



**STATE OF NEW YORK EXECUTIVE CHAMBER
REQUEST FOR PROPOSALS**

AFTER-ACTION REVIEW AND RELATED SERVICES

The purpose of this Request for Proposals (RFP) is to solicit proposals and award a contract to a qualified consultant firm, organization, or team of consultants/organizations* (Consultant or Firm) to provide After-Action Review (AAR) and related services to the New York State Executive Chamber (Chamber). The selected Consultant/Firm shall provide AAR services to review the State's COVID-19 response, identify what worked and what did not, and how the State could have improved its response, and provide a guide for the State to respond to any future large-scale emergencies. The Consultant/Firm's report should serve as a guide for New York State and for other governments to use in order to respond quickly and effectively to significant emergencies, whether they are pandemics, natural disasters or other emergency conditions that create major disruptions to normal life.

* Consultants/organizations are welcome to present a team proposal, but the Chamber would require one entity to serve as the prime contractor on this engagement.

This RFP also outlines the terms and conditions, and all applicable information required for submission of proposals. To prevent possible disqualification and to ensure compliance with the requirements of the RFP, Firms should pay strict attention to the proposal submission deadline and follow the format and instructions contained in this document.

Date	Event
July 20, 2022	Issuance of Request for Proposals
July 29, 2022 by 12:00 PM ET	Consultant/Firm Inquiries Due
On or about August 3, 2022	Chamber's Response to Consultant/Firm Inquiries
August 17, 2022 by 12:00 PM ET	Proposal Submission Deadline
Week of September 5, 2022	Finalist Interviews
August - September 2022	Proposal Evaluation and Selection
On or about September 20, 2022	Announcement of Award
Early to mid-November 2022	Anticipated Contract Start Date

The Executive Chamber reserves the right to change any of the dates stated in this RFP.

MWBE Goal: Established in each Statement of Work

SDVOB Goal: Established in each Statement of Work

Anticipated Contract Term: 1 year with 2 one-year renewal options

The procurement is in a restricted period from the date this RFP is issued until the contract has been approved. All contacts/inquiries shall be made by email to the following address: Contracts@budget.ny.gov. Designated Contacts for this Procurement:

Contracts Officer:	Michelle Heaslip
Contract Administrator:	Roxanne West
Additional Contacts:	Alisa Fortune

TABLE OF CONTENTS

1 Scope 4
1.1 Background and Overview 4
1.2 Goals and Objectives 4
1.3 Services Required 5
1.4 Statement of Work 6
1.5 Mandatory Requirement for Independence 6
1.6 Contract Term 7
2 Proposal Requirements 7
2.1 Technical Proposal 7
2.2 Cost Proposal 10
2.3 Administrative Proposal 11
2.4 Consultant/Firm Inquiries/Revisions to this RFP 12
2.5 Submission of a Complete Three-Part Proposal 13
2.6 Proposal Ownership 13
3 Evaluation Process 13
3.1 General Information 13
3.2 Submission Review 14
3.3 Evaluation and Scoring 14
4 Award of Contract/Debriefing 15
4.1 Contract Award 15
4.2 Debriefings 16
5 Contractual Requirements 16
6 Reservation of Rights 16
7 Freedom of Information Law 17
8 Ethics 18
8.1 Ethics Requirements 18
8.2 Vendor Responsibility Determination 19
8.3 Public Officers Law 20
9 Minority- and Women-Owned Businesses (MWBE) 20
9.1 NYS Executive Law Article 15-A 20
10 Service-Disabled Veteran-Owned Business Enterprises (SDVOB) 22
APPENDICES/FORMS 26
APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS 26
APPENDIX B: SAMPLE CONTRACT / POST AWARD FORMS 32
APPENDIX C: PROPOSAL CHECKLIST 59
FORM 1: COST PROPOSAL 61
FORM 2: CONSULTANT INFORMATION AND ATTESTATION 65
FORM 3: NON-COLLUSIVE BIDDING CERTIFICATION 67
FORM 4: FIRM ASSURANCES OF NO CONFLICT 68
FORM 5: MWBE AND EQUAL EMPLOYMENT OPPORTUNITIES REQUIREMENTS 70
FORM 6: MWBE DIVERSITY PRACTICES 74
FORM 7: VENDOR RESPONSIBILITY QUESTIONNAIRE INSTRUCTIONS 78
FORM 8: PROCUREMENT LOBBYING RESTRICTIONS 79
FORM 9: DISCLOSURE OF PENDING OR PRIOR LAWSUITS, CONFLICTS OF INTEREST, OR INVESTIGATIONS OR DISCIPLINARY ACTIONS 81
FORM 10: FREEDOM OF INFORMATION LAW REDACTION REQUEST 82
FORM 11: EXECUTIVE ORDER NO. 177 CERTIFICATION 83
FORM 12: SEXUAL HARASSMENT PREVENTION CERTIFICATION 84
FORM 13: CERTIFICATION UNDER EXECUTIVE ORDER NO. 16 PROHIBITING STATE AGENCIES AND AUTHORITIES FROM CONTRACTING WITH BUSINESSES CONDUCTING BUSINESS IN RUSSIA 85

