New York State Department of Economic Development

REQUEST FOR PROPOSALS

Tourism Representation Services for Canada

RFP Number: 26-6179

PROPOSALS DUE:
October 23, 2026, 2026 BY 5:00 P.M. Eastern Standard Time
RFP RELEASED: SEPTEMBER 09, 2026

Empire State Development
Albany, New York 12245
www.esd.ny.gov

Request For Proposal (RFP) Response Form

RFP # 26-6179

Please review this RFP. Complete the following information and mail this form or if submitting a proposal, this form together with your entire proposal, to the address at the bottom of this page. Late proposals cannot be accepted.

/ / **Attached is our proposal**

/ / **We do not intend to submit a proposal for the following reason(s):**

_____

_____

Name of Organization:_____

Address:_____

_____

- Is this address your company's principal place of business? Yes_____ No_____

  The term "principal place of business" is defined as follows:

  A company's principal place of business is generally considered to be the enterprise's main office, where the regular meetings of its board of directors occurs, and where a company's business is managed, conducted and directed, regardless of where the administrative departments or the physical property of the business are located. For purposes of determining the principal place of business, a foreign business enterprise's principal place of business is not necessarily the same as its state of incorporation. In sum, the determinate is where the actual "business" of the corporation takes place.

  If the above address is not your principal place of business, please indicate the full address of your principal place of business on the following two lines:

  _____

  _____

- Will this product or service be substantially produced in NYS: Yes_____ No_____

- Subject to the "Conditions Governing Proposals" article stated in this RFP, proposals must be in agreement with all terms and conditions of this RFP.

Phone #:_____ **Fax #:**_____

Signature:_____ **Date:**_____

Type or Print Name and Title:_____

Mail this as the first page of your proposal. If not submitting a proposal, please e-mail this form to: tourismrfp@esd.ny.gov

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
REQUEST FOR PROPOSAL 26-6179
Table of Contents

SECTION I - ADMINISTRATIVE INFORMATION 1
1.0 Purpose 1
1.1 Inquiries 1
1.2 Schedule of Pertinent Dates 1
1.3 Submission of Proposals 2
1.4 Designated Contacts 2
SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES 3
2.0 Background 3
2.1 Scope of Services 4
2.2 Budget 6
2.3 Deliverables 6
2.4 Mandatory Qualification Requirements 6
2.5 Selection Criteria/Evaluation 7
2.6 Interview/ Oral Presentation 7
2.7 Evaluation Process 7
2.8 Contract Award 8
SECTION III - PROPOSAL CONTENT AND CONDITIONS 9
3.0 General Information 9
3.1 Complete Proposal Instructions 9
3.2 Conditions Governing Proposals 11
3.3 Iran Divestment Act 11
3.4 Freedom of Information Law (FOIL) 12
3.5 Notification of Award 12
3.6 Debriefing 12
3.7 Protest and Appeals 13
3.8 Liability 14
3.9 Procurement Lobbying 14
3.10 Adherence with Federal Contractual Requirements 14
3.11 Gender Based Violence and the Workplace 14
SECTION IV - CONTRACTUAL INFORMATION 15
4.0 Contract Term 15
4.1 Cancellation 15
4.2 Subcontracting Requirement 15
4.3 Financial Terms/Payment Process 15
4.4 Relationship 17
4.5 Minority and Women Owned Business Enterprises 18
4.6 Intellectual Property/Personal Property Rights in Data Computer Software and Other Intellectual Property 19
4.7 Confidentiality 20
4.8 Right to Publish 22
4.9 Compliance with Applicable Law 22
4.10 Indemnification 22
4.11 Publicity 22

APPENDIX A – Standard Clauses for All New York State Contracts
APPENDIX B – Budget
APPENDIX C – Non-Collusive Bidding Certification
APPENDIX D – MacBride Fair Employment Principles
APPENDIX E – Responsibility Questionnaire Information
APPENDIX F – Procurement Lobbying Disclosure Pursuant to Sections 139-J and 139-K of State Finance Law
APPENDIX G -Bidder's Identifying Data
APPENDIX H - Contractor Travel Reimbursement Guidelines
APPENDIX I – Examples of Successful Efforts by the Vendor for Specific Deliverables
APPENDIX J - Mandatory Requirements Checklist

SECTION I - ADMINISTRATIVE INFORMATION

1.0 Purpose

The New York State Department of Economic Development (hereafter referred to as "NYSDED" or the "Department") has issued this Request for Proposal (RFP) to secure a qualified individual or firm (the "Contractor") to represent the Department in the Canada market exclusively for travel and tourism. The successful bidder (also referred to herein as the "Contractor") will be responsible for various tasks associated with travel trade representation and marketing, consumer marketing, strategic counsel on the Canada travel industry, and operational support for the NYSDED Division of Tourism in industry-related activities and promotions.

It is important and in the interest of the selected contractor (the "Contractor") that the Contractor maintains independence and remains free to perform services for other parties, provided that such parties are disclosed to NYSED and are not competitive with NYS's tourism and business development interests. Therefore, in order for the Department to secure the Contractor's services, it is critical that an independent contractor relationship be established versus an employer-employee relationship.

1.1 Inquiries

All questions must be submitted in writing via email to tourismrfp@esd.ny.gov **with "Tourism Representation Services for Canada" in the subject line. Please do not contact the Department by telephone. Questions must be received by the Department no later than September 25, 2025 @3:00 PM Eastern Standard Time.** Questions of a substantive nature will be provided to all known recipients of the RFP shortly after the question deadline.

1.2 Schedule of Pertinent Dates

Release of RFP	September 9, 2026
Deadline for Receipt of Questions	September 25, 2026 **by 3:00 PM EST**
Submission of Proposals	October 23, 2026 **by 5:00 PM EST**
	Late proposals cannot be accepted.
Oral Presentations/Interviews	By appointment at the discretion of NYSDED
Award of Contract	December, 2026 (estimated)
Projected Contract Start Date	February 1, 2027 (estimated)

1.3 Submission of Proposals

Interested individuals or firms must submit their proposals no later than **5:00 P.M. U.S. Eastern Standard Time**, **on** October 23, 2026. Appendix B - Budget must be attached as a separate document from the rest of your proposal.
Applicants **must** submit their full proposal to tourismrfp@esd.ny.gov with **"Tourism Representation in Canada– *your company name*"** in the subject line.

* It is the responsibility of each individual or firm to ensure timely submission of its proposal. Proposals received after the scheduled date and time cannot be accepted.

1.4 Designated Contacts

For the purpose of the Procurement Lobbying requirements of this RFP (see section 3.8 and Appendix F), the Department's designated contact shall be Jamie Moore and employees designated by the Department as part of the Department's Contract Management Unit and all staff designated by the Department to have responsibilities and duties in the Department's Administration and Counsel's Office.

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

2.0 Background

New York State Department of Economic Development
The New York State Department of Economic Development (ESD) is the government agency with the primary objective of creating private sector job opportunities for New Yorkers by enhancing the State's economic growth. ESD's Division of Tourism ("the Division") takes the lead role in carrying out the Department's mission with regard to the tourism industry. The Division achieves this task by promoting New York State as the premier location to vacation and visit. The Division supports this mission by promoting the state's travel destinations, primarily through its iconic I LOVE NEW YORK brand and tourism marketing activities, including trade and consumer initiatives, traditional and digital media as well as domestic and international marketing.

Tourism in New York State is one of the top three industries as measured by private sector employment and is a significant contributor to the state's economy. In 2024 tourism generated $94.0billion in direct spending, 145.2 billion in total economic impact, $11.4 billion in state and local taxes and accounted for 741,882 jobs in New York State.

In 2024, New York State received 315.4 million visitors of which approximately 308.5 million were domestic and 6.9 million were international. New York City remains the number one destination for overseas visitors in the United States, welcoming 9.5 million overseas visitors in 2024. While international visitors represent approximately 2% of total visitor volume to New York State, they account for roughly 20% of total visitor spending — underscoring their outsized economic value.

The tourist industry of New York State has been severely impacted by the COVID pandemic and is now finally re-emerging and looking to capitalize on new trends, opportunities and pent-up demand.

I LOVE NY markets the state and supports the tourism industry in the following ways:

- Marketing
    - Paid advertising (TV, radio, print, digital, out-of-home)
    - Public Relations / earned media
    - Owned media (ILNY website, collateral, mobile app, etc.)
    - Social media
    - Direct marketing (e.g. email newsletter)
    - Live event activations (i.e. experiential)
- Sales
    - Marketing to travel trade at trade shows
    - Supporting international tour operators
- Public Policy
    - Projects or programs that help make New York State a better place to visit
- Industry Support
    - Providing and managing Funding to support planning and execution of marketing programs and capital improvements
    - Education and workforce development programs to assist local and regional tourism industry partners

Objectives
New York State is divided into 11 separate vacation regions: The Adirondacks, Capital/Saratoga, The Catskills, Chautauqua/Allegany, Finger Lakes, Greater Niagara, Central New York, Hudson Valley, Long Island, Thousand Islands/Seaway and New York City.

Each vacation region offers unique tourism assets. In addition, the state as a whole presents vacation experiences linked to the themes including food and wine, culture and history, the outdoors and winter sports.

