



Empire State Development

Andrew Cuomo
Governor

Kenneth Adams
ESD CEO

New York State Department of Economic Development

REQUEST FOR PROPOSALS

**I LOVE NEW YORK
Get Outta Town Bus**

RFP Number: 14-6095

**PROPOSALS DUE: August 6, 2014
BY 3:00 P.M.**

RFP Released: July 15, 2014

Request For Proposal (RFP) Response Form

I LOVE NEW YORK GET OUTTA TOWN BUS - RFP # 14-6095

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

- Attached is our proposal**
- We do not intend to submit a proposal for the following reason(s):**

Name of Organization: _____

Address: _____

- Is this address your company's principal place of business? Yes _____ No _____

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

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

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

- Will this product or service be substantially produced in NYS: Yes _____ No _____
- Subject to the "Conditions Governing Proposals" article stated in this RFP, proposals must be in agreement with all terms and conditions of this RFP.

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

Signature: _____ **Date:** _____

Type or Print Name and Title: _____

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

NEW YORK STATE
DEPARTMENT OF ECONOMIC 14-6095
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SECTION I - ADMINISTRATIVE INFORMATION

1.0 Purpose

The New York State Department of Economic Development, D/B/A Empire State Development (“ESD”), on behalf of the State of New York (“NYS” or “State”), is issuing this Request for Proposal (“RFP”) for interested parties for the procurement of a tour operator(s) or bus company to provide transportation for the I LOVE NEW YORK Get Outta Town Bus to New York State designated ski areas for the 2014-2015 season, craft beverage trails and New York State events. The tour operator(s) or bus company will work with ESD, Division of Tourism and the NYS Department of Agriculture & Markets (“DAM”) to develop the desired locations for the I LOVE NEW YORK Get Outta Town Bus. In turn, ESD, Division of Tourism will connect industry partners to assist with ticket repackaging and logistics.

The purpose of this RFP is to select a tour operator(s) or bus company who will operate the official I LOVE NEW YORK Get Outta of Town bus from New York City and the Toronto area, to New York State ski resorts, craft beverage trails and selected NYS events, ultimately driving additional visitation throughout New York State.

1.1 Inquiries

All questions must be submitted in writing via email to tourismrfp@esd.ny.gov with “I LOVE NEW YORK GET OUTTA TOWN BUS” in the subject line. **Please do not contact the Department by telephone. Questions must be received by the Department no later than July 22, 2014 by 3:00 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.

1.2 Schedule of Pertinent Dates

Release of RFP	July 15, 2014
Deadline for Receipt of Questions	July 22, 2014 by 3:00 PM EST
Submission of Proposals	August 6, 2014 by 3:00 PM EST
Oral Presentations/Interviews	By appointment at the discretion of NYSDED
Award of Contract	August/September 2014 (estimated)
Projected Contract Start Date	Fall 2014 (estimated)

1.3 Submission of Proposals

Interested individuals or firms must submit their proposals no later than **3:00 P.M. U.S. Eastern Standard Time, on August 6, 2014**. Submit four (4) copies of the proposal to the following address:

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

**** In addition to the hard copies, the Applicant MUST submit an identical electronic version of the proposal in MS Word/Excel or compatible **editable** format to tourismrfp@esd.ny.gov with “I LOVE NEW YORK GET OUTTA TOWN BUS – 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.** Zip files cannot be accepted.**

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

1.4 Designated Contacts

The designated Department Project Director (DPD) for this project is:

Name: Rowena Sahulee, Director of Tourism Marketing, Licensing & PR
Division of Tourism

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

SECTION I - ADMINISTRATIVE INFORMATION

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

2.0 Background

New York State Department of Economic Development

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

The Division’s overall campaign strategy is to market New York State as a premier year round, multi seasonal destination. The Department has substantive marketing programs promoting all of NYS seasonally, thematically and publicizing the facilities and attractions of NYS.

2.1 Scope of Services

The Division of Tourism, I LOVE NEW YORK is looking for a tour bus operator(s) or bus company who will provide transportation along with ski lift ticket, lesson and/or rental; transportation to five NYS craft beverage regions; and transportation to NYS events and festivals from the New York City and Toronto-area. The Division of Tourism will work with the selected operator/company to make the connections to the ski resorts, beverage trails and event producers on volume discount ticketing. The Division of Tourism will work with the selected operator/company on the schedule of viable ski trips and tours based on their experience and knowledge.

