NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
REQUEST FOR PROPOSAL (RFP)

BUSINESS DEVELOPMENT AND RELATED SERVICES IN EUROPE

RFP NUMBER 13-6083

PROPOSAL DUE DATE – SEPTEMBER 4, 2013, 3:00 P.M. EST
(LATE PROPOSALS CANNOT BE ACCEPTED)

(Release Date – August 13, 2013)

Request For Proposal (RFP) Response Form

RFP # 13-6083

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:_____

By checking this box, we request that you remove our name from your bidders' list ☐
Mail this as the first page of your proposal. If not submitting a proposal, please mail this form to: Lisa Sutton, NYS Department of Economic Development, Office of Fiscal Management, Albany, NY 12245.

NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT
REQUEST FOR PROPOSAL (13-6083)
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RFP 13-6083

SECTION I - ADMINISTRATIVE INFORMATION

1.0 Purpose

The New York State Department of Economic Development (hereafter referred to as "DED", "NYSDED" or the "Department") has issued this Request for Proposal ("RFP") seeking a qualified individual or firm (the "Contractor") to perform economic development services with an emphasis on market coverage for the major European markets (the "Designated Area") for New York State ("NYS" or the "State").

The main objective of this project is to locate a contractual independent contractor representative who will:

a) Promote increased exports by NYS companies in the Designated Area;
b) Promote increased investment in NYS by companies and individuals from the Designated Area; and
c) trade show, trade mission or other international business development promotion and marketing related tasks as assigned by the department.

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

1.1 Inquiries

All questions must be submitted in writing via email to rfpfaq@esd.ny.gov **with "Business Development in Europe" in the subject line. Please do not contact the Department by telephone. Questions must be received by the Department no later than August 23, 2013, 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	August 13, 2013
Deadline for Receipt of Questions	**August 23, 2013 by 3:00 PM EST**
Submission of Proposals	**September 4, 2013 by 3:00 PM EST** **Late proposals cannot be accepted.**
Oral Presentations/Interviews	By appointment at the discretion of NYSDED
Award of Contract	September 2013 (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 **September 4, 2013, 2013**. Submit five (5) 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 rfpinfo@esd.ny.gov with **"Business Development in Europe – *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.

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

1.4 Designated Contacts

For the purpose of the Procurement Lobbying requirements of this RFP (see section 3.7 and Appendix H), the Department's designated contacts shall be Lisa Sutton at lsutton@esd.ny.gov and employees designated by the Department as part of the Department's Contract Management Unit and all staff designated by the Department to have responsibility and duties in the Department's International Division and the Department's Counsel's Office.

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

2.0 Background

The Department is empowered under Section 100 as well as Article 10 of the NYS Economic Development Law to encourage and develop commerce with other states and foreign countries. Information regarding the Department's activities, programs, incentives, target industries for foreign direct investment, etc., can be found on the Department's website at http://www.nylovesbiz.com. The Department currently maintains representatives in 3 countries (South Africa, United Kingdom (Europe), Israel). The existing contract for the Department's European representative (located in the U.K.) expires August 2013, and this RFP is intended to allow the Department to establish a new contract.

2.1 Structure of Operations

The department is seeking representation for the trade and investment interests of the State of New York in Europe. For purposes of this RFP, Europe is defined as all of Western and Eastern Europe. Firms wishing to submit proposals who cannot represent the entire area should indicate so in their proposal. The selected representative will have the ability to cover the markets of interest and perform the tasks described in the Scope of Services paragraphs. There is no requirement to establish or maintain a separate or stand alone New York State office. Any existing offices of the representative will be sufficient as long as they have the required technology and communications suite to communicate and report results to the department in the required manner.

The selected representative shall perform trade and investment related activities under the direction of the department program managers. The department will assign a program manager/director to manage "trade/export" related activities and a separate manager/director to manage inward international investment into New York State (Foreign Direct Investment /FDI) activities. Each manager will communicate to the representative and provide program management and oversight (including expenditures) for each respective area.

2.2 Scope of Services

The Contractor shall perform Business Development Activities, including both Trade Development and International Investment Attraction to NYS, as further described in this Section 2.2. For the purpose of this RFP and any contract ("the Contract") resulting from it, Business Development Activities shall mean the promotion of (i) increased exports of goods and services, including agricultural products by NYS companies to the Designated Area and (ii) increased investment into NYS by companies and individuals from the Designated Area. On occasion the Contractor should be prepared to represent NY State with other economic development issues such as tourism development. The Contractor shall render the Services in accordance with the highest professional and ethical standards. The Department shall identify the Project Managers prior to commencement of the Contract. The Services performed by the Contractor under the Contract shall include the following:

(a) Trade Development and Investment Attraction. The Contractor shall provide business

development services in the Designated Area to create export sales opportunities for NYS companies that produce, manufacture, develop technologies, and offer goods and/or services for sale. The contractor shall help qualified New York State companies, industry associations and regional entities representing best prospects for export expansion, as specified by the Department and in Appendix C.

The Contractor shall actively identify, qualify, and provide leads/projects for the attraction of international investment to NYS. As part of this contract and under the direction of the department, the selected firm (the "Contractor") will design and execute a direct marketing campaign to targeted businesses outside New York State and in the targeted market. The Contractor shall be responsible for identifying firms, qualifying leads for inward investment attraction, as well as providing operational support for the department in industry-related investment attraction activities and promotions. Such international investment attraction work shall focus on NYS's key industry clusters and technologies with the objective of creating quality jobs in NYS. These industries and industry priorities will be provided to the contractor after contract award..