The objective of this RFP is to solicit tourism marketing representation of New York State in Canada
.
While New York City is well known, New York State is less so. The aim is to:

- Identify assets of New York State that are of interest to the visitor from Canada
- Generate awareness of these assets
- Create the desire to visit New York State to experience these assets
- Enable New York State tourism destinations and suppliers to cater to the visitor from Canada
- Facilitate the offering of New York State product in Canada
- Promote visits to New York State
- Entice travelers from Canada to visit not only New York City but other parts of New York State
- Capture a larger share of these visitors to extend their stays and experience other destinations across New York State

2.1 SCOPE OF SERVICES

DED Division of Tourism seeks a Contractor to represent it in the Canada marketplace for travel and tourism promotion activities for a period of up to five (5) years. The Contractor is to develop a clear and focused marketing strategy, and implement marketing activities with creativity, discipline and accountability. The responsibilities of the Contractor shall include a combination of trade, media, consumer outreach and general representation services (the "Services) in Canada as further described in this Section 2.1 and provide the deliverables as described in Section 2.3 of the RFP.

DED Division of Tourism may extended Scope of Services to additional geographic markets, upon consultation with vendor.

New York State seeks a vendor who can identify and implement highly creative, cost effective initiatives to motivate travel to New York State. For the purpose of this RFP and any contract (the "Contract") resulting from it, the Services shall mean:

(i) **Travel Trade representation** of the Division of Tourism and marketing of travel to New York State through industry-related activities and promotions. This should include but not necessarily be limited to the following:

- Trade shows
- Sales missions with NYS destinations and businesses
- Tour operator familiarization tours
- Trade media Public Relations
- Travel trade partnerships and promotions as described below
- Travel trade relationship management
- Printed and online marketing collateral and communications
- Active participation on Visit USA Committees and their marketing programs
- Attendance at pertinent travel industry events to enhance New York State's visibility

(ii) **In-market Management of Partner Marketing Promotions**, including:

- Selecting tour operators and others for the most effective marketing partnerships
- Defining clear objectives and KPI's with each partner
- Providing trade partnership marketing proposals to I LOVE NY
- Ensuring promotions comply with I LOVE NY brand guidelines
- Managing product and program development as part of partnerships
- Ensuring KPI's and objectives are met throughout the promotion
- Producing an end of campaign report with conclusions and recommendations

(iii) **Consumer marketing** in Canada and marketplace including:

- Creating and executing paid consumer advertising in outlets such as digital and print based on market data and measurable KPI's, and in adherence with I LOVE NY messaging and branding guidelines
- Generating consumer-facing earned media / PR through tactics like story pitching and FAM tours

(iv) **Strategic counsel** on the international travel industry and trends in Canada market, in particular. This should include but not necessarily be limited to the following:

- Preparing annual marketing plan with key initiatives, measurable objectives and detailed timelines and budgets
- Developing and managing performance metrics with clear measurable indicators that demonstrate impact of activities in the international market
- Developing relevant itineraries and travel product
- Prioritizing target tour operators in Canada
- Briefing the Division on trends, their relevance to New York State and recommending actions
- Adopting and adhering to I LOVE NY brand guidelines which are available upon request
- Media monitoring as appropriate

(v) Operational support to ensure New York State is fully represented in the Canada market. This should include but not necessarily be limited to the following:

- Providing account management services and an account manager. Division of Tourism shall have the right to approve this and any future account manager(s)
- Collecting and maintaining research, market intelligence, NYS product inventory and related data that shall remain the property of DED
- Coordinating with New York City Tourism & Conventions representation, where appropriate
- Maintaining a media database of journalists, tour operators and trade partners and make such database available for the Division and its statewide advertising agency and PR firm to use on Division business.
- Handling all in-market inquiries from trade, consumers and media regarding New York State tourism
- Providing the Contractor's address in Canada as the business address for DED Division of Tourism and issuing mail on behalf of I LOVE NY at the Company's addresses.
- Providing a dedicated telephone number in Canada and an e-mail address with some indication of New York representation (for example xx@nylovesu.com or xx@nyCanada.com) for each staff member providing services under this contract.

(vi) Collaboration with DED's International Foreign Direct Investment and Trade Promotion Offices:
DED maintains representative services to promote foreign direct investment and trade promotion in various regions of the world. At the request of the Department, the Contractors shall collaborate with these offices for mutual benefit as opportunities arise.

The Contractor may not contract with or work independently with any New York State company or U.S. competing destination or business without the prior approval of NYSDED. NYSDED has the right of first refusal for the Contractor's projects, contracts or other relationships with New York State or US tourism related businesses or organizations.

2.2 Budget

Approximately US $250,000.00 per year is expected to be available for the Contractor to represent the Division of Tourism in Canada and execute the scope of services described in Section 2.1. The contractor's budget reflects both administrative and marketing activity (which shall mean direct marketing expense) annually. Marketing activity shall not mean personnel fees, personnel expenses, overhead, rent, and other similar expenses. Proposals exceeding US $250,000.00 per year will be rejected without review.

The New York State Division of Tourism may maintain an additional budget fund of $50,000.00 to be used at its discretion for tourism activations and marketing campaigns, as directed by the Division.

2.3 Deliverables

The Contractor will also be responsible for providing:

- An annual marketing plan, due 60 days prior to the start of each fiscal year (except the first), detailing the activities planned for the coming year, goals, recommendations, expected results and metrics. Annual plans should align with the Division of Tourism's fiscal year which runs April 1 to March 31. The initial marketing plan shall be provided by the Contractor within 45 days of the contract start date and shall cover the period from the start of the contract through March 31, 2027.
- Monthly activity reports, due within 30 days of the month covered by the report, describing activities and accomplishments, and demonstrating how the following objectives are being met:
  - a) Increasing awareness of New York State as a place to visit
    b) Facilitating the development of New York travel products, particularly beyond New York City
    c) Enabling the travel trade to successfully sell New York State vacations and thereby increasing the number of visitors from Canada to New York State
- Periodic and final reports on marketing partnerships and consumer facing projects including feedback, KPIs, trends and next step recommendations
- Monthly financial reports / invoices, generated within 30 days of the end of each month, for expenses and fees

2.4 Mandatory Qualification Requirements

Your proposal must demonstrate your ability to comply with each of the items identified below. Inability to demonstrate compliance with these qualifications will result in the disqualification of your proposal.

1. Demonstrated knowledge of the Canadian tourism industry and trends.
2. Demonstrate at least 5 years' experience in working with the Canadian travel trade and press
3. Proven experience in consumer marketing, including digital media and the web
4. Demonstrated accomplishments in destination marketing
5. Staff assigned to this project with relevant experience and qualifications
6. Physical presence in London and access to other major tourism producing centers
7. Three letters of reference that can substantiate that your company has successfully conducted similar projects in the past.
8. Demonstration of economic resources to pay expenses in advance of reimbursement from the State, for the services described in Section 2.1 and 2.3 of this RFP, as well as the staff and administrative expense itemized in your proposal (Appendix B – Budget.)

2.5 Selection Criteria/Evaluation

Proposals that meet all the mandatory qualifications as outlined in Section 2.4 above will be evaluated by NYSDED based on the following Selection Criteria:

1. **Technical evaluation** consisting of:

   a. **Demonstrated Experience** **(20 points)**
   Relevant tourism experience in performing services similar to those described in Sections 2.1 and 2.3 of this RFP for similar destination clients with clear, demonstrated impact

   b. **Quality of Approach & Performance Metrics** **(25 points)**
   Thorough and creative plan proposed to accomplish Scope of Services (section 2.1) with demonstrated ability to execute said proposal in a timely fashion. Your proposal must address each item listed in section 2.1 and 2.3 above and a timeline for execution plan of action (See also Section 3.1.)

   c. **Organizational capability** **(15 points)**
   Commitment, capability and expertise of the specific staff to be assigned to this account

2. **Resources evaluation** **(20 points)**
   Evaluation of the adequacy, appropriateness, effectiveness and reasonableness of the resources proposed by the firm to accomplish the scope of services and tasks set forth in Section 2.1 – Scope of Services

3. **Cost evaluation** **(20 points)**
   Evaluation of the cost proposed
   (Please review Section 3.1, and complete Appendix B – Financial Proposal in full. Do NOT substitute your own budget format.)
   *Appendix B - Budget must be bound separately from the rest of your proposal.

2.6 Interview/Oral Presentation

Interviews/Oral Presentation of finalists may be conducted at the discretion of the Department. The interview/oral presentation will allow finalists to elaborate on information included in their proposals. Key personnel directly responsible for the project will participate in the interview/oral presentation. Costs incurred by the finalists for preparation and participation in the interviews/oral presentations including but not limited to travel and staff time shall be the sole responsibility of each finalist.

2.7 Evaluation Process

Initial evaluation of proposals will be done in two parts: Technical Evaluation and Cost Evaluation. NYSDED's Evaluation Committee will review the technical portion of each proposal based on the technical criteria listed above. NYSDED's Evaluation Committee will not be advised of the costs proposed or cost scores (points awarded for cost) prior to the selection of the Finalists. However, the

Evaluation Committee may be advised of information contained in each bidder's budget (Appendix B) if such information is deemed by the Department to be pertinent in assessing the level of effort to be put forth by the bidders in performing the project. Then cost scores, computed by NYSDED's Contract Management Unit based on a weighted average formula, will be added to the technical score resulting in the total score for the written proposal.