The ski trips are to start with the 2014-2015 winter season.

From New York City, the desired mountains to visit are:

- Region: Hudson Valley
Thunder Ridge, Belleayre
- Region: Catskills
Plattekill, Hunter, Windham
- Region: Adirondacks
West, Gore, Whiteface, Titus
- Region: Central New York
Greek Peak, Toggenburg, Labrador and Song Mountains

From the Toronto-area, the desired mountains to visit are:

- Region: Finger Lakes
Bristol
- Region: Greater Niagara
Holiday Valley, Kissing Bridge
- Region: Chautauqua-Allegheny
Peek n Peak and Swain

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Throughout the entire winter season the I LOVE NEW YORK Get Outta of Town bus will service one to two New York State ski mountains each weekend. The ski bus tickets options will include: transportation, transportation + lift ticket, transportation + lift ticket + ski or snowboard rental, and transportation + lift ticket + ski or snowboard rental + lesson. Overnight ski packages can be developed with ski resorts with lodging options.

The tours to craft beverage trails are desired to start in the fall 2014

From New York City, the beverage regions to visit are:

Long Island, Finger Lakes and the Hudson Valley

From the Toronto-area, the beverage regions to visit are:

Niagara Escarpment, Finger Lakes and Thousand Islands

There will be at least one beverage trail serviced once a month in the Fall 2014 and Spring/Summer 2015. A schedule for beverage trail tours will be determined between the selected bus operator/company and the Division of Tourism. As demand increases, additional buses may be added.

A schedule for New York State events will be determined between the selected bus operator/company and the Division of Tourism. Examples of NYS events for consideration are: The Great New York State Fair in Syracuse, Adirondack Balloon Festival in the Adirondacks, Fringe Fest in the Finger Lakes, and the Oyster Festival in the Long Island to name a few.

The Division of Tourism will want to also use the bus trips as an opportunity to cross-promote different state vacation assets by utilizing the video monitors, collateral on board and Taste NY events.

The Division of Tourism will make the volume discount connections with ski mountains, beverage trails, events and festivals for the selected operator/company to repackage and sell. Revenues the selected operators make is theirs to keep. The goal of the Division of Tourism is to provide access to these key state vacation assets and provide economic impact to the areas being served. The selected operator/company is carrying out the state's mission to make people around the world aware of our state's tourism destinations, and now to provide transportation to visitors to experience the wonders of New York State for themselves. New York State is looking for a partner to help us carry out this mission.

Respondents to this RFP must provide:

1. Company description including years of operation.
2. Current ski, craft beverage tour and/or NYS event tours, if any
List and provide descriptions of any currently offered bus tour packages with tickets to ski areas, craft beverage trails or other New York State events or festivals out of New York City or Toronto area.
 - a) Include a full description of how the operation works
 - b) Description of what is seen or experienced on the tours
 - c) Where is pickup and drop off
 - d) Duration of the tours
 - e) Include any feedback/testimonials from customers
3. Current bus transportation tour package offerings
List and provide descriptions of (5) currently offered bus transportation tour packages with tickets offered in New York State including where they originate from and ticket prices. Include a full description of how the operation works:
 - a) Description of what is seen or experienced on the tours
 - b) Where is pickup and drop off

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- c) Duration of the tours
- d) Include any tours that have an overnight lodging component as one of the options
- e) Any feedback/testimonials from customers are welcome
4. Suggested Bus Tours
Suggest other tours, event or festival trips to add to the roster of I LOVE NEW YORK bus trips. In your description include:
 - a) Description of what the tour would contain
 - b) Where is pickup and drop off
 - c) Duration of the tour
 - d) Include any overnight lodging component
 - e) Any feedback/testimonials from customers interested in this type of tour are welcome
5. Ticketing Structure
Provide your ticketing structure of how pricing is determined.
 - a) What is factored into establishing the cost?
 - i. What is the percentage of mark up to the retail cost
6. Ticketing Distribution Networking
List out your distribution network along with descriptions of each that can assist in providing ticketing directly with the consumer. Include the percentage of potential sales that can come from each network. Distribution network examples are but not limited to: website, concierge desk, and third party resellers
7. Tour Operator
If you are a tour operator, provide the list of charter bus companies that would provide the transportation. List out the type of modern motor coaches including make, model, capacities and amenities you would use for this operation – include photos.
Amenities to identify: on board Wi-Fi, electrical outlets at each seat or how many on board, restroom, luggage storage and video capabilities.
8. Bus Company
If you are a bus company, provide a list of your modern motor coach fleet available for this endeavor. Include make, model, capacities and amenities you would use for this operation – include photos.
Amenities to identify: on board Wi-Fi, electrical outlets at each seat or how many on board, restroom, luggage storage and video capabilities.
9. Liability Insurance
Provide a copy of your liability insurance
10. Current Policies
 - a. What is your cancelation policy?
 - b. What is your refund policy?
 - c. Do you have minimums tickets to sell per bus trip in order for it leave?
 - i. In the case if they are not meet, what is the policy?
11. Mechanical Breakdown
 - a. In the unfortunate event of a transportation break down during the scheduled trip, what is the policy?

