

REQUEST FOR PROPOSALS (RFP)
RFP # 24-OPD-7

New York State Department of State
Office of Planning, Development & Community Infrastructure
for
Maritime and Ports Asset Inventory and Needs Assessment

KEY DATES

Release Date: May 20, 2024

Deadline for Questions: June 24, 2024

Questions and Answers Posted: July 16, 2024

Proposal Due Date: August 7, 2024

The procurement is in a restricted period from the date this RFP is issued until the contract has been approved. All contacts and inquiries shall be made to the designated contact for this procurement at the following address:

Procurement Unit
NYS Department of State
Bureau of Fiscal Administration
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
Email: dos.sm.procurement@dos.ny.gov
(include in subject line: **RFP#24-OPD-7** <name of vendor>)

Refer to <https://dos.ny.gov/funding-bid-opportunities> to review responses to all inquiries.

Table of Contents

1. INTRODUCTION	4
1.1 Overview.....	4
1.2 Designated Contact.....	5
1.3 Funding and Term of Contract.....	6
1.4 Eligible Proposers	6
1.5 Proposer’s Minimum Qualifications.....	7
1.6 Proposer’s Preferred Qualifications	7
2. SCOPE OF WORK.....	8
3. ELIGIBLE COSTS	11
4. INELIGIBLE COSTS.....	12
5. PROPOSAL SUBMISSION.....	12
5.1 Question Submission and Agency Response.....	12
5.2 Method for Issuing Clarifications or Modifications to the RFP	12
5.3 Submission of Proposals.....	12
5.4 Packaging of RFP Response	13
5.5 Elements in the Response	13
5.6 Elements of the Technical Proposal	14
5.7 Elements of the Cost Proposal.....	15
6. EVALUATION AND SELECTION PROCESS.....	16
6.1 Proposal Evaluation	16
6.2 Evaluation Criteria	16
6.2.1 Technical Proposal Evaluation.....	16
6.2.2 Cost Proposal Evaluation.....	18
6.3 Method of Award.....	18
6.4 Notification of Award.....	18
7. ADMINISTRATIVE INFORMATION	18
7.1 Mandatory Requirements.....	18
7.1.1 Confidentiality	18
7.1.2 Consultant Assurances.....	19
7.1.3 Subcontracting	19
7.1.4 Proprietary Interests.....	19
7.1.5 Travel.....	19
7.1.6 Reporting Requirements.....	20

7.1.7 Dispute and Conflict Resolution.....	20
7.1.8 Debriefing.....	20
7.1.9 Protest Procedures	20
7.1.10 Vendor Responsibility Questionnaire.....	20
7.1.11 Contractor’s Insurance Requirements	21
7.1.12 State Consultant Services Reporting	26
7.1.13 Lobbying Statute Summary	27
7.1.14 New York State Tax Law Section 5-a.....	27
7.1.15 Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women.....	28
7.1.16 Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses.....	32
7.1.17 Executive Order 16.....	35
7.1.18 Iran Divestment Act.....	35
7.1.19 Sexual Harassment Policy and Training.....	36
7.1.20 Amendments to the Contract	36
8. RESERVED RIGHTS	36
Attachments	39
Attachment 1: Non-Collusive Bidding Certification	39
Attachment 2: Conflict of Interest Statement	41
Attachment 3: Lobbying Form.....	43
Attachment 4: Technical Proposal Transmittal Sheet.....	48
Attachment 5: Cost Proposal Transmittal Sheet	50
Attachment 6: Contract Pricing Proposal form.....	51
Attachment 7: Consultant Disclosure Form A.....	52
Attachment 8: ST-220-CA.....	53
Attachment 9: Executive Order 16	54
Attachment 10: Diversity Practices Questionnaire	55
Attachment 11: MWBE Form D: Utilization Plan	57
Attachment 12: SDVOB Form 100: Utilization Plan	58
Attachment 13: SAMPLE Contract	59

1. INTRODUCTION

1.1 Overview

The New York State Department of State (NYSDOS), Office of Planning, Development and Community Infrastructure (OPDCI) is seeking consultant services for a Maritime and Ports Asset Inventory and Needs Assessment to support DOS's Green and Resilient Ports Initiative. The primary purpose of this study is to create a detailed inventory of maritime and ports assets in New York State and evaluate and prioritize future infrastructure and investment needs to support the sector.

NYSDOS is an executive department of the State of New York and administers the State's Coastal Management Program (CMP). The CMP is a framework for government decision-making which affects New York's coastal area and aims to promote the beneficial use of coastal resources, prevent their impairment, and manage major activities substantially affecting resources in New York's coastal waters. These coastal waters include the marine environment of Long Island and New York City, the tidal estuarine environment of the Hudson River, and the freshwater environment of the Great Lakes-St. Lawrence region.

Through NYSDOS's OPDCI, the Ocean and Great Lakes (OGL) Program was established to collaborate with local, State, and federal agencies to advance planning, policy, and project activities that address the connections between ocean and Great Lakes ecosystem health, economic vitality, and community well-being. The OGL program implements the goals of Article 14 of NYS Environmental Conservation Law which promotes the restoration, protection, and enhancement of New York State's Ocean and Great Lakes ecosystems and coastal economies. Because of NYSDOS's unique role in coastal management and planning, it has a strong interest in maritime activities within the state's coastal boundaries and works to ensure resilient and sustainable maritime economies within the state's coastal communities.

The maritime and ports sector in New York State are critical components of the state and national economies where they facilitate commerce, create good jobs, and promote economic growth. Because of the integral nature of the maritime sector and ports in New York, these facilities are at the forefront of climate adaptation and resiliency, and sustainable infrastructure planning. In addition, coastal communities and waterfront properties are experiencing a growing demand for limited waterfront spaces to support a variety of competitive uses. This study aims to gather data needed to more comprehensively understand how residential and recreational uses as well as port and industrial activities can coexist and mutually support thriving waterfront communities.

Within New York State, port authorities and private entities operate ports and maritime infrastructure. Port authorities are governmental or quasi-governmental public authorities responsible for managing and operating facilities. Major public port authorities in New York include the Port of New York and New Jersey¹ the Port of Albany², Port of Oswego³, and Port of

¹ New York State Unconsolidated Law Chapter 154 (1921)

² New York State Unconsolidated Law Chapter 192 (1925)

³ New York State Public Authorities Law Article 6, Title 2

Ogdensburg⁴. Distinct from port authorities, State public benefit corporations such as the New York State Canal Corporation have oversight of the New York State Canal System which consists of the Erie Canal, Cayuga-Seneca Canal, Oswego Canal, and Champlain Canal. Federal ownership includes the St. Lawrence Seaway. Private terminals, in comparison, are operated by private companies and terminal operators, and may specialize in a specific type of cargo or maritime use. For the purposes of the deliverables covered in this RFP, “maritime” uses are intended to include: cargo (container and bulk) and passenger cruise vessels, and ferry services outside of the New York City ferry system⁵.

This study seeks to conduct a comprehensive assessment of ports and maritime facilities in New York State and will:

- Create an asset inventory database that catalogues key infrastructure;
- Develop an economic assessment of ports and the maritime sector’s effect on local and regional economies; and
- Create a needs assessment that identifies funding, and prioritizes implementation actions and investment across the sector, with an emphasis on ‘greening’, resiliency, and decarbonization strategies.

These tasks will provide NYSDOS with an understanding of the current state of major components within the maritime and ports sector and facilitate broad strategic programmatic support to identified needs. This study will build upon prior public or port-commissioned studies examining the economic impact of ports on local, regional, and national economies, and provide NYSDOS with a framework of knowledge to provide technical assistance to sector partners as well as inform future planning and economic development activities undertaken by State entities such as Empire State Development, the New York State Department of Transportation, and the New York State Energy Research and Development Authority. A key objective and outcome of this study is to directly engage partners and stakeholders in the maritime and ports sector and identify and prioritize broad or project-specific needs.

1.2 Designated Contact

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on all communications between DOS and Proposers during the procurement process. Proposers are restricted from making contacts from the earliest notice of intent to solicit offers/proposals, through final award and approval of the Procurement Contract by DOS, and, if applicable, the Office of the State Comptroller (“restricted period”), to anyone other than designated staff, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a).

As such, DOS identifies the following designated contact to whom all communications, including technical questions, requests for clarification, or any attempt to influence this procurement, must be made. In compliance with the Procurement Lobbying Law, Rachel Reilly has been designated

⁴New York State Public Authorities Law Article 6, Title 3

⁵ <https://www.ferry.nyc/>

the primary contact for this procurement solicitation and may be reached by email or surface mail for all inquiries regarding this solicitation.

Rachel Reilly
NYS Department of State
Bureau of Fiscal Administration
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
RFP# 24-OPD-7

By email: dos.sm.procurement@dos.ny.gov
Include in subject line: RFP# 24-OPD-7 <name of vendor>

DOS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Proposers pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, Proposers are debarred from obtaining governmental Procurement Contracts.

For further information regarding these statutory provisions, see the Lobbying Statute Summary in Section 7.1.13 of this solicitation.

1.3 Funding and Term of Contract

Funding will be provided through the New York State Environmental Protection Fund - Ocean and Great Lakes line.

This agreement shall be effective upon approval of the NYS Office of the State Comptroller. The anticipated contract term is approximately two (2) years. DOS shall have no liability under this RFP to the successful Proposer for consulting services, or to any other party, beyond funds available for this RFP.

DOS will negotiate the contract for services in fulfillment of the needs of this RFP on the basis of demonstrated competence and qualifications. Contract negotiations may include, but are not limited to, the selected Proposer's price proposals to ensure work is accomplished at fair and reasonable rates.

This agreement may be canceled at any time by the DOS giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

1.4 Eligible Proposers

Any for-profit, not-for-profit, academic or other organization is eligible to apply under this procurement.

1.5 Proposer's Minimum Qualifications

1. Proposals must be received by the due date and time stated on the cover page of this RFP.
2. Not-for-profit Proposers must be prequalified in the New York Statewide Financial System by the proposal due date.
 - a) Be incorporated pursuant to New York State Not-For-Profit Corporation Law
 - b) Have an approved tax-exempt status under the Internal Revenue Service code

Any proposer that fails to meet these criteria will be eliminated without further evaluation.

1.6 Proposer's Preferred Qualifications

Preference will be given to Proposers with:

- a. In-depth knowledge and understanding of the maritime industry and infrastructure in New York State, including those in coastal areas of the Hudson River, Atlantic Ocean, Long Island Sound, State Canals, and the Great Lakes.
- b. Experience working with public and private ports and terminal operators. Applicants with demonstrated experience working with New York State maritime and port entities are preferred.
- c. Demonstrated ability to perform outreach to diverse partners for data collection, and the ability to present complex data in clear, concise, and high-quality formats.
- d. Demonstration of experience in port planning, infrastructure assessments, and related work. Experience in providing strategic reports that assess infrastructure, identify opportunities, and provide meaningful strategies for implementation.
- e. Understanding of port electrification, decarbonization, and resiliency best practices, programs, initiatives, as well as potential funding streams available to the maritime industry and ports for related infrastructure and upgrades.
- f. Experience in assessing port infrastructure, including terminals, piers, wharfs, breakwalls, channels, and related elements of basic port function and ability to provide basic descriptions of core functions, condition, and application to different types of cargo or vessel services (e.g. servicing for offshore facilities, passenger transport/ferries).
- g. Experience coordinating complex projects involving multiple disciplines, managing, and scheduling multi-disciplinary work to meet deadlines. Familiarity with New York's Climate Leadership & Community Protection Act (Climate Act) goals as they relate to measures to promote the beneficial electrification of freight transport and reduce greenhouse gas emissions from the marine transportation sector.⁶ Experience quantifying, evaluating, and reporting economic trends and projections and their relationship to specific cargoes, commodities, and trade patterns.
- h. Demonstrated applied knowledge in port operations and transportation logistics.
- i. Demonstrated experience in working with public and/or private terminal operators to identify mechanisms for growth and identify new opportunities.
- j. Economic modeling: experience in providing models of economic forecasts that can be scaled down for specific sectors (commodities) and related to ports.