NYSDED reserves the right to determine whether oral presentations/interviews will be necessary. If NYSDED decides to conduct oral presentations/interviews, such oral presentations/interviews will occur as follows:

2.7.1 Following the evaluation of proposals as provided above, the Evaluation Committee will determine the Finalists to be interviewed as those having the highest combined technical and cost scores. NYSDED anticipates that three (3) proposers will be selected as Finalists.

2.7.2 Each Finalist will be notified of the date and time of their oral presentation/interview to be held via telephone/video conference. The oral presentation/interview should further document the proposer's ability to provide the required services. Key personnel directly responsible for the project including the Senior Project Consultant should be present and participate in the oral presentation/interview. The purpose of the oral presentation/interview is to impart to the Evaluation Committee an understanding of how specific services will be furnished and clarify other information included in the proposal. Further information with regard to the format of this stage of the evaluation may be provided to the finalists prior to their oral presentations/interview. 2.8

2.8 Contract Award

Following the oral presentation/interviews, if any, the Evaluation Committee members will re-score each proposer interviewed on the technical criteria listed above. NYSDED anticipates that the Evaluation Committee will make an award recommendation of one proposer based upon its determination of the best value for NYSDED as the highest total scores (technical and cost).

Upon selection, negotiations will be commenced with the successful proposer to enter into a contract setting forth the general terms that would govern the contract for services contemplated by this RFP. The Department will not enter into protracted negotiation with the successful proposer over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract including any amendments thereto. If the successful proposer does not sign and return to the Department the proposed contract including any draft of the proposed contract, within thirty (30) calendar days of receipt by the Contractor, the Department reserves the right to declare the award of the project to the Contractor null (null award). The Department will not be responsible for any cost incurred by the Contractor as a result of a null award. An award will then be made to the next highest scoring proposer.

SECTION III - PROPOSAL CONTENT AND CONDITIONS

3.0 General Information

In preparing proposals, individuals and firms should follow the guidelines within this RFP.

3.1 Complete Proposal Instructions

Each participating bidder must submit a complete proposal with each element of the Section 2.3 addressed. In addition, all proposals must include the following information. Bidders supplying incomplete responses may be deemed non-compliant. Please follow the format listed below:

1. Title page, indicating:
   Name, address (both mail and email) phone & fax number, contact person, and federal ID number (if any). It must also include a signed statement that the offer shall be firm and not revocable for a period of 60 days unless withdrawn in writing.
2. Table of contents and page numbers

3. Technical Proposal

a. Experience

- **Provide background information on your company**, including: history, years in business, and experience in the past 5 years, company size, number of employees, types of services provided, locations, parent company, and/or affiliate information, type of company, etc. Also include a discussion on how your company meets the experience, knowledge and accomplishment requirements in Section 2.4 of this RFP.
- **Specify the accreditations your company** has acquired since its inception, and give details of any company membership of professional or trade organization affiliations
- **Three letters of reference** that each include a statement describing the project applicant did for the business and how satisfied the business was with applicants work**.**
- **Attach a current client list**

b. Proposed Approach and Performance Metrics

The Approach shall address**:**

- **Scope of work.** Describe in detail how your company will provide the Scope of Work described in Section 2.1 and 2.3 of this RFP.
- **Target markets**. Propose the key Canada market segments on which New York State should focus. Identify the greatest opportunity for New York State to grow tourism to areas outside New York City.
- **Marketing plan**. Outline the key elements of a trade and consumer directed marketing plan to promote New York State as a premier leisure tourism destination to market segments in Canada.
- **Prioritization**. Given the breadth of activities included in the scope of work and a fixed budget, priority must be placed on activities that will result in the highest return on investment of time and money. Provide an experienced-based perspective on which activities, across trade and consumer marketing, should result in the highest return on investment

Performance metrics discussion shall address:

- **Performance measures to be used.** Performance measures related to each element of the proposed program are essential and required. Please include suggested metrics, tracking methodology and an annual process for regular, ongoing reporting that demonstrates clear Return on Investment (ROI) for New York State's investment. Such metrics could include, but are not

limited to attributable earned media value from PR efforts, website visitation and visitor quality measures, product portfolio tracking of New York State itineraries added/retained/removed by targeted tour operators and a pipeline mechanism for tracking sales mission/trade show meetings, leads, familiarization tours, and conversion to itineraries offered by tour operators, and sales.

c. Organizational Capability

- **Demonstrate the company's organizational capability** to provide the Scope of Work described in Section 2.1
- **Specify who would be the primary contacts** and dedicated staff on the New York State account. Include resumes identifying their experience working with the travel trade, media and consumer marketing as it relates to promoting a destination in addition to knowledge of/experience with New York State
- Identify how much time would each staff person devote to this account.

d. Other

Please complete and include Appendices C, D, E and, F (Non-Collusive Bidding Certification, MacBride Fair Employment Principles, Responsibility Questionnaire information, and Procurement Lobbying Disclosures Pursuant to Sections 139-j and 139-k of State Finance Law respectively). In addition, include the Bidders Identifying Data form and the Checklist.

The Successful Applicant may also be required to complete the following, but their inclusion is not required at the time of proposal submission:

- Proof of workers compensation and disability insurance or signed Exemption Certificate.
- New York State tax forms ST-220-CA and ST-220-TD. The ST-220-CA may be found at: ST-220-CA doc.. The ST-220-TD may be found at: ST-220-TD doc.
- A State Consultant Services *Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term* (Form A) available at: Form A doc. The State Consultant Services *Contractor's Annual Employment Report* (Form B), to be submitted annually, available at: Form B doc. More information on the consultant services reporting can be found at: OSC-GFO

4. Financial and Resource Proposal

The Financial and Resource Proposal must be bound separate from the Technical Proposal.

Appendix B of this RFP must be completed and submitted as part of your proposal. DO NOT USE AN ALTERNATIVE BUDGET FORMAT. Each bidder must complete Appendix B. The annual budget limit is US $250,000. Annual cost shall include all employment-related expenses including payroll taxes, health insurance, employer liability insurance, etc. The bidder shall include in his proposal the expenses associated with attending (admission fees, travel, etc.) the Trade Shows as noted in Section 2.1 but not the costs of exhibiting (booth fees) at such events. Should the Department wish to exhibit at the events, it intends to contract for those services directly with the organizers. If any of the personnel duties will be filled with subcontractors, please include their costs under the Subcontractor line. Subcontractor services are performed by other organizations or individuals who are not employees of the Contractor. All figures shall be included in U.S. dollars. Note: NYS will not pay for Contractor relocation expenses.

In addition, NYS will not pay for elective credit card charges, including, but not limited to, late fees, interest or a credit card's annual fee. However, NYS will cover unavoidable bank and credit card fees associated with international transactions/banking, including, but not limited to, wire fees or currency exchange fees. Coverage of such fees shall be at the sole discretion of the Department.

Do not include such costs in your financial proposal. Also, do not exceed the annual budget total limit noted

above for any of the contract years in your financial proposal. In addition, discuss resource allocation and recommendations on how resources should be allocated to trade and consumer marketing activities. Discuss your approach to optimizing the budget to ensure New York State achieves maximum impact

3.2 Conditions Governing Proposals

Only those individuals or firms who have supplied complete information will be considered. Any patented or proprietary information included in the proposal must be clearly identified in the proposal and in a cover letter submitted with the proposal (see Section 3.4).

The Department reserves the following prerogatives:

- to accept or reject any or all proposals;
- to waive or modify minor irregularities in proposals received;
- to eliminate mandatory qualifications unmet by all offerers;
- to disqualify proposed offers that fail to meet the mandatory qualifications;
- to require clarification from any bidder for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;
- to negotiate with any or all proposers, within the proposal requirements, to best serve the interests of the State of New York;
- to amend the specifications after their release, with due notice given to all those solicited to modify their proposals to reflect the changed specifications;
- to utilize any or all ideas submitted in the proposals received unless those ideas are covered by legal patent or proprietary rights;
- to award contract(s) for any or all parts of a proposal; and
- to elect to award contract(s) to one or more responsive and responsible offerers, provided that the basis for the election among multiple contracts at the time of award shall be the most practical and economical alternative and shall be in the best interest of the State.

By submitting a proposal, an individual or firm agrees that it will not make any claim for or have any right to damages because of any lack of information or misinterpretation of the information provided in this RFP.

3.3 Iran Divestment Act

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor is advised that once the list is posted on the OGS website, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list.
During the term of the Contract, should NYSDED receive information that a person is in violation of the above-referenced certification, NYSDED will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days

after the determination of such violation, then NYSDED shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDED reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award 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.

3.4 Freedom of Information Law (FOIL)

The Department is subject to the Freedom of Information Law, which governs the process for the public disclosure of certain records maintained by the Department. (See Public Officers Law, Sections 87 and 89).