2.2 Marketing Plan

1. Present a sample marketing plan on how the promotion of the I LOVE NEW YORK Get Outta Town Bus would be executed.
Examples to include:
 - a) Public Relations Plan
 - b) Digital Channels Available

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- c) Social Media Following
- d) Any Paid Advertising
- e) Include any others

2.3 In-Kind

The I LOVE NEW YORK Get Outta Town bus will be incorporated into I LOVE NEW YORK's PR strategies and active pitching, website presence, social media, as well as potential paid traditional, local and digital media buys.

The selected operator will be granted a royalty-free license to use the I LOVE NEW YORK mark in their own promotional efforts to promote the I LOVE NEW YORK Bus. This also includes motor coach branding. They will be granted the title of the "Official Bus Operator for I LOVE NEW YORK" that can be used to promote the Get Outta Town Bus and other potential uses based on approval by ESD.

2.4 Deliverables

The deliverables for this project are consistent with the Scope of Services (2.1) and Marketing Plan (2.2) sections discussed above.

2.5 Mandatory Qualification Requirements

Address the requirements and provide Documentation where needed

- a) Interested parties must possess the ability to transport people to designated areas via motor coach and connected to a distribution network to provide ticketing directly with the consumer.
- b) Prior to the proposal due date for this RFP, you must have a minimum of five (5) years experience as a tour operator or bus company in operation. You must have the ability to charter buses, or own the buses necessary to execute the bus trips as described in the Scope of Services.
- c) The bidder must have top safety ratings and subject to NYS DOT inspections.
- d) All drivers of the selected company must be 19A school qualified
- e) Only bids that include modern motor coaches with restrooms, power outlets, Wi-Fi, luggage storage and video monitors will be considered.
- f) Proposals for bus tours originating out of the Toronto area must be submitted by a Canadian tour operator or bus company. U.S. bus operators or companies with pre-existing relationships with Ontario, Canada bus operators or companies can also bid on the Canadian operation.
- g) Proposals for bus trips originating out of New York City must be submitted by a U.S. operator already doing business in New York State.
- h) Proposals for just the Toronto area or New York City operation will be accepted. There may be two different operators selected. One to handle each market.
- i) Proposals from a single tour bus operator or company who would like to do both markets will be accepted.
- j) Pick up location in New York City must be in Manhattan – Grand Central, Union Square or other easily accessible location.

2.6 Selection Criteria/Evaluation

Proposals that meet all the mandatory qualifications as outlined in Section 2.5 above will be evaluated by NYSDDED based on the Selection Criteria stated in this section.

Proposals will be scored based on the following criteria:

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1. Experience **(30 points)**
How well the bidder meets the qualification requirements addressed in section 2.5 of this RFP.
2. Ability to perform the required services and samples provided **(30 points)**
Evaluation of the approach proposed to accomplish the Scope of Services (section 2.1) of this RFP.
3. Marketing Approach **(20 points)**
Evaluation of the marketing channels and content that would be executed by the selected operator/company to promote the I LOVE NEW YORK GET OUTTA TOWN BUS addressed in section 2.3
4. Cost **(20 points)**
Please complete Appendix B Budget in full. Please DO NOT substitute your own budget format.
5. References
Bidders must supply a minimum of three references (including name and address of the organization, contact name and telephone number) that can substantiate the quality of the bidder's work to be considered for an award of this project. Points are not awarded for references, however references must be provided with your proposal
6. Interview/Oral Presentation

Interviews/Oral Presentation of finalists *may* be conducted at the discretion of the Department. The interview/oral presentation will allow finalists to elaborate on information included in their proposals and provide additional information. Additional tour 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 1.) Meet or talk with the finalists, 2.) Pose any questions that remain unclear in the proposals, and 3.) Obtain a more detailed perspective on their qualification. 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, NY office, or via telephone, video conference or other online communication protocol.