⁶ New York State Environmental Conservation Law 75-0103(13)(f)

2. SCOPE OF WORK

Within the contract term, the Contractor will complete the following tasks and products (deliverables). All deliverables will be reviewed by NYSDOS and the Contractor will address and incorporate suggested edits prior to final approval and acceptance for payment.

Task 1: Kickoff meeting and project coordination

The contractor shall participate in an initial in-person meeting with NYSDOS to review and agree upon the project scope and schedule, project requirements, roles and responsibilities, and any other information which would assist in project completion.

A schedule of project check-in meetings will be arranged. The Contractor shall prepare and distribute to NYSDOS a brief meeting summary clearly indicating the agreements and action items reached at the meeting. Work on subsequent tasks shall not proceed prior to Department approval of the proposed approach as outlined in the meeting summary.

Most meetings will be held virtually; the initial project kick-off meeting will be in person in Albany, New York.

Deliverables:

- Project initiation meeting held with NYSDOS.
- Written meeting summary outlining agreements reached.
- Schedule of project check-in meetings and timetable of deliverables

Task 2: Identify and catalogue public and private entities controlling New York's maritime infrastructure assets.

The contractor will utilize available resources and research to create an inventory in Microsoft Access format with relevant contact information for key personnel, including email, phone, and address.

For the purposes of this RFP, entities include: Public and private port entities and authorities, vessel operations and management entities, government agencies, academic institutions, commercial partners, and public stakeholders related to the ports and maritime sector.

Deliverable: Inventory of public/private entities in Microsoft Access format.

Task 3: Engage entities identified in Task 2 to conduct survey interviews.

Develop an interview questionnaire with NYSDOS to identify maritime and ports assets including but not limited to asset type, location, ownership, and usage data.

The questionnaire will also seek to catalogue the targeted entity's labor and workforce needs, land use needs, energy infrastructure, energy availability, and energy needs including electrification, decarbonization, use of alternative fuels as part of DOS's Green Ports Initiative.

The questionnaire will seek to catalogue any resiliency best practices, programs, initiatives being planned or undertaken by the entity.

Deliverable: Interview questionnaire in Word, PDF, Excel, Web, or comparable format.

Task 4: Conduct outreach to maritime and port entities.

The contractor will utilize the questionnaire to solicit information from identified entities. Dependent on entity capacity, consultant may opt for in-person, remote, or written survey interviews in consultation with DOS.

Deliverable: Completed questionnaires for each maritime and port entity in Word, Excel, or PDF format.

Task 5: Develop a Maritime Asset Database

The Maritime Asset Database will compile detailed information on identified maritime and ports assets in New York State as obtained through the interview questionnaire, publicly available online information, and professional or industry publications as needed.

Components of the Maritime Asset Database will include but not be limited to:

- Asset type - including resources and infrastructure related to maritime uses and activity such as:
 - Public and private port entities and authorities, vessel operations and management entities, agencies, academic institutions, commercial partners, and public stakeholders.
 - Public and private port infrastructure, including terminals, piers, docks, navigation channels, dock-side facilities and storage, and cargo handling equipment.
 - Energy infrastructure and availability at ports, including current electrification, decarbonization, and resiliency best practices, programs, initiatives.
 - For the purposes of this RFP, assets do not include non-port owned vessels and Port Authority of NY/NJ and NYC-operated commuter ferries.
- Location - including address, and x, y and/or latitude and longitude coordinates,
- Primary products handled,
- Ownership and governance structure- public or private (list specific government type or owning company as appropriate) with a point of contact,
- Usage including frequency of vessel calls,
- Energy infrastructure and availability data,
- Climate-related needs,

- Resiliency measures to protect from flooding, sea level rise (where appropriate) and extreme water levels,
- Land use needs and constraints,
- Other information that may be deemed useful in consultation with DOS.

Where applicable, information that is proprietary or related to domestic security will be limited in the level of detail incorporated in the database.

Deliverable: Maritime Asset Database in MS Access or compatible database format.

Task 6: Spatial Asset Map

Contractor will provide NYSDOS with a spatial map or map data illustrating the geographic distribution of maritime and ports assets by location as collected above.

The map will supplement the Maritime Asset Database with visual, spatial, and metadata information for key assets.

Deliverable: Spatial Asset Map in ESRI/ArcGIS-compatible format with underlying data and metadata provided to NYSDOS.

Task 7: Economic Impact Analysis of the Maritime Industry and Ports on Local Economies

Utilizing modeling software such as IMPLAN or equivalent, the contractor will develop an Economic Impact Analysis (EIA) that will provide a comprehensive analysis of maritime and port entities on local, state, and regional economies.

The EIA will collect and describe quantitative data on jobs directly and indirectly created by the entity, and contributions to the state and/or local economies and communities.

The EIA will detail investments made or planned to upgrade and modernize ports and related infrastructure to support renewable energy goals in the Climate Act, and in support of offshore wind development.

The EIA will also describe the trends, growth opportunities, and estimated potential economic impact to the state and local economies from the entity's investments in offshore wind, electrification, resiliency, and "greening" of infrastructure and operations.

In addition to entity-level descriptions, the EIA will summarize broad themes across the sector in New York State.

Deliverable: Economic Impact Analysis Report provided to NYSDOS.

Task 8: Green Ports Needs Assessment and Implementation Plan

Utilizing the Maritime Asset Database, Spatial Asset Map, and Economic Impact Analysis, the contractor will develop a Green Ports Needs Assessment and Implementation Plan (Needs Assessment) that identifies gaps in infrastructure, funding, and policy, and identifies specific implementation recommendations to support the industry's sustainable growth and resiliency.

The Needs Assessment will provide and design a prioritized implementation plan for areas of support and investment with a specific focus on greening, resiliency, decarbonization, and offshore wind opportunities at individual priority ports.

The Contractor will conduct remote interviews State and federal agency personnel responsible for port implementation and funding, including: Departments of Environmental Conservation, State, and Transportation; Empire State Development; New York Power Authority (New York State Canals); New York State Energy Research and Development Authority; the U.S. Army Corps of Engineers; Department of Transportation (including the Maritime Administration and St. Lawrence Seaway Development Corporation); and Environmental Protection Agency.

The Needs Assessment will be targeted, actionable and specific and include:

- Infrastructure needs that support greening, resiliency, decarbonization, and port growth opportunities such as offshore wind at maritime and port entities.
- Funding needs and opportunities for greening, resiliency, decarbonization, and port growth opportunities such as offshore wind at maritime and port entities, including specific Climate Act renewable energy goals.
- State policy and regulatory recommendations for maritime and ports to support greening, resiliency, decarbonization, and port growth opportunities such as offshore wind at maritime and port entities.
- Land use and development current and forecasted constraints, and tools, local laws, and programmatic support that can assist ports in growth and resiliency efforts.
- Ongoing communication and coordination needs between maritime and port entities, agencies, and stakeholders.
- Implementation actions that list priority projects for specific maritime and ports entities, identifies potential funds to support implementation, and details implementation timescale (short term, long term, etc.).
- Where possible, specific infrastructure projects will be identified that include estimated cost, permitting or regulatory hurdles, potential funding sources, and any other pertinent information.

Deliverable: Green Ports Needs Assessment and Implementation Plan provided to NYSDOS. Submission of a draft report is required for review and approval prior to the final submission.

3. ELIGIBLE COSTS

Costs must be adequately justified and directly support the scope of work for the proposed contract. Proposed project costs must be essential to project completion.

Estimated direct costs should be embedded in the billable rates for each deliverable. Costs should anticipate one in person meeting for two staff to Albany, New York. There will be no payment

for any costs other than the deliverable costs included in the Proposal. Payment will be made upon completion of deliverables.

4. INELIGIBLE COSTS

The following costs are not eligible for reimbursement under the contract resulting from this RFP:

- Expenses including but not limited to: alcohol, equipment, out-of-state or out- of-country travel, prizes and awards, honoraria, lobbying expenses, fund-raising events/expenses, proposal writing costs, taxes, fines and penalties, deficit funding, religious activities and refreshments for meetings.
- Costs that are not adequately justified or that do not directly support the scope of work or deliverables.
- Costs incurred prior to the contract start date.

5. PROPOSAL SUBMISSION

5.1 Question Submission and Agency Response

Questions and requests for clarification regarding this RFP shall only be directed to the Designated Contact. Communications are only accepted via email, or in writing, and must be submitted by the date posted on the cover page of this RFP. Official answers to questions will be posted on the DOS's website at <https://dos.ny.gov/funding-bid-opportunities> on the date stated on the cover page of this RFP. The deadline for submission of questions is as stated on the cover page of the RFP. By submitting a proposal, Proposer agrees to all terms and conditions of this RFP and the terms of the Sample Contract attached. Any questions regarding the terms and conditions of this RFP and the sample contract must be submitted prior to the Questions Due Date stated on the cover of this RFP. Exceptions to the terms of this RFP or the terms and conditions of the sample contract will not be considered unless they are submitted as a question during the Q&A period.

5.2 Method for Issuing Clarifications or Modifications to the RFP

The issuance of clarifications or modifications to this RFP will be posted on the DOS's website at <https://dos.ny.gov/funding-bid-opportunities> and may occur within the posting of official answers to questions (see cover page for posting dates).

5.3 Submission of Proposals

Proposals must be received on or before the Proposal Due Date listed in Key Event Dates on the cover page of this RFP. Proposers assume all risks for timely, properly submitted proposals. Only those contractors who furnish all required information will be considered for evaluation. Late proposals will neither be accepted nor reviewed.

Proposals and all required forms must be submitted electronically. For the purposes of this RFP, electronic signatures are considered to be the same as a hard copy signature. Electronic proposals should be signed and submitted in two pdf documents (Technical Proposal in one document,

Cost Proposal in a separate document) to the DOS Procurement mailbox at dos.sm.procurement@dos.ny.gov. Proposals should be sent to the Procurement mailbox *only*. Please do not include any additional DOS staff when submitting the proposal. Including additional staff on a proposal submission may be seen as a violation of Procurement Lobbying Law.

No financial proposal or pricing information may be included in the Technical Proposal. Technical and Cost Proposals should be submitted as separate documents and identified with: (1) Maritime and Ports Asset Inventory and Needs Assessment RFP#24-OPD-7; (2) the name of the Proposer, and (3) labeled “Technical Proposal” or “Cost Proposal” as applicable. It is strongly recommended that proposals be submitted no later than two days before the due date in case there are technical difficulties with the submittal. DOS is not responsible for proposals that are not received due to technical issues. DOS will confirm receipt of proposals, but the Proposer is responsible for ensuring that their proposal was received. Proposer acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of their proposal regardless of whether the original of said application is in existence. Electronic proposals must be received by 11:59 pm on the due date listed on the cover of this RFP.

The State of New York will not be held liable for any cost incurred by the contractor for work performed in the preparation and production of a proposal or for any work performed prior to the formal execution and approval of a contract.