The Contractor shall perform their responsibilities for trade development, export promotion and investment attraction in accordance with the specification as described in Appendix C of this RFP. The Department maintains a professional staff of trade development experts who will provide the Contractor with export ready companies interested in the European market. The Contractor shall also provide support for special projects, related to the scope of services detailed in Appendix C, as designated by the Department. The Department will provide the contractor with specific quantifiable guidelines on what is expected of them. The contractor will be expected to fulfill those metrics and requirements.

(b) Reports. In connection with activities assigned under this contract, the Contractor shall provide monthly and annual reports as further described in Appendix C. These reports are expected to supplement data entered into an online CRM system that is being finalized by the Department. The contractor shall utilize the department's CRM systems to input and track both trade and investment activities and results. In connection with the financial activities, the Contractor shall provide monthly reports, receipts and proof of payments of all expenditures under this contract. The reporting shall identify the expenses incurred for the month by the categories identified in Appendix B. The Contractor shall include in each such monthly financial report a description and detail of any expense line The reports shall be written in English, prepared in US Dollars using the-existing currency exchange rates and delivered not later than the last day of the month. . Receipts or invoices provided to the Department in other than English will need to be translated into English to be processed.

(c) Place of Work and Office Management. The Contractor will provide Services primarily from the Contractor's Principal Office located in the Designated Area, but will, as needed, come to other places designated by the Department to meet with representatives of the Department. The Contractor will:

- Be responsible for the physical arrangement, management and compliance with all Designated Area host nation laws and regulations for the Representative Office(s), including the hiring of the Contractor's own support staff, licensing or registration of offices and operations, and maintenance and repair of the Representative Office(s);

- Develop and submit updates to the annual Financial Proposal as requested by the Department;
- Be able to provide material related to the functions above, including material provided by the Department to interested parties.
- Be responsible for all activities involving the Representative Office(s);
- Be liable and responsible for paying all applicable taxes and fees relating to employment of staff and operation of the Representative Office(s); and
- Ensure that the Representative Office(s) meet the Technical Requirements described in Appendix C.

(d) Business Records. The Contractor shall prepare and maintain all financial and other business records. The financial records shall be prepared and maintained in accordance with generally accepted accounting principles in the United States. During the term of this Contract, with five (5) business days written notice, the Department shall have access and the right to examine, audit, excerpt, photocopy, and transcribe any and all financial and other business records prepared and maintained by the Contractor. During the term of this Contract, Contractor will provide the Department with a database listing all of Contractor's contacts in the Designated Area, such databases to be provided quarterly on an Excel-compatible format. Upon termination of this Contract, copies of all financial and business records contemplated under this section shall be provided to the Department or to an agent designated by the Department.

(e) Time Devoted to Services and Operations of Representative Offices. In accordance with Section 4.4(b) of this RFP, the Department will rely on the Contractor to determine the manner of and time required for performance of the Services. As a guideline, performance of the Services will require that the Representative Office(s) be operational and staffed in accordance with customary business practices in the Designated Area in order to interface with the Department and clientele being represented; however, the Contractor need not perform these services in person.

(f) Knowledge Regarding New York. The Contractor shall maintain in-depth knowledge concerning the State's economic structure, business interests, practices, tourism markets, educational assets relevant to international business development (e.g. colleges/universities, R&D facilities, etc.) and culture and shall be fully conversant with the State's economic development programs and services. The Contractor should include money in their budget for trips to New York to learn of relevant new developments.

2.3 Mandatory Qualification Requirements

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

1. Experience in trade development, investment attraction, and/or marketing, with at least 5 years of such experience in the Designated Area.
2. Fluency in reading, writing and speaking English and at least two other major European languages (French and German preferred).
3. Demonstrated knowledge of the business communities in the Designated Area, with

specific knowledge of NYS targeted industry clusters (see http://www.nylovesbiz.com) preferred. Current residency in Europe is also required;
4. University degree;
5. Demonstrated knowledge of New York State (i.e. economics, geography, business community); and
6. At least 5 years of experience in providing the trade and investment services described in this RFP. At least 5 years of experience in direct marketing and outreach through various sales, distribution and virtual channels including social media.

2.4 Selection Criteria

Proposals that meet all the mandatory qualifications as outlined in Section 2.3 above will be evaluated by NYSDED based on the Selection Criteria stated in this section.
Proposals will be scored based on the following criteria:

1. Experience of the organization and the staff proposed to carry out the scope of services/plan of action **30 points**

2. Plan of action **20 points**
(Evaluation of the approach proposed to accomplish Section 2.2 – Scope of Services, Appendix C, and Appendix D as further discussed in Section 3.1 of this RFP)

3. Cost **30 points**
(Please review Section 3.1, item f and complete Appendix B – Financial Proposal in full. Do NOT substitute your own budget format.)

4. Language Ability (both English and other major European languages) **10 points**

5. Knowledge of New York State **10 points**

Optional Extra Points (selected finalists only)

6. Interview/Oral Presentation **25 points**
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. 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 understanding of the extent of the Contractor's knowledge of the RFP subject matter, project requirements and whether the methods and resources used by the Contractor are necessary, reasonable, and appropriate. 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.