2.7 Evaluation / Award Process

DED's evaluation committee will independently review each proposal based on the criteria listed above. The reviewer's scores will be combined to provide an average score.

NYSDDED reserves the right to determine whether oral presentations/interviews will be necessary. If NYSDDED 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 scores. NYSDDED will determine at its discretion the number of finalists to be interviewed.

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2. Each finalist will be notified of the date, and time of their oral presentation/interview which will be conducted via telephone/video conference. The oral presentation/interview should further document the proposer's ability to provide the required services. 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. Additional portfolio samples may be requested at this time.
3. Following the oral presentation/interviews, if any, the Evaluation Committee members will re-score each proposer interviewed on the technical criteria listed above. The selection of the successful bidder is made to the highest score based on the total score for the written proposal and the interview/oral presentation score (if applicable).

2.8 Contract Award

The Department, in its sole discretion, may make awards to multiple vendors under this RFP if it determines that such approach is in the best interest of the State. Upon selection, negotiations will be commenced with the successful proposer(s) to enter into a contract setting forth the general terms that would govern the contract for services contemplated by this RFP. The Department will not enter into protracted negotiation with the successful proposer over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract including any amendments thereto. If the successful proposer does not sign and return to the Department the proposed contract including any draft of the proposed contract, within thirty (60) calendar days of receipt by the Contractor, the Department reserves the right to declare the award of the project to the Contractor null (null award). The Department will not be responsible for any cost incurred by the Contractor as a result of a null award. An award will then be made to the next highest scoring proposer.

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SECTION III - PROPOSAL CONTENT AND CONDITIONS

3.0 General Information

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

3.1 Complete Proposal Instructions

Each participating bidder must submit a complete proposal with each element of the Section 2.1, 2.3 and 2.5 addressed. In addition, all proposals must include the following information. Bidders supplying incomplete responses may be deemed non-compliant. Please follow the format listed below:

1. Title page, indicating:

On company letterhead, name, address (both mail and email) phone & fax number, contact person, and federal ID number, NYS Vendor ID number (if any). **It must also include a signed statement that the offer shall be firm and not revocable for a period of 60 days unless withdrawn in writing.**

2. Table of contents including page numbers

3. Technical Proposal

Answer all questions stated in the Scope of Services (2.1), Marketing Plan (2.2) and Mandatory Qualification (2.5) in the order they are presented with its identified heading and answer beneath it. Provide necessary documentation stated in the Mandatory Qualification Requirements section (2.5) in the order stated.

Use Times New Roman, 12 point fonts for all proposals. Include any photographs in color.

4. Administrative Proposal

Please complete and include Appendices C, D, E and, F (Non-Collusive Bidding Certification, MacBride Fair Employment Principles, Responsibility Questionnaire information, and Procurement Lobbying Disclosures Pursuant to Sections 139-j and 139-k of State Finance Law respectively). The Successful Bidder must also complete the following but their inclusion is not required at the time of proposal:

- New York State tax forms ST-220-CA and ST-220-TD. The ST-220-CA may be found at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf. The ST-220-TD may be found at http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_fill_in.pdf.
- A State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term (Form A) available at <http://www.osc.state.ny.us/agencies/gbull/g226forma.pdf>. The State Consultant Services Contractor's Annual Employment Report (Form B), to be submitted annually, available at <http://www.osc.state.ny.us/agencies/gbull/g226form%20b.pdf>. More information on the consultant services reporting can be found at <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>.

5. Cost Proposal

Please complete Appendix B (Budget) of this RFP in full. Please DO NOT substitute your own budget format

SECTION I - ADMINISTRATIVE INFORMATION

3.2 Conditions Governing Proposals

Only those individuals or firms who have supplied complete information will be considered.

The Department reserves the following prerogatives:

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

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

3.3 Iran Divestment Act

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

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

Additionally, Bidder/Contractor is advised that once the list is posted on the OGS website, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract, should NYSDDED receive information that a person is in violation of the above-referenced certification, NYSDDED 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 NYSDDED 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.