Proposals must remain open and valid for 365 days from the due date, unless the time for awarding the contract is extended by mutual consent of DOS and the Proposer. A proposal shall continue to remain an effective offer, firm and irrevocable, subsequent to such 365-day period until either tentative award of the contract(s) by the issuing office is made or withdrawal of the proposal in writing by Proposer. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing office to the successful contractor(s), who shall thereupon be obligated to execute a formal contract. This RFP remains the property of the State at all times, and all responses to this RFP, once delivered, become the property of the State.

5.4 Packaging of RFP Response

Each page of the proposal should be numbered consecutively from the beginning of the proposal through all appendices. Forms and attachments submitted should be complete and legible; include original signatures where requested, and adhere to any page limitations set forth in this RFP. Where there are page limitations, Proposers should use 12-point font with one-inch margins.

5.5 Elements in the Response

Proposers may respond to this RFP to perform the work as an individual consultant or as a team of consultants. Proposals that include a team of consultants must identify a Lead Proposer who will be the responsible party for all purposes including contract award and contract execution.

Each proposal must include two distinct sections:

1. Section 1 – Technical Proposal, and
2. Section 2 – Cost Proposal

No financial proposal or pricing information may be included in a Proposer’s technical proposal.

5.6 Elements of the Technical Proposal

The Proposer’s technical proposal must contain, at a minimum, the following completed documents signed by an official authorized to bind the Proposer to the provisions of the RFP. Failure to submit the required documents may result in the proposal being deemed nonresponsive.

(1) Technical Proposal Transmittal Sheet (Attachment 4)

Proposers must submit a complete Technical Proposal Transmittal Sheet with original signature. The transmittal letter response should attest that the Proposer has the demonstrated knowledge and expertise in the services sought in the RFP.

(2) Qualifications and Overall Experience

- a) Proposer should demonstrate knowledge and understanding of the maritime industry and infrastructure in New York State.
- b) Proposer should demonstrate experience and performance working with, and communicating with public and private ports and terminal operators and identify any relevant experience working with New York State maritime and port entities.
- c) Proposer should demonstrate experience with outreach to diverse partners for data collection and the presentation of complex data in clear, concise, and high-quality formats.
- d) Proposer should demonstrate experience and performance with projects related to maritime and port infrastructure planning, analysis, and strategy.
- e) Proposer should demonstrate understanding of port electrification, decarbonization, and resiliency best practices, programs, and initiatives, and laws and regulations, as well as knowledge of port operations, transportation logistics, and relevant funding programs.
- f) Proposers should demonstrate experience and performance with projects related to maritime and ports economic modeling and trends analysis.
- g) Proposer should demonstrate understanding and experience in assessing port infrastructure and identifying upgrade opportunities and implementation strategies.
- h) Proposer should demonstrate experience and knowledge is preparing reports and spatial assets related to ports infrastructure analysis.
- i) Proposers should demonstrate experience and performance with project management and effective communication with partners.

(3) Understanding of Project Goals and Objectives

- a) Proposers should demonstrate understanding of project goals and objectives.

- b) Proposers should submit a summarized approach to project completion including all core tasks in the scope of work.
- c) Proposers should demonstrate readiness to begin work on the project including a proposed timeframe for when work will begin and ability to meet the timeline goals for the project.

(4) Project Team/Organization/Key Personnel

Proposer should provide:

- a) Resumes of all persons who will be assigned work pursuant to the RFP including all subcontractors, demonstrating appropriate and relevant qualifications, educational background, professional accreditation, training, and experience.
- b) An organizational chart of project staff and described roles and responsibilities of identified staff, including subconsultants, if any.
- c) Proposers should designate an individual as the Project Manager. The Project Manager should be able to demonstrate their management of one other project of similar size and nature and a description of that project.
- d) Proposer should identify gaps in skillsets/expertise in their proposed team and identified subcontractors to fill the gaps if already in place or laid out a plan for finding subcontractors to fill any remaining gaps.

(5) Diversity Practices Questionnaire

Proposers must complete and submit the Diversity Practices Questionnaire attached here as Attachment 10 with their proposal.

5.7 Elements of the Cost Proposal

The Proposer's cost proposal must contain, at a minimum, the following completed documents signed by an official authorized to bind the Proposer to the provisions of the RFP. Failure to submit the required documents may result in the proposal being deemed nonresponsive. The Proposer's cost proposal should also contain the following completed forms:

- 1. Non-Collusive Bid Certification (Attachment 1)
- 2. Conflict of Interest Statement (Attachment 2)
- 3. Lobbying Form (Attachment 3)
- 4. Consultant Disclosure Form A (Attachment 7)
- 5. ST-220-CA (Attachment 8)
- 6. Executive Order 16 Certification (Attachment 9)
- 7. Diversity Practices Questionnaire (Attachment 10)
- 8. MWBE Form D (Attachment 11)
- 9. SDVOB Form 100 (Attachment 12)

(1) Cost Proposal Transmittal Sheet (Attachment 5)

The sheet must be signed by an official authorized to bind the Proposer to the provisions of the RFP and the Proposer's response. The signed cover sheet includes an attestation that the Proposer's Cost Proposal will remain valid for a minimum of 365 days from the RFP proposal due date. All

relevant fields should be complete and legible. A scanned signature or an electronic signature are both acceptable.

(2) Contract Pricing Proposal Forms (Attachment 6)

Provide a detailed pricing schedule as outlined in Attachment 6 – *Pricing Proposal*. Pricing Proposal should include expenses to provide proposed deliverables inclusive of all bidder costs to complete each task. Expenses related to deliverables including administrative costs, travel, etc. must be included in the deliverables listed. Clearly label each page “PRICING SCHEDULE, PAGE __ OF __.” Prices provided on the Pricing Schedule submitted with the proposal shall be the prices that the firm will implement if selected as the successful Contractor.

If your firm is selected as the successful Contractor, the prices provided in response to this section shall be prices upon which any future request for a price increase will be based. Price increases will be considered as detailed below. Future price increases will NOT be considered if the prices established in the original Pricing Schedule were too low to adequately cover all costs related to production and distribution.

6. EVALUATION AND SELECTION PROCESS

6.1 Proposal Evaluation

All proposals are subject to an evaluation by the DOS. DOS will select the Proposer who will provide the “best value”, taking into consideration qualifications, experience, services and cost, and the consistency of the proposal with the requirements of this RFP. Only proposals judged to be responsive to the submission requirements as set forth in this RFP will be evaluated. The technical and cost sections of each proposal will be evaluated separately, using the criteria described below.

Proposals will be reviewed for conformity with this RFP and will be evaluated for substantive content. The Evaluation Team may request that additional information or clarification be provided. The evaluation process will consist of two phases: Technical Evaluation and Cost Evaluation, as described in the following sections.

6.2 Evaluation Criteria

6.2.1 Technical Proposal Evaluation

An Evaluation Panel composed of at least three individuals will evaluate technical proposals. The final technical score for each proposal will be derived by averaging the raw technical score from each reviewer to arrive at the final technical score.

Technical Proposal Evaluation Factors

(1) Qualifications and Overall Experience (35 points)

- a. Proposer demonstrated knowledge and understanding of the maritime industry and infrastructure in New York State.
 - b. Proposer demonstrated experience and performance working with, and communicating with public and private ports and terminal operators and identify any relevant experience working with New York State maritime and port entities.
 - c. Proposer demonstrated experience with outreach to diverse partners for data collection and the presentation of complex data in clear, concise, and high-quality formats.
 - d. Proposer demonstrated experience and performance with projects related to maritime and port infrastructure planning, analysis, and strategy.
 - e. Proposer demonstrated an understanding of port electrification, decarbonization, and resiliency best practices, programs, and initiatives, and laws and regulations, as well as knowledge of port operations, transportation logistics, and relevant funding programs.
 - f. Proposers demonstrated experience and performance with projects related to maritime and ports economic modeling and trends analysis.
 - g. Proposer demonstrated an understanding and experience in assessing port infrastructure and identifying upgrade opportunities and implementation strategies.
 - h. Proposer demonstrated experience and knowledge is preparing reports and spatial assets related to ports infrastructure analysis.
 - i. Proposers demonstrated experience and performance with project management and effective communication with partners.
- (2) Understanding of Project Goals and Objectives (30 points)
- a. Proposer demonstrated understanding of project goals and objectives.
 - b. Proposer summarized approach to project completion including all core tasks in the scope of work.
 - c. Proposer demonstrated readiness to begin work on the project including a proposed timeframe for when work will begin and ability to meet the timeline goals for the project.
- (3) Project Team/Organization/Key Personnel (13 points)
- a. Proposer provided resumes of all persons who will be assigned work pursuant to the RFP including all subcontractors, demonstrating appropriate and relevant qualifications, educational background, professional accreditation, training, and experience.
 - b. Proposer included organizational chart of project staff and described roles and responsibilities of identified staff, including subconsultants, if any.
 - c. Proposer identified a Project Manager and demonstrated their management of one other project of similar size and nature. Proposer included a description of that project.
 - d. Proposer identified gaps in skillsets/expertise in their proposed team and identified subcontractors to fill the gaps if already in place or laid out a plan for finding subcontractors to fill any remaining gaps.

- (4) Diversity Practices Questionnaire Diversity Practices Questionnaire (Attachment 10) will be scored in accordance with the established matrix. (2 points)

6.2.2 Cost Proposal Evaluation

The evaluation and scoring of the costs will be determined independently by DOS' Bureau of Fiscal Management. The lowest Proposer must receive the maximum number of points awarded for the cost component (20 points). The other Proposers will receive a proportional score using the following formula:

$a = (b/c) \times 20$, where:

- b = lowest total cost;
- c = total cost for the Proposer being scored;
- a = normalized cost score for Proposer being scored; and
- 20 = total cost points.

6.3 Method of Award

This is a competitive procurement that will result in one contract to perform the services outlined in this RFP. The method of award is best value, which takes into consideration cost as well as technical or non-cost factors.

Each evaluator's individual technical scores will be averaged to arrive at an overall technical score. Technical scores will account for 80% and cost will account for 20% of the total score. DOS will make the award based on the highest overall score.

6.4 Notification of Award

After the evaluation, all Proposers offering proposals will be notified of the name(s) of the selected Proposer(s). The selected Proposer(s) will be notified that their submitted proposal has been selected and that a contract will be forthcoming for execution. The original proposal, and any additions or deletions to the proposal become part of the contract.

Public announcements or news releases pertaining to any contract resulting from this RFP shall not be made without prior approval from the issuing office.

7. ADMINISTRATIVE INFORMATION

7.1 Mandatory Requirements

7.1.1 Confidentiality

Internal drafts of DOS documents must be treated as confidential. In addition, documents obtained and/or produced during the course of the successful Proposer's work under the contract shall be designated as "confidential" or "trade secret."

All individuals performing work under the contract will be required to sign a “confidentiality agreement” that will preclude anyone from revealing or utilizing the information contained in a confidential/trade secret document in connection with any activity other than work under the contract.

Confidential documents will only be available to individuals on a need-to-know basis, are to be kept and used in a secure setting and cannot be copied. Penalties have been established by the State of New York for any violation of the confidentiality agreement.

7.1.2 Consultant Assurances

The successful Proposer(s) must agree that it will perform its obligations under the contract in accordance with all applicable Federal, State and local laws, rules and regulations now and hereafter in effect.

The successful Proposer(s) must warrant and affirm that the terms of the RFP, its proposal, and any resulting contract do not violate any contracts or agreements to which it is a party and that its contractual obligations will not adversely influence its ability to perform under the contract.

