

**REQUEST FOR PROPOSALS (RFP)
RFP #24-OPD-31**

**New York State Department of State
Office of Planning, Development & Community Infrastructure
for**

Smart Growth Implementation Toolkit and Technical Assistance Program Development

KEY DATES

Release Date: November 13, 2024

Deadline for Questions: December 2, 2024

Questions and Answers Posted: December 16, 2024

Proposal Due Date: January 7, 2025 by 11:59 pm EST

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-31 <name of vendor>**)

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

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1. INTRODUCTION

1.1. Overview

New York State received approximately \$3 million through the U.S. Environmental Protection Agency's (EPA) Climate Pollution Reduction Grant program (CPRG) to develop Priority and Comprehensive Climate Action Plans. The New York State Department of State (DOS) was allocated a portion of those funds to support the development of the Priority and Comprehensive Climate Action Plans as required by EPA and to develop projects that support the implementation of Smart Growth practices that reduce greenhouse gas (GHG) emissions and other harmful air pollution, consistent with the goals of CPRG.

EPA's Climate Pollution Reduction Grant Program was created under the Inflation Reduction Act of 2022 to pursue GHG emissions reductions (particularly in the near-term) and associated air pollution reductions through new technologies, operational efficiencies, and solutions transitioning the United States to a low-carbon economy. The goals of this program include:

- Tackle damaging climate pollution while supporting the creation of good jobs and lowering energy costs for families;
- Accelerate work to advance environmental justice and empower community-driven solutions in overburdened neighborhoods; and
- Deliver cleaner air by reducing harmful air pollution in places where people live, work, play, and go to school.

The CPRG program consists of multiple phases, which are being conducted through an interagency collaboration between the New York State Department of Environmental Conservation, the New York State Energy Research and Development Authority, and DOS. The CPRG phases include: (1) Development of a Priority Climate Action Plan (PCAP), (2) Development of implementation applications, and (3) Development of a Comprehensive Climate Action Plan (CCAP).

In March 2024, New York State submitted its PCAP to EPA detailing the priority measures that New York State intends to pursue to achieve near-term GHG emissions reductions. In April 2024, New York State submitted implementation applications to EPA, requesting funds that would be used to implement projects to reduce GHG emissions in the near term across the State. Currently, the State is working on the Comprehensive Climate Action Plan which will address all significant GHG emissions sources and sectors and establish near-term and long-term GHG emissions goals and strategies.

As part of the planning component of the CPRG program, DOS was allocated funds to pursue the implementation of Smart Growth. Smart Growth is a planning framework that promotes dense and spatially interconnected land use configurations, creating opportunities for multiple modes of

transportation, housing diversity and density, safe and accessible public spaces, and sustainable and energy-efficient mixed-use development. Smart Growth lowers GHG emissions by reducing vehicle miles traveled (VMT), generating more compact and energy-efficient housing, and reducing sprawl by avoiding the conversion of natural lands to development. Smart Growth strives to integrate economy, equity, environment, and energy in order to promote land use planning principles that create livable, sustainable, and equitable communities across the State, among other objectives, such as reduction of GHG emissions.

To integrate economy, equity, environment, and energy in community planning and development, DOS has identified ten Smart Growth principles that can guide a community's development strategies and projects. Those principles are:

1. Develop plans and land use regulations that allow for and encourage mixed-use neighborhoods.
2. Enable a diverse mix of housing types that provide for opportunity and choice for all.
3. Prioritize infill and redevelopment of existing buildings to revitalize neighborhoods, and downtowns including areas around public transit.
4. Provide well-planned, equitable, and accessible public spaces.
5. Encourage compact neighborhood design and concentrated development around existing infrastructure.
6. Preserve open space, agricultural resources, and natural resources.
7. Prioritize transportation options such as walking, cycling, and public transportation.
8. Promote climate resiliency and adaptation, preferably through nature-based solutions, and reduce greenhouse gas emissions.
9. Build on unique traits to create an attractive and welcoming community with a strong sense of place.
10. Engage in an inclusive, collaborative public planning process that considers the needs and character of the community.

DOS currently operates two existing Smart Growth grant programs: the Smart Growth Community Planning and Zoning Program and the Smart Growth Countywide Resiliency Planning Program, described below:

Smart Growth Community Planning and Zoning Program provides direct grants to municipalities, counties, regional planning entities, and eligible not-for-profit organizations on behalf of a county or municipality to develop comprehensive plans, area plans, and zoning ordinances that embrace the principles of Smart Growth, including planning and zoning that will lead to development patterns that reduce GHG emissions. These documents provide the legal and policy framework to guide future land use and development decisions. Smart Growth principles such as compact, mixed-use development in municipal centers and walkable, bikeable, transit-

accessible streetscapes reduce automobile use and dependence and thus reduce transportation-based GHG emissions.

Smart Growth Countywide Resiliency Planning Program provides grants to counties, regional planning entities, and relevant not-for-profit organizations to develop countywide resiliency plans to help communities prepare for and respond to a variety of natural disasters, such as flooding, drought, wind, sea-level rise, extreme heat, and the increased frequency of severe storm events. The resiliency plans consider past damages, future threats, and potential economic opportunities; identify strategies and projects to make communities more resilient; and include both adaptation and mitigation strategies to proactively address risks, reduce vulnerabilities, and seek solutions that provide multiple benefits and address multiple goals.

As the State's planning agency, DOS is interested in furthering its support of communities in implementing Smart Growth while also understanding the impact of Smart Growth on GHG emissions and other impacts. The results of this project will help DOS and local governments demonstrate the impact land use decisions have on GHG emissions by quantifying their impacts. This effort will support communities with developing, adopting, and implementing Smart Growth practices and policies appropriate for the community's specific context, calculating the GHG emission reductions of Smart Growth development, and helping the State meet the goals set forth in the Climate Leadership and Community Protection Act (CLCPA).¹

DOS will contract with a selected consultant to complete a multi-component project:

- (1) Develop a Smart Growth Implementation Toolkit (“Toolkit”) and
- (2) Conduct a Smart Growth Implementation Technical Assistance Program (“Program”), in consultation with DOS and informed by community/stakeholder outreach and engagement.

