Katherine Hochul
Governor

Hope Knight
ESD President, CEO & Commissioner

New York State Department of Economic Development

REQUEST FOR PROPOSALS

TRADEMARK LICENSING AGENCY

RFP NUMBER 23-6155

PROPOSALS DUE FRIDAY, OCTOBER 20, 2023
5:00 PM EST

(LATE PROPOSALS CANNOT BE ACCEPTED)

RFP Released: September 25, 2023

Request For Proposal (RFP) Response Form

RFP # 23-6155

Please review this RFP and complete the information below. 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:

This form serves as the cover page of your proposal and must be submitted with your complete proposal according to the instructions in section 1.5
If NOT submitting a proposal, please e-mail this form only to: tourismrfp@esd.ny.gov

Table of Contents

REQUEST FOR PROPOSAL (RFP) RESPONSE FORM 2

SECTION I - ADMINISTRATIVE INFORMATION 5

1.0 PURPOSE 5
1.1 DESIGNATED CONTACTS 5
1.2 INQUIRIES 5
1.3 SCHEDULE OF PERTINENT DATES 5
1.4 PRE-BID CONFERENCE 5
1.5 SUBMISSION OF PROPOSALS 6

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES 7

2.0 BACKGROUND 7
2.1 SCOPE OF SERVICES 8
2.2 DELIVERABLES 10
2.3 MINIMUM QUALIFICATION REQUIREMENTS 11
2.4 SELECTION CRITERIA 11
2.5 INTERVIEW/ORAL PRESENTATION 11
2.6 EVALUATION / AWARD PROCESS 12
2.7 CONTRACT AWARD 12
2.8 DEBRIEFING 13
2.9 PROTEST AND APPEALS 13

SECTION III - PROPOSAL CONTENT AND CONDITIONS 15

3.0 GENERAL INFORMATION 15
3.1 COMPLETE PROPOSAL 15
3.2 CONDITIONS GOVERNING PROPOSALS 16
3.3 FREEDOM OF INFORMATION LAW (FOIL) 17
3.4 NOTIFICATION OF AWARD 17
3.5 COST OF PROPOSAL 17
3.6 LIABILITY 18
3.7 PROCUREMENT LOBBYING 18
3.8 IRAN DIVESTMENT ACT 18

SECTION IV - CONTRACTUAL INFORMATION 20

4.0 CONTRACT PREPARATION 20
4.1 CONTRACT TERM 20
4.2 CANCELLATION/TERMINATION 20
4.3 PAYMENT PROCESS 22
4.4 INTELLECTUAL PROPERTY/PERSONAL PROPERTY 26
4.5 REPORTS 26
4.6 SUBCONTRACTS 26
4.7 FIDELITY BOND 27
4.8 PROCEDURE UPON CANCELLATION/TERMINATION 27
4.9 CONFIDENTIALITY; PRIVILEGE 28
4.10 CONFLICTS OF INTEREST; RESTRICTIVE COVENANTS 28
4.11 REPRESENTATIONS AND WARRANTIES BY THE DEPARTMENT 29
4.12 REPRESENTATIONS, WARRANTIES, AND COVENANTS BY THE CONTRACTOR 29
4.13 RIGHT OF THE DEPARTMENT TO USE THE PROPERTY 30
4.14 PRIOR APPROVAL OF LICENSE AGREEMENTS AND MATERIALS UNDER LICENSES 30
4.15 APPROVAL OF AFFILIATE LICENSING AGENCY CONTRACTS 31
4.16 OWNERSHIP OF PROPERTY 31
4.17 EXPENSES 31
4.18 DEFINITIONS 31
4.19 APPOINTMENT 32
4.20 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES ("MWBE") PARTICIPATION AND EQUAL

EMPLOYMENT OPPORTUNITIES ("EEO") _____ 33

APPENDIX A – STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS _____ ERROR! BOOKMARK NOT DEFINED.

APPENDIX B – BUDGET _____ 9

APPENDIX C – NYS CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES _____ 1

APPENDIX D – PROCUREMENT LOBBYING DISCLOSURE _____ 1

APPENDIX E – NON-COLLUSIVE BIDDING CERTIFICATION _____ 1

APPENDIX F – NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: _____ 1

APPENDIX G – VENDOR RESPONSIBILITY INFORMATION _____ 1

APPENDIX H – CHECKLIST _____ 1

APPENDIX I - LOGOS _____ 50

SECTION I - ADMINISTRATIVE INFORMATION

1.0 PURPOSE

The New York State Department of Economic Development (hereafter referred to as NYSDED or the Department) requires the services of a qualified licensing agency to facilitate full domestic and international licensing support of the Department's copyrights, trademarks and service marks, including the Department's registered I♥NY trademark and service mark and the marks pictured in Appendix H of this RFP. In addition to pictures of the marks, please see section 4.18 for certain definitions used throughout this RFP.

This Scope of Services for this RFP contains requirements that the successful bidder or applicant (also referred to herein as the Contractor or Licensing Agency) prepare Licensing Agreements, manage licensees, issue royalty reports and payments, manage royalty free licenses as needed, and provide brand enforcement.

1.1 DESIGNATED CONTACTS

For the purpose of the Procurement Lobbying requirements of this RFP (see section 3.7 and Appendix D); the Department's designated contact shall be Lisa Sutton, employees designated by the Department as part of the Department's Contract Management Unit, all staff designated by the Department to have responsibilities and duties in the Department's Administration and Counsel's Office.

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed in this RFP. Refer to: https://www.nysenate.gov/legislation/laws/STF/139-J

1.2 INQUIRIES

All questions must be submitted in writing via email to tourismrfp@esd.ny.gov **with "Trademark Licensing Agency" in the subject line. Please do not contact the Department by telephone. Questions must be received by the Department no later than October 6, 5:00 PM.** All inquiries must cite the particular RFP section in the questions.

Answers to all questions of a substantive nature will be provided to all known recipients of the RFP as soon as possible after the question period deadline.

1.3 SCHEDULE OF PERTINENT DATES

Release of RFP	**September 25, 2023**
Deadline for Receipt of Questions	**October 6, 2023, by 5:00 PM EST**
Submission of Proposals	**October 20, 2023, by 5:00 PM EST** **Late proposals cannot be accepted.**
Oral Presentations/Interviews	By appointment at the discretion of NYSDED
Award of Contract	November/December 2023 (estimated)

1.4 PRE-BID CONFERENCE

There is no pre-bid conference for this project.

1.5 SUBMISSION OF PROPOSALS

Interested individuals or firms must submit their **hard copy** proposals no later than **5:00 P.M. U.S. Eastern Standard Time**, on October 20, 2023.
Submit six (6) copies of the proposal to the following address:

NYS Department of Economic Development
Office of Fiscal Management
625 Broadway – 8th floor
Albany, NY 12245
Attention: Lisa Sutton
PROPOSAL

Please note: Your budget must be separately bound from the rest of your proposal to allow for the cost evaluation to be completed independent of the technical evaluation.

In addition to the hard copies, the Applicant **must** submit an identical electronic version of their entire proposal, including budget and completed forms to tourismrfp@esd.ny.gov with **"Trademark Licensing Agency – *your company name*" in the subject line**. **Electronic copies are used for administrative purposes and DO NOT fulfill the requirement to submit the hard copies by the deadline**.

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

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

2.0 BACKGROUND

The I LOVE NY campaign was originally created in 1977 by the State of New York in response to a widespread economic crisis throughout the state and was extremely successful in harnessing travel and tourism as a driver of economic development. Almost fifty years later, the campaign still delivers an impressive economic impact as a tourism initiative that creates jobs, increases direct spending and produces benefits that are felt statewide. Tourism represents a $85.5 billion industry in New York State (NYS) and accounts for over 850,041 direct and indirect jobs. As tourism remains an integral part of the NYS economy, the I LOVE NY campaign represents a vital link to one of the most tested and resilient vehicles for continued economic growth. The Division of Tourism is making a significant impact in the lives of every New Yorker in the State.