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NYSDDED reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

3.4 Freedom of Information Law (FOIL)

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

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

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

3.5 Notification of Award

The Department will notify the successful proposer by written confirmation.

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

3.6 Debriefing

An unsuccessful bidder has the right to a debriefing regarding the reasons its proposal was not selected for award. Upon request, the Department will provide a debriefing to any unsuccessful applicant as to the reasons that the proposal submitted was not selected for an award. To request a review of an unsuccessful proposal send an e-mail to tourismrfp@esd.ny.gov. A review should be requested by an unsuccessful bidder within thirty (30) days of the date of the notice that its proposal was not selected for an award.

3.7 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.

SECTION I - ADMINISTRATIVE INFORMATION

3.8 Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Department and Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in Section 1.4 of this solicitation. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers contact only Department staff identified in the aforementioned section of this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <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. 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>

SECTION I - ADMINISTRATIVE INFORMATION

SECTION IV - CONTRACTUAL INFORMATION

4.0 Contract Term

The successful offerer(s) shall perform the work and provide the services set forth in this RFP as an independent contractor for a period of one (1) year with an option to extend the term for up to two (2) additional years. The total term of the contract shall not exceed three (3) years.

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

4.1 Cancellation

Once a contract or other agreement resulting from this RFP is fully executed and approved, the Department has the right to cancel it early, in whole or in part, for cause or convenience on thirty (30) calendar day's written notice to the Contractor.

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

4.2 Subcontracting

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

After the contract resulting from this RFP, if any, is awarded, any subcontractors that were not originally identified in the Contractor's proposal must receive prior approval from the Department.

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

4.3 Reports

Programmatic and/or financial reporting is not anticipated under the terms of any agreement resulting from this RFP. However, the Department reserves the right to request reasonable programmatic or financial reports at our sole discretion. Said reports will be delivered by the successful bidder to the Department in a reasonable period of time.

4.4 Relationship

The relationship of the Contractor to the Department arising out of a contract award shall be that of an independent contractor. The Contractor, in accordance with his/her status as an independent contractor, covenants and agrees that the Contractor will conduct itself consistent with such status, that the Contractor will neither hold itself out as, nor claim to be, an officer or employee of the Department or the State of New York by reason hereof, and that the Contractor will not by reason hereof make any claim, demand or application for any

SECTION I - ADMINISTRATIVE INFORMATION

right or privilege applicable to an officer or employee of the Department or the State of New York, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

All personnel of the Contractor shall be within the employ of the Contractor only, which alone shall be responsible for their work, their direction, and their compensation. Nothing in the contract award shall impose any liability or duty on the Department or the State of New York on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as a subcontractor, expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, or for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation, and the Contractor hereby agrees to indemnify and hold harmless the Department and the State of New York against any such liabilities.

4.5 Confidentiality

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

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

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

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

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

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products, prices, costs, development activities, service performance, operating results, employee lists, personnel matters, and other confidential or proprietary information; or (7) any of the information described in subsections (1)-(6) of this Section 4.7(b) that the Department obtains from another party or entity and that the Department treats or designates as confidential or proprietary information, whether or not such information is owned or was developed by the Department. "Confidential Information" shall not include information that is generally known or available to the public.

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

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

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

4.6 Right to Publish

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

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4.7 Compliance with Applicable Laws.

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

4.8 Indemnification

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

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

4.9 Publicity

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

4.10 Non-discrimination and Contractor Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation to promote opportunities for maximum feasible participation of certified MWBEs in the performance of ESD projects. Respondents are strongly encouraged by ESD to solicit and utilize, including through partnering or other joint venture agreements, New York State certified Minority-owned Business Enterprises and Women-owned Business Enterprises in relation to providing the services described in this RFP. However, due to the limited scope and nature of these services, MWBE participation goals will not be established for the I LOVE NEW YORK Get Outta Town Bus project. The successful bidder shall acknowledge and adhere to ESD's Non-Discrimination and Equal Employment Opportunity ("EEO") policies

The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/>

Further, the ESD Office of Contractor & Supplier Diversity ("OCSD") is available to assist respondents in identifying New York State certified MWBEs that can provide services in connection with this RFQ. If you require MWBE listings, please call the OCSD at (212) 803-3225. A call placed to OCSD for the aforementioned purposes will not be considered a prohibited lobbying contact

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any

violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. 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 (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) 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 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 section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or

conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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.