The purpose of the Toolkit is to identify Smart Growth measures that would be appropriate to diverse development typologies, develop strategies and projects for implementing such Smart Growth measures, quantify GHG emissions impacts and other co-benefits associated with Smart Growth strategies and projects, and develop user-friendly tools to help communities advance Smart Growth practices in their localities while assessing GHG emissions impacts. This Toolkit will promote the development and implementation of Smart Growth measures that will result in reduced GHG emissions and healthier communities. Development of the Toolkit will be followed by implementation of the Program. The purpose of the Program is to utilize the completed Toolkit to assist communities with the development of a Smart Growth Action Plan (“Plan”) that would move a community from the planning stage, evidenced by an existing Smart Growth

¹ NY Laws of 2019, Chapter 106.

comprehensive plan and/or area plan, to the implementation of Smart Growth policies and related projects.

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 contact 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, Catherine Traina has been designated the primary contact for this procurement solicitation and may be reached by email or surface mail for all inquiries regarding this solicitation.

Catherine Traina
NYS Department of State
Bureau of Fiscal Administration
1 Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231
RFP #24-OPD-31

By email: dos.sm.procurement@dos.ny.gov

Include in subject line: *RFP #24-OPD-31* <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 7.1.14 of this solicitation.

1.3. Funding and Term of Contract

This contract will be funded by DOS with 100% of the funding provided by the Federal EPA through the Climate Pollution Reduction Grant Program's planning grant, which was awarded to New York State in 2023. DOS is a sub-recipient, with the NYS Department of Environmental Conservation serving as the lead agency with EPA. The scope proposed in this project is aligned with the State's approved workplan and agreement with EPA.

This contract shall be effective upon approval of the NYS Office of the State Comptroller. The anticipated contract term is approximately 2 years, with final deliverables completed no later than August 2027. 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 either 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.

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:
 - a. be prequalified in the New York Statewide Financial System by the proposal due date
 - b. be incorporated pursuant to NYS Not-For-Profit Corporation law
 - c. have an approved tax-exempt status under section 501(c)(3) of the Internal Revenue Service code

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

1.6. Proposer's Preferred Qualifications

Preference will be given to Proposers with demonstrated experience and expertise related to the following:

1. Community/Regional Planning: Experience in land use planning at the community and regional scale that integrates all aspects of a community's physical, economic, and social characteristics.
 - a. Specifically planning experience related to Smart Growth (defined in Section 1.1) and deep knowledge of a variety of land use strategies and the dynamic impact different strategies have on one another.
 - b. Stakeholder and Community Engagement: Experience with developing and conducting stakeholder and public engagement, such as interviews, focus groups, public workshops, surveys, and charettes as well as the quantitative and qualitative analysis of stakeholder and engagement inputs.
2. Existing Program Knowledge: Understanding of NYS's CLCPA and the associated Scoping Plan as well as Smart Growth principles and practices.
3. Experience with the quantification of GHG emissions and co-pollutants, particularly as they relate to land use and Smart Growth
 - a. Forecasting and Quantification of GHG and Co-Pollutant Emissions: Experience with the forecasting and quantification of GHG and co-pollutant emissions associated with specific actions related to Smart Growth (e.g., land use patterns, building decarbonization, construction of bike lanes).
 - b. Health and Environmental Impacts Analysis: Experience with analyzing health (e.g., physical and mental health) and environmental impacts (e.g. air or water quality) related to the implementation of Smart Growth practices. This would include any health or environmental impacts pertaining to the relationship between GHG emissions and Smart Growth.
 - c. Cost/Benefit Analysis: Experience with cost/benefit analyses including estimating project costs, including construction, operations and maintenance, and indirect costs; and project benefits, including both financial and non-financial (e.g. social, cultural, and open space) benefits.
 - d. Travel Forecasting and Analysis: Experience with forecasting and analyzing changes in travel patterns due to the implementation of Smart Growth practices. This may include analyzing mode-shift, changes to vehicle miles traveled as a result of Smart Growth, and other means of measuring how travel changes due to Smart Growth.
4. Project Administration

- a. **Project Management:** Experience coordinating complex projects involving multiple disciplines and managing and scheduling work to meet short deadlines, including demonstrated ability to respond to emerging conditions that may affect meeting schedules, product delivery or partner needs.
- b. **Strategic Communication:** Experience with plain language writing, illustrating, including graphics, and editing, with ability and commitment to produce professional quality products that clearly articulate the project process, use language that is easily comprehensible for a general, non-scientific audience, and incorporate feedback from DOS and other stakeholders.
- c. **Contract Administration:** Ability to coordinate with DOS's project manager(s) to ensure effective project management, follow project manager protocols on communication with partners, and recommend efficiencies and accomplish project objectives.

2. SCOPE OF WORK

Proposals should address, at a minimum, the following tasks listed below. Proposers are encouraged to refine their specific approach based on their professional expertise. To the extent practicable, components and tasks may overlap to ensure that this project is progressing and can be completed within 2 years from contract execution with the selected contractor.

Component 1: Development of a Smart Growth Toolkit (Beta version, which will be refined during Component 2)

Task 1: Identification of Development Typologies

New York is home to varied development patterns and places, ranging from dense downtowns to rural hamlets. Because appropriate Smart Growth measures will vary across the development patterns and places found throughout New York, it is important to classify patterns and places into different development typologies. Using the identified development typologies, any community in the state should be able to identify the development typology(ies) appropriate for its context, which will help identify and prioritize the applicable, appropriate Smart Growth measures. A Smart Growth measure is a specific practice, policy, mechanism, project, or strategy that a community/municipality can implement to align with one or more Smart Growth principles outlined in Section 1.2, Background.