2.5 Evaluation Process

Initial evaluation of proposals will be done in two parts – Technical Evaluation and Cost Evaluation. DED's evaluation committee will review the technical portion of each proposal based on the technical criteria listed above. Then cost scores, computed by DED's Contract Management Unit based on a weighted average formula, will be added to the technical score resulting in the total score for the written proposal.

Interviews/Oral Presentations for finalists may be conducted at the option of DED. In the event that interviews/oral presentations are conducted, the bidders receiving the five highest total average scores on the written proposals shall be selected as finalists. The Department may select fewer than five finalists if any of the top five has a total average score less than 25 points (maximum points available for interviews/oral presentations) lower than the highest total average score received. DED's evaluation committee will not be advised of the cost scores (points awarded for cost) prior to the selection of the five finalists. However, the evaluation committee may be advised of information, contained in each bidder's financial proposal (Appendix B) if such information is deemed by DED to be pertinent in assessing the level of effort to be put forth by the bidders in performing the project. The finalists will be contacted to schedule an appointment for interviews/oral presentations (if requested). The selection of the successful bidder is made to the highest score based on the total (technical and cost) score for the written proposal and the interview/oral presentation score (if applicable).

SECTION III - PROPOSAL CONTENT AND CONDITIONS

3.0 General Information

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

3.1 Complete Proposal

Each participating individual or firm must submit a complete proposal with each element of the Selection Criteria, Section 2.4, 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:

a. Title page, indicating:
Name, address, phone & fax number, contact person, email address, and federal ID number (if applicable). It must also include a statement that the offer shall be firm and not revocable for a period of 60 days.

b. Table of Contents

c. Approach to provide the Scope of Services outlined in Section 2.2, Appendix C and Appendix D
Develop a plan of action describing how your organization intends to accomplish all of the duties described in Section 2.2 - Scope of Services, Appendix C and Appendix D and to meet the main objectives stated in Section 1.0 of this RFP. Include a discussion of marketing activities such as trade shows, seminars, direct mail/e-mail/telephone solicitation, event sponsorship, advertising, public relations, market intelligence and research, advocacy, websites, etc. that you propose to implement. Your approach should demonstrate your knowledge on the following areas and how you will use that knowledge and other relevant knowledge to accomplish the minimum performance targets identified in Appendix C:
    1. Business and government contacts especially those in the industry clusters relevant to NYS;
    2. Local business practices;
    3. Distribution services;
    4. Sales channels
    5. New technologies being used in trade development and FDI attraction, such as social media.

Also, include how you could surpass the performance targets in any area in any contract year. If subcontracting, subcontractors must be identified by contractor name, and the bid shall include an explanation of the specific function they perform and a description of the working arrangements.

The plan of action shall be limited to 30 pages, single-spaced on 8½"x11" or A4 paper. The Department reserves the right to reject any proposal in which the bidder does not offer all of the services included in Section 2.2, Appendix C and D of this RFP.

d. Experience

NYSDED considers direct, prior experience in providing the Services requested in this RFP as a requirement. Your proposal must cite how your company meets the experience requirements listed in Section 2.3, including narratives of past projects, successful results, and client and contact lists. Also include three references able to substantiate that your organization meets those requirements.

e. Organization and Staffing

Include in your proposal current resume(s) of professional staff who will be performing the services. Highlight experience relevant to the scope of services discussed in Section 2.2, Appendix C and Appendix D and specifically identify any special education, certification, language ability, and/or training.

f. Financial Proposal

Appendix B of this RFP must be completed and submitted as part of your proposal. DO NOT USE AN ALTERNATIVE BUDGET FORMAT. Each bidder must complete Appendix B. The annual budget limit is US $150,000. Annual cost shall include all employment-related expenses including payroll taxes, health insurance, employer liability insurance, etc. The bidder shall include in his proposal the expenses associated with attending (admission fees, travel, etc.) the Trade Events as noted in Appendix C, Section I.C but not the costs of exhibiting (booth fees) at such events. . If any of the personnel duties will be filled with subcontractors, please include their costs under the Subcontractor line. Subcontractor services are performed by other organizations or individuals who are not employees of the Contractor. All figures shall be included in US dollars. Note: NYS will not pay for Contractor relocation expenses. Do not include such costs in your financial proposal. Also, do not exceed the annual budget total limits noted above for any of the contract years in your financial proposal.

g. Other

Please complete and include Appendices E, F, G, and H (Non-Collusive Bidding Certification, MacBride Fair Employment Principles, Responsibility Questionnaire, 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.

3.2 Conditions Governing Proposals

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

The Department reserves the following prerogatives:

- to accept or reject any or all proposals;
- to decline to award a contract resulting from this RFP;
- to waive or modify minor irregularities in proposals received;
- to eliminate mandatory qualifications unmet by all bidders;
- to disqualify proposals 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 bidders, 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 bidders, 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 Notification of Award

The Department will notify the successful proposer in writing. Each proposer whose proposal is rejected will be notified in writing by the Department.

A contract defining all terms and conditions of the parties will be drafted by the Department. The contract may incorporate sections 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 (AG), the Office of the State Comptroller (OSC), and in some cases the Department of Civil Service. The Contract will not be considered fully executed until approved by both the AG and OSC.