January 2014

Appendix B Budget

Contractor Expenses

Complete the budget for the sample ski trip and beverage trail transportation as highlighted in section 2.1. Attach additional pages if required. Please DO NOT change the format of this budget.

1. Provide an example of transportation ticket at cost and with retail mark-up for ski bus trips and beverage trails for:

a. Leaving from NYC Market

Sample Vacation Region: Hudson Valley

- i. Thunder Ridge: 137 Birch Hill Rd, Patterson, NY 1256
- ii. Belleayre Mountain: 181 Galli Curci Road, Highmount, NY 12441

Sample Beverage Trail:

- i. Long Island, North Fork

b. Leaving from Toronto-area Market

Sample Vacation Region: Chautauqua-Allegheny

- i. Peek n Peak: 1405 Olde Road, Clymer, NY 14724
- ii. Swain Mountain: 2275 County Rd 24, Swain, NY 14884

Sample Beverage Trail:

- i. Niagara Falls Escarpment, Niagara Wine Trail

2. You only need to provide ticketing structure for the market(s) you are bidding to operate.

Leaving from - NYC Market <u>Region:</u> Hudson Valley <hr/> Ski Mountain: Thunder Ridge Mountain <hr/>	\$ _____ Retail Transportation Ticket \$ _____ Actual Transportation Cost _____ % Percentage of mark up from actual cost to the retail rate
Leaving from - NYC Market <u>Region:</u> Hudson Valley <hr/> Ski Mountain: Belleayre Mountain <hr/>	\$ _____ Retail Transportation Ticket \$ _____ Actual Transportation Cost _____ % Percentage of mark up from actual cost to the retail rate

Appendix B Budget
Contractor Expenses

Leaving from - Toronto Market <u>Region:</u> Chautauqua-Allegheny	\$ _____ Retail Transportation Ticket
Ski Mountain: Peek n Peak	\$ _____ Actual Transportation Cost _____ % Percentage of mark up from actual cost to the retail rate
Leaving from - Toronto Market <u>Region:</u> Chautauqua-Allegheny	\$ _____ Retail Transportation Ticket
Ski Mountain: Swain Mountain	\$ _____ Actual Transportation Cost _____ % Percentage of mark up from actual cost to the retail rate

Appendix B Budget
Contractor Expenses

Beverage Trail Sample Trips

Leaving from - NYC Market <u>Region:</u> Long Island	\$ _____ Retail Transportation Ticket
Beverage Trail: North Fork	\$ _____ Actual Transportation Cost _____ % Percentage of mark up from actual cost to the retail rate
Leaving from - Toronto Market <u>Region:</u> Niagara Falls Escarpment	\$ _____ Retail Transportation Ticket
Beverage Trail: Niagara Wine Trail	\$ _____ Actual Transportation Cost _____ % Percentage of mark up from actual cost to the retail rate

APPENDIX C

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

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

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

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

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

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

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

Person Legally Responsible for Binding Bidder

Name _____ Title _____

Signature _____

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

Legal name of person, firm or corporation

Legal name of person, firm or corporation

Person(s) Legally Responsible for Binding Participant

Name _____

Name _____

Title _____

Title _____

Business Address _____

Business Address _____

City _____ State _____

City _____ State _____

APPENDIX C

Bidder's Identifying Data

Bidder's Name _____

Business Address _____

Street _____

City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Federal ID Number _____

If Bidder is a Partnership complete the following:

Name of Partners or Principals

Business Address

If Bidder is a Corporation complete the following:

Name

Business Address

President

Secretary

Treasurer

APPENDIX D

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

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

- (1) has business operations in Northern Ireland;

Yes ____ or No ____

if yes:

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

Yes ____ or No ____

Signature

Date

APPENDIX E

Vendor Name: _____

NYS Vendor ID No. _____
(If one has been assigned)

Vendor Responsibility Information

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

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

Please check one of the following:

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

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

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

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

Statutory Summary

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

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

Generally speaking, two related aspects of procurements were affected: (i) activities by the business and lobbying community seeking procurement contracts and (ii) activities involving governmental agencies establishing procurement contracts. The obligations imposed by State Finance Law Sections 139-j and 139-k are collectively referred to as the “new State Finance Law”. State Finance Law Sections 139-j and 139-k may be viewed at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sf139-j.htm> and at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sf139-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.

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.

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

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

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

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

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

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

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

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

Offerer Certification:

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

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

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