Deliverables:

- a. Draft and final versions of the development typologies and descriptive characteristics, that include visualizations and illustrations, with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format

Task 2: Identification of Smart Growth Practices, Strategies, Policies, Mechanisms, and Projects (“Measures”)

This task deliverable is to develop a range of Smart Growth measures that align with DOS’ ten Smart Growth principles that maximize GHG emission reductions. These measures may include practices, strategies, policies, mechanisms, or projects (“measures”) that can help a community develop in ways consistent with applicable Smart Growth principles. These measures must be able to apply to the development typologies identified in Task 1 with different measures applicable to the appropriate development typology.

Deliverables:

- a. Draft and final versions of Smart Growth measures and their alignment with development typologies that include visualizations and illustrations, with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format;

Task 3: Development of Measurement Tools and Methodologies for Quantifying GHG Emissions Reductions and Co-Benefits Associated with Smart Growth

This task shall include the development of measurement tools with associated assumptions and methodologies that quantify the reductions in GHG emissions associated with Smart Growth measures, as identified in Task 2. The contractor will be expected to identify the appropriate unit of measurement for quantifying GHG emissions. The goal of these measurement tools is to effectively estimate the GHG emissions reductions achieved with the implementation of a Smart Growth measure. The measurement tools should also account for other co-benefits, including financial, social, and environmental benefits to the extent practicable. The measurement tools should account for different development typologies from Task 1. The contractor will be expected to conduct research and do modeling to estimate the reduction in GHG emissions. This may include analyzing how Smart Growth measures affect Vehicle Miles Traveled (VMT), development density, building construction, and more. Examples of frameworks/tools that could be reviewed and/or adapted as a part of this Task include, but are not limited to:

- [GHG Inventory/Reporting Tool - https://www.epa.gov/ghgemissions/capacity-building-tools](https://www.epa.gov/ghgemissions/capacity-building-tools)
- [GHG Calculator](https://www.epa.gov/climateleadership/simplified-ghg-emissions-calculator)
- [GHG Equivalencies Calculator - https://www.epa.gov/climateleadership/simplified-ghg-emissions-calculator](https://www.epa.gov/climateleadership/simplified-ghg-emissions-calculator)
- [EPA’s Benchmarking and Building Performance Standards \(BPS\) Policy Toolkit - https://www.epa.gov/statelocalenergy/benchmarking-and-building-performance-standards-policy-](https://www.epa.gov/statelocalenergy/benchmarking-and-building-performance-standards-policy)

toolkit#:~:text=EPA's%20Benchmarking%20and%20Building%20Performance,multi family%20buildings%20in%20their%20communities.

- [ENERGY STAR - https://www.energystar.gov/partner-resources/residential_new/program_reqs](https://www.energystar.gov/partner-resources/residential_new/program_reqs)
- [EPA GLIMPSE -https://www.epa.gov/air-research/glimpse-computational-framework-supporting-state-level-environmental-and-energy](https://www.epa.gov/air-research/glimpse-computational-framework-supporting-state-level-environmental-and-energy)
- [EPA Energy Savings and Impacts Scenario Tool \(ESIST\) - https://www.epa.gov/statelocalenergy/energy-savings-and-impacts-scenario-tool-esist](https://www.epa.gov/statelocalenergy/energy-savings-and-impacts-scenario-tool-esist)

Deliverables:

- a. A draft and final version of a report describing the GHG quantification measurement tool developed. The report shall discuss the approach taken to develop the tool, the data collected and used, the assumptions included in the tool, the methodologies behind the tool, and other information that conveys the process behind developing the tool. This report shall include a plain-language executive summary with appropriate visualizations and illustrations. A technical appendix is also required detailing the assumptions, methodologies, and all technical information used in developing the tool.

Task 4: Development of a User-Friendly Tool to Enable Quantification of GHG Reductions

The measurement tools developed in Task 3 will need to be developed and presented in a user-friendly format that does not require substantial technical knowledge to use and understand. This user-friendly tool will be publicly available with the expected users being local government planners and community development staff, local elected officials, planning consultants, and State planners. To the extent practicable and needed, the data used in the creation of the tool should be able to be easily updated by DOS.

Deliverables:

- a. Draft and final versions of the measurement tool (e.g. an Excel-based calculator, or other) associated with the identified Smart Growth measures

Task 5: Development of Smart Growth Assessment Tool

This task involves the creation of a Smart Growth assessment tool that communities can use to self-assess their policies and practices that support development aligned with Smart Growth principles. The tool should also be used to educate communities on appropriate Smart Growth measures and identify gaps in existing measures. This assessment tool should be designed so that it applies to all development typologies identified in Task 1. This may result in different assessment tools to be applied to the development typologies identified in Task 1. At a minimum, the

assessment tool should include questions that cover all the Smart Growth principles identified in the Background section.

The assessment tool should also include strategies and best practices for how to implement Smart Growth measures. These strategies and best practices may include suggestions on how to get started, co-benefits (some of which may be quantifiable per Task 3), cost estimates, time frame for implementation, potential funding sources/technical assistance, relevant examples and case studies, and other information that may help a community progress in implementing Smart Growth development.

Deliverables

- a. Draft and final versions of a Smart Growth Assessment Tool, including instructions of using the assessment tool, and strategies for applying and implementing appropriate measures as referenced in Task 5 with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format.

Task 6: Bi-Weekly Progress Meetings and Monthly Status Reports

The contractor shall attend, at a minimum, bi-weekly check-in call with DOS. These calls shall discuss project progress and preview upcoming work. The consultant will be responsible for providing summaries of these calls along with action items.