1 Scope

1.1 Background and Overview

On March 1, 2020, the first COVID-19 case was confirmed in the State of New York, and New York became the first epicenter of the pandemic in the United States. In the face of this public health crisis, the State made a series of emergency decisions to protect public health and safety, and ensure that New Yorkers had adequate health care, basic necessities and protection from the spread of disease. The State paused virtually all aspects of life that were not essential. Businesses and non-essential government functions were shut down, schools were closed, and people were ordered to stay at home.

The State mobilized its workforce to, among other actions, secure medical and protective equipment, increase the State's testing capacity for COVID-19, build temporary hospitals, increase temporary health care and other personnel, fund food pantries and respond to increasing unemployment claims. The State used Executive Order authority to establish masking requirements, limit public gatherings, manage care in hospitals, nursing homes and other congregate settings, limit travel to and from New York, procure ventilators and personal protective equipment, and other actions to protect the public.

The State made decisions in the early days of the COVID-19 emergency that had far reaching effects on New Yorkers. With the benefit of time and experience, a thorough review of the steps taken will inform future responses to emergencies. The purpose of this AAR is to conduct such a review and prepare a blueprint to help guide executives in the event that there is ever another emergency of this scope. To support this effort, the State is soliciting Firms to provide independent AAR services of the State's COVID-19 response. The AAR findings will be used to create a playbook for future emergencies.

1.2 Goals and Objectives

The objectives of the AAR services should include the following:

- Review the State's COVID-19 response.
- Identify strengths, best practices, as well areas where policies were deficient in meeting the public's needs, and identify key lessons to improve public health preparedness and response.
- Report the key findings in a structured and timely manner and provide clarification as needed.
- Provide key recommendations and prioritize or categorize those recommendations.
- Prepare a planning guide for the State for use in a future emergency, including identification of the first steps the State should take when an emergency overwhelms existing plans on the level of Covid-19 occurs and recommendations on how to approach and guide executive decision making.
- Recommendations should be specific, feasible, time bound, measurable, and adequately translated into an action plan(s).

Beginning shortly after the execution of a contract resulting from this RFP, the initial work is anticipated to include reviewing the Chamber's needs and priorities, analyzing data and reports

available for each area of review, providing recommendations on research methodologies, and developing plans to execute the reviews. The focus of the review services is to identify those actions/policies/efforts that were most effective, those that could be improved for future responses, and those for which the State should consider alternatives when confronted with future emergencies. Priority areas for review and recommendation may include, but not be limited to:

- Review policies and guidance on the management of hospitals and in-patient facilities in light of the pandemic's demands, including which medical procedures could and should continue.
- Review policies and guidance for the transfer of individuals, particularly the most vulnerable individuals, into congregate settings, including homeless shelters, group homes, nursing homes, jails and prisons, and the efficacy of infection controls within those entities.
- Review policies and guidance for the shutdown and reopening of educational institutions, and how early childhood, school age, special education and post-secondary educational programs were handled during COVID-19 and how they should be handled in a future emergency.
- Factors for determining which businesses, industries, and functions should be considered essential and for what purposes, and the processes for making such decisions.
- The securing and procurement of essential goods and services to meet New Yorkers' needs.
- The protection needed for essential workers in the workplace, and programs and services needed by these workers, who are often from low income communities of color.
- Coordination among and between the State and its federal and local counterparts, including relationships with mayors, county leaders and other elected officials.
- Effective education and communication with the public, including the sharing of data and other information.
- Staffing and expertise needed to plan and implement emergency procedures and specific functions that must be fulfilled.

The State seeks initial findings for as many of the above areas as reasonably possible within six months of the contract start. More detailed analysis and additional areas should be incorporated over the following six months, culminating in a final report within one year of the contract start date. Any work under the contract shall be in accordance with a mutually agreeable Statement of Work as described in Section 1.3 below. Additional reviews and related services shall be determined as the project progresses.

1.3 Services Required

Working with Chamber executives, the selected Firm/Consultant shall perform assignments provide independent research, review and reporting in order to assist the State in responding to other emergencies in the future.

The State's COVID-19 response and recovery efforts spanned a wide range of areas and sectors. The various reviews under this engagement will address many of those. The following list includes, but is not limited to, the areas that may be the subject of review under the contract resulting from this RFP:

- Common preparedness, response, and recovery issues
- Provision of essential health services
- The effectiveness of policies and programs in reducing disparities in health outcomes for communities of color
- Plans and coordination across all levels of government, federal, state, county, and local
- Protection of vulnerable populations in congregate settings
- Public health Infrastructure
- Infection control measures including testing, contact tracing, surveillance, investigation and vaccine management/distribution
- Staffing/workforce/human resources/training
- Procurement/supply chain management/logistics
- Community engagement and support
- Communications/information sharing/guidance

Upon request, the Firm/Consultant will be assigned projects that may include but not be limited to:

1. Prepare AAR to evaluate New York State’s response to the COVID-19 pandemic including deep dives into specific areas of the State’s role in the COVID-19 response efforts.
2. Recommend the appropriate research methodologies and conducting research, data collection and analysis, focus groups and surveys.
3. Solicit input from key stakeholders, health experts and university research institutions.
4. Identify opportunities for improvements to the State’s response efforts including urgent, high priority recommendations and longer-term, strategic recommendations.
5. Provide input to a statewide plan for future responses based on AAR findings and best practices. This may include identification of areas where the State should increase capability and resources to enhance preparedness, strategies and action items to implement improvements and potential interventions based on different scenarios.

1.4 Statement of Work

At the onset of each assignment, the selected Firm/Consultant and Executive Chamber will be required to document in a statement of work (SOW) all required services to complete the work, deliverables to be developed and outcomes to be achieved, project costs and payment structures, and any MWBE/SDVOB subcontracting goals. The selected Consultant/Firm will also be expected to: maintain adequate documentation of its work; work under the direction of the Executive Chamber; and satisfy all of its obligations under the SOW.

1.5 Mandatory Requirement for Independence

It is essential that the review maintain a high level of independence. For this engagement the Executive Chamber is requesting proposals from qualified independent consultants, research organizations, think tanks and educational institutions. **Firms that have contracted with NYS Agencies and Authorities to advise on the State’s COVID-19 response, help set up COVID response, relief, and recovery programs, or provide support services to the State that in**

the Chamber's sole determination compromise its independence shall not be considered for award.

In order to be considered for contract award, Firms/Consultants must certify that they meet the minimum qualifications set forth below. Satisfaction of this minimum qualification shall be documented Form 2 of this RFP. **Inability to meet the minimum qualifications set forth below will result in the rejection of a proposal as non-responsive.**

Mandatory Consultant Qualifications:

The Consultant shall have not contracted with NYS Agencies and Authorities to advise on the State's COVID-19 response, help set up COVID-19 response, relief and recovery programs, or provide support services.