Individuals or firms which submit proposals to the Department may request that the Department except all or part of such proposal from public disclosure, pursuant to Section 87(2)(d) of the Public Officers Law, on the ground that the proposal contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the firm submitting the information. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for such an exception must be in writing and state the reasons for the requested exception. It must also specify the proposal or portions thereof, for which the exception is requested.

If the Department grants the firm's request for exception from disclosure, the Department shall keep such proposal in secure facilities and shall notify the firm of any request the Department receives for disclosure of the proposal.

3.5 Notification of Award

The Department will notify the successful proposer by written confirmation.

A contract defining all terms and conditions of the parties will be drafted by the Department. The contract may incorporate SECTION II - PROGRAM BACKGROUND AND SCOPE OF SERVICES of this RFP, the State's standard contracting provisions (attached hereto as APPENDIX A) and as much of the successful firm's final proposal as may be appropriate among its provisions. After the Department and the successful firm execute the contract, it must be submitted for approval to the Attorney General's Office and the Office of the State Comptroller.

3.6 Debriefing

A debriefing shall be requested by the unsuccessful applicant within 15 calendar days of receipt of notification by the NYSDED that the applicant's proposal is unsuccessful. Such notification shall be provided by NYSDED to all unsuccessful applicants for this procurement.

NYSDED, upon request made within 15 calendar days of such notice, shall schedule the debriefing to occur within a reasonable time of such request. Debriefings shall be conducted at the NYSDED's Albany or New York City office, or via telephone, video conference or other types of electronic communication. NYSDED personnel participating in the debriefing discussion shall have been involved with and knowledgeable about the procurement and the evaluation and selection of the successful applicant. Such debriefing shall include, but not to limited to: (A) the reasons the proposal submitted by the applicant was not selected for award; (B) the qualitative and quantitative analysis employed by NYSDED in assessing the relative merits of the proposal; (C) the application of the selection criteria to the unsuccessful applicant's proposal.; and (D) when the debriefing is held after the award has been fully finalized and approved, the reason for the selection of the winning proposal. The debriefing

shall also provide, to the extent practicable, general advice and guidance to the unsuccessful applicant concerning potential ways that their future proposals could be more responsive.

To request a debriefing please contact the Department via e-mail at tourismrfp@esd.ny.gov within fifteen (15) calendar days of receipt of the notice that your proposal was not selected for an award.

3.7 Protests and Appeals

1. Protests

Any interested party may file a protest, in writing, with the NYS Dept. of Economic Development NYSDED. within ten (10) business days from the date of the notice of the contract award, except:

- where a protest concerns the terms and conditions of the solicitation (or other matters that would be apparent to an interested party prior to the date set in the solicitation for the receipt of bids), in which case that protest must be filed on or before the date set in the solicitation for the receipt of bids or proposals; or
- where NYSDED determines that sufficient circumstances exist and has set forth a different time period for filing protests.

a) Once received by NYSDED the protest shall be refer either to an individual employee or group of employees of NYSDED. No such employee will have been actively involved in the procurement process being protested. NYSDED will provide a copy of any protest filed to the successful bidder.
b) DED may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest raises only issues of law that have already been decided.
c) DED shall issue a determination within fifteen (15) business days of the filing of the protest. The answer to the protest should address all the factual and legal allegations contained in the protest. A copy of the answer shall be simultaneously delivered to the protester and the successful bidder.
d) During the time period in which a protest may be filed, or during the resolution of a pending protest, NYSDED may negotiate terms and conditions of the contract or grant award with the successful bidder. However, a contract or grant award will not be approved by the NYSDED prior to the expiration of the time period for filing a protest, or, if a protest has been filed, before the NYSDED issues a determination of the protest.
e) The person or persons designated by NYSDED to consider the protest shall prepare a written recommendation addressing all of the issues that have been raised by the protest.
f) DED may accept, modify or reject such recommendation.
g) In making his or her determination with regard to the protest, the NYSDED designee may, in his or her sole discretion, consider any additional information from any source relating to the allegations set forth in the protest.
h) All parties that have participated in the protest, as well as the original successful bidder, shall be provided with a copy of the final determination of NYSDED. The determination shall be made part of the procurement or grant award record.

2. Appeals

All parties receiving a copy of the ESD final determination will also receive a copy of the current "Contract Award Protest Procedure For Contract Awards Subject To The Comptroller's Approval." This document explains the time periods and procedure for filing a protest with the Office of the State Comptroller.
An interested party has ten (10) business days from the date it receives NYSDED's determination to file an appeal with the Bureau of Contracts in the Office of the State Comptroller.
https://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/files/XI_17_att1.pdf

3.8 Liability

The Department is not liable for any costs incurred by any individual or firm for work performed to prepare its proposal or for any travel or other expenses incurred in the preparation and/or submission of its proposal. Further, the Department is not liable for any costs incurred until the contract has been approved by the State Attorney General and the State Comptroller's Office.

3.9 Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Department and Office of the State Comptroller ("restricted period") to 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). Designated staff, as of the date hereof, is identified in Section 1.4 of this solicitation. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers contact only Department staff identified in the aforementioned section of this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder 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 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at Procurement Lobbying Law | Office of General Services. State Finance Law Sections 139-j and 139-k may be viewed at http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-j.htm and at http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-k.htm

3.10 Adherence with Federal Contractual Requirements

When entering into contract with the Department for this engagement, winning bidder is advised that their contract must adhere to the principles of 2 CFR Part 200.

3.11 Gender Based Violence and the Workplace

Bidder must certify that the organization has in place and has implemented a Gender-Based Violence and the Workplace Policy (please see the OPDV Gender-Based Violence and the Workplace website for more information regarding these policies) and has provided such policy to all of its employees, directors and board members. Such policy shall, at a minimum, meet the requirements of subdivision 11 of section five hundred seventy-five of the executive law. If the bidder 'cannot make this certification, they must include a signed statement setting forth in detail the reasons therefor.

SECTION IV - CONTRACTUAL INFORMATION

4.0 Contract Term

The successful contractor shall perform the work and provide the services set forth in this RFP as an independent contractor for a period of up to five (5) years.

The Department reserves the right to cancel any contract resulting from this RFP as described in Section 4.1 – Cancellation below. Both parties agree that any contract resulting from this RFP shall end on the termination date unless terminated as described in Section 4.1 – Cancellation below.

4.1 Cancellation

Once a contract or other agreement resulting from this RFP is fully executed and approved, the Department has the right to cancel it early, in whole or in part, for cause or unavailability of State funds at any time or for convenience on thirty (30) calendar days written notice to the Contractor. If cancelled for cause, payment to the Contractor for charges incurred will be made at the Department's sole discretion. If cancelled for convenience, the Department agrees to pay the Contractor for charges incurred in the performance of the Contract up to the time of cancellation. If cancelled for unavailability of State funds, the Department will not be liable for payment but will use its best efforts to pay outstanding charges previously approved by the Department to the extent permitted by New York State Law.

Additionally, the Department also reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

4.2 Subcontracting Requirement

The Bidder may subcontract elements of the program for which it lacks location or in-house capabilities. The firm's proposal must identify the subcontracting firm or firms and cite the proposal. The Department is an equal opportunity contractor and reserves the right to review and approve all subcontracting firms.

After the contract resulting from this RFP, if any, is awarded, any subcontractors or purchases in excess of $50,000 that was not originally identified in the Contractor's proposal must adhere to the following:

- For subcontracts or purchases that are competitively bid the Contractor must request proposals from a minimum of three qualified firms, and the lowest responsible or best value proposer, as appropriate, shall be accepted unless otherwise approved in writing by the Department.
- Subcontracts or purchases that are sole or single source must include a detailed justification and require the written approval of the Department prior to entering into the agreement.

The contractor may not, without written consent of the Department, assign to any party the Contract or any interest herein, or claim hereunder.

4.3 Financial Terms/Payment Process

a) Payment for Contractor's Services. All amounts referred to in this RFP and the Contract shall be in United States Dollars. The Department shall pay to the Contractor a fee for the Services as established in the Contractor's Financial Proposal. Payment shall be made on a reimbursement basis for actual services rendered during the invoice period. The Department will not pay a recurring flat rate fee. No other amounts for compensation, expenses, taxes, fees or other costs shall be owed by the Department to the Contractor for Services

during the term of the Contract. Payment for services performed to the satisfaction of the Department shall be made in the ordinary course of State business upon receipt of duly authenticated invoices/vouchers, list of tasks performed during the billing period in a format acceptable to the Department and upon receipt of reports and/or deliverables, if required elsewhere in this RFP. The contractor shall invoice the Department quarterly on the first day of each quarter. Unless otherwise agreed by the parties, all payments relating to fees described in the Contract shall be made by the Department by deposit into the Contractor Account which is further described in Section 4.3(e).

b) Expenses. The Contractor shall be responsible for all expense which Contractor incurs in rendering services under the Contract, including without limitation, compensation to Contractor's subcontractors, employees, assistants or agents, if any, long distance and local telephone charges, entertainment expenses, office rental or mortgage expenses, training expenses, the cost of tools and supplies, and all other expenses incurred in rendering services under the Contract.