Deliverables:

- a. Bi-weekly check-in calls and call summaries with action items

Component 2: Smart Growth Implementation Technical Assistance Program

The technical assistance program component will follow the creation of the Toolkit from Component 1 and involve employing the Toolkit in DOS-selected pilot communities that have varying levels of Smart Growth and planning knowledge. These communities will be in the Mid-Hudson, Mohawk Valley, and/or Central NY regions. The purpose of this component is to provide the community with targeted technical assistance that can be used to advance local Smart Growth measures and reduce GHG emissions, resulting in providing the community with a Smart Growth Action Plan (“Plan”). The Program will also serve as an opportunity for the contractor to test the Toolkit and evaluate its effectiveness and usability in a real-world setting. Using the findings from this technical assistance process, the contractor will then refine the beta version of the Toolkit developed in Component 1.

DOS-selected pilot communities will likely include those that have participated in or are currently participating in DOS's Smart Growth Community Planning and Zoning program.

Task 1: Community Collaboration

The contractor shall lead a technical assistance program in two selected pilot communities (selected by DOS with input from the contractor) using the Toolkit developed in Component 1. The contractor shall work with the selected communities to conduct the following activities:

- Complete the Smart Growth Assessment (Component 1, Task 5) **in collaboration with** each selected community, **not** on the community's behalf.
- Assess the GHG emissions reductions associated with existing Smart Growth measures already in place per the Assessment using the quantification tool (Component 1, Task 4)
- Develop a plan for limited community and stakeholder engagement to determine the issues pertaining to Smart Growth in the community and identify the community's priorities. Engagement is expected to be inclusive and include a diverse group of local and regional leaders, stakeholders, community representatives, etc. representative of the entire community. The contractor shall hold at least one community-wide public event, three stakeholder events, a community tour, and conduct consistent engagement with local elected officials and municipal staff for the duration of the process for each of the two communities. DOS staff will assist with identifying local and regional leaders, stakeholders, community representatives, etc. for invitation to engagement events in each community.
- Review each community's regulatory, planning, and development landscape, including relevant data, existing plans, local land use and development regulations, and existing infrastructure.

Deliverables:

- a. Completed Smart Growth Assessments for each of the selected pilot communities;
- b. Draft and final versions of a community and stakeholder engagement plan;
- c. Draft and final versions of community and stakeholder engagement meeting summaries;
- d. Draft and final versions of an assessment of the community's regulatory, planning, and development landscape.

Task 2: Smart Growth Action Plan Development

This task shall include the development of a community-specific Smart Growth Action Plan that advances the community from the planning stage and provides direction for how a community can implement Smart Growth measures that will result in GHG emissions reductions, along with quantified estimates for the emissions reductions. The Plan should seek to build on existing

comprehensive planning and/or area planning documents and identify priority actions that will accelerate the community's implementation of Smart Growth principles and reduce GHG emissions.

The contractor shall use the Toolkit's identified Smart Growth measures, GHG emissions quantification tool, and strategies and best practices from the Assessment to draft the Plan. The measures, quantification, and strategies and best practices shall be adapted to each community.

Deliverables:

- a. Draft and final versions of Action Plans for each DOS-selected pilot community with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format;

Component 3: Refinement of Smart Growth Toolkit

After the completion of each Action Plan (Task 2, Component 2), the contractor will revisit each of the deliverables from the tasks from Component 1. Having now completed and assessed the usability of the Toolkit in different communities during Component 2, the contractor will refine each beta version of the Toolkit deliverables based on feedback received and lessons learned while using it in the communities.

Deliverables:

- a. A final version of the development typologies and descriptive characteristics, inclusive of refinements resulting from the Technical Assistance Program (Component 2), that include visualizations and illustrations, the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format;
- b. A final version of Smart Growth measures and their alignment with development typologies, inclusive of refinements resulting from the Technical Assistance Program (Component 2), that include visualizations and illustrations, with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format;
- c. A final version of a report describing the GHG quantification measurement tool developed. The report shall discuss the approach taken to develop the tool, the data collected and used, the assumptions included in the tool, the methodologies behind the tool, and other information that conveys the process behind developing the tool. This report shall include a plain-language executive summary with appropriate visualizations and illustrations. A technical appendix is also required detailing the assumptions, methodologies, and all technical information used in developing the tool. This final version should be inclusive of all refinements resulting from the testing of the tool during the Technical Assistance Program (Component 2);

- d. Final version of the measurement tool (e.g. an Excel-based calculator), inclusive of refinements resulting from the Technical Assistance Program (Component 2), associated with the identified Smart Growth measures;
- e. Final version of the Smart Growth Assessment Tool, inclusive of refinements resulting from the Technical Assistance Program (Component 2), including instructions of using the assessment tool, and strategies for applying and implementing appropriate measures as referenced in Task 5 with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format.

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 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
- 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 three pdf documents (Technical Proposal in one document, Cost Proposal in a separate document, Diversity Practices Questionnaire 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 and Diversity Practices Questionnaire should be submitted as separate documents and identified with: (1) Smart Growth Implementation Toolkit and

Technical Assistance Program Development RFP #24-OPD-31; (2) the name of the Proposer, and (3) labeled “Technical Proposal”, “Cost Proposal”, or “Diversity Practices Questionnaire” 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 Eastern Time 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 90 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 90-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.

No financial proposal or pricing information may be included in a Proposer's technical proposal. Proposals that include pricing information in the technical proposal will be disqualified without further evaluation.

5.5.1. 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. A scanned signature or an electronic signature are both acceptable.