NYSDED is the New York State agency tasked with creating private-sector job opportunities for New Yorkers by enhancing the state's economic growth. The Division of Tourism takes the lead in carrying out this mission by promoting New York State as the premier location to vacation and an ideal destination for families. The Department's primary resource to promote tourism is the world renowned and celebrated I LOVE NY campaign.

Since the inception of the campaign, all promotional efforts have highlighted New York State vacation destinations alongside the trademarked logo, I♥NY. (the "Mark"). The terms Mark, mark, marks and logo are used interchangeably throughout this RFP. These terms primarily refer to the I♥NY. trademark and service mark however other current and future trade and/or service marks are also included under the terms and conditions of this RFP. The Department has owned trademark rights to the logo since its inception.

The campaign currently enjoys high levels of consumer awareness. Over the years, the logo itself has received significant fame, good will, worldwide distribution, and publicity. Today, the I♥NY. mark is one of the most revered logos in the world. However, our challenge is that consumers do not necessarily understand I♥NY. represents tourism, including travel throughout the entire state and not only New York City.

The Department selectively grants domestic and international licenses for commercial use of the marks on a royalty/fee basis and for other uses without royalty or fee. Since 1990, the Department has contracted with licensing agencies for worldwide use of the Mark which generates approximately $1 million in revenue annually for New York State.

The licensing program aims to enhance the recognition, fame, and good will of the I LOVE NY logo, using the mark as a symbol of how special a New York State vacation or getaway is, particularly the surprise and delight one will experience when traveling in NYS. Ideally, the logo would make that connection with prospective travelers and/or serve as a meaningful, relevant, and important reminder to past travelers of their visit to New York State, making them excited for repeat visits and inspiring them to be advocates to friends and family about the memory-making value of taking a trip in the state.

The goals of the program are to:

- Ensure that licensed merchandise aligns I♥NY. with the entire state through diverse imagery and broad scale distribution
- Enhance the overall awareness of New York State as a travel destination by associating the logo with tourism activities and destinations specific to New York State
- Sustain and grow the revenue of the licensing program

In order to achieve these goals, the licensing agency is expected to:

- Develop a plan that includes objectives, strategies, and tactics to deepen the connection between the logo and the entirety of New York State as a tourism destination
- Evaluate current licensing projects and provide recommendations on their alignment with the goals, objectives, and strategies of the program
- Balance the goals of sustaining and growing revenue with enhancing the perception of the logo with NYS as a whole and as a travel destination
- Provide recommendations on how to increase the revenue of the licensing program that are in line with the goals of the program

2.1 SCOPE OF SERVICES

The licensing agency is required to have full-service capabilities in key areas. The primary functions of the licensing agency selected are outlined below:

Planning and Outreach

2.1.1 Develop a comprehensive plan to maximize the value (both recognition and financial value) of the Department's copyrights, trademarks, and service marks, including the registered I LOVE NY trademark/service mark. This will be done in close consultation with the Department and is subject to approval by the Department.

2.1.2 Evaluate current License Agreements and recommend changes to be implemented in future License Agreements to make them consistent with the goals and objectives of the licensing program.

2.1.3 Identify and pursue new opportunities for licensing in domestic and international markets, in existing and new product categories and in accordance with the licensing strategy and plan.

2.1.4 Seek out appropriate manufacturers (souvenir products, wearing apparel, decorative items, tourism related products, etc.), merchandise retailers and others in accordance with the licensing strategy and plan. Attempt to match manufacturers and retailers of merchandise.

2.1.5 At the discretion of the Department, the plan may be modified to incorporate any copyrights, trademarks or service marks subsequently developed by the Department or the State of New York.

License Agreements

2.1.6. Undertake a program of identifying new licensees as well as negotiating, writing, and administering new License Agreements in accordance with the licensing strategy and plan. The Department must approve all License Agreements and the intermediate components thereof. The Department may reject any proposed License Agreement.

2.1.7 Administer any existing licensing agreements that Department has in place at the time of the contract which are no longer being serviced by the previous contractor (at the discretion of the Department). Upon expiration of existing license agreements, the Licensing Agency may be able to negotiate new licensing agreements with such licensees upon approval by the Department.

2.1.8 Financial compensation for Licensing Agreements is outlined in Section 4.3 of this RFP.

2.1.9 The Department retains the option to issue and administer its own licenses, cooperative advertising programs and partnerships. This will include approval of products, negotiating of licensing terms, as well as collection and retention of any and all applicable fees and royalties associated therewith. In such an occurrence, the licensing agency will not receive any compensation.

2.1.10 In certain circumstances the Department may consider waiving royalty payments for License Agreements and drafting Royalty free agreements. When royalty payments are waived and the Licensing Agency is asked to identify licensee, negotiate terms, administer the License Agreement, or provide such other services as may be requested, upon prior written approval of the Department, the Licensing Agency shall invoice the Department at the blended hourly rate discussed in section 4.3.5 of this RFP.

2.1.11 Local tourism promotion agencies, governments, and other grantees, which are required to utilize the Mark in tourism promotion executions under various state tourism funding programs, such as the state's Tourism Matching Funds program and the Market NY grant program, are excluded from the payment of royalty fees for such use of the Mark.

Licensee Management

2.1.12 Manage all phases of licensing, including product development, packaging, advertising, promotion, and reporting, with the Department's approval.

2.1.13 Monitor all programs with licensees and coordinate with the Department to insure consistent image and quality control across all aspects of the program.

2.1.14 Obtain the Department's approval for all new licensee concepts, artwork and pre-production samples for all items containing the Mark.

2.1.15 Require that all licensed goods/services conform to the quality standards acceptable to the Department. The Licensing Agency shall obtain general product samples, pre-production samples and post-production samples of goods produced and report back to the Department on the quality of the goods. The Department may, at its discretion, request that the sample be sent to the Department for inspection. The Licensing Agency may, at its discretion, perform field inspections.

2.1.16 Perform financial audits of the licensees to determine if the licensee has accurately reported sales activity on an annual basis and at the Licensing Agency's discretion.

2.1.17 Determine an appropriate level of product liability insurance, mandate that the licensee obtain insurance, ensure that coverage is current and maintain records of insurance coverage.

Reporting and Finances

2.1.19 Develop and implement a quarterly royalty reporting and payment system that includes year to date revenue, guarantee status and other financial information (including back up documents) to

present a clear picture of the financial standing of each licensee in the program. The Department must approve the system to ensure that the desired information is being reported.

2.1.20 Provide bi-weekly activity status reports of all projects (see section 4.3.6.4).

2.1.21 Provide a year-end financial report and program assessment that includes projections and recommendations for the upcoming year.

2.1.22 Provide additional reports as detailed in the RFP and at the request of the Department.

Brand Protection and Enforcement

2.1.23 Identify unauthorized users of the Department's Marks on various website marketplaces, including, but not limited to Amazon; Ebay; Etsy; Zazzle; RedBubble; Society 6; Spreadshirt; Customon; Teepublic; TeeHerviar; and Best Limited Tee. When requested by the Department, follow website marketplace procedures for taking down infringement merchandise, which may include establishing brand registries and / or profiles.

2.1.24 When requested by the Department, work with the Department on enforcement of the brand. The Licensing Agency may be asked to notify infringers through cease-and-desist orders, assess damages and collect, ultimately recommend that they enter into a License Agreement for past and future use of the Mark or face possible legal action.

2.1.25 Unless otherwise agreed to in writing between the Licensing Agency and the Department, the Licensing Agency shall not take legal action against violators of the Mark.

Other Services

2.1.26 If requested, provide legal advice to or secure legal advice on behalf of the Department regarding intellectual property issues.

2.1.27 Designate one staff person to be the point of contact to the Department regarding royalty fee base reporting and licensing issues. The licensing agency will be required to meet with the Department upon request.

2.1.28 At the discretion of the Department, provide all of the above listed services with regard to any and all trademarks owned by the Department or State of New York and those subsequently developed if any, by the Department or State of New York. The Department may require licensing agency to perform other licensing related activities upon mutual agreement of the parties.