7.1.3 Subcontracting

Before any part of the contract shall be sublet, the Contractor shall submit to DOS in writing, the name of each proposed subcontractor and obtain written consent to utilize such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as DOS may require concerning the proposed subcontractor's ability and qualifications.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the Contract Documents including, but not limited to the General Conditions and Requirements.

7.1.4 Proprietary Interests

All information and products developed under this contract become the sole property of the DOS. The successful Proposer(s) shall not copyright any material developed under this contract.

7.1.5 Travel

All travel is included within proposer's bid price. Additional travel may not be reimbursed unless planned and pre-approved in writing by DOS. Compensation for such travel will be provided at the same rates as established by the Office of the State Comptroller in the State of New York

Office of the State Comptroller Travel Manual (<https://www.osc.state.ny.us/agencies/travel/manual.pdf>). Current rates are identified at the following website: <https://www.gsa.gov/travel/plan-book/per-diem-rates>.

7.1.6 Reporting Requirements

The successful Proposer(s) will be responsible for the completion of a variety of administrative and project reporting requirements, and the cost of same shall be included in the proposal price. Upon award of the contract and prior to the start of any work, the successful Proposer(s) shall be available for an initial job meeting with DOS. This meeting will include:

- a. An introduction for each respective organization, chain of command, etc., and
- b. Review of the scope of work and the expectations of DOS and the consultant.

During the term of any contract resulting from this RFP, the successful Proposer(s) shall maintain contact with DOS regarding all communication and transactions relating to the aforementioned contract(s). Upon completion of each assignment, the results must be forwarded to DOS.

7.1.7 Dispute and Conflict Resolution

During the course of the contract between the DOS and the successful Proposer(s), attempts may be made to resolve any disputes between the parties by telephone or by in-person discussions whenever feasible, with follow-up written documentation as appropriate.

7.1.8 Debriefing

Unsuccessful applicants may request the opportunity to be debriefed. Requests must be made in writing within 15 calendar days of receipt of notice of award to the same address to which proposals are submitted.

7.1.9 Protest Procedures

In the event unsuccessful Proposers wish to protest the award resulting from this RFP, Proposers should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

7.1.10 Vendor Responsibility Questionnaire

DOS conducts a review of prospective Contractors (Proposers) to provide reasonable assurances that the Proposer is responsive and responsible. A Questionnaire is used for non-construction contracts and is designed to provide information to assess a Proposer's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a proposal, Proposer agrees to fully and accurately complete and submit the "Questionnaire". The Proposer acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Proposer is

responsible, and that the State will be relying upon the Proposer's responses to the Questionnaire when making its responsibility determination.

DOS strongly recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.state.ny.us/vendrep/info_vrsystem.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at itservicedesk@osc.state.ny.us. Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact DOS or the Office of the State Comptroller's Help Desk for a copy of the paper form.

In order to assist the State in determining the responsibility of the Proposer, the Proposer should complete and certify (or recertify) the Questionnaire no more than three months prior to the proposal due date. Please note that a Proposer's Questionnaire cannot be viewed by DOS until the Proposer has certified the Questionnaire. It is recommended that all Proposers become familiar with all of the requirements of the Questionnaire in advance of the proposal opening to provide sufficient time to complete the Questionnaire.

The Proposer agrees that if it is found by the State that the Proposer's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, DOS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

This section shall also apply to any proposed subcontractor performing services under the contract in excess of \$100,000.00, or at the discretion of DOS. The successful proposer will certify/recertify the Questionnaire at the time of contract execution.

7.1.11 Contractor's Insurance Requirements

Prior to the commencement of the work, the Contractor shall file with the State, Certificates of Insurance evidencing compliance with all requirements contained in the Contract. Such certificate shall be of form and substance acceptable to the State.

Acceptance and/or approval by the State does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing to any insurance or self-insurance maintained by the State; shall be endorsed to provide written notice be given to the State, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by

return receipt of United States Certified Mail which shall be sent to New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231-0001; and shall name NYS Department of State as certificate holder thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85). The NYS Department of State as certificate holder requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by DOS. Such approval shall not be unreasonably withheld.

The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the State and rated at least "A" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of the Contract and to remain in full force and effect throughout the term of the Contract and as further required by the Contract. The Contractor shall not take any action or fail to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply DOS updated replacement Certificates of Insurance, and amendatory endorsements.

Contractor shall, throughout the term of the Contract or as otherwise required by the Contract, obtain and maintain in full force and effect the following insurance with limits not less than those described below and as required by the terms of the Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

(1) Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent Contractors, products completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse and underground coverage.

(a) If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.

(2) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

(3) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against DOS arising from Contractors work.

(a) If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.

(b) If the Contract includes disposal of materials from the job site, the Contractor must furnish to DOS, evidence of pollution legal liability insurance in the amount of \$2,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Contract.

(i) If autos are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

(4) If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss.

(a) Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.

(b) If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.

(5) Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against DOS, or, if such waiver is unobtainable (a) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against DOS or (b) any other form of permission for the release of DOS.

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of DOS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to DOS. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for DOS's immediate termination of any contract resulting from this RFP, subject only to a five business day cure period. Any termination by DOS under this section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against DOS of State its agents and employees therefore for lost profits or any other damages.

(6) Workers' Compensation/Disability Insurance. Workers' Compensation, Employer's Liability, and Disability Benefits meeting all New York State statutory requirements are required. If coverage is obtained from an insurance company through an insurance policy, the policy shall provide coverage for all states of operation that apply to the performance of the contract. In addition, if employees will be working on, near or over navigable waters, coverage provided under the US Longshore and Harbor Workers' Compensation Act must be included. Also, if the contract is for temporary services, or involves renting equipment with operators, the Alternate Employer Endorsement, WC 00 03 01A, must be included on the policy naming the People of the State of New York as the alternate employer.

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:

- (1) be legally exempt from obtaining workers' compensation insurance coverage;
or
- (2) obtain such coverage from insurance carriers;
or
- (3) 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 DOS at the time of bid submission or shortly after the opening of bids:

(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.ny.gov);

Or

(2) Certificate of Workers' Compensation Insurance:

(a) 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 DOS;

or

(b) 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 DOS;

or

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

or

(d) Certificate of Participation in Workers' Compensation Group Self-Insurance Form GSI-105.2, available from the Contractor's Group Self-Insurance Administrator.

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:

(1) be legally exempt from obtaining disability benefits coverage;

or

(2) obtain such coverage from insurance carriers;

or

(3) 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 DOS at the time of bid submission or shortly after the opening of bids:

(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.ny.gov);

or

(2) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to DOS;

or
(3) 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 DOS as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

7.1.12 State Consultant Services Reporting

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as "contracts entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services" ("covered consultant contract" or "covered consultant services"). The amendments also require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), the Division of the Budget and the Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered contracts awarded on and after such date.

To meet these requirements, winning Proposers for procurements involving consultant services agree to complete:

- Form A – the Contractor's Planned Employment Form.
- Form B – the Contractor's Annual Employment Report throughout the term of the Contract by May 1st of each year.

The following information must be reported for each covered consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such contract was in effect during such prior State fiscal year:

1. Total number of employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such employees.
3. Total compensation paid to all employees that performed consultant services under such Contract.*

(Information must be reported on the Contractor's Annual Employment Report (Form B) or other format stipulated by DOS.)

**NOTE: The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be*

collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information via Form B to the Department of Civil Service, the Office of the State Comptroller and the Department of State, as designated below:

NYS Office of the State Comptroller
Bureau of Contracts
110 State St, 11th floor
Albany, NY 12236
Attn: Consultant Reporting

NYS Department of State
Contract Administration Unit
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
Proposal RFP # 24-OPD-7

NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to section 87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual employee names or social security numbers are set forth on a document, the state agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

7.1.13 Lobbying Statute Summary

Pursuant to State Finance Law §§ 139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between a Governmental Entity and a Proposer during the procurement process. A Proposer is restricted from making contacts from the earliest posting, on a Governmental Entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Proposers intending to result in a Procurement Contract with a Governmental Entity through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, the Office of the State Comptroller ("Restricted Period") to other than the Designated Contacts for the Governmental Procurement unless it is a Contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). The Designated Contact(s) for this Governmental Procurement, as of the date hereof, are also required to obtain certain information when contacted during the Restricted Period and make a determination of the responsibility of the Proposer pursuant to these two statutes. Certain findings of nonresponsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Proposer is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <https://www.dos.ny.gov/procurement/lobby.htm>.

7.1.14 New York State Tax Law Section 5-a

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Tax and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law.

Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

If awarded a contract, Form ST-220-CA must be filed with the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with proposal submission). Failure to make either of these filings may render a Proposer non-responsive and non-responsible. Proposers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at 1-800-698--2909 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: <http://www.nystax>.

7.1.15 Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

Pursuant to New York State Executive Law Article 15-A, DOS recognizes its obligation under the law to promote business opportunities for maximum feasible participation of New York State-certified Minority- and Women-owned Businesses Enterprises (MWBES) and the employment of minority group members and women in the performance of DOS contracts.

The Department-wide New York State-certified MWBE utilization goal is 30%. For purposes of this solicitation, DOS hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15% for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that DOS may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?XID=8241&TN=ny>. For guidance on how DOS will determine a Contractor’s “good faith efforts” refer to 5 NYCRR §142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the broker’s contract.

FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the supplier’s contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and DOS may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between:

- 1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- 2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, Proposer agrees to demonstrate its good faith efforts to achieve MWBE participation goals by submitting evidence thereof:

- For non-Federally funded contracts: through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com/?TN=ny>, provided,

however, that a Proposer may arrange to provide such evidence via a non-electronic method by contacting DOS.

- For Federally funded contracts: through the MWBE Quarterly Report (Form F) to DOS, by the 10th day following each end of quarter over the term of the Contract.

Additionally, a Proposer will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan (Form D) with their proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to DOS for review and approval.

DOS will review the submitted MWBE Utilization Plan and advise the Proposer of DOS acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to dos.sm.mwbe@dos.ny.gov a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DOS to be inadequate, DOS shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the proposal.

DOS may disqualify a Proposer as being non-responsive under the following circumstances:

- a) If a Proposer fails to submit an MWBE Utilization Plan;
- b) If a Proposer fails to submit a written remedy to a notice of deficiency;
- c) If a Proposer fails to submit a request for waiver; or
- d) If DOS determines that the Proposer has failed to document good faith efforts.

The Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Request for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to DOS but must be made no later than prior to the submission of a request for final payment on the Contract.

Good Faith Efforts:

Proposers will be required to make Good Faith Efforts (GFE) to provide meaningful participation to MWBEs as subcontractors or suppliers in the performance of contracts.

As detailed in 5 NYCRR §142.8, documentation of GFE includes, but is not limited to:

- Evidence of outreach to MWBEs: mail, email, phone calls and follow up;
- Written responses by MWBEs to the vendor's outreach;

- Copies of search(es) of the directory and advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
- Attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the vendor with MWBEs including dates and location;
- Information describing specific steps undertaken to reasonably structure the contract scope of work to maximize opportunities for MWBE participation; and
- Information describing non-MWBE subcontractors' efforts to engage MWBEs to undertake part of the project's work or to procure equipment/materials/supplies.

Successful proposers will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to DOS by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women OR Authority equivalent to Appendix A. The respondent is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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 respondent, to undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Additionally, successful Proposers will be required to submit the following documents and information within ten (10) business days after the Proposer receives notice from DOS that the Contract is being awarded as evidence of compliance with the foregoing:

A. A Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement (Form A).

A staffing Plan (Form B) if the Contract is over \$250,000.