3.4. 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 and 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 Attorney General and State Comptroller's Office.

3.5 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 IV - CONTRACTUAL INFORMATION

4.0 Contract Term

The successful offerer shall perform the work and provide the services set forth in this RFP as an independent contractor for a period of five (5) years. 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 for cause or unavailability of State funds at any time or for convenience on thirty (30) calendar days written notice to the Contractor. The Department shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; (iii) convenience, (iv) the Contractor's failure to meet the performance goals provided by the State. The Department at its option may terminate the Contract for convenience without prior notice upon paying the Contract an amount equal to 30 calendar days' fee in lieu of such notice. If cancelled for cause, payment to the Contractor for charges incurred will be made at the Department's sole discretion. If cancelled for unavailability of State funds, the Department will not be liable for payment but will use its best efforts to pay outstanding charges previously approved by the Department to the extent permitted by New York State Law.

Additionally, the Department also reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k (see Appendix H) 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.

4.2 Subcontracting Requirements

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

After the contract resulting from this RFP, if any, is awarded, any subcontractors or purchases in excess of $50,000 that 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 Financial Terms/Payment Process

(a) Payment for Contractor's Services. All amounts referred to in this RFP and the Contract shall

be in United States Dollars. The Department shall pay to the Contractor a fee for the Services as established in the Contractor's Financial Proposal. No other amounts for compensation, expenses, taxes, fees or other costs shall be owed by the Department to the Contractor for Services during the term of the Contract. Payment for services performed to the satisfaction of the Department shall be made in the ordinary course of State business upon receipt of duly authenticated invoices/vouchers and upon receipt of reports and/or deliverables, if required elsewhere in this RFP. The contractor shall invoice the Department quarterly on the first day of each quarter. Unless otherwise agreed by the parties, all payments relating to fees described in the Contract shall be made by the Department by deposit into the Contractor Account which is further described in Section 4.3(e).

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

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

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

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

(f) Accounting Records.

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

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

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

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

(g) Financial Reports. Monthly and annual reports shall be provided in accordance with Section 2.2 and Appendix C of this RFP.

(h) No Benefits. Contractor will be responsible for providing Contractor's own benefits and insurance coverage during the term of the Contract. Contractor, as an independent contractor, and Contractor's subcontractors and employees shall not be eligible for or entitled to participate in the benefits, plans, and insurance coverage provided by the Department to its employees.

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

4.4 Relationship

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

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

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

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

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

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

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

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

(i) Title to Contractor's Materials. Title to the materials to be furnished by Contractor in connection with the performance of the Services shall remain with the Contractor unless otherwise specified in Sections 4.6 and 4.7.

4.5 Intellectual Property/Personal Property Rights in Data, Computer Software & Other Intellectual Property

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

4.6 Confidentiality:

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

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

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

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

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

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

(c) Return of Documents/Data. Contractor acknowledges and agrees that, with the exception of information that Contractor can demonstrate was possessed or owned by him prior to his engagement with the Department that has not otherwise been modified, updated, or improved by Contractor or the Department in connection with his engagement with the Department, all sales files, customer records, customer lists, supplier records, supplier lists, product information, letters, contracts, notes, notebooks, records, reports, memoranda, formulae, and all other Department materials, documents, and data used, prepared, or collected by Contractor as part of his

engagement with the Department, in whatever form, are and will remain the property of the Department. Contractor also understands and agrees that all Confidential Information that comes into his possession while he is an independent contractor of the Department, whether prepared by him or others, is and will remain the property of the Department. Thus, Contractor agrees that he will return all documents, written material, information, products, devices, and other property belonging to the Department, as well as all documents and other materials of any kind that constitute or contain any Confidential Information, in his possession or control, regardless of how stored or maintained, including all originals, copies, and compilations and all information stored or maintained on computer, tapes, discs, or any other form of technology upon the earlier to occur of (i) five (5) business days after receipt of the Department's written request to return such property or (ii) the last day of the Contractor's engagement with the Department.

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

4.7 Right to Publish.

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

4.8 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 governor 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.

4.9 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 Designated Area or any 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.

4.10 Publicity.

Any publication or news releases relating to the Representative Offices shall state that the Representative Offices is supported by the New York State Department of Economic Development or Empire State Development as instructed by the Department.

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, licenser, licensee, lessor, lessee or any other party):

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (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).

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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital 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: 518-292-5220
Fax: 518-292-5884
http://www.empire.state.ny.us

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
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
http://www.empire.state.ny.us

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.

December 2012

(APPENDIX B)

Financial Proposal

COMPLETE this financial proposal form in full (Contract Years 1 through 5 and totals for the both Option 1 and Option 2). <u>Do not change the budget format.</u> Failure to complete the financial proposal or bidder changes to the format may result in the disqualification of your proposal. Any bidder failing to complete the budget pages for both Option 1 and Option 2 will be disqualified.

Refer to Section 3.1, item f for additional guidance on completing the following budget.