2.1.29 Any contract resulting from this RFP is nonexclusive. The Department retains the right to engage future vendors in licensing activities.

2.2 DELIVERABLES

The deliverables for this project are consistent with the Scope of Services discussed above. Include in your proposal why your agency should represent the I LOVE NY logo for licensing services.

2.3 MINIMUM QUALIFICATION REQUIREMENTS

2.3.1 The Licensing Agency and / or its proposed account manager, must demonstrate a minimum of five (5) years of experience and be able demonstrate substantial knowledge of licensing and performing services similar to those described in section 2.1 (Scope of Services) of this RFP.

2.3.2 The Licensing Agency must have the ability to maintain an inventory of samples from every licensee in the program.

2.3.3 As part of the proposal, provide at least three business references letters that can substantiate that your company has been in business performing services essentially similar to those described in section 2.1 of this RFP.

2.3.4 This section 2.3 of the RFP is not intended to itemize all requirements for an award of this project.

2.4 SELECTION CRITERIA

Proposals, which meet all the requirements of this RFP, will be evaluated by Department, based on the Selection Criteria stated in this section.

Proposals will be scored based on the following criteria:

2.4.1 Experience **(20 points)**

How well the bidder meets the Minimum Qualification Requirements (section 2.3) of this RFP. Additional consideration will be given to tourism specific licensing experience.

2.4.2. Evaluation of Proposal (section 3.1) **(25 points)**

Evaluation of the quality of the ideas and approach proposed to accomplish the Scope of Services (section 2.1) of this RFP.

2.4.3 Ability to Perform Proposal (section 3.1) **(25 points)**

Evaluation of a demonstrated ability to execute the ideas and approach proposed to accomplish the Scope of Services (section 2.1) of this RFP.

2.4.4 Cost **(30 points**)

Please complete Appendix B Budget in full. Please DO NOT substitute your own budget format. Your budget must be separately bound from the rest of your proposal.

2.4.5. References

Points are not awarded for references; however, reference letters must be provided with your proposal as mentioned above in 2.3.3.

2.5 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 and provide additional information. Additional portfolio samples may be requested at this time. The purpose of the interview/oral presentation is to provide the Department's Review Committee with the opportunity to: meet or talk with the finalists; pose any questions that remain unclear in the proposals; and obtain a more detailed perspective on their qualifications. 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. The Department reserves the right to conduct the interviews at the Department's Albany or New York City office, telephone, video conference or other online communication protocol.

If NYSDED decides to conduct oral presentations/interviews, such oral presentations/interviews will occur as follows:

1. Following the evaluation of proposals as provided above, the Evaluation Committee will determine the finalists to be interviewed as those having the highest average of all combined technical and cost scores. NYSDED anticipates that up to three (3) Licensing Agencies will be selected as finalists. The Department reserves the right to select any number of proposals as finalists.

2. Each finalist will be notified of the date and time of their oral presentation/interview to be held in person or via telephone/video conference. 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 if deemed necessary.

2.6 EVALUATION / AWARD 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 Licensing Agency 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.

2.7 CONTRACT AWARD

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

Upon selection, negotiations will be commenced with the successful Licensing Agency to enter into a contract setting forth the general terms that would govern any subsequent contract for services contemplated by this RFP. The Department will not enter into protracted negotiation with the successful Licensing Agency over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract. If the successful bidder 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 Licensing Agency.

2.8 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.

2.9 PROTEST AND APPEALS

2.9.1 Protests

Any interested party may file a protest, in writing, with 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.

2.9.1.1 Once received by NYSDED, the protest shall be referred either to an individual employee or group of employees of NYSDED for review. No such employee will have been actively involved in the procurement process being protested. DED will provide a copy of any protest filed to the successful applicant.

2.9.1.2 NYSDED 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.

2.9.1.3 NYSDED 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 applicant.

2.9.1.4 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 applicant. However, a contract or grant award will not be approved by NYSDED prior to the expiration of the time period for filing a protest, or, if a protest has been filed, before NYSDED issues a determination of the protest.

2.9.1.5 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.

2.9.1.6 NYSDED may accept, modify or reject such recommendation of its designee(s).

2.9.1.7 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.

2.9.1.8 All parties that have participated in the protest, as well as the original successful applicant, 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.

2.9.2 Appeals

All parties receiving a copy of the NYSDED 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

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

Each participating applicant must submit a complete proposal with the RFP response form attached as a cover page. The proposal must address each element of the Minimum Selection Criteria, Section 2.4. In addition, all proposals must include the information below. Applicants supplying incomplete responses may be deemed non-compliant. Please follow the format listed below:

3.1.1 Title page, indicating:
Name, address (both mail and email) phone number, contact person, federal ID number and NYS Vendor ID number if assigned. **It must also include a statement that the offer shall be firm and not revocable for a period of 60 days unless withdrawn in writing.**

3.1.2. An overview of your company. Please limit to two pages.

3.1.3. A discussion of the relevant experience of your company and your staff proposed to provide the Scope of Services. This shall include a demonstration of how your company and staff meet the experience requirements in Section 2.3. Please limit to three pages.

3.1.4 Resumes of the company's key personnel and other staff proposed to provide the Scope of Services.

3.1.5 A description of how your company proposes to accomplish the Scope of Services. Your proposal must address each item listed in section 2.1 and specific items below:

3.1.5.1 Outline a plan for pursuing licensing opportunities in domestic and international markets that align with our licensing strategy. Provide a sample client list with case studies on successful licensing partnerships (domestic and international) and how they were achieved.

3.1.5.2 Present one (1) domestic and one (1) international partnership opportunity idea that your agency has the ability to develop and deliver.

3.1.5.3 The Marks are frequently used without permission of the Department requiring that the successful bidder provide strong attention to this issue. Outline a system for identifying unauthorized use of Department's Marks including:

- Best practices to fight counterfeiting and trademark infringement
- Methods to provide enforcement opportunities to our law enforcement partners
- An idea for an incentive program that would help curtail counterfeiters and infringers

3.1.6 Limit your response to section 3.1.5 to ten (10) 8 1/2" x 11" pages, 12-point font. If any of the tasks associated with the project will be completed by non-company employees, qualifications and

experience of those individual must also be specified.

3.1.7 References as described in Section 2.3.3.

3.1.8 Budget Requirements - Appendix B (Budget) of this RFP must be completed and submitted as part of your proposal. **DO NOT USE AN ALTERNATIVE BUDGET FORMAT.**

3.1.9 Please complete and include Appendices D, E, F, and G (Procurement Lobbying Disclosures, Non-Collusive Bidding Certification, MacBride Fair Employment Principles and the Vendor Responsibility Information Form -with online certification date filled in **OR** a hard copy questionnaire attached).

3.1.10 The Successful Applicant may also be required to complete the following:
(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

3.2 CONDITIONS GOVERNING PROPOSALS

3.2.1 Only those applicants that have supplied complete information will be considered.

3.2.2 FOIL: 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 3.3).

3.2.3 The Department reserves the following prerogatives:

3.2.3.1 to accept or reject any or all proposals;

3.2.3.2 to decline to award a contract resulting from this RFP;

3.2.3.3 to require clarification from any applicant for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;

3.2.3.4 to waive or modify minor irregularities in proposals received;

3.2.3.5 to eliminate mandatory requirements unmet by all applicants;

3.2.3.6 to negotiate with any or all bidders, within the proposal requirements, to best serve the interests of the State of New York;

3.2.3.7 to amend the specifications contained in this RFP after its release, with due notice given to all potential applicants known to the Department to reflect the changed specifications;

3.2.3.8 to utilize any or all ideas submitted in the proposals received unless those ideas are covered by legal patent or proprietary rights and the applicant has so advised the Department in statements contained in the bidders proposal and in a cover letter annexed thereto;

3.2.3.9 to award contract(s) for any or all parts of a proposal; and

3.2.3.10 to elect to award contract(s) to one or more responsive and responsible applicants, 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.