C. A Workforce Utilization Report (Form C) and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by DOS on a quarterly basis during the term of the Contract, to the Bureau of Fiscal Management at:

Email: dos.sm.mwbe@dos.ny.gov

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of age, race, creed (religion), color, national origin, sexual orientation, gender identity or expression, military status, sex, age, disability, predisposing genetic characteristic, familial status, marital status or status as a victim of domestic violence or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified or assisted in any proceeding under the Human Rights Law, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

All required forms can be found at the following address: <https://dos.ny.gov/supplier-diversity>.

7.1.16 Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses

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

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

Contract Goals

- A. DOS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Proposer should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/> Questions regarding compliance with SDVOB participation goals should be directed to DOS at dos.sm.sdvob@dos.ny.gov. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see Required Good Faith Efforts below).

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Proposers are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their proposal.
- B. The Utilization Plan shall list the SDVOBs that the Proposer intends to use to perform the Contract, a description of the work that the Proposer intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Proposer acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to DOS.
- C. DOS will review the submitted SDVOB Utilization Plan and advise the Proposer of DOS acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to DOS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DOS to be inadequate, DOS shall notify the Proposer and direct the Proposer to submit, within five business days of notification by DOS a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

DOS may disqualify a Bidder’s bid or proposal as being non-responsive under the following circumstances:

- a) If a Proposer fails to submit an SDVOB Utilization Plan;
- b) If a Proposer fails to submit a written remedy to a notice of deficiency;
- c) If a Proposer fails to submit a request for waiver; or
- d) If DOS determines that the Proposer has failed to document good faith efforts.

If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, DOS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Proposer shall speak to the Designated Contacts at DOS for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Proposer that is able to document good faith efforts to meet the goal requirements, as set forth in Required Good Faith Efforts below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Proposer may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by DOS at that time, the provisions of SDVOB Utilization Plan (C), (D) & (E) will apply. If the documentation included with the Proposer's waiver request is complete, DOS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to DOS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If DOS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, DOS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to dos.sm.sdvob@dos.ny.gov.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.

- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by DOS with certified SDVOBs whom DOS determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to DOS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 and should be completed by the Contractor and submitted to DOS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: dos.sm.sdvob@dos.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

All forms are available at: <https://dos.ny.gov/supplier-diversity>.

7.1.17 Executive Order 16

Executive Order 16 prohibits state agencies and authorities from contracting with businesses conducting business in Russia. Please see the guidelines under this Executive Order and the Certification located here: <https://ogs.ny.gov/EO-16>. The certification must be submitted by all proposers.

7.1.18 Iran Divestment Act

By submitting a proposal in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Proposer/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Proposers/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. Proposers/Offerers further certify that they will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Proposer/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

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

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

7.1.19 Sexual Harassment Policy and Training

By submission of this proposal, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that the Proposer has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of [section two hundred one-g of the labor law](#).

7.1.20 Amendments to the Contract

Amendments and modifications of executed contracts are sometimes necessary to accommodate the needs of the contractor and the Department. Contract modifications, including budget amendments and no-cost time extensions, will be made at the discretion of DOS with the approval of the Office of the State Comptroller.

8. RESERVED RIGHTS

The Department of State Reserves the Right to:

- 1) Reject any or all proposals received in response to the RFP;
- 2) Withdraw the RFP at any time, at the agency's sole discretion;
- 3) Make an award under the RFP in whole or in part;
- 4) Disqualify any Proposer whose conduct and/or proposal fails to conform to the requirements of the RFP;
- 5) Seek clarifications and revisions of proposals;
- 6) Use proposal information obtained through site visits, management interviews and the state's investigation of a Proposer's qualifications, experience, ability or financial standing, and any material or information submitted by the Proposer in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
- 7) Prior to the proposal due date, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;

- 8) Prior to the proposal due date, direct Proposers to submit proposal modifications addressing subsequent RFP amendments;
- 9) Change any of the scheduled dates;
- 10) Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Proposers;
- 11) Waive any requirements that are not material;
- 12) Negotiate with the proposers within the scope of the RFP in the best interests of the State. DOS will negotiate the contract for services in fulfillment of the needs of this RFP on the basis of demonstrated competence and qualifications. Contract negotiations may include, but are not limited to, the selected Proposer's price proposals to ensure work is accomplished at fair and reasonable rates. DOS will negotiate the contract for services in which it reserves the right to:
 - a. Adjust the total amount of funding based on the program's success, funding source approval requirements, or any other relevant factors;
 - b. Terminate the contract at any time if the contractor is underperforming, or require the contractor to terminate staff that are underperforming;
 - c. Terminate the contract at any time with written notice not less than thirty (30) days;
 - d. Incorporate necessary program changes by modifying or adding to the services required;
 - e. Tailor the services as needed within the scope of the contract; and
 - f. Interview Proposers or individuals assigned to work on the desired contracting services as a secondary stage in the selection process, if determined necessary by DOS.
- 13) If unsuccessful in negotiating a state contract with the selected applicant within an acceptable time frame, the Department may begin state contract negotiations with the next ranked qualified applicant(s) in order to serve and realize the best interests of the state;
- 14) Utilize any and all ideas submitted in the proposals received;
- 15) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Proposer's proposal and/or to determine a Proposer's compliance with the requirements of the solicitation;
- 16) Waive or modify minor irregularities in proposals received after prior notification to the Proposer;
- 17) Make awards based on geographic distribution;
- 18) Not fund a proposal that fails to submit a clear and concise work plan or budget;
- 19) Adjust or correct cost figures with the concurrence of the proposer if errors exist and can be documented to the satisfaction of the Department of State and the State Comptroller;
- 20) Award more than one contract resulting from this RFP;
- 21) In its sole discretion, determine the total number of awards to be granted pursuant to this RFP;
- 22) Offer partial or no funding to any proposer if its proposal cannot fulfill its proposed program within the funding available;
- 23) Require reporting on forms designed for use solely for this procurement;

- 24) Not to make any awards pursuant to this RFP. This RFP does not commit DOS to award any contracts, to pay the costs incurred in the preparation of a response to this RFP or to procure or contract for service;
- 25) Request a Best and Final Offer (BAFO) from all eligible Proposers; and
- 26) In the event that a workplan submitted post award during contract negotiations is substantially different from the proposal submitted through the procurement process, DOS reserves the right to require modifications to the workplan to bring it into conformance with the proposal. If no such modifications are made and approved within a reasonable time period, DOS may rescind the award and make funding available to the next highest scoring proposal.

Attachments

Attachment 1: Non-Collusive Bidding Certification

RFP #24-OPD-7

By submission of this proposal, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization under penalty of perjury, that to the best of their knowledge and belief:

1. The prices of this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor; and
3. No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

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

[AFFIX ADDENDUM 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 of _____, _____ as the act and deed of said corporation or partnership.

IF PROPOSER(S) IS (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS/PRINCIPALS

LEGAL RESIDENCE

IF BIDDER(S) IS (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAME	LEGAL
RESIDENCE	
President:	
_____	_____
Secretary:	
_____	_____
Treasurer:	
_____	_____

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal Name of person, firm or corporation

By: _____
Name Title

Street Address

City, State, Zip Code

Attachment 2: Conflict of Interest Statement

RFP #24-OPD-7

The Firm offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and

8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

9. Firms responding to this RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title: _____

Signature: _____ Date: _____

Firm Name: _____

This form must be signed by an authorized executive or legal representative.

Attachment 3: Lobbying Form

**Offerer's Affirmation of Understanding of and Agreement Pursuant to
State Finance Law §139-j (3) and §139-j (6) (b)**

Background:

State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Offerer Disclosure of Prior Non-Responsibility Determinations

Note: Government Entities may wish to consider integrating this language in their existing forms.

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

As an alternative to this form, the Governmental Entity may elect to incorporate this disclosure question into its procurement questionnaire, such as the New York State Standard Vendor Responsibility Questionnaire set out at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf>.

Offerer Disclosure of Prior Non-Responsibility Determinations (Continued)

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form:

Contract Procurement Number: _____ Date: _____

1. Has any Government Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

NO

YES

If yes, please answer the next question.

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle):

NO

YES

3. Was the basis for the finding on non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

NO

YES

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below and attach additional pages as necessary.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-responsibility: _____

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

NO

YES

6. If yes, please provide details below and attach additional pages as necessary.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____

Date: _____

Offerer's Certification of Compliance with State Finance Law §139-k(5)

Background:

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

Instructions:

A Governmental Entity must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity. While the nature of the Procurement Contract will determine how to obtain the certification and when the certification should be obtained, the following documents have been identified for consideration:

- solicitation documents (such as an Invitation for Bids or Requests for Proposal);
- procurement contract; and
- other/stand alone certification.

It is recommended that the certification be obtained as early as possible in the process, such as when an Offerer submits its proposal, bid or other form of offer.

Offerer Certification

I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____
Date: _____
Name: _____
Title: _____
Contractor Name: _____
Contractor Address: _____ _____

Attachment 4: Technical Proposal Transmittal Sheet

New York State Department of State, RFP #24-OPD-7

TECHNICAL PROPOSAL FOR _____ <i>(insert working group subject area)</i>	
<i>Name of Proposer Organization (Legal name as it would appear on a contract)</i>	
<i>Mailing Address (Street address, P.O. Box, City, State, ZIP Code)</i>	
Federal Employee Identification Number:	NYS Vendor ID Number:
If NYS Certified:	
Minority Business Enterprise (MBE) <input type="checkbox"/>	Woman Business Enterprise (WBE) <input type="checkbox"/>
Person authorized to act as the contact for this firm in matters regarding this proposal:	
Printed Name <i>(First, Last)</i> :	Title:
Telephone number:	Fax number:
E-mail:	
Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:	
Printed Name <i>(First, Last)</i> :	Title:
Telephone number:	Fax number:
E-mail:	
(CORPORATIONS) Name/Title of person authorized by the Board of Directors to sign this proposal on behalf of the Board:	
Printed Name <i>(First, Last)</i> :	Title:
Signature of Proposer or Authorized Representative	Date:

By signing this form below, you certify that:

- you are authorized on behalf of the proposer and its governing body to submit this proposal and to bind the Proposer to comply with the requirements listed in this RFP;
- the Proposer agrees to all terms and conditions contained in the draft contract attached hereto as Attachment 13;
- all of the information contained in this proposal and in all statements, data and supporting documents are true, correct and complete to the best of your knowledge and belief;
- the proposal price submitted on the Pricing Proposal will remain valid for a minimum of 365 days from the date of submission.
- by submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the proposer has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

Signature of Authorized Representative

Date

Attachment 5: Cost Proposal Transmittal Sheet

New York State Department of State, RFP #24-OPD-7

COST PROPOSAL FOR _____ <i>(insert working group subject area)</i>	
Name of Proposer <i>(Legal name as it would appear on a contract)</i>	
Mailing Address <i>(Street address, P.O. Box, City, State, ZIP Code)</i>	
Federal Employee Identification Number:	NYS Vendor ID Number:
If NYS Certified:	
Minority Business Enterprise (MBE) <input type="checkbox"/>	Woman Business Enterprise (WBE) <input type="checkbox"/>
Person authorized to act as the contact for this firm in matters regarding this proposal:	
Printed Name <i>(First, Last)</i> :	Title:
Telephone number:	Fax number:
E-mail:	
Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:	
Printed Name <i>(First, Last)</i> :	Title:
Telephone number:	Fax number:
E-mail:	
(CORPORATIONS) Name/Title of person authorized by the Board of Directors to sign this proposal on behalf of the Board:	
Printed Name <i>(First, Last)</i> :	Title:
Signature of Proposer or Authorized Representative	Date:

By signing this form, the above Proposer or Authorized Representative attests that the proposal price submitted on the Bid Detail Sheet will remain valid for a minimum of 365 days from the date of submission.