BUDGET PROPOSAL

Budget Category	Contract Year 1	Contract Year 2	Contract Year 3
Contract Employees List titles (use additional pages if necessary) _____ _____	$_____	$_____	$_____
Miscellaneous Contractual Services	$_____	$_____	$_____
Transportation - Air – In and Out Of Country	$_____	$_____	$_____
Transportation - Ground – In and Out Of Country	$_____	$_____	$_____
Lodging – In and Out of Country	$_____	$_____	$_____
Meals – In and Out of Country	$_____	$_____	$_____
Telecommunications (telephone, cellular, internet, fax service, other)	$_____	$_____	$_____
Postage, Freight, and Delivery	$_____	$_____	$_____
Advertising – including business meals and entertainment expenses	$_____	$_____	$_____
Liability Insurance	$_____	$_____	$_____
General Office Supplies	$_____	$_____	$_____
Office Equipment	$_____	$_____	$_____
Membership Dues & Subscriptions	$_____	$_____	$_____
Other Expenses – including audit expenses	$_____	$_____	$_____
BUDGET TOTALS	$_____	$_____	$_____

BUDGET PROPOSAL (continued)

Budget Category	Contract Year 4	Contract Year 5	CONTRACT TOTALS
Contract Employees List titles (use additional pages if necessary) _____ _____	$_____	$_____	$_____
Miscellaneous Contractual Services	$_____	$_____	$_____
Transportation – Air – In and Out Of Country	$_____	$_____	$_____
Transportation – Ground – In and Out Of Country	$_____	$_____	$_____
Lodging – In and Out of Country	$_____	$_____	$_____
Meals – In and Out of Country	$_____	$_____	$_____
Telecommunications (telephone, cellular, internet, fax service, other)	$_____	$_____	$_____
Postage, Freight, and Delivery	$_____	$_____	$_____
Advertising – including business meals and entertainment expenses	$_____	$_____	$_____
Liability Insurance	$_____	$_____	$_____
General Office Supplies	$_____	$_____	$_____
Office Equipment	$_____	$_____	$_____
Membership Dues & Subscriptions	$_____	$_____	$_____
Other Expenses – including audit expenses	$_____	$_____	$_____
BUDGET TOTALS	$_____	$_____	$_____

APPENDIX C
Additional Specifications on Scope of Services

The following, Section 2.2 and Appendix D of this RFP describe primary specifications for the Contractor. These will be reviewed and updated annually. In the event that the Contractor and the Department do not agree on updates prior to the start of each contract year, it is agreed that the specifications of the previous contract year will be in effect. The services provided by this office support both New York State companies in their export activities and NYS international investment attraction efforts. Providing services such as matchmaking services, market intelligence and trade and investment events programming, and lead generation; and fueled by input from the Department and New York State companies themselves, the Contractor can best assist this State's export and investment attraction activities in the following ways:

I. SERVICES PROVIDED

The services provided by the foreign offices, as contracted, can be grouped under four broad categories: **(A) Trade Assistance Work Order Services, (B) Country-Specific Intelligence, (C) Trade Events Program Administration, (D) Investment Attraction/Foreign Direct Investment, (E) Reporting, (F) Other Duties.**

A. TRADE WORK ORDER SERVICES:

Prior to the start of each contract year, the Department and the Contractor will review previously established targets for Qualified Client Requests for that year and actual sales for that year. The annual minimum targets for the Representative Office(s) shall include:

- Services to at least 100 export-ready NYS companies* per year; and
- At leastUS$1,000,000 in annual sales for contract years 1, increasing to $2,000,000 for year 2, growing to $3,000,000 for year 3, reaching $4,000,000 for year 4 and increasing to $5,000,000 for year 5.

The Contractor shall:

1. Identify best distribution channels for New York State industries in the Designated Area and maintain records of qualified agents, brokers, wholesalers, dealers, distributors, retailers and EMCs (export management companies);
2. Identify, per client request, best distribution channels, for client product(s);
3. Facilitate client/distributor, agent, and representative relationships including language assistance, foreign business protocols, and assistance with methods of payment or regulations, duties etc.; and
4. Assist NYS exporters traveling to the Designated Area in implementing (2) and (3) supra under this section.

B. COUNTRY-SPECIFIC INTELLIGENCE:

The Contractor shall provide:

1. Foreign Market Intelligence (product, country or region-specific) including suggestions and guidance for: Product Market Viability (country or region-specific), Market Penetration Strategy, Market Development Strategy, Product Adaptation, Modification, and Compliance

2. Statistics and Records (country and region specific) on:

a. Best industries
b. Best products
c. Trade shows
d. Trade leads
e. Desired representation for NYS companies
f. Associations, agencies and individuals of potential service to NY companies

3. Other Sources of Information and Referrals (country or region specific) for information on:
   a. Entry regulations/controls/tariffs/duties/etc.
   b. Political, social, cultural peculiarities affecting market

C. TRADE EVENTS PROGRAM ADMINISTRATION

The Contractor shall assist the Department in administering a trade events program in the Designated Area which will be used as a tool for developing NYS trade representative prospects in Designated Area. Actual events are to be established prior to each contract year and may change subject to the agreement of the Department and Contractor. For each contract year the Contractor shall:

1. Provide on-site planning, budgeting and implementing of trade shows (specific to the Designated Area) with overall project management by the Department;
2. Attend trade shows and participate in trade and investment missions, providing service to NYS firms or NYS economic developers;
3. Assist trade consultant with post-show/mission follow up including post-show and post-mission assessment and follow-up with participants;
4. Maintain database of superior industry-specific trade events (see Section B, item 2.c, above); and
5. Assist with on-site coordination, planning, and implementing of trade and investment missions.