1.6 Contract Term

The term of the contract with the Firms selected is anticipated to be for one year with two one-year renewal options. Notwithstanding the expiration of the contracts, the Statement of Work may require the Contractor to work beyond that date through the completion of a specific project. In such event, the terms and conditions of the contract shall survive expiration of the contract term and apply through the completion of the project and acceptance by the State

2 Proposal Requirements

The Consultant/Firm should submit a proposal which clearly and concisely provides all of the information requested. A complete proposal for this RFP comprises three (3) separate proposals: Technical, Cost, and Administrative.

- **Technical Proposal** – The purpose of the Technical Proposal is for the Consultant/Firm to demonstrate their qualifications, competence and capacity to undertake the engagement described herein.
- **Cost Proposal** – The Cost Proposal is the fee the Consultant/Firm will charge the Chamber for the services described in this RFP.
- **Administrative Proposal** – The Administrative Proposal contains standard requirements by which the Consultant/Firm must agree to abide by, information requested by the Chamber in connection with these requirements, and additional forms to be completed by the Firm.

2.1 Technical Proposal

The Technical Proposal should specifically detail the Firm's experience and qualifications in providing the services sought by the Chamber. **Please note, in the Technical Proposal, Firms should not include any information related to their cost or the amount proposed for this RFP.**

Below is a listing of the technical information to be provided by the Firm. Firms must keep the Technical Proposal to a maximum of 30 pages (not including table of contents, resumes, and letters of reference).

A. Table of Contents

The table of contents should clearly identify the location of all material within the proposal by section and page number.

B. Executive Summary

An Executive Summary highlighting significant aspects of the Technical Proposal.

C. Mandatory Qualifications for Independence:

As stated in Section 1.5, it is essential that the reviews maintain a high level of independence. In addition to certifying that the bidder has not advised on the State’s COVID response, helped set up COVID response, relief and recovery programs, or provided support services in Form 2 of this RFP, bidders are instructed to disclose any work that it has previously performed to advise on, helped set up or supported the COVID response in NYS. Such disclosure should include the following:

- 1) The scope and specific deliverables of each engagement
- 2) The entity for whom the work was performed
- 3) The total fees and expenses paid to the Consultant for each engagement

D. Consultant/Firm Experience and Qualifications

In this section of the Technical Proposal, Consultants/Firms should demonstrate relevant experience to enable the State to fully understand their capabilities and breadth of experience. Consultants/Firms should provide as much detail as possible on past performance and demonstrate familiarity and proficiency in successfully performing the work stated in this RFP.

1. Provide an overview of the Consultant’s/Firm’s experience related to Services Required that demonstrates the Consultant’s/Firm’s capabilities and expertise in performing after-action review services or similar review and improvement plan services. As part of this overview, Consultants/Firms should also briefly demonstrate their ability to apply their expertise to the Areas/Sectors identified in Section 1.3. If your Consultant/Firm lacks capabilities or expertise in any of the Areas/Sectors, discuss how your Consultant/Firm can access the capabilities and expertise.
2. A detailed description of the direct prior experience of the Firm, comparable to those services detailed in Section 1 in the last five (5) years. Specifically, Firms should detail at least two similar engagements of actual client projects that demonstrate the depth and breadth of the Firm's expertise and experience, including a description of the direct prior experience of the Consultant/Firm with entities comparable to New York State for whom the Consultant/Firm provides, or has provided, after-action review or similar services.

For each of the client projects, please indicate the following:

- a. Name of client organization
 - b. Type of client (e.g., government entity (local, State, Federal), private company, etc.)
 - c. Role of the Firm
 - d. Project description
 - e. Name of Project Manager who oversaw this project
 - f. Number of Consultant/Firm staff (FTEs) involved
 - g. Project duration including start/end dates
 - h. Total cost of project
 - i. Identify key issues and how they were resolved
 - j. The success at meeting timelines and project objectives
 - k. Any other information regarding the project that would assist the Executive Chamber in determining the success experienced by the client
2. Provide a sample AAR report, implementation plan or similar report previously prepared by the Consultant/Firm.