3.2.4 By submitting a proposal, the applicant 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 FREEDOM OF INFORMATION LAW (FOIL)

The Department is subject to the Freedom of Information Law (FOIL), which governs the process for the public disclosure of certain records maintained by the Department. (See Public Officers Law (POL) Sections 84 and 90). All information submitted in response to this RFP is therefore subject to disclosure pursuant to FOIL, unless the content of the document falls under a specific exemption as outlined in POL Section 87 (2).

Individuals or firms which submit proposals to the Department may preemptively 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. The request must: (1) be in writing (2) specify the portion of the document for which the exemption is requested, and (3) provide specific justification for the requested exception.

3.4 NOTIFICATION OF AWARD

The Department will notify the successful applicant by written confirmation.

A contract defining all terms and conditions of the parties will be drafted by the Department. The contract may incorporate portions 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.

3.5 COST OF PROPOSAL

The Department is not liable for any and all costs incurred by the applicant or any individual or firm associated with the applicant, for work performed to prepare, explain and submit the applicant’s proposal. In addition, the Department is not liable for any and all costs incurred by the applicant or any individual or firm associated with the applicant to discuss, propose, negotiate or otherwise address in any way whatsoever, terms and conditions of any contract resulting from this RFP. Further, the Department is not liable for any

costs incurred until the contract has been approved by the Attorney General and the State Comptroller's Office.

3.6 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.

3.7 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 1.1 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 http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html or by calling the New York State Office of General Services; OGS Legal Services, Empire State Plaza, 41st Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. State Finance Law Sections 139-j and 139-k may be viewed at https://ogs.ny.gov/acpl

3.8 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.

SECTION IV - CONTRACTUAL INFORMATION

4.0 CONTRACT PREPARATION

A contract defining all terms and conditions of the parties will be drafted by the Department. The contract may incorporate any or all of this RFP, Standard Clauses for All New York State Contracts (attached hereto as APPENDIX A), and as much of the successful bidder's final proposal as may be appropriate, and other documents as may be deemed suitable by the Department.

After the Department and the successful applicant execute the Contract, it must be submitted for approval to the Attorney General's Office (AG) and the Office of the State Comptroller (OSC) before it will become effective. The Contract will not be considered fully executed until approved by both the AG and OSC.

The Department will not enter into protracted negotiation with the successful applicant over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract. If the successful applicant 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. Moreover, the Department reserves the right to cancel for cause any proposed amendment to the original contract which is not signed and returned to the Department within thirty (30) calendar days of receipt by the Contractor.

Note: All payments need to be submitted to New York State. Must be remitted.

4.1 CONTRACT TERM

The successful applicant shall perform the work and provide services set forth in this RFP for a period of three (3) years from the term start date, unless terminated early as provided for in section 4.2. Thereafter the contract may be renewed for two (2) additional years under the same terms and conditions. The total term of the contract shall not exceed five (5) years.

The Department reserves the right to cancel any contract resulting from this RFP as described in Section 4.2 below. Both parties agree that any contract resulting from this RFP shall end on the termination date unless terminated as described in section 4.2 Cancellation/Termination below.

4.2 CANCELLATION/TERMINATION

Once a contract 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.

4.2.1 Department Termination

Once a contract resulting from this RFP is fully executed and approved, the Department has the right to terminate it immediately for cause or for convenience at any time on thirty (30) days written notice to the Contractor. Regardless of the reason for cancellation, (cause or convenience), the Contractor shall continue to pay the Department's revenue as discussed in section 4.3 below, of all gross receipts.

If the contract is terminated for cause, the Contractor shall immediately turn over to the Department or the Department's designee, all agreements (licensing or otherwise) produced under the terms of the Contract. The Contractor shall immediately turn over any cash and all accounts receivables to the Department and shall not be entitled to any additional consideration from agreements produced under terms of the Contract.

If the agreement is terminated as a result of expiration of the term or terminated by the Department for convenience or any reason other than cause, the Contractor shall assign to the Department or the Department's Designee, within ninety (90) days from the termination or expiration of the agreement, all licensing agreements produced under the terms of this agreement. The Contractor may continue to invoice The Department their percentage of gross receipts as discussed in section 4.3 of this RFP for Licensing Agreements for a period which is the lesser of: one (1) year after termination or expiration of the agreement, or the date of the natural expiration of any licensing agreement and may continue to provide administrative services until such time as the Licensing Agreements are assigned to the Department or the Department's Designee. The Contractor shall not renew Licensing Agreements that terminate but shall notify the Department of the pending termination sixty (60) days in advance thereof. Alternatively, upon the Department's consent, the Contractor may turn over the administration of any or all License Agreements to the Department with no further consideration due the Contractor. No Licensing Agreement or other Agreement issued by the Contractor shall be for a term greater than five (5) years, unless separately agreed to in writing by the Department.

4.2.2 Contractor Termination

4.2.2.1 The Contractor has the right to terminate this Agreement, in whole for cause. In the event of a cause termination, the Contractor shall first give the Department a written Notice of Termination for Cause, therein specifying the reason(s) for termination (the event of default). The Department will than have sixty (60) days to correct the event of default, in which case the Contractor shall issue without delay, a notice to the Department rescinding the Notice of Termination for Cause. Late payment of funds by the Department shall not be considered a reason for a cause termination.

4.2.2.2 The Contractor may request termination of the Contract for reasons other than cause. Such termination will be at the discretion of the Department.

4.2.2.3 If the agreement is terminated by Contractor, the Contractor shall immediately turn over any cash and all accounts receivables to the Department and shall not be entitled to any

additional consideration from agreements produced under terms of the Contract.

4.3 PAYMENT PROCESS

4.3.1 Each License Agreement shall provide for all payments there under to be made to the Contractor on the Department's behalf.

4.3.2 In complete and total consideration for all of the Contractor's services hereunder relative to the administering of the Property, and relative to License Agreements, performed in a manner satisfactory to the Department, the Contractor shall be entitled to the compensation set forth in subparagraph 4.3.3 of this section 4.3.

4.3.3 Gross Receipts

4.3.3.1 With respect to gross receipts from any and all License Agreements pertaining to this RFP, the Contractor shall be entitled to percentages bid in Appendix B (Budget) of the Contractor's proposal. All gross receipts received on the Department behalf must be remitted in full to the Department. Contractor will invoice the Department for their percentage due as indicated below:

4.3.3.1.1 Any License Agreement for which the Contractor identifies the licensee, negotiates the terms of the License Agreement and administers the License Agreement, the Contractor shall be entitled to the percent bid on Line A of the Budget appearing in the Contractors proposal, of gross receipts actually received under said License Agreement. All gross receipts received on the Department behalf must be remitted in full to the Department. Contractor will invoice the Department for their percentage due. Said budget shall be in the form of Appendix B attached hereto;

4.3.3.1.2 Any License Agreement for which the Department identifies the licensee and provides the name of and contact person for the licensee(s) to the Contractor, and the Contractor negotiates the terms of the License Agreement and administers the License Agreement, the Contractor shall be entitled to the percent bid on Line B of the Budget appearing in the Contractors proposal, of gross receipts actually received under said License Agreement. All gross receipts received on the Departments behalf must be remitted in full to the Department. Contractor will invoice the Department for their percentage due. Said budget shall be in the form of Appendix B attached hereto;

4.3.3.1.3 Any License Agreement for which the Department assigned the licensee to the Contractor, and the Contractor administers the License Agreement, the Contractor shall be entitled to the percent bid on Line C of the Budget appearing in the Contractors proposal, of gross receipts actually received under said License Agreement. All gross receipts received on the Department behalf must be remitted in full to the Department. Contractor will invoice the Department for their percentage due. Said budget shall be in the form of Appendix B attached hereto; or

4.3.3.1.4 Contractor shall be entitled to a blended hourly rate for the processing of license agreements which it submits on Line D of Appendix B attached hereto.