D. INVESTMENT ATTRACTION/FOREIGN DIRECT INVESTMENT (FDI) DELIVERABLES:

Prior to the start of each contract year, the Department and the Contractor will review previously established targets for Business & Industry Goals which shall include new company contacts and new qualified project leads transferred to the Department each month. The annual targets minimum for the Representative Office(s) shall include**:

- Conduct a direct marketing campaign to generate "qualified leads," and achieve a goal of seven (7) leads in each of the assigned target industry clusters
- Conduct phone call prospecting and visits with potential investment targets/firms: 150-350 per year: calls on, then in-person visits with, executives from companies targeted for investment attraction, in NYS industry clusters or clear opportunity sectors/contacts;
- 50-75 per year: investment leads or projects generated;
- 15-25 per year: qualified prospects for attraction/relocation or retention/expansion, with site analysis involving such elements as geographic parameters, anticipated completion dates, allocated investment dollars and specific questions for Department response;
- 10-15 per year site visits with NYS Department team, per needs of prospect/project;
- 5-10 per year: actual FDI location successes, with job creation in NYS of at least 10 professionals per firm.

** The Contractor shall ensure that for each contract year fifty percent (50%) or more of the foreign direct investment calls, leads/projects, qualified prospects, site visits and actual FDI location successes with job creation be targeted for investment in Upstate New York (See Appendix I – NYS Regions).

E. REPORTING ON TRADE DEVELOPMENT AND INVESTMENT ATTRACTION

Monthly Reports on Business and Industry Activity shall be completed in the following format. Monthly Reports shall be submitted no later than 15 days after the end of each month for the previous month's work. The Department reserves the right to modify this report or to substitute submission of report with entry of relevant information in its CRM system.

Monthly International Business Activity Report	
Office:	For Month Of:
Date Report Completed: / /	
Services Provided	
(A) Research: List 5 top industry segments	
(B) Business Development: 1. List the new companies serviced for trade development 2. List investment attraction calls, leads/projects generated, qualified prospects, potential site visits and successful FDI location results with NYS job creation numbers. 3. List trade and investment events, conferences, special events in which you participated. 4. List business travel, purpose, locations, dates 5. List office visitors 6. Other activities	
(C) Communications: List all confirmed project leads transferred to the Department	

The Contractor will also prepare an Annual Report in the following format which will be submitted to the Department within one week of the end of the previous contract year for that contract year:

Annual Report	
Office:	For Contract Year starting _____ and ending _____
Date Report Completed: / /	
The Report should be in a narrative format including, but not necessarily limited to, the following:	
• Services provided, including major successes and achievements.	
• Research: Summary of 5 top industry segments, including current market conditions	
• Business Development: Summary of marketing events and activities conducted.	
• Communications: Summary of confirmed/active project leads identified and transmitted to the Department, including current status of those projects.	

F. OTHER DUTIES

1. ADMINISTRATIVE DETAILS

The Contractor shall ensure that complete client data information will be entered, updated and maintained in the department assigned CRM (client reporting management) system. This will include all required information, status and results of work orders or other requests, and applicable information to provide quality service to the clients. The Contractor shall also ensure that monthly and annual reports required in the RFP and Contract are submitted by deadlines.

An annual independent audit of the previous contract year's financial records will be concluded in accordance with international accounting practices and submitted to the contract administrator within 6 months of the end of the year audited.

2. TECHNOLOGY REQUIREMENTS

(a) Software: The Contractor shall secure and maintain licensed Microsoft office software (Word, Excel, Powerpoint), that meets the following specifications:

-
- Must be able to support CRM (client reporting management) system
- Must be able to protect system from viruses and from infiltrating network worldwide.

(b) Communication: The Contractor shall secure and maintain communication services that meet the following specifications:

- Must be able to send and receive landline voice calls.
- Must have facsimile capabilities.
- Must have voice messaging capabilities.
- Must have cellular phone capabilities.
- Must respond to voice messages within 24hours or the next business day (principal or his/her designee).

(c) Internet Access: The Contractor shall secure and maintain high speed internet services that allow for communications e-mail messaging and CRM connectivity that support department objectives.

APPENDIX D
RESPONSIBILITIES AND TASKS GUIDELINES

The Department has established the following guidelines for the Department's International Division Trade and Investment Specialists, International Representative Office(s), and NYS Industry/Technology Clusters, Business Organizations and Individual Companies. Guidelines are subject to change.