(2) Qualifications and Overall Experience

- a. Proposer should demonstrate experience and performance with planning and analysis related to community/regional land use planning, Smart Growth, GHG emissions forecasting and quantification, and stakeholder and community engagement.
- b. Proposals should include projects that have been completed, with an allowance for one (1) incomplete but substantially completed project (75% complete) that demonstrates experience with some or all of the preferred qualifications and/or outlined tasks. Dates of project completion or expected completion date shall be included. Preferred qualifications for proposers include the following criteria in addition to the aforementioned experience:
 - i. Five (5) completed projects submitted, with an allowance of up to one (1) of the five (5) projects to be incomplete but substantially completed (75% completed as determined by the proposer).
 - ii. All five (5) projects completed in the last eight (8) years, with the exception of up to one (1) of the five (5) projects incomplete but substantially completed (75% completed) at the time of proposal submission.
 - iii. Three (3) of the five (5) projects were completed by the proposer and not their subcontractors (if any). One (1) of these three (3) projects under this criterion is allowed to be

incomplete but must be substantially completed (75% completed as determined by the proposer).

- c. The projects should reflect the diversity that is required and together cover all the tasks required in this project (including but not limited to quality of deliverables, adherence to budget and schedule, communication, etc.)

(3) Understanding of Project Goals and Objectives (Up to 10 pages, plus graphics)

- a. Proposer should demonstrate understanding of project goals and objectives
- b. Proposal should summarize approach to project completion
- c. Proposers should identify any novel approaches to complete project tasks
- d. Proposals should exhibit understanding of Smart Growth planning and development and quantification and analyses of GHG emissions
- e. Proposals 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.
- f. Proposers should indicate percent effort of Key Personnel.

(4) Project Team/Organization/Key Personnel

- a. Proposer should provide resumes of all persons who will be assigned work pursuant to this RFP including subcontractors, demonstrating appropriate and relevant qualifications, educational background, professional accreditation, training, and experience.
- b. Proposals should include organizational chart of project staff and describe roles and responsibilities of identified staff, including subcontractors, if any.
- c. Proposers should identify a Project Manager and describe their experience in management of one other project of similar size and nature. Proposers should include a description of that project.
- d. Proposers should identify and describe gaps in skillsets/expertise in their proposed team and identify strategies or subcontractors to fill the gaps or lay out a plan for finding staff or subcontractors to fill any remaining gaps.

5.5.2. Diversity Practices Questionnaire

The Proposer's Diversity Practices 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:

1. Diversity Practices Questionnaire (found at <https://dos.ny.gov/procurement-forms>)
2. MWBE Form D (found at <https://dos.ny.gov/supplier-diversity>)

A scanned signature or an electronic signature on the form are both acceptable.

5.5.3. 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.

(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 90 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.

The Proposer's cost proposal should also contain the following completed forms:

1. Non-Collusive Bid Certification (Attachment 1 found at <https://dos.ny.gov/procurement-forms>)
2. Conflict of Interest Statement (Attachment 2 found at <https://dos.ny.gov/procurement-forms>)
3. Procurement Lobbying Forms (Attachment 3 found at <https://dos.ny.gov/procurement-forms>)

4. Consultant Disclosure Form A (Attachment 7 found at <https://dos.ny.gov/procurement-forms>)
5. ST-220-CA (Attachment 8 found at <https://dos.ny.gov/procurement-forms>)
6. Executive Order 16 Certification (Attachment 9 found at <https://dos.ny.gov/procurement-forms>)
7. SDVOB Form 100 (Attachment 12 found at <https://dos.ny.gov/supplier-diversity>)

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, Cost and Diversity Practices 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 clarification be provided. The evaluation process will consist of three phases: Technical Evaluation, Diversity Practices 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 carried out to two decimal places to arrive at the final technical score.

DOS reserves the right to request the top-scoring Proposer and any Proposer scoring within 5 points of the top-scoring Proposer to provide a presentation as part of the final selection process.

Technical Proposal Evaluation Factors

(1) Qualifications and Overall Experience (28 points)

- a. Proposer demonstrated experience and performance with planning and analysis related to community/regional land use planning, Smart Growth, GHG emissions forecasting and quantification, and stakeholder and community engagement.

- b. Proposals included projects that have been completed, with an allowance for one (1) incomplete but substantially completed project (75% complete) that demonstrate experience with some or all of the preferred qualifications and/or outlined tasks. Dates of project completion or expected completion date were included. Preferred qualifications for proposers include the following criteria in addition to the aforementioned experience:
 - i. Five (5) completed projects submitted, with an allowance of up to one (1) of the five (5) projects to be incomplete but substantially completed (75% completed as determined by the proposer).
 - ii. All five (5) projects completed in the last eight (8) years, with the exception of up to one (1) of the five (5) projects incomplete but substantially completed (75% completed) at the time of proposal submission.
 - iii. Three (3) of the five (5) projects were completed by the proposer and not their subcontractors (if any). One (1) of these three (3) projects under this criterion is allowed to be incomplete but must be substantially completed (75% completed as determined by the proposer).
 - c. The projects reflected the diversity that is required and together cover all the tasks required in this project (including but not limited to quality of deliverables, adherence to budget and schedule, communication, etc.)
- (2) Understanding of Project Goals and Objectives (38 points)
- a. Proposer demonstrated understanding of project goals and objectives
 - b. Proposal summarized approach to project completion
 - c. Proposers identified any novel approaches to complete project tasks
 - d. Proposals exhibited understanding of Smart Growth planning and development and quantification and analyses of GHG emissions
 - e. Proposals 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.
 - f. Proposers indicated percent effort of Key Personnel.
- (3) Project Team/Organization/Key Personnel (12 points)
- a. Proposer provided resumes of all persons who will be assigned work pursuant to this RFP including subcontractors, demonstrating appropriate and relevant qualifications, educational background, professional accreditation, training, and experience.
 - b. Proposals included organizational chart of project staff and described roles and responsibilities of identified staff, including subconsultants, if any.
 - c. Proposers 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. Proposers 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.

6.2.2. Diversity Practices Questionnaire

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

6.2.3. 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 carried out to two decimal places to arrive at an overall technical score. Non-cost factors 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 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. Compliance with Federal requirements

To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

7.1.2. 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 may 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.

7.1.3. 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.

7.1.4. 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.

7.1.5. 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 or products developed under this contract.