c) Payments of Tax Assessments. As an independent contractor, the Department will not be responsible for payment of any FICA, FUTA or other similar charges or withholding for Contractor, and Contractor acknowledges and agrees that it is solely the Contractor's obligation to report and pay all Designated Area or any country or political subdivision thereof, federal, state and local income, self-employment and other taxes due for him on all compensation from the Department as may be required by law. The Department will issue a Form 1099 for all compensation paid to the Contractor. Additionally, Contractor assumes full responsibility for the payment of all assessments or contributions, whether of the Designated Area or any country or political subdivision thereof, state or U.S federal, with respect to all employees engaged by Contractor to perform services in connection with the Contract. Contractors shall furnish to the Department, a certificate or other evidence of compliance with all laws of the Designated Area or any country or political subdivision thereof, New York or U. S. concerning contributions, taxes and payroll compensation, transaction, sales use or other taxes or assessments of whatever nature or kind levies or assessed as a consequence of the work performed or on the compensation to be paid under the Contract.

d) Deviations from Financial Proposal. Should additional costs not provided for in the Financial Proposal but related to the Contract be incurred the Contractor shall be responsible for payment of such costs. The Department reserves the right to provide additional funding at its sole discretion, for expenses for special projects that are not considered part of the day to day operations of the office.

e) Contractor Account. The Contractor shall establish and maintain a deposit account ("Contractor account") with a financial institution designated by the Contractor and having offices in the Designated Area for use of the Representative Offices. The Contractor shall notify the Department of the location and account number of such Contractor Account, and this account shall be used exclusively for the Representative Office(s).

f) Accounting Records.

(1) The Department shall not be liable for a negative balance in the Contractor Account or any other account.

(2) All expenses shall be recorded in the books of the Representative Office and charged against the Contractor Account cost. The Contractor shall not be allo0wed any fee, commission or other benefit based on cost incurred under Contract.

(3) Financial records of the Contractor shall be maintained in accordance with generally accepted accounting principles in the United States.

(4) Financial records shall be kept on an accrual basis.

g) Financial Reports. Monthly, quarterly and annual reports shall be provided in accordance with the requirements set by the Department and stated in the contract.

h) No Benefits. Contractor will be responsible for providing Contractor's own benefits and insurance

coverage during the term of the Contract. Contractor, as an independent contractor, and Contractor's subcontractors and employees shall not be eligible for or entitled to participate in the benefits, plans, and insurance coverage provided by the Department to its employees.

i) Termination. Upon termination, the Department shall pay to the Contractor a pro rate share of any amounts due and payable pursuant to Section 4.3(a) of this RFP through the effective date of the termination. Within ten (10) business days after the effective date of termination of the contract, the Contractor shall deliver to the Department all unearned payments previously advanced to the Contractor. If the Contractor fails to turn over all unearned payments to the Department, then, in addition to any other rights or remedies that the Department may have in law or in equity, the Department shall be entitled to recover from the Contractor interest at the annual rate of twelve (12) percent per annum on the principle amount of all unreturned unearned payment, together with court costs and reasonable attorney fees incurred in the collection of such amounts.

4.4 Relationship

(a) Independent Contractor Status. The relationship of the Contractor to the Department shall be that of an independent contractor, not an employee.

(b) No Control by Department. The parties acknowledge and agree that the Contractor shall use Contractor's own judgment as to time, place, details and means by which Contractor accomplishes the results of Contractor's Services under the contract; that Contractor is not subject to instructions by the Department as to when, where and how the Services should be performed; that Contractor is not required to work set hours of the day or week established by the Department; that Contractor is not required to perform Services in sequence determined by the Department; and that nothing contained herein shall be construed to create the relationship of employer and employee between the Department and the Contractor, provided, however, that Contractor is expected to provide the Services in a timely and competent manner in order to meet the needs and expectations of the Department.

(c) Transfer of Undertakings: Change of Service Provider at end of Contract Term
At the end of the Contract Term and, in the event that there is a transfer of services which falls within the definition of a Relevant Transfer for the purposes of the Transfer of Undertakings (Protection of Employment Regulations 1981 as amended, and related Enactments and for the purposes of re-tendering, then, upon request, the Contractor fully and accurately disclose all information relating to its employees who are principally engaged in providing the Services, that is, its employees who are engaged exclusively on providing the Services or who are engaged for more than 70% of their time in providing these Services, including the total number of employees whose employment with the Contractor is liable to be terminated at the expiry of this Agreement (but for operation of law) or liable to be transferred, their age and gender, their terms and conditions of their employment, including salary, bonus payments, pay settlements redundancy entitlement, pension entitlement and working arrangements) their job titles and the qualifications required for each position.

(d) Employees of Contractor. The Contractor may, at its sole expense, employ and retain such employees as may be necessary to conduct the Services in the Designated Area. All obligations relating to the compensation, benefits and taxes of such employees shall be the sole obligation and responsibility of the Contractor, who shall be deemed the employer of such employees. The Contractor shall direct the work of all employees and subcontractors.

(e) Other Activities of Contractor. The Parties agree that Contractor may be engaged as a consultant, employee or otherwise in non-profit, business or commercial activities for other parties during the term of this contract, provided that such activities: (1) do not prevent Contractor from performing his obligations as set forth in the Contract; and (2) are not Competitive Activities (as defined below), detrimental to the Department or cause the Contractor to breach any of the provisions of the Contract. "Competitive Activities" are those activities which (i) are performed by the Contractor for another state, trade association, or trade group which represents interests

or performs services which are competitive with the State or the Department and (ii) are similar to the Services.

(f) Limitation on Authority. The Contractor acknowledges that it is not an agent or legal representative of the Department and the Contractor shall not have nor represent that it does have any power or right to bind the Department. Neither the Department nor any employee or agent of the Contractor shall be deemed to be the legal representative or an employee of the Department by reason of the contract. During the term of the Contract, the Contractor shall not take any action inside or outside of the Designated Area which could: (1) confer on the State or Department "permanent establishment" or equivalent status, as defined in any applicable law or income tax treaty; (2) subject the State or the Department to income or other taxation in the Designated Area or any country or political subdivision thereof; (3) impair the treatment of the Representative Offices as representative offices or liaison representative offices. Nothing contained in the Contract shall in any way be construed to create an agency or employee relationship between the Contractor and the Department.

(g) Insurance. Contractor agrees to maintain such insurance necessary to fully protect both Contractor and Department from any and all claims under the Workers' Compensation Act, or any foreign country's equivalent, including maintaining insurance, through appropriate local government department or agency; or employers' liability laws, and from any and all other claims for damage to property or for personal injury, including death, made by any person whomsoever, that may arise from or relate to performance of the Services by Contractor, any subcontractor or any person directly or indirectly engaged or employed by Contractor or subcontractor. Contractor agrees to provide the Department with certificates evidencing the required insurance coverage within thirty (30) days after Contractor begins performance of the Services.

(h) Department's Right of Inspection. The actual performance and supervision of all the work hereunder shall be by Contractor, but the Department shall designate a representative or representatives who shall at all times have access to the Representative Offices for the purposes of observing or inspecting the work performed by Contractor, to judge whether such work is being performed by Contractor in accordance with the terms of the Contract. Such representative or representatives shall be empowered to act for the Department in all matters relating to Contractor's performance of the work undertaken hereunder.

(i) Department Not a Joint Venturer or Partner. In entering into and complying with the Contract, Contractor is at all times performing as an independent contractor. Nothing in the Contract shall constitute or be construed as a creation of a partnership or joint venture between Contractor and the Department, or their successors or assigns.

(j) Title to Contractor's Materials. Title to the materials to be furnished by Contractor in connection with the performance of the Services shall remain with the Contractor unless otherwise specified in Sections 4.9.

4.5 Minority and Women-owned Business Enterprises ("MWBE") Participation and Equal Employment Opportunities ("EEO")

(a) General Obligations:

The State of New York and the Department actively support and encourage equal employment opportunities on State contracts for minorities and women and the participation of certified MWBEs in State contracts. NYS international office contracts are exempt from specific MWBE targets or goals. The contract which the Department will prepare based on this RFP will contain provisions regarding the Contractor's obligations under Article 15-A of the Executive Law and its implementing regulations; the participation of certified minority and women-owned business enterprises in the performance of the contract, A listing of certified MWBEs is by calling 800-782-8369. There are provisions within New York State for contractors to be exempted from the MWBE requirements of Article 15-A of the Executive Law, as will be the case for this contract.

4.6 Intellectual Property/Personal Property Rights in Data Computer Software and Other Intellectual Property

(a) Rights in Data. All studies, reports, findings, sources, bibliographies, subscriber lists, mailing lists, working papers, files, input materials and output materials, the media upon which the same are located (including cards, tapes, discs. And other storage facilities), together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, and all other materials, prepared for and delivered to the Department in the course of performance of the Agreement hereunder (hereinafter referred to as "Date"), shall be deemed to be "work made for hire" (as defined in Section 101 of Title 17 of the United States Code), and shall be provided to and become the exclusive property of the Department. Data shall be deemed and determined to not include computer software and related documentation. If it is determined that any Data encompassed above does not fall within the definition of "work made for hire" (as defined in Section 101 of the Title 17 of the U.S.C), the Contractor hereby covenants and agrees to transfer all right, title and interest in any such Data to the Department, and cooperates with the Department, as is necessary , in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

(b) Rights in COTS Computer Software. Any commercial "off-the-shelf" (COTS) computer software and its related documentation and licenses which were purchased by the Contractor to perform date collection, date dissemination and marketing as discussed in this Agreement shall be transferred to the Department to the extent permissible by the original license. The transfer of such COTS software shall be accomplished at no additional cost to the Department.