International Trade and Investment Specialists

- Identify and contact companies in industry sectors to ascertain interest in expanding internationally.
  ✓ How: telephone, e-mail, mass mailing, trade events, industry events, other means as appropriate.
- Identify and qualify investment prospects and leads relevant to NYS regions and industries (working with Regional, Strategic Business and Policy colleagues) and convey such prospects to International Office Representatives.
- Visit NYS companies to: (1) explain international trade development and International Representative Office services and available resources; (2) collect information; and (3) establish relationship.
- Confirm that NYS company clients are export-ready.
- Become familiar with company, product and industry characteristics.
  ✓ How: company interviews, trade publications, industry-related training, other means as appropriate.
- Assist NYS companies with an export strategy and market focus.
- Ensure that the NYS company has provided all the necessary support documentation as agreed upon by the trade representative and the International Representative Office. Typically this would include: all data specified in the client request in Client Relationship Management Database, 15 sets of product literature, an introductory letter and samples if appropriate.
  ✓ If necessary, coach client to properly ship and value international shipment of product literature and samples to International Representative Office.
- Confirm that all data have been entered into Client Relationship Management Database and that client has couriered product literature and samples to International Representative Office. Notify International Representative Office via e-mail that official request for assistance by this company has been completed.
- **Notify appropriate Regional Office**(s) and other relevant DED colleagues **via e-mail that request has been initiated, with company contact information. When request is completed, notify again via e-mail.**
- Follow up with the NY company within two weeks after an overseas office response is provided to assess status and assist with next step.
- Inform company of any applicable events, trade shows or missions sponsored by NYSDED, US DOC, and other partners to assist with market penetration.
  ✓ How: telephone, e-mail, web site, mass mailings, other means as appropriate.
- Recommend that NY company consider a future trip to work with International Office Representative in the market of interest.
- Proactively assist NY company with export-related tasks and questions.
- Track and provide performance measurement data monthly.
- Develop and improve relationships with trade associations, Chambers of Commerce, universities and other partner organizations.
- Work with International Representative Office to assist with coordination of industry-related reverse trade missions.

International Representative Office(s)

- Confirm receipt of request and product literature to company and NY representative within 3 working days after product literature received.
- **Complete request for trade assistance/work order within mutually agreed upon time between the trade manager and International Representative Office at the time the request is opened, not to exceed three months.**
- Assess request and communicate projected turnaround to NY company and NY representative within one week after receipt.
- Generate qualified investment prospects and leads, based on company visits, trade/investment events, international market intelligence and prospects and leads received from NYS colleagues.
- Review of product/company-specific assessment for marketability.
- Review of market entry recommendation.
- Perform trade and investment contact search.
- Analyze pricing information and provide competitive analysis.
- Provide in country assistance/visits with companies on a selective basis.
- Make recommendations for fine-tuning of marketing/promotional documents.
- Complete basic information reports on foreign companies - potential partners and competitors.
- Compile results into comprehensive report for NY company, with copy to NY manager.
- Send comprehensive report in agreed upon format via e-mail. Confirm to NY company and NY manager via e-mail that report has been sent.
- Track and provide performance measurement data monthly.
- Develop reverse trade mission opportunities as they arise; communicate and coordinate with NY manager to take advantage of potential export sales.
- Plan to participate in upcoming trade shows, missions, or in-country company visits to facilitate follow up from the International Representative Office report.

New York State Companies

- Provide accurate and comprehensive information to NYSDED trade and investment specialists.
- Provide 15 copies of product literature **via Federal Express or comparable courier service** directly to the appropriate International Representative Office.
- Discuss follow-up and potential market visit to meet and achieve results for the company.
- Plan to participate in upcoming trade shows, missions, or in-country company visits to facilitate follow up from the International Office report.
- Commit to contributing the effort and energy to succeed internationally.

Note: The volume of International Representative Office requests for each market will dictate the turnaround time and level of customer service that can be provided by the foreign representative office.

APPENDIX E

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

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

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

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

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

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

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

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

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

Person Legally Responsible for Binding Bidder

Name_____ Title_____

Signature_____

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

_____ _____

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

Person(s) Legally Responsible for Binding Participant

Name_____ Name_____

Title_____ Title_____

Business Address_____ Business Address_____

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 F

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MACBRIDE FAIR EMPLOYMENT PRINCIPLES

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

(1) has business operations in Northern Ireland;

Yes ____ or No____

if yes:

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

Yes____ or No____

Signature Date

APPENDIX G

Vendor Name: _____

Vendor Responsibility Information

Effective January 1, 2005, the Office of the State Comptroller has conveyed that all requests for contract approval must include information regarding Vendor Responsibility. 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.

☐ A Vendor Responsibility Questionnaire is attached hereto.

APPENDIX H

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

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

Statutory Summary

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

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

Generally speaking, two related aspects of procurements were affected: (i) activities by the business and lobbying community seeking procurement contracts and (ii) activities involving governmental agencies establishing procurement contracts. The obligations imposed by State Finance Law Sections 139-j and 139-k are collectively referred to as the "new State Finance Law". State Finance Law Sections 139-j and 139-k may be viewed at http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-j.htm and at http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-k.htm

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

NYS Department of Economic Development Policy Language

Pursuant to State Finance Law §§139-j and 139-k, this Invitation for Bid includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Department and Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, are any member of the Department's Contract Management or Publications Unit. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers contact only Department staff identified in the aforementioned section of this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html or by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41st Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. E-mail: Anne.Phillips@OGS.State.NY.US.

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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.

Termination Provisions

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

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

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

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

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

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

_____

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

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

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

Offerer Certification:

I certify that all information provided to the Department with respect to State Finance Law

§139-k is complete, true and accurate.

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

_____

Form 3 - Offerer Disclosure of Prior Non-Responsibility Determinations

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

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

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

Offerer Disclosure of Prior Non-Responsibility Determinations

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

_____

Address: _____

_____

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

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

No Yes

If yes, please answer the next questions:

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

No Yes

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

No Yes

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

_____

(Add additional pages as necessary)

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

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

OFFERER CERTIFIES THAT ALL INFORMATION PROVIDED TO THE GOVERNMENTAL ENTITY WITH RESPECT TO STATE FINANCE LAW §139-K IS COMPLETE, TRUE AND ACCURATE.