4.3.3.1.5 IMPORTANT – Contractor must bid BOTH the percentages referenced in 4.3.3.1.1-3 above and a blended hourly rate for which they would process license agreements for the Department. Whether Contractor will be compensated based on a percentage or hourly rate may vary for specific license agreements and will be at Department's discretion. In the event Contractor is to be paid the blended hourly rate for processing of a license agreement, the Contractor, upon consent of the Department, shall be entitled to a portion of the gross receipts owed to the Department from receipts collected by the Contractor on the Department's behalf from other License Agreements in which Contractor was paid a royalty percentage pursuant to 4.3.3.1-3 above and shall submit an invoice to the department for those funds.

4.3.3.2 For each License Agreement subject to sections 4.3.3.1.1, 4.3.3.1.2 and 4.3.3.1.3 above, the Department and the Contractor may execute a letter agreement setting forth the agreed upon percentage of gross receipts the Contractor shall be entitled to as set forth in Appendix B (Budget). Each such letter agreement shall be incorporated in this Agreement and in every respect made a part of the Agreement as if fully set forth herein.

4.3.3.3 The Department shall be under no obligation to threaten or bring suit against any licensee under a License Agreement to collect any sums of money due there under. To the extent that the Department makes claims or brings suit to collect such sums of money due, the Contractor's compensation for such License Agreement shall consist of the percentage of gross receipts realized if any to which the Contractor would otherwise be entitled pursuant to this section 4.3, after the Department has deducted all expenses required to collect such gross receipts, including, without limitation, all court costs, attorneys' fees and any other costs and expenses.

4.3.3.4 Notwithstanding anything contained in this Agreement to the contrary, the Contractor shall not be entitled to any compensation arising from or relating to orders for goods or services, by or on behalf of the Department primarily for its own use or resale, from licensees pursuant to License Agreements. The Contractor shall cause the licensees under the License Agreements to be bound by provisions which allow the Department to purchase quantities of goods covered by said License Agreements at a rate below the price charged by the licensee to its customer base. Said purchases shall be free from royalty fees or commissions. Rates shall be negotiated on a license by license basis. The use by the Department contemplated pursuant to this subdivision 4.3.3.4 is for promotional giveaways/value-added incentive items or for resale on its or others web sites or via catalog or retail sale via storefront or information center.

4.3.4 In consideration for all of the Contractor's services hereunder for assisting the Department relative to royalty free agreements, performed in a manner satisfactory to the Department, the Contractor shall be entitled to the compensation set forth in subparagraph 4.3.5 of this section 4.3. Furthermore, services relative to License Agreements are excluded from compensation under subparagraph 4.3.5 below and are covered in subparagraph 4.3.2 and 4.3.3 above. However, in the event that Contractor incurs legal fees in connection with this agreement including, but not limited to, legal fees defending enforcement of this agreement or specific licensing agreements, such legal fees may be charged to the Department at the rate set forth in the Budget Appendix B section D Blended Hourly Rate Professional Services.

4.3.5 For consulting and administrative services relative to royalty free agreements which have been requested and pre-approved in writing by the Department, the Contractor shall be entitled to blended hourly rates as bid on lines E and F of the Budget appearing in the Contractor's proposal, said Budget shall be in the form of Appendix B attached hereto. The Contractor may be asked by the Department and must be willing to provide consulting and administrative assistance (such as but not limited to legal counsel, registration of Marks, and opposition (defense) of Marks similar in design to the Department's), hereafter ancillary services, at the blended hourly rates for services. Specifically excluded from the aforesaid ancillary services are Licensing Agreements. In payment for said ancillary services, the Contractor, upon written authorization from the Department, shall be entitled to a portion of the gross receipts owed to the Department from receipts collected by the Contractor on the Department's behalf from License Agreements as indicated below. Contractor shall invoice the Department for those funds.

4.3.5.1 In the event the Department requires the consulting and administrative services of the Contractor relative to a particular royalty free agreement and/or ancillary services, the Department shall provide a written request to the Contractor outlining the specific services to be performed and the scope thereof. The Contractor shall then provide the Department with a written estimate of the requisite hours to perform the services. The Contractor shall not begin work on the project until it receives written approval of the estimate, or modifications thereof, from the Department. In the event the Contractor at any point anticipates exceeding the approved estimate, it must notify the Department and provide a proposed revised estimate of the additional hours needed to complete its tasks. The Contractor shall not perform any services on a project beyond the approved estimate until the revised estimate is approved by the Department in writing.

4.3.5.2 The compensation due the Contractor for services provided as per section 4.3.5.1 above shall be equal to the number of hours that are pre-approved by the Department and performed by the contractor multiplied by the blended hourly rates itemized in the Budget appearing in the Contractors proposal.

4.3.6. Administrative & Fiscal Requirements

4.3.6.1 Within thirty (30) days following the end of the quarter in which it actually receives gross receipts (gross revenue) under any License Agreement, the Contractor shall remit gross revenue to the Department, and invoice the Department their percentage of revenue due under section 4.3.3.1 of this RFP. The Contractor shall, within thirty (30) days following the end of each quarter in which it provides services relative to royalty free agreements and/or ancillary services, submit documentation to the Department Project Director (hereafter referred to as DPD) outlining the total number of hours of services performed, and when permitted (see note 3/ of Appendix B) travel, administrative and other necessary expenses, for the applicable quarter in agreement with written estimates (provided to and approved by the Department in advance), segregated by royalty free agreement and ancillary services and invoice the Department what they are owed. The DPD shall review said documentation and provide the Contractor with a response outlining the number of hours approved. In the event of a dispute concerning the number of hours approved, the Contractor may only invoice the number of hours actually approved for payment in writing by the DPD.

4.3.6.2 In the event that the Contractor fails to make said remittance to the Department within the

period of time prescribed in section 4.3.6.1, the Contractor shall be liable and shall pay to the Department the remittance due, plus interest thereon at a rate of twelve percent (12%) per annum.

4.3.6.3 Together with said remittance, the Contractor shall furnish to the DPD and the Department's Finance Office a statement of all gross receipts received by the Contractor during the preceding quarter under any License Agreement.

4.3.6.4 On a bi-weekly basis during the term of this Agreement, the Contractor shall furnish the DPD with an activity report, which shall include, but not be limited to, a discussion and analysis of the services and activities of the Contractor hereunder, including marketing efforts, License Agreements concluded or under development, services relative to royalty free agreements, ancillary services including legal enforcement or other pending legal issues, and a discussion of the projected and recommended activities of the Contractor on behalf of the Department, and such further information, explanation or recommendations as the DPD may request.

4.3.6.5 On a quarterly basis during the term of this Agreement, the Contractor shall furnish the DPD and the Department's Finance Office (Attn: Accounts Receivable) with a revenue report detailing all licensing receipts and distribution thereof for the reporting period, year-to-date, and inception-to-date for each licensee.

4.3.6.6 On a quarterly basis after the expiration of this Agreement, the Contractor shall furnish the DPD and the Department's Finance Office with a revenue report and revenue, the same as is defined in paragraph 4.3.6.5 above. This paragraph 4.3.6.6 shall survive the expiration of this Agreement for a period which is the lesser of: one (1) year after termination or expiration of the agreement, or the date of the natural expiration of any licensing agreement. Alternatively, with the Department's consent, the Contractor may turn over the administration of any or all License Agreements to the Department with no further consideration due the Contractor.

4.3.6.7 Upon receipt of the Department's occasional written request, and within thirty (30) days following the end of each fiscal year, the Contractor shall furnish to the DPD and the Department's Finance Office a detailed statement, certified by an officer of the Contractor, showing all gross receipts received by the Contractor during the preceding fiscal year and a delineation of the distribution of the same.

4.3.6.8 Within ninety (90) days following the effective date of termination of this Agreement, including the initial termination (see section 4.1), the Contractor shall furnish to the DPD and the Department's Finance Office a detailed financial statement certified by an independent certified public accountant, showing all gross receipts received by the Contractor during the term of this Agreement and any renewals thereof.