(c) Rights to Contractor Owned Pre-Existing Computer Software/Documentation. All computer software and related documentation, together with any versions of the same or other intermediate components thereof, which may or may not be either confidential or proprietary, which was owned by the Contractor and existed at the time of the effective date of this Agreement and which, during the Term of the Agreement is used by the Contractor in the conduct of the performance of this Agreement in such a fashion as to render such preexisting software to the state of being an integral and necessary operating component of the Contractor-Developed Computer Software developed under this Agreement (thereinafter referred to as "Contractor –Owned Pre-Existing Computer Software/Documentation), shall be deemed to remain the property of the Contractor and all right, title and interest therein to the same shall continue to vest in the Contractor, with the express understanding that the Contractor hereby licenses to the Department to use such Contractor Owned Pre-Existing Computer Software/Documentation as provided for in subparagraph (d) herein below.

(d) Rights to Contractor-Developed Computer Software and Software Documentation. The Contractor will design, develop and install computer software as may be required for the Department. The Department will have exclusive ownership of the software including all documentation, source and executable code. All computer software and related documentation, together with any versions of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed by the Contractor in the direct course of performance of this Agreement (thereinafter ''Contractor-Developed Computer Software and Software Documentation''), shall be deemed to be the property of the Department and all right, title and interest therein to the same shall vest in the Department.

(e) For Software License Agreements. For software license agreements regarding any and all pre-existing computer Software and Documentation including Software/ Documentation developed by the Contractor or purchased from outside sources, the Contractor hereby grants to the Department a nonexclusive, royalty-free, irrevocable, license to the Department, for:

1. All Software and Software Documentation (as herein above defined) developed or purchased in the course of performance of this Agreement; and
2. Only that Contractor-Owned Pre-Existing Computer Software/Documentation (as herein above defined) which forms an integral and necessary operating component of the Contractor-Developed Computer Software created under this Agreement;
3. This license shall include the right to reproduce for archival purposes only, and to use and make and

permit others to use and make any modifications necessary to the Contractor-Developed Computer Software and Software Documentation, and the Contractor-Owned Pre-Existing Software/Documentation;

The rights granted by this license do not include any rights to derivative works, modifications, revisions, and upgrades to the Contractor-Developed Computer Software and Software Documentation which are developed by the Contractor after the term of this Agreement, or any extensions thereto, expires or is terminated.

(f) Other Intellectual Property Rights. Except for those intellectual property rights otherwise addressed in sections (a) through (e) above the Contractor agrees that all other patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, this Agreement rendered to the Department by the Contractor or any of its employees or subcontractors during the term of this Agreement (hereinafter "Items") shall be deemed to be a "work made for hire"(as herein above defined), and shall be provided to and become the exclusive property of the Department. If it is determined that any Items encompassed above do not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Contractor hereby covenants and agrees to transfer all right, title and interest in any such Items to the Department, and will cooperate with the Department, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest. The Contractor hereby assigns all rights in such intellectual property to the Department, shall, and will ensure that its employees and subcontractors shall, supply all assistance reasonably requested in securing for the Department's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such intellectual property, and will provide full information in regards to any such Item and execute all appropriate documentation prepared by the Department in applying or otherwise registering, in the Department's name, all rights to any such Items. The Department has the right to grant license to make, use, buy or sell any Items derived from the services performed under this Agreement. Provided however, upon mutual agreement of the Contractor and the Department, the Department may waive its property rights, in writing, to any and all patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, this Agreement.

(g) Additional rights. The Department reserves the right to include additional or revised intellectual/personal property provisions in the Contract in addition to or in place of those described herein, with regard to the ownership (exclusive and/or nonexclusive) of any property or work product created or purchased as a result of any agreement resulting from this RFP. The presumption is that, unless otherwise stated and agreed to in writing, all intellectual property is owned by the Department, including reports, surveys and all other works made or performed for hire. Specifically exempt from the provisions of this paragraph are property, plant and equipment provided by the Contractor to the Department, for the purpose of carrying out the provisions of this RFP. Property, plant, equipment may be subject to intellectual/personal property regulation when agreed to in writing by the parties.

4.7 Confidentiality

For and in consideration of the term of the Contract, Contractor agrees to the following for the ongoing protection of the Department:

(a) Obligations. The Contractor and the Department agree that Contractor shall have an affirmative duty to preserve the confidentiality and safekeeping of all Department documents and “Confidential Information” (as defined below). In particular, except to the extent that the use or disclosure of any Confidential Information is required to carry out Contractor’s assigned duties as an independent contractor for the Department, during the term of the Contract and following the termination of the Contract (for whatever reason):

(1) Misappropriation; use for the purpose of competing with Department, either directly or indirectly; disclose to any third party, either directly or indirectly; or aid anyone else in disclosing to any third party, either directly or indirectly; all or any part of any Confidential Information; or

(2) Use, disclose, divulge or communicate directly or indirectly to any third party: (a) the names, addresses and other contact data regarding any customers of the Department; or (b) the details of any contracts, business transactions or negotiation to which the Department is party or of any tenders, offers or proposals submitted or to be submitted by the Department in connection with its business.

(b) Scope. For purposes of the Contract, "Confidential Information" shall mean confidential and proprietary business or technical information furnished to or obtained by Contractor during the course of his contracting arrangement with the Department (including, without limitation, information created, discovered, developed or made know by such Contractor as part of his engagement with the Department), whether such information is in the form of data, forecasts, records, reports or other documents prepared by or on behalf of the Department. Such Confidential Information includes, by way of illustration, but is not limited to: (1) any Department information regarding a Department Customer (as defined below), including but not limited to customer lists, contracts, business transactions, requirements, billing histories, needs, and products or services provided by the Department to such customers; or (2) all financial information concerning the Department, including but not limited to financial statements, balance sheets, profit and loss statements, earnings, commissions and salaries paid to employees, sales data and projections, forecasts, cost analyses, and similar information: or (3) all Department information regarding sources and methods of supply to the Department, including but not limited to supply agreements, supplier lists, supply terms, product discounts and similar information; or (4) all plans and projections for business opportunities for new or developing business of the Department, including but not limited to marketing concepts and business plans; or (5) all software, drawings, specifications, models, and marketing techniques developed by the Department; or (6) all information relating to the Department's services, products, prices, costs, development activities, service performance, operating results, employee lists, personnel matters, and other confidential or proprietary information; or (7) any of the information described in subsections (1)-(6) of this Section 4.7(b) that the Department obtains from another party or entity and that the Department treats or designates as confidential or proprietary information, whether or not such information is owned or was developed by the Department. "Confidential Information" shall not include information that is generally known or available to the public.

For purposes of the Contract, "Department Customer" means any company or individual customer of the Department: (1) at the time of the end of the term of the Contract; (2) who contacted Contractor, whom Contractor contacted or served, or for whom Contractor assisted in contact or service during the term of the Contract; and/or (3) any company or individual customer of the Department who purchased products or services from the Department during term of the Contract.

(c) Return of Documents/Data. Contractor acknowledges and agrees that, with the exception of information that Contractor can demonstrate was possessed or owned by him prior to his engagement with the Department that has not otherwise been modified, updated, or improved by Contractor or the Department in connection with his engagement with the Department, all sales files, customer records, customer lists, supplier records, supplier lists, product information, letters, contracts, notes, notebooks, records, reports, memoranda, formulae, and all other Department materials, documents, and data used, prepared, or collected by Contractor as part of his engagement with the Department, in whatever form, are and will remain the property of the Department. Contractor also understands and agrees that all Confidential Information that comes into his possession while he is an independent contractor of the Department, whether prepared by him or others, is and will remain the property of the Department. Thus, Contractor agrees that he will return all documents, written material, information, products, devices, and other property belonging to the Department, as well as all documents and other materials of any kind that constitute or contain any Confidential Information, in his possession or control, regardless of how stored or maintained, including all originals, copies, and compilations and all information stored or maintained on computer, tapes, discs, or any other form of technology upon the earlier to occur of (i) five (5)

business days after receipt of the Department's written request to return such property or (ii) the last day of the Contractor's engagement with the Department.

(d) Duration of Confidentiality Obligations. Contractor agrees that he will maintain and keep all Confidential Information strictly confidential throughout the term of the Contract and for a period of twelve (12) months after his engagement with the Department ends. In addition, Contractor agrees that the provisions of this Section 4.7 shall survive the termination or end of Contractor's independent contractor relationship with the Department, regardless of the date, reason or manner of such termination, and such termination shall not in any way impair or affect Contractor's continued obligation to observe the provisions of this Section 4.7.

4.8 Right to Publish

The Contractor shall not publish, circulate or disclose any articles, reports or other writing concerning their business or the subject matter of the Contract without the prior written consent of the Department.