Attachment 6: Contract Pricing Proposal form

RFP #24-OPD-7

Deliverable	Cost
Task 1 - Kickoff meeting and project coordination	\$
Task 2 - Identify and catalogue public and private entities controlling New York’s maritime infrastructure assets	\$
Task 3 - Develop a questionnaire to engage identified entities in in-person, remote, or survey interviews	\$
Task 4 - Conduct outreach to maritime and port entities	\$
Task 5 - Develop a Maritime Asset Database	\$
Task 6 - Spatial Asset Map	\$
Task 7- Economic Impact Analysis of the Maritime Industry and Ports on Local Economies	\$
Task 8 - Green Ports Needs Assessment and Implementation Plan	\$
Total:	\$

Proposer’s Name: _____

Representative: _____
Signature *Date*

Name: _____

Title: _____

Attachment 7: Consultant Disclosure Form A

This document can be found at: <https://dos.ny.gov/24-OPD-7>

Attachment 8: ST-220-CA

This document can be found at: <https://dos.ny.gov/24-OPD-7>

Attachment 9: Executive Order 16

This document can be found at: <https://dos.ny.gov/24-OPD-7>

Attachment 10: Diversity Practices Questionnaire

DIVERSITY PRACTICES QUESTIONNAIRE

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

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

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

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

3. What percentage of your company's overhead (i.e., those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or noncontract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?⁷

4. Does your company provide technical training⁸ to minority- and women-owned business enterprises? Yes or No

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

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? Yes or no

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

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

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

⁷ Do not include onsite project overhead.

⁸ Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

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

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

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan

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

Signature of Owner/Official

Printed Name of Signatory

Title

Name of Business

Address

City, State, Zip

Attachment 11: MWBE Form D: Utilization Plan

<https://dos.ny.gov/form-d-mwbe-utilization-plan>

<https://dos.ny.gov/form-d-mwbe-utilization-plan-additional-worksheet>

Attachment 12: SDVOB Form 100: Utilization Plan

<https://dos.ny.gov/form-100-sdvob-utilization-plan-vendors>

Attachment 13: SAMPLE Contract

STATE OF NEW YORK VENDOR CONTRACT

<p>STATE AGENCY:</p> <p>NYS Department of State One Commerce Plaza 99 Washington Avenue – Suite 1010 Albany, NY 12231</p>	<p>BUSINESS UNIT/DEPT ID: DOS01/3800000</p> <p>CONTRACT NUMBER:</p> <p>CONTRACT TYPE:</p> <p><input type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input checked="" type="checkbox"/> Fixed Term Agreement</p>
<p>CONTRACTOR SFS PAYEE NAME:</p>	<p>TRANSACTION TYPE:</p> <p><input checked="" type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment - NCTE</p>
<p>CONTRACTOR DOS INCORPORATED NAME:</p>	<p>PROJECT NAME:</p> <p>Maritime and Ports Asset Inventory and Needs Assessment</p>
<p>CONTRACTOR IDENTIFICATION NUMBERS:</p> <p>NYS VENDOR ID Number:</p> <p>Federal Tax ID Number:</p> <p>DUNS Number (if applicable):</p>	<p>AGENCY IDENTIFIER:</p> <p>24-OPD-7</p> <p>CFDA NUMBER (Federally Funded Contracts Only):</p> <p>n/a</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS:</p> <p>CONTRACTOR PAYMENT ADDRESS:</p> <p><input checked="" type="checkbox"/> Check if same as primary mailing address</p> <p>CONTRACTOR MAILING ADDRESS</p> <p><input checked="" type="checkbox"/> Check if same as primary mailing address</p>	<p>CONTRACTOR STATUS:</p> <p><input type="checkbox"/> For Profit <input type="checkbox"/> Municipality, Code: <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit</p> <p>Charities Registration Number:</p> <p>Exemption Status/Code:</p> <p><input type="checkbox"/> Sectarian Entity</p>

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

CONTRACTOR:

STATE AGENCY:

NYS Department of State
One Commerce Plaza
99 Washington Avenue – Suite 1010
Albany, NY 12231

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF NEW YORK

COUNTY OF _____

On the ____ day of _____, _____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor name on the face page of this Master Contract.

(Notary) _____

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

This AGREEMENT, by and between the New York State Department of State, with its principal offices at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231 (hereinafter referred to as DOS) and [name] with its principal office at [address] (hereinafter referred to as CONTRACTOR).

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW THEREFORE, in consideration of the mutual covenants and considerations herein set forth, the parties hereto agree as follows:

ARTICLE I – CONDITIONS OF THE AGREEMENT

- 1.1 This AGREEMENT incorporates the Face Page attached, the Vendor Contract, and the marked appendices identified on the Face Page hereof in the following order of precedence, except that Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT:
- Appendix A, Standard Clauses (dated June 2023)
 - Appendix X – Modification Agreement Form
 - The body of the Vendor Contract
 - Appendix B – Budget
 - Appendix C – Program Work Plan
 - Appendix D – Payment and Reporting Schedule
- 1.2 The period of this AGREEMENT shall be as specified on the Face Page hereof. Should funding become unavailable, this AGREEMENT may be suspended until funding becomes available. In such event the STATE shall notify the CONTRACTOR immediately of learning of such unavailability of funds, however, any such suspension shall not be deemed to extend the term of this AGREEMENT beyond the end date specified on the Face Page hereof.
- 1.3 Funding for the entire contract period shall not exceed the amount specified on the Face Page hereof. To modify the AGREEMENT, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Appendix X and all the appropriate attachments in conjunction therewith. In addition, such modification may be subject to the approval of the Attorney General and Office of the State Comptroller before it shall become valid, effective and binding upon the STATE.
- 1.4 The CONTRACTOR shall meet the program objectives summarized in the Budget and Program Work Plan in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program, and conditions of applicable permits, administrative orders and judicial orders.

- 1.5 Invoices shall contain the contract number listed on the Face Page and be addressed to the NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 1110, Albany, NY 12231. Such invoices shall be submitted quarterly via email to dos.sm.fiscal.cau@dos.ny.gov with the following subject line: [contract number, name, funding source]. All invoices submitted for reimbursement should include a detailed written progress report, charges for the billing period, project activity for the next period, outstanding issues, financial status and schedule.
- 1.6 This AGREEMENT cannot be assigned, transferred, conveyed, sublet or otherwise disposed of in any way without previous consent in writing to the CONTRACTOR and the Office of the State Comptroller. The CONTRACTOR may subcontract with those SUBCONTRACTOR entities listed in Appendices B and C however all subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this Agreement and its Appendices.
- 1.7 This agreement or amendments thereto shall be deemed to be fully executed when approved by the Office of the State Comptroller.

ARTICLE II – GENERAL

- 2.1 For the purposes of this Agreement, the terms "State," "Agency" and "Department" are interchangeable, unless the context requires otherwise. In addition, the terms "Agreement" and "Contract" are interchangeable, unless the context requires otherwise.
- 2.2 No liabilities are to be incurred beyond the contract period and no costs will be reimbursed for such liabilities unless: 1) funds have been reappropriated for the Project in the subsequent State fiscal year, 2) the Department determines that it is in the best interest of the State to provide additional time to complete the Project and 3) an extension agreement is executed.
- 2.3 The Department shall not be liable for expenses of any kind incurred in excess of the State Funds as set forth on the Face Page and shall not be responsible for seeking additional appropriations or other sources of funds for the Project.
- 2.4 The Contractor shall perform all services to the satisfaction of the Department. The Contractor shall provide all services and meet the program objectives described in Appendix B in accordance with: provisions of this Agreement; relevant State, federal and local laws, rules and regulations, administrative and fiscal guidelines; where applicable, operating certificates for facilities or licenses for an activity or program, and conditions of applicable permits, administrative orders and judicial orders.
- 2.5 The Contractor agrees to proceed expeditiously with the Project and to complete the Project in accordance with the timetable set forth in the Program Work Plan (Appendix C) as well as with the conditions of any administrative orders, or judicial orders and this Agreement.

ARTICLE III - CHANGES TO THIS AGREEMENT

- 3.1 Any amendment, change, extension, revision or discharge of this Agreement, in whole or part, shall not be invalid or unenforceable because of lack of insufficiency of consideration; provided, however, that such amendment, change, extension, revision or discharge is in writing and executed by the parties.

- 3.2 To modify any terms of this Agreement within an existing period, the parties shall revise or complete an Appendix X and the appropriate appendix form(s), which may be subject to approval of the Department and Office of the State Comptroller.

ARTICLE IV – INSURANCE REQUIREMENTS

- 4.1 Prior to the commencement of the work, the CONTRACTOR shall file with the STATE, Certificates of Insurance evidencing compliance with all requirements contained in this AGREEMENT. Such certificate shall be of form and substance acceptable to the STATE.
- 4.2 Acceptance and/or approval by the STATE does not and shall not be construed to relieve CONTRACTOR of any obligations, responsibilities or liabilities under the AGREEMENT.
- 4.3 All insurance required by the AGREEMENT shall be obtained at the sole cost and expense of the CONTRACTOR; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing to any insurance or self-insurance maintained by the Department; shall be endorsed to provide written notice be given to the Department of State, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail which shall be sent to New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231-0001; and shall name the People of the State of New York and their directors, officers, agents, and employees as additional insured thereunder.
- 4.4 The CONTRACTOR shall be solely responsible for the payment of all deductibles to which such policies are subject.
- 4.5 Each insurance carrier must be rated at least "A" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A" Class "VII" in the most recently published Best's Insurance Report.
- 4.6 The CONTRACTOR shall cause all insurance to be in full force and effect as of the date of this AGREEMENT and to remain in full force and effect throughout the term of this AGREEMENT and as further required by this AGREEMENT. The CONTRACTOR shall not take any action or omit any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.
- 4.7 Not less than thirty (30) days prior to the expiration date or renewal date, the CONTRACTOR shall supply the Department updated replacement Certificates of Insurance, and amendatory endorsements.
- 4.8 Unless the CONTRACTOR is self-insured or terms are otherwise inapplicable, CONTRACTOR shall, throughout the term of the AGREEMENT or as otherwise required by this AGREEMENT, obtain and maintain in full force and effect the following insurance with limits of those described below and as required by the terms of this AGREEMENT, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies). Where CONTRACTOR is self-insured, the CONTRACTOR shall provide suitable evidence of such to the Department relating to the risks and coverage amounts as provided hereunder.

- Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. Acceptable forms include the following:
 - Proof of Workers' Compensation Coverage (Form C-105.2, U-26.3, SI-12, GSI-105.2 or CE-200).
 - Proof of Disability Coverage (Form DB-120.1, DB-155, or CE-200).
 - ACORD forms are not acceptable proof of coverage.
- Comprehensive Automobile Liability Insurance with a limit of \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- CONTRACTOR shall submit certificates of proof of active insurance (naming NYS Department of State, One Commerce Plaza, 99 Washington Avenue - Suite 1110, Albany, NY 12231) as the certificate holder.
- An Owner's Protective Liability Policy with limits of \$1,000,000 in the name of the Contractor.