4.3.6.9 All statements of gross receipts received by the Contractor on behalf of the Department hereunder shall be true, complete and accurate, and shall be calculated in accordance with generally accepted accounting principles applied on a consistent basis.

4.3.7 The following subsections of section 4.3 of this RFP shall survive termination of the contract; 4.3.3.1, 4.3.3.3, 4.3.3.4, 4.3.6.1 (excluding reference to 4.3.5 which shall not survive the contract), 4.3.6.2, 4.3.6.3, 4.3.6.4 (excluding marketing efforts and royalty free agreements), 4.3.6.5, 4.3.6.6,

4.3.6.7, 4.3.6.8 (no more frequently than bi-annually), 4.3.6.9., as well as sections 4.4, 4.5, and 4.7.

4.4 INTELLECTUAL PROPERTY/PERSONAL PROPERTY

The Department reserves the right to include intellectual/personal property provisions in the Contract, 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, all intellectual property is owned by Department, including works made or performed for hire. Specifically exempt from the provisions of this paragraph are property, plant, equipment and preexisting software provided by the Contractor to the Department, for the purpose of carrying out the provisions of this RFP. Property, plant, equipment and preexisting software may become subject to intellectual/personal property regulation when agreed to in writing by the parties.

4.5 REPORTS

The successful bidder will provide revenue and activity reports as described in section 4.3.6 of this RFP. In addition to reports discussed here and elsewhere in this RFP, the Department reserves the right to request other reasonable programmatic and/or financial reports. When requested to do so, the successful bidder will provide the Department with reports in a reasonable period of time and in an acceptable format.

4.6 SUBCONTRACTS

4.6.1 Subcontracting is permitted when required by the Contractor to fulfill the terms and conditions of this RFP. Your proposal must identify the name and address of the subcontracting firm or firms and explain which element(s) of the Scope of Service (section 2.1) and Budget (see Appendix B) the subcontractor(s) is responsible for. The Department is an equal opportunity Contractor and reserves the right to review and approve all subcontracting firms (see section 4.20 for details on Minority and Women-Owned Business Enterprise subcontracting).

4.6.2 After the contract resulting from this RFP, if any, is awarded, any subcontracts or purchases in excess of $15,000 that were not originally identified in the bidder's proposal must adhere to the following:

4.6.2.1 For subcontracts or purchases which are competitively bid, Contractor must request proposals from a minimum of three qualified firms, and the lowest responsible bidder shall be accepted unless otherwise approved in writing by the Department.

4.6.2.2 Subcontracts or purchases that are sole or single source (entered into without submission to competitive bid) must be approved in writing by the Department prior to entering into the agreement.

4.6.3 Sole/Single Source Contracts

For purposes of this agreement, sole source contracts are defined as where only one vendor is capable of supplying the required services or properties because such service or property offered is so unique that it cannot be duplicated or obtained elsewhere or involves creative artistry of a similar nature.

Single source contracts are defined as where, although more than one vendor can supply the required services or properties, circumstances of a material and substantial nature make the awarding of the contract to one vendor over the others appropriate.

The requirement for competitive bidding may be waived upon prior written approval of the DPD provided that prior to the acceptance of such services or properties, the Contractor provides a detailed written statement to the Department which describes the sole or single source determination, the alternatives considered and the terms of the proposed contract. In addition, the Contractor must establish to the satisfaction of the Department, the reasonableness of the proposed expenditure. In general, the price charged to the Department should be no greater than the price charged in the private sector. Sole/single source contracts are to be avoided whenever possible.

4.7 FIDELITY BOND

Within sixty (60) days of ratification of this Agreement by the Office of the State Comptroller, the Contractor will deliver to the Department a fidelity bond payable to the Department. Said bond shall remain payable during the term of the Contract and shall survive the termination of the contract so long as payment for Licensing Agreements are due the Department. The bond will be payable in the amount of Three Hundred Thousand Dollars ($300,000). Said bond must be maintained for the term of the Agreement including any extensions. On each anniversary of the contract including anniversaries that occur after termination, the Department may reassess the amount of the bond. The Department may direct the Contractor to increase the amount of the bond as necessary to protect the interests of the Department. The Parties agree that the Bond required pursuant to this section is not a performance bond. The bond required is for the protection of the Department against the fraud or negligence of the Contractor or Subcontractor(s) with respect to revenues generated relative to this Agreement. The Contractor shall be entitled to invoice the cost of the bond not to exceed one percent (1%) of the bonds face value, from Licensing Agreement gross receipts.

4.8 PROCEDURE UPON CANCELLATION/TERMINATION

Upon the cancellation/termination of the Contract, the Contractor shall comply with all Department cancellation procedures including, but not limited to:

4.8.1 Submission within thirty (30) days of a final activity report, which report shall include a detailed evaluation of the Contractor's activities pursuant to the Contract;

4.8.2 Submission within ninety (90) days of a final financial statement of all gross receipts actually received by the Contractor pursuant to the Contract and any renewals thereof, together with distributions relative to same. Such statement shall be certified by an independent certified public accountant;

4.8.3 Not incurring any further obligations under the terms of the Contract beyond the cancellation date, except as provided for in section 4.3.7;

4.8.4 The Contractor shall carry out all reasonable and appropriate written directions of the DPD with respect to the disposition of all goods bearing the Property; the originals of License Agreements and Royalty Free Agreements; the originals of payment records relating to License Agreements; logotype sheets and guidelines relating to the Property; designs relating to the Property; and any other books, records, accounts and documents relating to the performance of the Contractor hereunder; provided, however that nothing herein shall be construed as precluding the Contractor from maintaining business files relating to the subject hereof in the ordinary course of its business. All materials shall be maintained for a minimum period of seven (7) years after termination of the contract or termination of a License Agreement whichever is later;

4.8.5 Upon the written request of the Department's Deputy Commissioner and General Counsel or Assistant Director Office of Fiscal Management, the Contractor shall notify all licensees under License Agreements by certified mail, returned receipt requested (with a copy of the same to the Department), that further remittances due pursuant to their License Agreements shall be made to the Department or such other party as the aforesaid individuals may designate; and

4.8.6 Upon the cancellation/termination of the Contract by the parties, the Contractor and the Department shall be entitled to their respective percentages of the gross receipts actually received after the effective date of said cancellation under any License Agreement entered into and executed by all the parties concerned prior to the effective date of said cancellation. The Contractor's entitlement to such gross receipts shall be limited to the duration set forth in 4.2.1 or 4.2.2 set forth herein.

4.9 CONFIDENTIALITY; PRIVILEGE

4.9.1 The Contractor hereby agrees to maintain all material non-public information which it learns from the Department, other State employees or their contractors, subcontractors or agencies in the performance of the Contractor's duties hereunder as confidential information proprietary to the Department, and the Contractor shall have no right to assert any proprietary interest in such information either during the term of this Agreement or afterwards. The Contractor shall not use such information to the disadvantage of the Department. The Contractor shall not disclose or divulge such non-public information to any third party or cause the same to be disclosed or divulged without the prior written approval of the DPD.

4.9.2 The Contractor shall invoke all applicable privileges to the greatest extent permitted by law in any proceedings or forum in which the disclosure of such communications is sought. Within two (2) business days of receiving notification that the disclosure of such communications may be demanded, ordered, or otherwise requested or compelled, the Contractor shall notify the Department in writing thereof, and shall seek, move, or otherwise support the motion, request, or other application of the Department or its legal representative to intervene or otherwise participate in such proceedings to protect against such disclosure, with all attorneys' fees and related costs arising from the State of New York's participation in such a motion to be borne by the State of New York in any such proceedings. The Contractor shall disclose such communications only upon asserting any applicable privilege; receiving a final order, from the court or other forum in which such disclosure is sought, compelling disclosure of such communications and specifying that the Contractor's failure to comply therewith is punishable by law; and after all appeals and reviews there from, have been exhausted.