E. Staff Experience and Qualifications

In this section of the Technical Proposal, please identify the core staff that you anticipate will be assigned to this contract. Consultants/Firms should provide in depth detail and examples to support the knowledge and experience of their staff. It is the expectation of the Chamber that the core team assigned to the State will have limited turnover.

1. Core Staff

State the names of the staff members who would be assigned to the State's core team for this contract and include resumes for all core team members. Identify each team member using the titles described in Form 1 (Cost Proposal), even if these titles are not consistent with the Firm's existing titles. Describe each team member's: 1. qualifications and experience in providing after-action review or similar services, 2. functional area of responsibility as it relates to the required services, and 3. experience in any of the Areas/Sectors identified in Section 1.3.

2. Other Proposed Staff

As specific projects are assigned under the resulting contracts, Consultant's/Firm's will be required to access talent with the breadth of experience required to successfully support the State's needs. In this section, Consultant's/Firm's should demonstrate their ability to attract and assign well-qualified staff to the State's projects. In particular, Consultant's/Firm's should provide illustrative examples of the types of staff they can access throughout the contract term. Consultant's/Firm's should ensure these examples clearly indicate their ability to provide high-caliber staff with the requisite qualifications and Area/Sector expertise to provide the services outlined in Section 1.3 of this RFP as projects arise.

F. Reference Letters

Firms are asked to supply the Chamber with letters of reference for the following:

1. At least two (2) of the Consultant's/Firm's engagements described above;
2. One (1) letter of reference for the proposed Engagement Partner; and
3. One (1) letter of reference for the proposed Project Manager.

Reference letters should include the name, address and contact information of the Client. Client should include a brief description of the type and scope of services of the engagement, as well as the term and quality of work performed during the engagement.

The Chamber may seek additional information from references regarding subjects that may include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Consultant/Firm to the client during the project.

Considering the criteria, any missing letters of reference or the inability to contact a Consultant/Firm or staff reference provided by a Consultant/Firm will not be looked upon favorably and may result in a reduction of points.

2.2 Cost Proposal

Among the selection criteria is the fee the Consultant/Firm will charge the Chamber for the services described in this RFP. The Cost Proposal is an integral component of a Consultant's/Firm's three-part submission. The Cost Proposal Form (Form 1) must be completed in its entirety according to the instructions included in Form 1. **Proposals with a fee format different from the format indicated in Form 1 will be deemed non-responsive and the entire proposal will not be considered for evaluation or award.**

Compensation

The compensation structure for services under any resultant contract will be defined and described in a mutually agreed-upon SOW according to the needs of the individual project or engagement. Firms will be asked to provide a detailed breakdown of the proposed costs related to the scope for each individual project performed under the resulting contract. The rates included in the selected Firm's cost proposal and established in any resulting contract shall be used to determine individual project/engagement compensation amounts. When determining the compensation, rates in excess of the contract hourly rates are not allowed. In addition, any administrative work related to the creation of Statements of Work shall not be billable to the State. Selected Consultant/Firm shall submit invoices according to the terms of the resulting contract and SOW.

Manner of Payment

Payment of the successful Consultant/Firm will be based upon the fees stipulated in the SOW. The Chamber will compensate the successful Consultant/Firm following submission of an approvable invoice according to the contract.

The State of New York is not liable for any costs incurred by a Consultant/Firm in the preparation and/or production of any proposal, or for any work performed prior to the execution of a formal contract.