4.9 The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

ARTICLE V – VENDOR RESPONSIBILITY DETERMINATION

- 5.1 Vendor/Contractor hereby acknowledges that the Vendor Responsibility Questionnaire and certification is made a part of this contract by reference hereto and that any misrepresentation of fact in the Questionnaire and attachments, or in any contractor responsibility information that may be requested by the Department of State, may result in termination of this contract. During the term of this Contract, any changes in the provided Questionnaire shall be disclosed to the Department, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract.
- 5.2 The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Department, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- 5.3 The Department reserves the right to suspend any or all activities under this Contract, at any time, when information is discovered that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Department issues a written notice authorizing a resumption of performance under the Contract.
- 5.4 Should it be determined at any time that a Contractor is not responsible, the Department will notify the vendor in writing setting forth the basis for the determination and affording the Contractor reasonable time in which to refute the determination, justify why the basis for the determination is not relevant to this contract or to take corrective action to eliminate the responsibility impediment. If the responsibility condition cannot be reconciled to the satisfaction of the Department the contract or contract offer will be terminated by written notification given by the Department to the Contractor. In such event, the Department may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

5.5 This section shall also apply to any proposed subcontractor performing services under the contract in excess of \$100,000.00, or at the discretion of DOS.

ARTICLE VI – STATE CONSULTANT SERVICES REPORTING

6.1 Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as “contracts entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services” (“covered consultant contract” or “covered consultant services”). The amendments also require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), the Division of the Budget and the Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered contracts awarded on and after such date.

6.2 To meet these requirements, the following must be completed:

- Form A – the Contractor’s Planned Employment Form – completed and submitted with the executed contract.
- Form B – the Contractor’s Annual Employment Report throughout the term of the Contract submitted by May 1st of each year.

The following information must be reported for each covered consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such contract was in effect during such prior State fiscal year:

4. Total number of employees employed to provide the consultant services, by employment category.
5. Total number of hours worked by such employees.
6. Total compensation paid to all employees that performed consultant services under such Contract.

(Information must be reported on the Contractor’s Annual Employment Report (Form B) or other format stipulated by DOS.)

The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.

6.3 Contractor agrees to simultaneously report such information via Form B to the Department of Civil Service, the Office of the State Comptroller and the Department of State, as designated below:

NYS Office of the State Comptroller
Bureau of Contracts

NYS Department of State
Contract Administration Unit

110 State St, 11th floor
Albany, NY 12236
Attn: Consultant Reporting

1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231

NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

- 6.4 Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to section 87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual employee names or social security numbers are set forth on a document, the state agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

ARTICLE VII – MINORITY AND WOMEN OWNED BUSINESS PARTICIPATION

- 7.1 Article 15-A of the New York State Executive Law, as amended, authorized the creation of a Division of Minority and Women's Business Development to promote employment and business opportunities on state contracts for minorities and women. This law supersedes any other provision in state law authorizing or requiring an equal employment opportunity program or a program for securing participation by minority and women-owned business enterprises. Under this statute, State agencies are charged with establishing business participation goals for minorities and women. The Department of State administers a Minority and Women-owned Business Enterprises (MWBE) Program as mandated by Article 15-A.
- 7.2 For purposes of this AGREEMENT, the STATE hereby establishes a 30% MWBE participation goal (15% MBE and 15% WBE).

ARTICLE VIII – SERVICE-DISABLED VETERAN-OWNED BUSINESSES

- 8.1 Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (SDVOB), thereby further integrating such businesses into New York State's economy. Under this statute, State agencies are charged with establishing business participation goals for SDVOB. The Department of State administers a SDVOB Program as mandated by Article 17-B.
- 8.2 For purposes of this AGREEMENT, the STATE hereby establishes a 6% SDVOB participation goal.

ARTICLE IX – EQUAL EMPLOYMENT OPPORTUNITY

- 8.1 The Contractor hereby assures that it is, and shall be for the duration of this Agreement, in compliance with Title VII of the Civil Rights Act of 1964, as amended, and other federal and state equal employment opportunity laws.

ARTICLE X – CONFIDENTIALITY

- 9.1 All the reports, information, data, and other papers and materials in whatever form prepared or assembled by the CONTRACTOR under this AGREEMENT are confidential, and the CONTRACTOR shall not discuss them with or make them available to any individual or organization, other than in connection with the performance of duties and responsibilities under this AGREEMENT, without the prior written

approval of the STATE. These provisions do not apply to information that is in the public domain nor shall they restrict the CONTRACTOR from giving notices required by law or complying with an order to provide information or data when such order is issued by a court of competent jurisdiction. If disclosure of confidential information is required of the CONTRACTOR by judicial subpoena or other court process, the CONTRACTOR agrees to immediately notify the STATE of such process and allow the STATE to inspect any such data or information and interpose objections prior to delivery to the court. The CONTRACTOR shall ensure that all confidential or privileged records are kept in appropriately secured areas, and shall take reasonable precautions to protect the records in its custody from the dangers of fire, theft, flood, natural disasters and other physical threats, as well as unauthorized access.

- 9.2 Unless the STATE designates otherwise in writing, all information or data and all other documents generated or collected by the CONTRACTOR in the scope of its work under this AGREEMENT shall be deemed to be the exclusive property of the State of New York. No one else shall have any right, including, but not limited to, intellectual property rights (including trademark and copyright rights) in those items. No use of such materials or information shall be made without permission of the STATE. Consistent with these provisions, the CONTRACTOR shall have the right to keep and use all copies of its work product, including memoranda, notes, briefs, depositions and other transcripts. CONTRACTOR represents to the STATE that it has sufficient title or interest in such works to license pursuant to this AGREEMENT. Such representation shall survive the termination of this AGREEMENT. The STATE shall make all information or data and all other documents generated or collected by the CONTRACTOR in the scope of its work under this AGREEMENT available to the public at no cost. STATE hereby provides CONTRACTOR a revocable, non-exclusive license to use and distribute intellectual property developed under this contract for the purposes contained in Attachments B and C. Contractor's license is subject to third party confidentiality or other proprietary rights.

ARTICLE XI – INDEMNIFICATION

- 10.1 The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature to the extent caused by the negligent acts, errors or omissions of the CONTRACTOR in its performance of its services pursuant to this AGREEMENT.
- 10.2 Neither party shall be liable for losses, defaults, or damages under this AGREEMENT which result from delays in performing, or the inability to perform, all or any of the obligations or responsibilities imposed upon either party pursuant to the terms and conditions of this AGREEMENT, due to or because of acts of God, the public enemy; earthquake, floods, typhoons, civil strife, force or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
- 10.3 The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

ARTICLE XII – PAYMENT AND REPORTING

- 11.1 To be eligible for payment, the CONTRACTOR shall submit to the STATE's designated payment office (identified in Appendix D) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix D) and by agency fiscal guidelines, in a manner acceptable to the STATE.
- 11.2 The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix D). The STATE shall pay the CONTRACTOR, in consideration of contract services, a sum not to exceed the amount noted on the face page hereof. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.
- 11.3 The CONTRACTOR agrees to comply with requests for information in support of requests for payment in a timely and responsive manner.
- 11.4 The CONTRACTOR shall meet the audit requirements specified by the STATE.

ARTICLE XIII – RECORDS RETENTION

- 12.1 The CONTRACTOR shall maintain, at its principal place of business, detailed books and accounting records supported by original documentation relating to the incurring of all expenditures, as well as payments made pursuant to this AGREEMENT. The CONTRACTOR shall make such records available for review by the STATE upon request at any time. The STATE shall have the right to conduct progress assessments and review books and records as necessary. The STATE shall have the right to conduct an on-site review of the Project and/or books and records of the CONTRACTOR prior to, and for a reasonable time following, issuance of the final payment. The STATE shall be entitled to disallow any cost or expense, and/or terminate or suspend this AGREEMENT, if the CONTRACTOR has misrepresented any expenditures or Project activities in its proposal to the STATE, or in this AGREEMENT, or in any progress reports or payment requests made pursuant hereto. The CONTRACTOR shall maintain such books and accounting records in a manner so that reports can be produced therefrom in accordance with generally accepted accounting principles. The CONTRACTOR shall maintain separate fiscal books and records for all funds received through the STATE pursuant to this AGREEMENT.
- 12.2 During the term of this AGREEMENT and for a period of six years after its termination, the CONTRACTOR shall make all such books and records available to the STATE and the Office of the State Comptroller, or their designated representatives, for inspection and audit.

ARTICLE XIV - TERMINATION

- 13.1 Mutual Consent: The AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- 13.2 Cause: The STATE may terminate the AGREEMENT upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with any of the terms and conditions of the contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the AGREEMENT and fails to cure such cause within a reasonable time as set forth in the written notice.
- 13.3 Non-Responsibility: The STATE may make a final determination that the CONTRACTOR is non-responsible (Determination of Non-Responsibility). In such event, the STATE may terminate the contract at the CONTRACTOR's expense, complete the contractual requirements in any manner the STATE deems advisable and pursue available legal or equitable remedies for breach.

- 13.4 Convenience: The STATE may terminate the AGREEMENT in its sole discretion upon thirty (30) calendar days prior written notice.
- 13.5 Lack of Funds: If for any reason the STATE terminates or reduces its appropriation to the applicable State Agency entering into the contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this AGREEMENT, the AGREEMENT may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the CONTRACTOR where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the AGREEMENT, all remaining funds paid to the CONTRACTOR that are not subject to allowable costs already incurred by the CONTRACTOR shall be returned to the State Agency. In any event, no liability shall be incurred by the STATE (including the State Agency) beyond monies available for the purposes of the AGREEMENT. The CONTRACTOR acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the CONTRACTOR's responsibility.
- 13.6 Force Majeure: The STATE may terminate or suspend its performance under the AGREEMENT immediately upon the occurrence of a "force majeure." For purposes of the AGREEMENT, "force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the STATE which render the performance of its obligations impossible.

ARTICLE XV – NOTICES

- 14.1 Any notices shall be in writing and transmitted by mail or email to the following:

Notice to the CONTRACTOR:

[List name(s) and contact information]

Notice to the STATE:

[List name(s) and contact information]

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

**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, licensor, licensee, lessor, lessee or any other party):

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for

the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the

State of any State approved sums due and owing for work done upon the project.

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

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

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract

with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases,

easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in

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

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

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

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

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment

shall be governed by Article 11-A of the State Finance Law to the extent required by law.

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with

specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business
Development
28. 633 Third Avenue

- 29. New York, NY 10017
- 30. 212-803-2414
- 31. email: mwb certification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors,

and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

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

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

written notification to the Contractor in accordance with the terms of the agreement.

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

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

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

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

will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

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

Appendix B: Budget

Deliverable	Cost
Task 1 - Kickoff meeting and project coordination	\$
Task 2 - Identify and catalogue public and private entities controlling New York's maritime infrastructure assets	\$
Task 3 - Develop a questionnaire to engage identified entities in in-person, remote, or survey interviews	\$
Task 4 - Conduct outreach to maritime and port entities	\$
Task 5 - Develop a Maritime Asset Database	\$
Task 6 - Spatial Asset Map	\$
Task 7- Economic Impact Analysis of the Maritime Industry and Ports on Local Economies	\$
Task 8 - Green Ports Needs Assessment and Implementation Plan	\$
Total:	\$

Appendix C: Work Plan

Within the contract term, the Contractor will complete the following tasks and products (deliverables). All deliverables will be reviewed by NYSDOS and the Contractor will address and incorporate suggested edits prior to final approval and acceptance for payment.

Task 1: Kickoff meeting and project coordination

The contractor shall participate in an initial in-person meeting with NYSDOS to review and agree upon the project scope and schedule, project requirements, roles and responsibilities, and any other information which would assist in project completion.

A schedule of project check-in meetings will be arranged. The Contractor shall prepare and distribute to NYSDOS a brief meeting summary clearly indicating the agreements and action items reached at the meeting. Work on subsequent tasks shall not proceed prior to Department approval of the proposed approach as outlined in the meeting summary.