4.9.3 The obligations contained in section 4.9 shall survive the expiration or cancellation of this Agreement.

4.10 CONFLICTS OF INTEREST; RESTRICTIVE COVENANTS

In consideration of the compensation paid to the Contractor pursuant to sections 4.3 and in special consideration of the compensation paid to the Contractor pursuant to Paragraphs 4.8.6 hereof:

4.10.1 The Contractor hereby represents and warrants that it has completely and accurately disclosed to the Department in writing the nature and scope of any and all efforts it is currently undertaking which may constitute a Conflict of Interest.

4.10.2 During the term of this contract or any renewals thereof, and for a period commensurate with the survival provision of section 4.2.1 and 4.3.7 thereafter, regardless of the circumstances under which the contract had expired or was canceled (hereinafter called the "designated period"), the Contractor hereby agrees to completely and accurately disclose to the Department immediately in writing the nature and scope of any and all efforts, which to the best of its knowledge, it proposes to undertake in the Territory which may constitute a Conflict of Interest. During the designated period, in no event shall the Contractor, directly or indirectly, engage in a Conflict of Interest in the Territory without notifying the Department in writing and obtaining its prior written consent, as set forth in subsection 4.10.2.1 of this section 4.10.

4.10.2.1 The Department shall advise the Contractor in writing of whether it consents to the proposed Conflict of Interest within ten (10) business days of receiving the Contractor's written notification of a potential Conflict of Interest. During the designated period, the Contractor hereby agrees that it shall not, directly or in directly, engage in a Conflict of Interest in the Territory in the event that the Department does not consent to the Conflict of Interest.

4.10.2.2 The Contractor hereby specifically acknowledges and agrees that the representations, warranties, covenants, and obligations described in this RFP and provided for in the Contractor’s proposal are material provisions to be relied upon by the Department in entering into a contract. The Contractor specifically acknowledges that it is advised by the Department to review this entire RFP and the contract resulting from it if any, with its counsel, and that the Contractor has satisfied itself that the representations, warranties, covenants and obligations, terms and conditions set forth therein are reasonable in all respects, and that the same are valid and enforceable.

4.10.2.3 The Contractor hereby specifically acknowledges and agrees that a violation of any restrictive covenant or obligation contained in sections 4.9 or 4.10 hereof shall cause irreparable harm to the Department, and that the Department shall be entitled to an injunction without proof of special damages, together with the costs and reasonable attorneys' fees incurred by the Department in enforcing its rights under sections 4.9 and 4.10 hereof.

4.11 REPRESENTATIONS AND WARRANTIES BY THE DEPARTMENT

The Department represents and warrants that:

4.11.1 it has the legal competence to grant the rights herein to the Contractor if and when a contract is entered into;

4.11.2 to the best of its knowledge and belief, the use of the Property as herein contemplated will not infringe upon the rights of any other person, firm or corporation in the United States.

4.12 REPRESENTATIONS, WARRANTIES, AND COVENANTS BY THE CONTRACTOR

The Contractor represents warrants and covenants that:

4.12.1 It is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which its home office is located and is, duly authorized to conduct business in the State of New York;

4.12.2 It has the legal power and authority to execute and deliver any contract resulting from this RFP and to consummate the obligations and activities contemplated on its part hereby. The execution and delivery of any contract resulting from this RFP has been duly authorized by the Contractor, and no other proceedings by the Contractor are necessary to authorize the execution and delivery of a contract or the performance of the Contractor's obligations hereunder;

4.12.3 All statements of fact contained in the Contractor's proposal, are true, complete, and accurate and shall be true, complete, and accurate during the term of the Contract and any extension thereof; and neither it, nor any of its directors, officers, employees, consultants or subcontractors has or will give anything of value to anyone to procure a Contract between the parties or to influence any official act or the judgment of any person in the negotiation of any of the terms of any Contract resulting from this RFP.

4.13 RIGHT OF THE DEPARTMENT TO USE THE PROPERTY

Nothing in this RFP or any Contract resulting from it, shall be construed to limit the right of the Department:

4.13.1 to make, use, sell or modify the Property in connection with any commercial or other activity for its own benefit, or

4.13.2 to grant royalty free agreements, including, but not limited to, licenses granted pursuant to the Department's Tourism Matching Funds Program, cooperative advertising agreements, sponsorships, or agreements to promote various festivals, fairs, tournaments, or other tourist attractions in and around the State.

4.14 PRIOR APPROVAL OF LICENSE AGREEMENTS AND MATERIALS UNDER LICENSES

4.14.1 The Contractor shall obtain the prior written approval of the Department's Counsel's Office for all License Agreements proposed or negotiated by the Contractor hereunder. The Contractor hereby specifically agrees and acknowledges that the Department shall have the absolute right to disapprove, with or without cause and at its sole discretion, any program, person, firm, corporation, proposed or negotiated license, or License Agreement hereunder.

4.14.2 The content, form and substance of each such License Agreement shall be solely within the discretion of the Department. All License Agreements must provide the Department with complete control of the nature and quality of all licensed goods or services there under.

4.14.3 No License Agreement shall be entered into without the Department's written approval.

4.14.5 The Contractor shall promptly furnish to the Department's Counsel's Office three (3) true copies of each and every License Agreement negotiated on the Department's behalf for approval, after the same are executed by the Contractor and the Licensee. If the Department approves, it will forward two (2) fully executed copies to the Contractor, with one to be forward by the Contractor to the Licensee.

4.14.6 All License Agreements negotiated by the Contractor shall provide that the Licensee is to furnish the Department's DPD with art work, prototypes, and samples of all items manufactured, distributed or sold pursuant to the exercise of the rights therein licensed. All products, as well as advertising and promotional materials related thereto, shall be subject to the DPD's approval at the appropriate

stages of their development. Whenever the Department is required to give or to render an approval hereunder, then the Contractor shall send written notice requesting such approval to the DPD. The DPD will then notify the Contractor as to its approval or disapproval. Moreover, with regard to Licensing Agreements, the Contractor shall also implement the approval process described in section 4.14.5.

4.15 APPROVAL OF AFFILIATE LICENSING AGENCY CONTRACTS

The Contractor shall obtain the prior written approval of the DPD for the appointment of an affiliate (subcontractor) licensing agency, if any, and any and all contracts, agreements or any other arrangements that the Contractor proposes to enter into with any affiliate licensing agency hereunder. Moreover, the Contractor shall also implement the approval process described in section 4.14.5. Upon the full execution thereof, the Contractor shall promptly furnish to the Department a true copy of each and every written contract or agreement with the affiliate licensing agency, if any.

4.16 OWNERSHIP OF PROPERTY

The Contractor hereby specifically agrees and acknowledges that it does not, nor shall it, have any proprietary rights in and to the Property (or any part thereof) whatsoever, nor shall it hold itself out as having any such rights or any other rights or powers inconsistent with the provisions of the Contract.

4.17 EXPENSES

4.17.1 Unless otherwise specifically stated, the Contractor agrees to bear all promotional, service, operating, collection, overhead and other expenses and costs normally and customarily incurred by it in the general performance of its services hereunder.

4.17.2 The Department agrees that it will reimburse the Contractor for necessary charges approved in writing by the Department including but not limited to registration fees and filing fees incurred on behalf of the Department in connection with the establishment, maintenance, opposition and defense of the property, and for other ancillary services as provide for in section 4.3.5. If the Department decides to discontinue entering into License Agreements for any of the items set forth in section 4.18.1 hereof, the Department shall give the Contractor thirty (30) days prior written notice of such intention. Upon receipt of such notice, the Contractor agrees to cease all exploitation of the same. The Contractor agrees to cooperate fully with the Department in connection with the foregoing, including, but not limited to, cooperating with the Department in such trademark, service mark and copyright registrations as the Department, in its sole discretion and sole expense, may from time to time desire to make.

4.18 DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

4.18.1 "Property" shall mean the names, symbols, designs, logos, trademarks, trade names or service marks of the Department, which presently include the trademarks, service marks and designs set forth in Appendix H attached hereto and such other names, symbols, designs, logos, trademarks, trade names and service marks that the Department or the State of New York has, or may hereafter obtain, right, title and interest thereto.