2.3 Administrative Proposal

The Administrative Proposal contains standard requirements by which the Consultant/Firm must agree to abide, information requested by the Chamber in connection with these requirements, and additional forms to be completed by the Consultant/Firm. Consultants/Firms should complete and submit the administrative forms listed below:

- **Form 2:** The Firm Information and Attestation, which will be considered an integral part of the Proposal, should be signed and submitted with the Administrative Proposal. The Firm Information and Attestation should be signed by an individual authorized to contractually bind the Firm. A proposal with an unsigned Firm Information and Attestation page may be rejected. **Modified forms will not be accepted.**
- **Form 3:** Non-Collusive Bidding Certification. This form should be signed and submitted with the Administrative Proposal.
- **Form 4:** Firm Assurances of No Conflict of Interest or Detrimental Effect. This form must be signed by an authorized executive or legal representative and should be submitted with the Administrative Proposal. **Modified forms will not be accepted.**
- **Form 5:** Article 15-A Requirements. Complete and submit the following with the Administrative Proposal:
 - Form 5.1 – Workforce Composition Form.
 - Form 5.2 – Equal Employment Opportunity Policy Statement – If Firm, or any of its subcontractors, does not have an existing EEO policy statement, the Chamber may require the Consultant/Firm or subcontractor to adopt the attached model statement.
- **Form 6:** MWBE Diversity Practices. Complete and submit the following with the Administrative Proposal:
 - Form 6.1 – Responses to Diversity Practices Questionnaire, including documentation.
- **Form 7:** A Vendor Responsibility Questionnaire should be certified and filed by the proposal submission deadline. The Vendor Responsibility determination is required for review and approval of the contract by the State Comptroller’s Office. Consultants/Firms should file online with the New York State VendRep System, or submit a paper Questionnaire.

For any subcontract in excess of \$100,000, a Vendor Responsibility Questionnaire should be completed by the subcontractor and certified and filed by the proposal submission deadline. Subcontractor firms should file online with the New York State VendRep System, or submit a paper Questionnaire with the Firm’s proposal.

- **Form 8:** Procurement Lobbying Form should be completed and submitted with the Administrative Proposal confirming and certifying compliance with the Procurement Lobbying

Law, including disclosure of any findings of non-responsibility. **Modified forms will not be accepted.**

- **Form 9:** Disclosure of Pending or Prior Lawsuits, Conflicts of Interest, or Investigations or Disciplinary Actions Form should be completed and submitted with the Administrative Proposal.
- **Form 10:** Freedom of Information Law Redaction Request form should be submitted with the Administrative Proposal. If there is specific information in a Firm's proposal that a Consultant/Firm claims to be proprietary and/or trade secret information that meets the definition set forth in Section 87(2)(d), the Consultant/Firm should provide a letter in its Administrative Proposal outlining any specific concerns regarding disclosure under the New York State Freedom of Information Law (Article 6 of the Public Officers Law).
- **Form 11:** Executive Order No. 177 should be completed and submitted with the Administrative Proposal.
- **Form 12:** Sexual Harassment Prevention Certification. This form should be signed and submitted with the Administrative Proposal.
- **Form 13:** Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia. This form should be signed and submitted with the Administrative Proposal

2.4 Consultant/Firm Inquiries/Revisions to this RFP

Questions or requests for clarification regarding this RFP should be submitted via email, citing the RFP page and section, by 12:00 P.M. ET on **July 29, 2022** to contracts@budget.ny.gov. Questions will not be accepted orally and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted to the Chamber's website and notice of such posting will be sent to all Firms who have been furnished this RFP by the Chamber.

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be made by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

Further, if a Consultant/Firm discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, immediately notify the contacts listed on the cover page of such error and request clarification or modification to the document. The Chamber shall make RFP modifications by addendum, provided that any such modifications would not materially benefit or disadvantage any particular Consultant/Firm. Such clarification will be given by written notice to all parties who have been furnished an RFP by the Chamber.

If a Consultant/Firm fails to notify the Chamber of a known error, or an error that reasonably should have been known, prior to the proposal submission deadline, the Consultant/Firm shall assume the risk. If awarded the contract, the Consultant/Firm shall not be entitled to additional compensation or time by reason of the error or its late correction.

There are no designated dates for the release of addenda. Therefore, interested Consultants/Firms should check the Chamber's website on a daily basis from time of RFP issuance through bid opening. It is the sole responsibility of the Consultant/Firm to be knowledgeable of all addenda related to this procurement.

All RFP addenda will be issued on the Chamber's website at the following address: www.budget.ny.gov/contract/index.html.