7.1.6. Travel

All travel must be first 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>.

7.1.7. Reporting Requirements

The successful Proposer(s) will be responsible for the completion of a variety of administrative and 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.

7.1.8. 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.

7.1.9. 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.

7.1.10. 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/>.

7.1.11. 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 six 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.

7.1.12. 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 ten (10) 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 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.
- (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.
- (4) 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.

- (5) 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 Act² 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;

² 33 USC §901, et seq.

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).

7.1.13. 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 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-31

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.

7.1.14. 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>.

7.1.15. 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 offeror 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>.

7.1.16. 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>.

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

Article 3 of the New York State Veterans' Services 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://sdves.ogs.ny.gov/business-search>. 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 regard 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>.

7.1.18. 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.

7.1.19. 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/Offerors 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/Offerors 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.

7.1.20. 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](#).

7.1.21. 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.

The following* attachments can be found at <https://dos.ny.gov/procurement-forms>:

Attachment 1*: Non-Collusive Bid Certification

Attachment 2*: Conflict of Interest Statement

Attachment 3*: Procurement Lobbying Forms

Attachments 4: Technical Proposal Transmittal Sheet – attached below

Attachment 5: Cost Proposal Transmittal Sheet – attached below

Attachment 6: Contract Pricing Proposal form – attached below

Attachment 7*: Consultant Disclosure Form A

Attachment 8*: ST-220-CA

Attachment 9*: Executive Order 16 Certification

Attachment 10*: Diversity Practices Questionnaire

The following** attachments can be found at <https://dos.ny.gov/supplier-diversity>:

Attachment 11: MWBE Form D**

Attachment 12: SDVOB Form 100**

Attachment 13: SAMPLE Contract – attached below

Attachment 4: Technical Proposal Transmittal Sheet

New York State Department of State, RFP #24-OPD-31

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 90 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-31

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 90 days from the date of submission.

Attachment 6: Contract Pricing Proposal form

RFP #24-OPD-31

Deliverable	Cost
Component 1: Development of a Smart Growth Toolkit (Beta version, which will be refined during Component 2)	
Task 1: Identification of Development Typologies	\$
Task 2: Identification of Smart Growth Practices, Strategies, Policies, Mechanisms, and Projects (“Measures”)	\$
Task 3: Development of Measurement Tools and Methodologies for Quantifying GHG Emissions Reductions and Co-Benefits Associated with Smart Growth	\$
Task 4: Development of a User-Friendly Tool to Enable Quantification of GHG Reductions	\$
Task 5: Development of Smart Growth Assessment Tool	\$
Task 6: Bi-Weekly Progress Meetings and Monthly Status Reports	\$
Component 2: Smart Growth Implementation Technical Assistance Program	
Task 1: Community Collaboration	\$
Task 2: Smart Growth Action Plan Development	\$
Component 3: Refinement of Smart Growth Toolkit	\$
Total:	\$

Proposer’s Name: _____

Representative: _____

Signature

Date

Name: _____

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</p>
<p>CONTRACTOR DOS INCORPORATED NAME:</p>	<p>PROJECT NAME: Smart Growth Implementation Toolkit and Technical Assistance Program Development</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: 24-OPD-31</p> <p>CFDA NUMBER (Federally Funded Contracts Only): n/a</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS:</p> <p>CONTRACTOR PAYMENT ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address</p> <p>CONTRACTOR MAILING ADDRESS <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: <input type="checkbox"/> Sectarian Entity</p>

STATE OF NEW YORK VENDOR CONTRACT

<p>CURRENT CONTRACT TERM:</p> <p>FROM: TO:</p> <p>CURRENT CONTRACT PERIOD:</p> <p>FROM: TO:</p> <p>AMENDED TERM:</p> <p>FROM: TO:</p> <p>AMENDED PERIOD:</p> <p>FROM: TO:</p>	<p>CONTRACT FUNDING AMOUNT:</p> <p><i>(Multi-year – enter total projected amount of the contract; Fixed Term/Simplified Renewal – enter current period amount)</i></p> <p>CURRENT:</p> <p>AMENDED:</p> <p>FUNDING SOURCES:</p> <p align="center"> <input type="checkbox"/> State <input checked="checked" type="checkbox"/> Federal <input type="checkbox"/> Other </p>			
<p>FOR MULTI-YEAR AGREEMENTS ONLY – CONTRACT PERIOD AND FUNDING AMOUNT: (Out years represent projected funding amounts)</p>				
#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				
<p>ATTACHMENTS PART OF THIS AGREEMENT:</p> <p><input checked="checked" type="checkbox"/> Appendix A: Standard Clauses for NYS Contracts</p> <p><input checked="checked" type="checkbox"/> Appendix B: Budget</p> <p><input checked="checked" type="checkbox"/> Appendix C: Program Work Plan</p> <p><input checked="checked" type="checkbox"/> Appendix D: Payment and Reporting Schedule</p> <p><input checked="checked" type="checkbox"/> Appendix X: Modification Agreement Form</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: _____

Printed Name

By: _____

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 they reside at _____, that they are the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that they signed their 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: _____

Printed Name

By: _____

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 ten (10) 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
 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

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 3 of the New York State Veterans' Services 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 Veterans' Services Law §41.
- 8.2 For purposes of this AGREEMENT, the STATE hereby establishes a 6% SDVOB participation goal.

ARTICLE IX – EQUAL EMPLOYMENT OPPORTUNITY

- 9.1 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

- 10.1 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.

10.2 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

11.1 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.

11.2 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, epidemic or pandemic, 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.

11.3 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

12.1 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.

- 12.2 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.
- 12.3 The CONTRACTOR agrees to comply with requests for information in support of requests for payment in a timely and responsive manner.
- 12.4 The CONTRACTOR shall meet the audit requirements specified by the STATE.