4.9 Compliance with Applicable Law

The Contractor shall, at all times, comply with and observe all applicable laws, statutes, codes, ordinances and regulations which are in effect during the term of the Contract and which, in any manner govern or affect the Contractor's performance of the Services, including without limitation the laws of the United States, European country or political subdivision thereof.

4.10 Indemnification

(a) General. The Contractor hereby agrees to indemnify the State and the Department and each of their directors, officers, employees and agents, and hold the State and the Department, and each of their directors, officers, employees and agents, harmless from and against any and all claims, demands, and causes of action based on any violation of any laws, statutes, codes, ordinances, and regulations and the defense of any such claims, demands or causes of action, including, in each case, any such arising from actual or alleged action or omissions of the Contractor or any of its subcontractors or employees.

(b) Taxes. Contractor shall indemnify the Department and the State against all liability and loss in connection with, and shall assume full responsibility for payment of all European country or political subdivision thereof, United States, state and local taxes or contributions imposed or required under unemployment insurance, workers' compensation, social security, pension, and income tax laws, with respect to the Contractor and Contractors' employees and subcontractors.

4.11 Publicity

Any publication or news releases relating to the representation shall state that the services are supported by I Love NY, the New York State Department of Economic Development or Empire State Development as instructed by the Department.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

June 2023

TABLE OF CONTENTS

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

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds $50,000 (or $75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and $150,000 for State University Health Care Facilities) 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed $85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed $125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds $200,000.

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, citizenship or immigration status, 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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.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 May 2023, 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 899-bb and State Technology Law § 208).

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 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/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

Refer to Section 3.1, item 4 and Section 4.0 for additional guidance on completing the following budget. **Complete for all five years.** (Use additional sheets if necessary.) **DO NOT CHANGE FORMAT**

YEAR 1

MARKETING ACTIVITY EXPENSES

List Specific Activities, *for example**

Partner support	$_____
Public relations	$_____
Shows, exhibits and missions	$_____
Sales and training	$_____
Web marketing	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

MARKETING ACTIVITY EXPENSES TOTAL $_____

OFFICE OPERATIONS/NONMARKETING ACTIVITY FEES AND EXPENSES

PERSONNEL (Please list specific titles)

Title	Hourly Rate	# of Hours	Total Item
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____

Total Personnel Costs $_____

ADMINISTRATIVE/OTHER EXPENSES (i.e. supplies, travel, data collection, technology costs, rent, overhead etc.) Please list

_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

Total Admin./Other Expenses $_____

SUBCONTRACTS

_____	$_____
_____	$_____
_____	$_____

Total Subcontract Expenses $_____

OFFICE OPERATION/NON-MARKETING TOTAL $_____

YEAR ONE TOTAL FOR MARKETING AND NON-MARKETING ACTIVITIES **$**

*** Actual marketing budget categories to be determined by bidder.**

YEAR 2

MARKETING ACTIVITY EXPENSES

List Specific Activities, for example*

_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

MARKETING ACTIVITY EXPENSES TOTAL $_____

OFFICE OPERATIONS/NONMARKETING ACTIVITY FEES AND EXPENSES

PERSONNEL (Please list specific titles)

Title	Hourly Rate	Number of Hours	Total Item
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____

Total Personnel Costs $_____

ADMINISTRATIVE/OTHER EXPENSES (i.e. supplies, travel, data collection, technology costs, rent, overhead etc.) Please list

_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

Total Admin./Other Expenses $_____

SUBCONTRACTS

_____	$_____
_____	$_____
_____	$_____
_____	$_____

Total Subcontract Expenses $_____

OFFICE OPERATION/NON-MARKETING TOTAL $_____

YEAR TWO TOTAL FOR MARKETING AND NON-MARKETING ACTIVITIES **$**

YEAR 3

MARKETING ACTIVITY EXPENSES

List Specific Activities for example*

_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

MARKETING ACTIVITY EXPENSES TOTAL $_____

OFFICE OPERATIONS/NONMARKETING ACTIVITY FEES AND EXPENSES

PERSONNEL (Please list specific titles)

Title	Hourly Rate	Number of Hours	Total Item
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____

Total Personnel Costs $_____

ADMINISTRATIVE/OTHER EXPENSES (i.e. supplies, travel, data collection, technology costs, rent, overhead etc.) Please list

_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

Total Admin./Other Expenses $_____

SUBCONTRACTS

_____	$_____
_____	$_____
_____	$_____
_____	$_____

Total Subcontract Expenses $_____

OFFICE OPERATION/NON-MARKETING TOTAL $_____

YEAR THREE TOTAL FOR MARKETING AND NON-MARKETING ACTIVITIES $

YEAR 4

MARKETING ACTIVITY EXPENSES

List Specific Activities for example*

_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

MARKETING ACTIVITY EXPENSES TOTAL $_____

OFFICE OPERATIONS/NONMARKETING ACTIVITY FEES AND EXPENSES

PERSONNEL (Please list specific titles)

Title	Hourly Rate	Number of Hours	Total Item
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____

Total Personnel Costs $_____

ADMINISTRATIVE/OTHER EXPENSES (i.e. supplies, travel, data collection, technology costs, rent, overhead etc.) Please list

_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

Total Admin./Other Expenses $_____

SUBCONTRACTS

_____	$_____
_____	$_____
_____	$_____
_____	$_____

Total Subcontract Expenses $_____

OFFICE OPERATION/NON-MARKETING TOTAL $_____

YEAR FOUR TOTAL FOR MARKETING AND NON-MARKETING ACTIVITIES **$**

YEAR 5

MARKETING ACTIVITY EXPENSES

List Specific Activities, *for example**

Partner support	$_____
Public relations	$_____
Shows, exhibits and missions	$_____
Sales and training	$_____
Web marketing	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

MARKETING ACTIVITY EXPENSES TOTAL $_____

OFFICE OPERATIONS/NONMARKETING ACTIVITY FEES AND EXPENSES

PERSONNEL (Please list specific titles)

Title	Hourly Rate	# of Hours	Total Item
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____

Total Personnel Costs $_____

ADMINISTRATIVE/OTHER EXPENSES (i.e. supplies, travel, data collection, technology costs, rent, overhead etc.) Please list

_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

Total Admin./Other Expenses $_____

SUBCONTRACTS

_____	$_____
_____	$_____
_____	$_____

Total Subcontract Expenses $_____

OFFICE OPERATION/NON-MARKETING TOTAL $_____

YEAR FIVE TOTAL FOR MARKETING AND NON-MARKETING ACTIVITIES $_____

TOTAL BUDGET PROPOSAL SUMMARY

Year 1 Total for Marketing and Non-Marketing Activities	**$_____**
Year 2 Total for Marketing and Non-Marketing Activities	**$_____**
Year 3 Total for Marketing and Non-Marketing Activities	**$_____**
Year 4 Total for Marketing and Non-Marketing Activities	**$_____**
Year 5 Total form Marketing and Non-Marketing Activities	**$_____**
TOTAL	**$**

***Appendix B must be bound separately from the rest of the proposal.**
**** Do not exceed $250,000 annually.**

APPENDIX C

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW

SECTION 139-D, Statement of Non-Collusion in bids to the State

BY SUBMISSION OF THIS BID, BIDDERS AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

[BIDDERS AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT]

Subscribed to under penalty of perjury under the laws of the State of New York, this_____ day of _____, 20___ as the act and deed of said individual, corporation or partnership.

Person Legally Responsible for Binding Bidder

Name_____ Title_____

Signature_____

Joint or combined bids must be certified on behalf of each participant

_____ _____

Legal name of person, firm or corporation Legal name of person, firm or corporation

Person(s) Legally Responsible for Binding Participant

Name_____ Name_____

Title_____ Title_____

Business Address_____ Business Address_____

City_____ State _____ City_____ State_____

APPENDIX D

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes ____ or No____

if yes:

(2) shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes____ or No____

_____ _____

Signature Date

APPENDIX E

Vendor Name: _____

NYS Vendor ID # (if one has been assigned)_____

Vendor Responsibility Information

Effective January 1, 2005, the Office of the State Comptroller has conveyed that all requests for NYS contract approval must include information regarding Vendor Responsibility for the Contractor. **In addition any subcontractor on a state contract receiving over $100,000 must also complete a Vendor Responsibility Questionnaire**. The NYS Department of Economic Development recommends that vendors file the required questionnaire online via the NYS VendRep System. To enroll in and use the system, see the instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at http://portal.osc.state.ny.us.

Failure to submit a completed questionnaire may result in either a grant or designation being rescinded or delayed. In addition, the NYS Department of Economic Development reserves the right to rescind upon a finding that the recipient is deemed not responsible to receive funds.

Please check one of the following:

☐ A Vendor Responsibility Questionnaire has been filed online and has been certified/updated within the last six months. Date Certified:_____

☐ A Vendor Responsibility Questionnaire is attached hereto. Paper version can be found at: http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3290s.pdf.

APPENDIX F

PROCUREMENT LOBBYING DISCLOSURE PURSUANT TO SECTIONS 139-J AND 139-K OF STATE FINANCE LAW

(For Agreements of $15,000 or more please complete this form.)