Most meetings will be held virtually; the initial project kick-off meeting will be in person in Albany, New York.

Deliverables:

- Project initiation meeting held with NYSDOS.
- Written meeting summary outlining agreements reached.
- Schedule of project check-in meetings and timetable of deliverables

Task 2: Identify and catalogue public and private entities controlling New York's maritime infrastructure assets.

The contractor will utilize available resources and research to create an inventory in Microsoft Access format with relevant contact information for key personnel, including email, phone, and address.

For the purposes of this RFP, entities include: Public and private port entities and authorities, vessel operations and management entities, government agencies, academic institutions, commercial partners, and public stakeholders related to the ports and maritime sector.

Deliverable: Inventory of public/private entities in Microsoft Access format.

Task 3: Engage entities identified in Task 2 to conduct survey interviews.

Develop an interview questionnaire with NYSDOS to identify maritime and ports assets including but not limited to asset type, location, ownership, and usage data.

The questionnaire will also seek to catalogue the targeted entity's labor and workforce needs, land use needs, energy infrastructure, energy availability, and energy needs including electrification, decarbonization, use of alternative fuels as part of DOS's Green Ports Initiative.

The questionnaire will seek to catalogue any resiliency best practices, programs, initiatives being planned or undertaken by the entity.

Deliverable: Interview questionnaire in Word, PDF, Excel, Web, or comparable format.

Task 4: Conduct outreach to maritime and port entities.

The contractor will utilize the questionnaire to solicit information from identified entities.

Dependent on entity capacity, consultant may opt for in-person, remote, or written survey interviews in consultation with DOS.

Deliverable: Completed questionnaires for each maritime and port entity in Word, Excel, or PDF format.

Task 5: Develop a Maritime Asset Database

The Maritime Asset Database will compile detailed information on identified maritime and ports assets in New York State as obtained through the interview questionnaire, publicly available online information, and professional or industry publications as needed.

Components of the Maritime Asset Database will include but not be limited to:

- Asset type - including resources and infrastructure related to maritime uses and activity such as:
 - Public and private port entities and authorities, vessel operations and management entities, agencies, academic institutions, commercial partners, and public stakeholders.
 - Public and private port infrastructure, including terminals, piers, docks, navigation channels, dock-side facilities and storage, and cargo handling equipment.
 - Energy infrastructure and availability at ports, including current electrification, decarbonization, and resiliency best practices, programs, initiatives.
 - For the purposes of this RFP, assets do not include non-port owned vessels and Port Authority of NY/NJ and NYC-operated commuter ferries.
- Location - including address, and x, y and/or latitude and longitude coordinates,
- Primary products handled,
- Ownership and governance structure- public or private (list specific government type or owning company as appropriate) with a point of contact,
- Usage including frequency of vessel calls,
- Energy infrastructure and availability data,
- Climate-related needs,
- Resiliency measures to protect from flooding, sea level rise (where appropriate) and extreme water levels,
- Land use needs and constraints,
- Other information that may be deemed useful in consultation with DOS.

Where applicable, information that is proprietary or related to domestic security will be limited in the level of detail incorporated in the database.

Deliverable: Maritime Asset Database in MS Access or compatible database format.

Task 6: Spatial Asset Map

Contractor will provide NYSDOS with a spatial map or map data illustrating the geographic distribution of maritime and ports assets by location as collected above.

The map will supplement the Maritime Asset Database with visual, spatial, and metadata information for key assets.

Deliverable: Spatial Asset Map in ESRI/ArcGIS-compatible format with underlying data and metadata provided to NYSDOS.

Task 7: Economic Impact Analysis of the Maritime Industry and Ports on Local Economies

Utilizing modeling software such as IMPLAN or equivalent, the contractor will develop an Economic Impact Analysis (EIA) that will provide a comprehensive analysis of maritime and port entities on local, state, and regional economies.

The EIA will collect and describe quantitative data on jobs directly and indirectly created by the entity, and contributions to the state and/or local economies and communities.

The EIA will detail investments made or planned to upgrade and modernize ports and related infrastructure to support renewable energy goals in the Climate Act, and in support of offshore wind development.

The EIA will also describe the trends, growth opportunities, and estimated potential economic impact to the state and local economies from the entity's investments in offshore wind, electrification, resiliency, and "greening" of infrastructure and operations.

In addition to entity-level descriptions, the EIA will summarize broad themes across the sector in New York State.

Deliverable: Economic Impact Analysis Report provided to NYSDOS.

Task 8: Green Ports Needs Assessment and Implementation Plan

Utilizing the Maritime Asset Database, Spatial Asset Map, and Economic Impact Analysis, the contractor will develop a Green Ports Needs Assessment and Implementation Plan (Needs Assessment) that identifies gaps in infrastructure, funding, and policy, and identifies specific implementation recommendations to support the industry's sustainable growth and resiliency.

The Needs Assessment will provide and design a prioritized implementation plan for areas of support and investment with a specific focus on greening, resiliency, decarbonization, and offshore wind opportunities at individual priority ports.

The Contractor will conduct remote interviews State and federal agency personnel responsible for port implementation and funding, including: Departments of Environmental Conservation, State, and Transportation; Empire State Development; New York Power Authority (New York State Canals); New York State Energy Research and Development Authority; the U.S. Army Corps of Engineers; Department of Transportation (including the Maritime Administration and St. Lawrence Seaway Development Corporation); and Environmental Protection Agency.

The Needs Assessment will be targeted, actionable and specific and include:

- Infrastructure needs that support greening, resiliency, decarbonization, and port growth opportunities such as offshore wind at maritime and port entities.

- Funding needs and opportunities for greening, resiliency, decarbonization, and port growth opportunities such as offshore wind at maritime and port entities, including specific Climate Act renewable energy goals.
- State policy and regulatory recommendations for maritime and ports to support greening, resiliency, decarbonization, and port growth opportunities such as offshore wind at maritime and port entities.
- Land use and development current and forecasted constraints, and tools, local laws, and programmatic support that can assist ports in growth and resiliency efforts.
- Ongoing communication and coordination needs between maritime and port entities, agencies, and stakeholders.
- Implementation actions that list priority projects for specific maritime and ports entities, identifies potential funds to support implementation, and details implementation timescale (short term, long term, etc.).
- Where possible, specific infrastructure projects will be identified that include estimated cost, permitting or regulatory hurdles, potential funding sources, and any other pertinent information.

Deliverable: Green Ports Needs Assessment and Implementation Plan provided to NYSDOS. Submission of a draft report is required for review and approval prior to the final submission.

Appendix D: Payment and Reporting Schedule

This contract is a true cost reimbursement AGREEMENT. The CONTRACTOR may claim and be reimbursed for eligible project costs incurred and paid for by the CONTRACTOR. Eligible project costs must be incurred and goods and services must be received and accepted by the CONTRACTOR within the contract period. The total of such reimbursement shall not exceed the funding amount for this AGREEMENT as outlined in the most recently approved Appendix B and shall be claimed by the CONTRACTOR in accordance with the approved contract.

I. Payment Terms and Conditions

- A. Payment requests must be certified by a duly authorized representative of the CONTRACTOR as accurately representing such accomplishments and expenses as recorded in the CONTRACTOR'S accounting records, including where goods or services are provided by third parties not party to this AGREEMENT, a certification that any payment obligations arising from the provision of such goods or services have been paid by the CONTRACTOR and do not duplicate reimbursement or costs and services received from other sources.
- B. No payment under this AGREEMENT, other than advances as authorized herein, will be made by the STATE to the CONTRACTOR unless proof of performance of required services or accomplishments is provided. If the CONTRACTOR fails to perform the services required under this AGREEMENT the STATE shall, in addition to any remedies available by law or equity, recoup payments made but not earned, by set-off against any other public funds owed to CONTRACTOR.
- C. The CONTRACTOR will be entitled to receive payments for work, projects, and services rendered as detailed and described in the approved Appendix B. Billing vouchers submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for vouchers submitted by the CONTRACTOR shall be rendered electronically unless payment by paper check is expressly authorized by the Secretary of State, in the Secretary's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at (518) 474-6019. The CONTRACTOR acknowledges that it will not receive payment on any vouchers submitted under this contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Secretary of State has expressly authorized payment by paper check as set forth above.
- D. The CONTRACTOR shall submit to the STATE quarterly vouchers and reports of expenditures on such forms and in such detail as the STATE shall require. The CONTRACTOR shall submit complete and accurate vouchers to the State's designated payment office located at the following address:
 - Bureau of Fiscal Management
 - NYS Department of State
 - 1 Commerce Plaza
 - 99 Washington Avenue, Suite 1110
 - Albany, NY 12231

If work concludes early, a voucher may be submitted for the remaining contract value as described in Appendix B. All vouchers submitted by the CONTRACTOR pursuant to this AGREEMENT shall be submitted to the STATE no later than 30 days after the end date of the period for which reimbursement is being claimed. In no event shall the amount received by the CONTRACTOR exceed the budget amount approved by the STATE. All contract advances in excess of actual expenditures will be recouped by the STATE prior to the end of the applicable budget period.

II. Reporting Terms and Conditions

- A. The CONTRACTOR will provide the STATE with the reports of progress or other specific work products pursuant to this AGREEMENT as described in Appendix D. All required reports or other work products developed under this AGREEMENT must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the STATE in order for the CONTRACTOR to be eligible for payment.
- B. The Contractor shall provide to the Department project status updates by teleconference on an approximate weekly basis, and upon request by the Department. The Contractor will develop and electronically mail an agenda prior to each such teleconference. The Contractor will prepare a monthly status report covering all project tasks performed during the month. All monthly project status reports are due by 4:00 p.m. on the last business day of the month.

III. Other

- A. The DEPARTMENT shall have the right to conduct on-site progress assessments and reviews of the project and CONTRACTOR'S records during the life of the AGREEMENT and for a reasonable time following the issuance of the final payment. The CONTRACTOR shall furnish proper facilities, where necessary or useful, for such access and inspection at the DEPARTMENT'S convenience.
- B. The DEPARTMENT shall be entitled to disallow any cost or expense, or terminate or suspend this AGREEMENT if found that the CONTRACTOR has misrepresented any expenditure(s) or project activities in the AGREEMENT, or in any progress reports(s) or payment requests made pursuant hereto.
- C. The CONTRACTOR is required to keep separate books and records for all funds received and activities conducted under the AGREEMENT, and to make such books and records available for inspection and audit for 6 years following termination of the AGREEMENT.

Appendix X: Modification Agreement Form

Agency Code: 3800000/DOS01
 Contract Period: _____

Contract No.: _____
 Funding for Amendment: \$ _____

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the New York State Department of State, having its principal office in Albany, New York (hereinafter referred to as the STATE), and _____ (hereinafter referred to as the CONTRACTOR), for modification of the contract number noted above, as amended herein and noted below.

Type of contract modification:

- Renewal Revised total contract value \$ _____
- No cost time extension
- Amendment: _____
- Attached Appendices: _____

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE

NYS DEPARTMENT OF STATE

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

State Agency Certification: "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

State of New York _____)
 County of _____)ss:

On this _____ day of _____, in the year 20____, before me personally appeared _____, to me known and known to me to be the person who is the _____ of _____, the organization described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said organization; and that he/she executed the foregoing agreement for and on behalf of said organization.

 NOTARY PUBLIC

ATTORNEY GENERAL SIGNATURE

STATE COMPTROLLER SIGNATURE

Signature: _____

Signature: _____

Name: _____

Name: _____

Date: _____

Date: _____