4.18.2 "Territory" shall mean all places throughout the universe, in which the Department has or may obtain

any proprietary rights in and to the Property.

4.18.3 "License Agreement" shall mean any agreement or arrangement, whether in the form of a license or otherwise, made during the term of the Contract in which the Contractor, on behalf of the Department, with the written approval of the Department and the written approval of the Department of Law and the Office of the State Comptroller where applicable, grants to a third party the right to make, use, sell, distribute, advertise, promote, or otherwise commercially exploit goods or services bearing the Property in exchange for the payment of lawful currency or other compensation or consideration. License Agreement shall not include those agreements as defined in section 4.18.4 below.

4.18.4 "DPD" shall mean the Department's Project Manager, his/her designee or such other person as may be designated in writing by the Department.

4.18.5 "Conflict of Interest" shall mean any situation in which: (i) the representation or proposed representation of, or agreement to represent, for oneself or another, a person or entity and/or their literary, entertainment and similar properties, names, symbols, designs, logos, trademarks, trade names, service marks, or copyrights in the Territory would be competitive with promoting the State as a desirable tourist attraction or its economic development; or (ii) the solicitation or diversion of, attempt to solicit or divert, or agreements to solicit or divert, for oneself or another, any business of any nature from any third party in the Territory who has dealings with respect to License Agreements or Royalty Free Agreements. The Department and the Contractor hereby agree that any decision concerning the existence of an actual or potential Conflict of Interest shall be conclusively and reasonably made by the Department.

4.19 APPOINTMENT

4.19.1 The Department will engage the Contractor to act as its non-employee representative throughout the Territory for all fields of use; (i) for the purpose of conceiving and establishing plans to enter into License Agreements in accordance with the Department's objectives; (ii) to seek out persons, firms or corporations to enter into License Agreements; and (iii) to solicit and negotiate License Agreements on the Department's behalf with any person, firm or corporation. The Department intends but does not guarantee that the terms and conditions of this section 4.19.1 be sole and exclusive to the successful bidder. This is particularly but not exclusively necessary to meet the terms and conditions of prior contracts and agreements.

4.19.2 The Department shall engage the Contractor to act, upon request, as its non-exclusive non-employee representative throughout the Territory for all fields of use, (i) for the purpose of assisting the Department with conceiving and establishing plans to enter into royalty free agreements and provide ancillary services, in accordance with the Department's objectives; (ii) to assist the Department in seeking out persons, firms or corporations to enter into royalty free agreements; and (iii) to assist the Department in the solicitation and negotiation of royalty free agreements on the Department's behalf with any person, firm or corporation.

4.19.3 The Contractor, as an independent contractor, shall accept its appointments as such from the Department.

4.20 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES ("MWBE") PARTICIPATION AND EQUAL EMPLOYMENT OPPORTUNITIES ("EEO")

4.20.1 General Obligations:

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business in the performance of ESD contracts. For purposes of this Contract, however, goals will not be established due to the unavailability of minority and women-owned businesses for performance of this Contract.

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

STANDARD CLAUSES FOR NYS CONTRACTS

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

TRADEMARK LICENSING AGENCY
RFP 23-6155

Applicant Company Name:_____

A. License Agreement for which the Contractor identifies the licensee, negotiates the term of the License Agreement and administers the License Agreement. *1, 2*

_____%

B. License Agreement for which the Department identifies the licensee and provides the name of and contact person for the licensee to the Contractor and the Contractor negotiates the term of the License Agreement and administers the License Agreement. *1, 2*

_____%

C. License Agreement for which the Department identifies the licensee and negotiates the terms of the License Agreement and the Contractor administers the License Agreement. *1, 2*

_____%

D. Blended hourly rate for license agreements

$_____

E. Blended hourly rate professional services. *3*

$_____

F. Blended hourly rate administrative/clerical services. *3*

$_____

Notes:

1. *Contractor's fee expressed as a percentage of gross revenue collected (constructively received) from Licensing Agreements.*

2. *The percentages described above are inclusive of all Contractor expenses including travel and administrative.*

3. *Contractor expenses including travel and administrative. For oppositions, defense of property and other ancillary services as discussed in section 4.17.2, travel (at rates permitted NYS employees, see Appendix C), administrative and other necessary expenses will be reimbursed to the Contractor at cost provided that such expense are approved in advance and in writing by the DPD.*

DO NOT CHANGE THE FORMAT OF THIS BUDGET

APPENDIX C

NYS CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES

Any travel (if applicable) related to the project must be approved by DED 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 web site: http://www.osc.state.ny.us/agencies/travel/travel.htm

Allowance for lodging and meals have been set at the Federal Government allowances for their employees. The State allowance will change when the Federal allowances change. This usually occurs on an annual basis. Reimbursements will be made at the current published rates.

Receipts for lodging are mandatory. Receipts are not required for meals when the traveler is in overnight travel status. The Schedule which lists rates currently in effect for all destinations within the State is available at the New York State Office of the State Comptroller's website: http://www.osc.state.ny.us/agencies/travel/travel.htm

The per diem allowances are based on the county of assignment, therefore, the traveler's destination, as noted on the claim for reimbursement, must include the county, as well as the city. The Schedule ends with the rate for all locations (counties) not listed on the Schedule.

Please note that all applicable taxes are included in the maximum lodging allowances. No reimbursement for taxes will be made separately.

Rates for areas outside of New York, the continental United States and foreign areas, are also available at the New York State Office of the State Comptroller's Website at:
http://www.osc.state.ny.us/agencies/travel/travel.htm

The maximum reimbursement for lodging and meal expenses may not exceed the lodging and meal allowances for the area of travel. If the cost of lodging exceeds the maximum allowance for lodging in the area of travel, the traveler's meal allowance must be used to offset the higher lodging rate.

No reimbursement will be allowed for lunch.
To be entitled to full meal allowances, traveler must be in travel status overnight and eligible for reimbursement for breakfast and dinner.

Meal Allowance for Non-Overnight Travel - When a traveler is in travel status for less than a day and lodging charges are not incurred, reimbursement will be made for breakfast and dinner with receipts, at the allowed rates.

Transportation Costs:
Any common carrier transportation costs incurred should be at coach rate unless extenuating circumstances prevent such, in which instance a justification must be submitted with the expense.

Receipts/air passenger coupons are required for reimbursement.

Transportation by personally owned automobiles will be reimbursed at the IRS rate in effect at the time of travel unless the Department agrees to an alternative rate.
All taxi charges must be substantiated by a receipt.

***NOTE**: Incidental expenses such as tips to bellmen, porters, hotel maids, etc., continue to be included in the Federal allowance.*

APPENDIX D – 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". 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

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 Procurement Contracts. Further information about these requirements can be found at http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html or by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41st Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. E-mail: Anne.Phillips@OGS.State.NY.US.

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)

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.

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 E

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_____

APPENDIX F

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 G

VENDOR RESPONSIBILITY INFORMATION

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:

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

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

Appendix H- Mandatory Requirements Checklist
List 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)

_____ Bidder's Identifying Data form

_____ Full Proposal addressing each element of RFP Sections 3.1.1

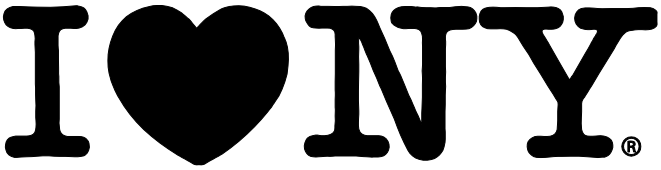
_____ Appendix B – Budget Forms – separate document (not to be bound or scanned with the rest of proposal as the budget will be evaluated separately from the technical proposal)

_____ Appendix E – Non-Collusive Bidding Certificate

_____ Appendix F – Nondiscrimination: MacBride Fair Employment Principals

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

_____ Appendix D – Procurement Lobbying Disclosure

_____ Identical electronic version of your entire proposal (including completed forms) sent to tourismrfp@esd.gov.

APPENDIX I – LOGOS