By:_____ Date:_____

Signature:_____

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

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

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

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

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

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

To: The New York state Department of Economic Development

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

From: _____
(Name and title of Offerer)

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

Address of Offerer: _____

_____Telephone Number:_____

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

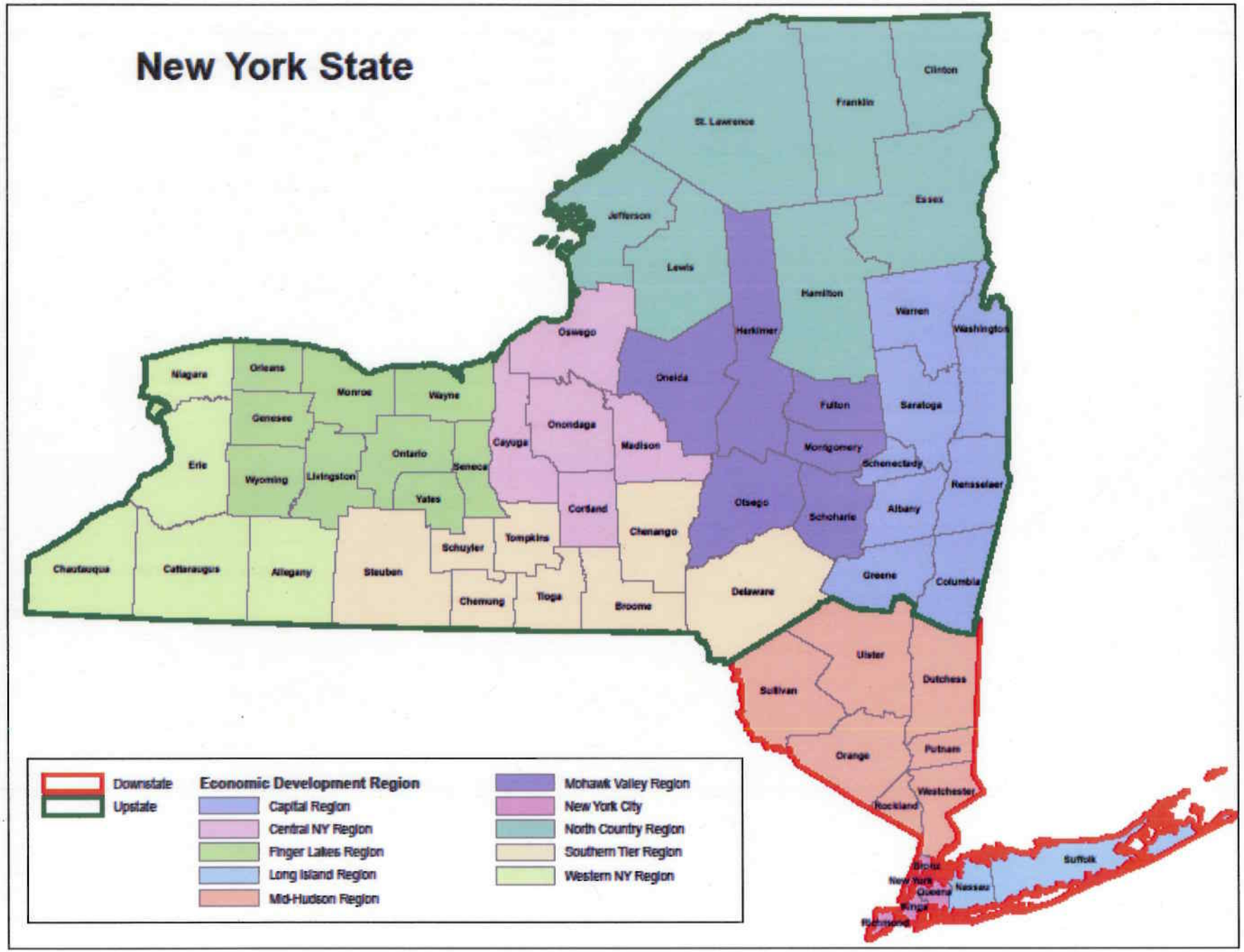
_____

Your Occupation: _____

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

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

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


New York State
St. Lawrence
Franklin
Clinton
Jefferson
Lewis
Essex
Hamilton
Herkimer
Warren
Washington
Oswego
Oneida
Fulton
Saratoga
Niagara
Orleans
Monroe
Wayne
Onondaga
Cayuga
Madison
Montgomery
Schenectady
Rensselaer
Genesee
Erie
Wyoming
Livingston
Ontario
Seneca
Yates
Otsego
Schoharie
Albany
Cortland
Chenango
Tompkins
Schuyler
Chautauqua
Cattaraugus
Allegany
Steuben
Chemung
Tioga
Broome
Delaware
Greene
Columbia
Ulster
Sullivan
Dutchess
Orange
Putnam
Westchester
Rockland
Bronx
New York
Queens
Kings
Nassau
Suffolk
Downstate
Upstate
Economic Development Region
Capital Region
Central NY Region
Finger Lakes Region
Long Island Region
Mid-Hudson Region
Mohawk Valley Region
New York City
North Country Region
Southern Tier Region
Western NY Region