ARTICLE XIII – RECORDS RETENTION

- 13.1 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.
- 13.2 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

- 14.1 Mutual Consent: The AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- 14.2 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.

- 14.3 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.
- 14.4 Convenience: The STATE may terminate the AGREEMENT in its sole discretion upon thirty (30) calendar days prior written notice.
- 14.5 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.
- 14.6 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, epidemic or pandemic and any unforeseen circumstances and acts beyond the control of the STATE which render the performance of its obligations impossible.

ARTICLE XV – NOTICES

- 15.1 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.**

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Contract Number:

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**STANDARD CLAUSES FOR NYS
CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, 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: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

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

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions

of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

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

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

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the

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

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

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

During the term of the Contract, should the state agency receive information that a person (as defined

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

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

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

Appendix B: Budget

Deliverable	Cost
Component 1: Development of a Smart Growth Toolkit (Beta version, which will be refined during Component 2)	
Task 1: Identification of Development Typologies	\$
Task 2: Identification of Smart Growth Practices, Strategies, Policies, Mechanisms, and Projects (“Measures”)	\$
Task 3: Development of Measurement Tools and Methodologies for Quantifying GHG Emissions Reductions and Co-Benefits Associated with Smart Growth	\$
Task 4: Development of a User-Friendly Tool to Enable Quantification of GHG Reductions	\$
Task 5: Development of Smart Growth Assessment Tool	\$
Task 6: Bi-Weekly Progress Meetings and Monthly Status Reports	\$
Component 2: Smart Growth Implementation Technical Assistance Program	
Task 1: Community Collaboration	\$
Task 2: Smart Growth Action Plan Development	\$
Component 3: Refinement of Smart Growth Toolkit	\$
Total:	\$

Appendix C: Work Plan

Component 1: Development of a Smart Growth Toolkit (Beta version, which will be refined during Component 2)

Task 1: Identification of Development Typologies

New York is home to varied development patterns and places, ranging from dense downtowns to rural hamlets. Because appropriate Smart Growth measures will vary across the development patterns and places found throughout New York, it is important to classify patterns and places into different development typologies. Using the identified development typologies, any community in the state should be able to identify the development typology(ies) appropriate for its context, which will help identify and prioritize the applicable, appropriate Smart Growth measures. A Smart Growth measure is a specific practice, policy, mechanism, project, or strategy that a community/municipality can implement to align with one or more Smart Growth principles outlined in Section 1.2, Background.

Deliverables:

- b. Draft and final versions of the development typologies and descriptive characteristics, that include visualizations and illustrations, with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format

Task 2: Identification of Smart Growth Practices, Strategies, Policies, Mechanisms, and Projects (“Measures”)

The DOS’ ten Smart Growth principles guide policy and program development. This task deliverable is to develop a range of Smart Growth measures that maximize GHG emission reductions. These measures may include practices, strategies, policies, mechanisms, or projects (“measures”) that can help a community develop in ways consistent with applicable Smart Growth principles. These measures must be able to apply to the development typologies identified in Task 1 with different measures applicable to the appropriate development typology.

Deliverables:

- b. Draft and final versions of Smart Growth measures and their alignment with development typologies that include visualizations and illustrations, with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format;

Task 3: Development of Measurement Tools and Methodologies for Quantifying GHG Emissions Reductions and Co-Benefits Associated with Smart Growth

This task shall include the development of measurement tools with associated assumptions and methodologies that quantify the reductions in GHG emissions associated with Smart Growth measures, as identified in Task 2. The contractor will be expected to identify the appropriate unit of measurement for quantifying GHG emissions. The goal of these measurement tools is to effectively estimate the GHG emissions reductions achieved with the

implementation of a Smart Growth measure. The measurement tools should also account for other co-benefits, including financial, social, and environmental benefits to the extent practicable. The measurement tools should account for different development typologies from Task 1. The contractor will be expected to conduct research and do modeling to estimate the reduction in GHG emissions. This may include analyzing how Smart Growth measures affect Vehicle Miles Traveled (VMT), development density, building construction, and more. Examples of frameworks/tools that could be reviewed and/or adapted as a part of this Task include, but are not limited to:

- [GHG Inventory/Reporting Tool](#)
- [GHG Calculator](#)
- [GHG Equivalencies Calculator](#)
- [EPA's Benchmarking and Building Performance Standards \(BPS\) Policy Toolkit](#)
- [ENERGY STAR](#)
- [EPA GLIMPSE](#)
- [EPA Energy Savings and Impacts Scenario Tool \(ESIST\)](#)

Deliverables:

- b. A draft and final version of a report describing the GHG quantification measurement tool developed. The report shall discuss the approach taken to develop the tool, the data collected and used, the assumptions included in the tool, the methodologies behind the tool, and other information that conveys the process behind developing the tool. This report shall include a plain-language executive summary with appropriate visualizations and illustrations. A technical appendix is also required detailing the assumptions, methodologies, and all technical information used in developing the tool.

Task 4: Development of a User-Friendly Tool to Enable Quantification of GHG Reductions

The measurement tools developed in Task 3 will need to be developed and presented in a user-friendly format that does not require substantial technical knowledge to use and understand. This user-friendly tool will be publicly available with the expected users being local government planners and community development staff, local elected officials, planning consultants, and State planners. To the extent practicable and needed, the data used in the creation of the tool should be able to be easily updated by DOS.

Deliverables:

- b. Draft and final versions of the measurement tool (e.g. an Excel-based calculator, or other) associated with the identified Smart Growth measures

Task 5: Development of Smart Growth Assessment Tool

This task involves the creation of a Smart Growth assessment tool that communities can use to self-assess their policies and practices that support development aligned with Smart Growth principles. The tool should also be

used to educate communities on appropriate Smart Growth measures and identify gaps in existing measures. This assessment tool should be designed so that it applies to all development typologies identified in Task 1. This may result in different assessment tools to be applied to the development typologies identified in Task 1. At a minimum, the assessment tool should include questions that cover all the Smart Growth principles identified in the Background section.