Statutory Summary

Changes to the New York State Finance Law (referred to as the "new State Finance Law") effective January 1, 2006, significantly alter the administrative process for the development of State procurement contracts1. The procedures discussed herein are put in place to address the new State Finance Law. The New York State Department of Economic Development recognizes the considerable additional responsibility that the new State Finance Law places on potential bidders ("Offerers") as well as on the Department and we regret any inconvenience. The Department assures you that we are interested in receiving a proposal from your company. Among other things, the new law:

- Makes the States lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by the Department.
- Requires the Department to record **all** contacts made by lobbyists and contractors (you) about a governmental procurement so that the public knows who is contacting the Department about procurements.
- Requires the Department to designate persons who generally may be the **only** staff contacted relative to the Department's procurement in a restricted period.
- Authorizes the imposition of fines and penalties against persons/organizations engaging in impermissible contacts about a Department procurement and provides for the debarment of repeat violators.
- Directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website.
- Expands the definition of lobbying to include procurement contracts.

Generally speaking, two related aspects of procurements were affected: (i) activities by the business and lobbying community seeking procurement contracts and (ii) activities involving governmental agencies establishing procurement contracts. The obligations imposed by State Finance Law Sections 139-j and 139-k are collectively referred to as the "new State Finance Law".

The following contains language and forms (these forms must be completed and returned as part of your proposal, and when indicated at other times during this procurement process) to be reviewed and completed by you the bidder ("Offerer"), in compliance with sections 139-J and 139-k of the State Finance Law.

NYS Department of Economic Development Policy Language

Pursuant to State Finance Law §§139-j and 139-k, this Invitation for Bid includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Department and Office of the State Comptroller ("restricted period") to 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). Designated staff, as of the date hereof, are any member of the Department's Contract Management or Publications Unit. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers contact only Department staff identified in the aforementioned section of this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder 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 4 year period, the Offerer/bidder is debarred from obtaining governmental

1 "Procurement contract" shall mean any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, article eleven-B state finance law contracts, program contracts between not-for-profit organizations, as defined in article X1-B of the state finance law, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed procurement contracts.

Procurement Contracts.

Termination Provisions
The Department also reserves the right to terminate any PO resulting from this IFB in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this contract.

Form 1 - Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

State Finance Law §139-j(6)(b) provides that: Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

The Department must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k.

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

By: _____ Date:_____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

_____

Form 2 - Offerer's Certification of Compliance with State Finance Law §139-k(5)

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

The Department must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity.

Offerer Certification:

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

By: _____ Date:_____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

_____

Form 3 - Offerer Disclosure of Prior Non-Responsibility Determinations

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

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

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

Offerer Disclosure of Prior Non-Responsibility Determinations

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

_____

Address: _____

_____

Name and Title of Person Submitting this Form: _____ Date: _____

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

No Yes

If yes, please answer the next questions:

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

No Yes

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

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

_____

(Add additional pages as necessary)

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

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

_____

(Add additional pages as necessary)

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

By:_____ Date:_____

Signature:_____

Form 4 - Report of Contact under State Finance Law §139-k(4)

THIS FORM TO BE COMPLETED AND RETURNED TO THE DEPARTMENT WHENEVER YOU CONTACT US DURING THE DESIGNATED PERIOD. ATTEMPTS TO CONTACT THE DEPARTMENT WILL NOT BE ACKNOWLEDGED UNLESS YOU PROVIDE THIS FORM. THIS INCLUDES THE SUBMISSION OF QUESTIONS REGARDING THIS IFB.

New York State Finance Law §139-k(4) obligates every Governmental Entity during the Restricted Period of a Procurement Contract to make a written record of any Contacts made. The term "Contact" is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the Governmental Procurement. In addition to obtaining the required identifying information, the Governmental Entity must inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the Governmental Entity.

It should be noted that State Finance Law §139-k(6) provides: [a]ny communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a "contact" within the meaning of this section and shall not be recorded

by a governmental entity pursuant to this section.

Offerers and those designated, employed or retained by Offerers are hereby advised of the Department's intention to record all Contacts.

Record of Contact Under State Finance Law §139-k(4)

To: The New York state Department of Economic Development

Regarding Procurement Project No.: _____ (See first page of this document) Date: _____

From: _____
(Name and title of Offerer)

Subject: Record of Contact under State Finance Law §139-k(4). In accordance with State Finance Law §139-k(4), the following information is provided).

Address of Offerer: _____

_____Telephone Number:_____

Offerer's Place of Principal Employment (Name and Address of your Employer, may be different from the Offerer's name and address, if not state same as above).

_____

Your Occupation: _____

1. Is the above named person or organization the "Offerer" in this governmental procurement? Please circle Yes or No

2. If no, was the above named person or organization retained, employed or designated by the "Offerer" to:

- Appear before the governmental entity about the governmental procurement? Please circle – Yes or No
- Contact the governmental entity about the governmental procurement? Please circle – Yes or No

APPENDIX G

Bidder's Identifying Data

Bidder's Name _____

Business Address _____
Street

_____
City State Zip

Telephone_____Fax_____ E-mail_____

Federal ID Number_____

If Bidder is a Partnership complete the following:

Name of Partners or Principals	Business Address
_____	_____
_____	_____
_____	_____
_____	_____

If Bidder is a Corporation complete the following:

Name	*Business Address*
_____	_____
President	
_____	_____
Secretary	
_____	_____
Treasurer	

APPENDIX G

APPENDIX H

Contractor Travel Reimbursement Guidelines

Any travel related to the project must be approved by NYSDED prior to incurring any travel related costs.

The maximum per diem rates permitted by the travel guidelines of the New York State Office of State Comptroller can be found at the following website:
http://www.osc.state.ny.us/agencies/travel/travel.htm

APPENDIX I

Examples of Successful Efforts by the Vendor for Specific Deliverables:

Deliverable - Increasing awareness of New York State as a place to visit in the Canadian media
Examples of Successful Efforts:

- Number of familiarization tours of NYS taken by journalists from Canada
- Number of newsletters about travel to NYS generated by ILNY in Canada
- Media coverage of existing and new travel products being offered to Canadians
- Increase in variety of media requests for details about NYS
- Number, quality, and feedback from sales calls on the Canadian media
- Number of Canadian publications in which articles/features on NYS are published
- Dollar value of print and social media coverage about NYS Canada

Deliverable - Facilitating the development of travel products beyond NYC for the Canadian

Example of Successful Efforts:

- Number of sales calls made by ILNY from Canada on travel agencies
- Number of tour wholesalers offering new NYS travel programs
- Number and new NYS travel programs offered to Canadians
- Variety of new NYC/NYS travel programs introduced

Deliverable – Enabling Canada travel trade to successfully sell NYS vacations
Examples of Successful Efforts

- Introduction of NYS vacation travel educational program for travel agents
- Number of educational presentations made to tour wholesalers and travel agents
- Number of tour operator and travel agent staff taking familiarization tours to NYS
- Number of NYS participants, Canadian attendees, and projects generated from ILNY from the Canadian Road Show
- Number and variety of marketing partnerships generated between ILNY and from the Canadian industry leadership

APPENDIX I

Deliverable - Generating consumer demand for travel to NYS
Examples of Successful Efforts:

- Number and variety of consumer directed promotions of NYS in Canada
- Number and variety of the Canadian consumer promotions involving trips to NYS
- Dollar value of consumer directed media published in Canada
- Number and variety of consumer directed marketing programs between ILNY and the Canadian consumer outlet marketing partners
- Increase in number of visitors from Canada to NYS
- Spending on trips taken to NYS from Canada

Deliverable – Enabling New York State tourism promotion agencies and suppliers to offer new product/programs to Canada:
Examples of Successful Effort:

- Number of briefings given on status of the Canadian travel trade and consumer
- Number of the Canadian travel consumer and trade needs identified that match the offerings of New York State
- Quantity and quality of meetings given to the ILNY Canadian Marketing Committee
- Number of action steps taken from needs identified by the Canadian Marketing Committee
- Number of new Canadian itineraries developed
- Number of new NYS promotional products offered to from Canada

APPENDIX I

APPENDIX J

Mandatory Requirements Checklist
(Checklist of Items to Return with Your Proposal)

*** Please include this checklist with your proposal**

Proposing Company Name:_____

_____ Request for Proposals (RFP) Response Form

_____ Title page, including not revocable for 60 days language (see RFP section 3.1.1)

_____ Bidder's Identifying Data form (Appendix G)

_____ Full Proposal addressing each element of RFP Sections 2.1, 2.4 and 3.1

_____ Appendix B – Budget Forms – separate document (not to be bound or scanned with the rest of proposal as the budget will be evaluated separately from the technical proposal)

_____ Appendix C – Non-Collusive Bidding Certificate

_____ Appendix D – Nondiscrimination: MacBride Fair Employment Principals

_____ Appendix E – Vendor Responsibility Information (*Also paper questionnaire if not completed online)

_____ Appendix F – Procurement Lobbying Disclosure

_____ Three Letters of reference (Section 3.1.3.a)

_____ Identical electronic version of your entire proposal (including completed forms and with budget scanned separately from the rest of your proposal) sent to tourismrfp@esd.gov.

_____ Gender Based Violence Certification (Section 3.11)

APPENDIX J