DiNapoli

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

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

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

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

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

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