The assessment tool should also include strategies and best practices for how to implement Smart Growth measures. These strategies and best practices may include suggestions on how to get started, co-benefits (some of which may be quantifiable per Task 3), cost estimates, time frame for implementation, potential funding sources/technical assistance, relevant examples and case studies, and other information that may help a community progress in implementing Smart Growth development.

Deliverables

- b. Draft and final versions of a Smart Growth Assessment Tool, including instructions of using the assessment tool, and strategies for applying and implementing appropriate measures as referenced in Task 5 with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format.

Task 6: Bi-Weekly Progress Meetings and Monthly Status Reports

The contractor shall host, at a minimum, bi-weekly check-in call with DOS. This call shall discuss project progress and preview upcoming work. The consultant will be responsible for providing summaries of these calls along with action items.

Deliverables:

- b. Bi-weekly check-in calls and call summaries with action items

Component 2: Smart Growth Implementation Technical Assistance Program

The technical assistance program component will follow the creation of the Toolkit from Component 1 and involve employing the Toolkit in DOS-selected pilot communities that have varying levels of Smart Growth and planning knowledge. These communities will be in the Mid-Hudson, Mohawk Valley, and/or Central NY regions. The purpose of this component is to provide the community with targeted technical assistance that can be used to advance local Smart Growth measures and reduce GHG emissions, resulting in providing the community with a Smart Growth Action Plan (“Plan”). The Program will also serve as an opportunity for the contractor to test the Toolkit and evaluate its effectiveness and usability in a real-world setting. Using the findings from this technical assistance process, the contractor will then refine the beta version of the Toolkit developed in Component 1. DOS-selected pilot communities will likely include those that have participated in or are currently participating in DOS’s Smart Growth Community Planning and Zoning program.

Task 1: Community Collaboration

The contractor shall lead a technical assistance program in up to three selected pilot communities (selected by DOS with input from the contractor) using the Toolkit developed in Component 1. The contractor shall work with the selected communities to conduct the following activities:

- Complete the Smart Growth Assessment (Component 1, Task 5) **in collaboration with** each selected community, **not** on the community's behalf.
- Assess the GHG emissions reductions associated with existing Smart Growth measures already in place per the Assessment using the quantification tool (Component 1, Task 4)
- Develop a plan for limited community and stakeholder engagement to determine the issues pertaining to Smart Growth in the community and identify the community's priorities. Engagement is expected to be inclusive and include a diverse group of local and regional leaders, stakeholders, community representatives, etc. representative of the entire community. The contractor shall hold at least one community-wide public event, three stakeholder events, a community tour, and conduct consistent engagement with local elected officials and municipal staff for the duration of the process. DOS staff will assist with identifying local and regional leaders, stakeholders, community representatives, etc. for invitation to engagement events.
- Conduct a limited community and stakeholder engagement process in each selected community.
- Review community's regulatory, planning, and development landscape, including relevant data, existing plans, local land use and development regulations, and existing infrastructure.

Deliverables:

- e. Completed Smart Growth Assessments for each of the selected pilot communities
- f. Draft and final versions of a community and stakeholder engagement plan
- g. Draft and final versions of community and stakeholder engagement meeting summaries
- h. Draft and final versions of an assessment of the community's regulatory, planning, and development landscape.

Task 2: Smart Growth Action Plan Development

This task shall include the development of a community-specific Smart Growth Action Plan that advances the community from the planning stage and provides direction for how a community can implement Smart Growth measures that will result in GHG emissions reductions, along with quantified estimates for the emissions reductions. The Plan should seek to build on existing comprehensive planning and/or area planning documents and identify priority actions that will accelerate the community's implementation of Smart Growth principles and reduce GHG emissions.

The contractor shall use the Toolkit's identified Smart Growth measures, GHG emissions quantification tool, and strategies and best practices from the Assessment to draft the Plan. The measures, quantification, and strategies and best practices shall be adapted to each community.

Deliverables:

- b. Draft and final versions of Action Plans for each DOS-selected pilot community with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format;

Component 3: Refinement of Smart Growth Toolkit

After the completion of each Action Plan (Task 2, Component 2), the contractor will revisit each of the deliverables from the tasks from Component 1. Having now completed and assessed the usability of the Toolkit in different communities during Component 2, the contractor will refine each of the beta version of the Toolkit deliverables based on feedback received and lessons learned while using it in the communities.

Deliverables:

- f. A final version of the development typologies and descriptive characteristics, inclusive of refinements resulting from the Technical Assistance Program (Component 2), that include visualizations and illustrations, the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format;
- g. A final version of Smart Growth measures and their alignment with development typologies, inclusive of refinements resulting from the Technical Assistance Program (Component 2), that include visualizations and illustrations, with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format;
- h. A final version of a report describing the GHG quantification measurement tool developed. The report shall discuss the approach taken to develop the tool, the data collected and used, the assumptions included in the tool, the methodologies behind the tool, and other information that conveys the process behind developing the tool. This report shall include a plain-language executive summary with appropriate visualizations and illustrations. A technical appendix is also required detailing the assumptions, methodologies, and all technical information used in developing the tool. This final version should be inclusive of all refinements resulting from the testing of the tool during the Technical Assistance Program (Component 2).
- i. Final version of the measurement tool (e.g. an Excel-based calculator), inclusive of refinements resulting from the Technical Assistance Program (Component 2), associated with the identified Smart Growth measures
- j. Final version of the Smart Growth Assessment Tool, inclusive of refinements resulting from the Technical Assistance Program (Component 2), including instructions of using the assessment tool, and strategies for applying and implementing appropriate measures as referenced in Task 5 with the final product to be created in Adobe InDesign[®] and/or Adobe Acrobat[®] (PDF) format.

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 they have the authority to sign on behalf of said organization; and that they 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: _____