2.5 Submission of a Complete Three-Part Proposal

Consultants/Firms must submit hardcopy and electronic versions of their proposals in accordance with the following (A Proposal Checklist is located in Appendix C to assist Firms in compilation of proposals.):

Hardcopy Submission

Consultants/Firms must submit via email a searchable, electronic version of their proposal (A Proposal Checklist for each lot is located in Appendix C to assist Consultants/Firms in compilation of proposals.) **No hardcopy proposals will be accepted.** The email subject line should identify the RFP and be sent to contracts@budget.ny.gov by the deadline outlined below.

1. Proposals should be addressed to:

Jason DiGianni
New York State Division of the Budget
State Capitol, Room 129
Albany, NY 12224

2. Submission of proposals in a manner other than as described in these instructions will not be accepted. ***Late proposals will not be considered for award.***
3. A complete package (Technical, Cost, and Administrative Proposals) must be received by **12:00 P.M. ET on August 17, 2022.**

2.6 Proposal Ownership

All proposals and accompanying documentation become the property of the State of New York and will not be returned. The Chamber reserves the right to use any portions of the Consultant's/Firm's proposal not specifically noted as proprietary.

3 Evaluation Process

3.1 General Information

The Chamber will evaluate each proposal based on the "Best Value" concept. This means that the proposal that "optimizes quality, cost, and efficiency among responsive and responsible Firms", shall be selected for award (State Finance Law, Article 11, § 163).

During the evaluation process, the Chamber may require clarifying information from a Consultant/Firm. If specific sections of the written proposal require clarification, the Chamber will identify the section(s) and information requested in writing. The Consultant/Firm should respond by the deadline stated in the correspondence. In addition, the Chamber may use the proposal, information obtained through any interviews, and the Chamber's own investigation of a Consultant's/Firm's qualifications, experience, ability or financial standing, and any other material or information submitted by the Consultant/Firm in the course of evaluation and selection under this RFP. The State reserves the right to contact other sources not necessarily identified in the proposal to obtain information.

3.2 Submission Review

DOB's Contracts Office will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in Section 2 of this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of the Chamber, may be rejected. All proposals passing the submission review will be evaluated.

3.3 Evaluation and Scoring

Technical Evaluation (76 Points)

An Evaluation Panel will independently score each Technical Proposal that meets the submission requirements of this RFP. Evaluation Panel members will score Technical Proposals to identify Consultants/Firms with the highest probability of satisfactorily providing the services described in Section 1.3 of this RFP. Evaluations will be based on the Consultant's/Firm's demonstration of its ability to provide the services required through its Technical Proposal. Individual Panel member scores will be averaged to calculate a technical score for each responsive Consultant/Firm.

MWBE Diversity Practices (4 Points)

MWBE Diversity Practices will be evaluated based upon the Firm's responses to the Questionnaire developed by the New York State Chamber of Minority and Women's Business Development, and found in Form 6.1. This Questionnaire consists of seven (7) questions for Firms to answer. Some questions request supporting documentation to support certain answers. Additional scoring information for diversity practices can be found in Form 6.2.

Cost Evaluation (20 Points)

The Chamber's Contracts Office will examine the Cost Proposal (Form 1), and review it for responsiveness to cost requirements. If a Cost Proposal is found to be non-responsive, that proposal will be eliminated from consideration. All complete, responsive proposals will receive a cost score.

Cost proposals will be evaluated on a pre-determined formula using the information provided in Form 1. The maximum score (20 points) will be allocated to the proposal with the lowest cost

according to this formula. All other proposals will receive a proportionate score to the proposal with the lowest cost, according to the following formula:

Cost points awarded = (20 potential points) X (Low Bid / Firm's Bid)

Finalists and Interviews

An initial composite score for each responsive Consultant/Firm will be calculated by adding the Technical Proposal points, MWBE Diversity Practices points, and Cost Proposal points. The Finalist Consultants/Firms will be the Consultants/Firms with the three highest initial composite scores and any Consultants/Firms within ten percent of the average initial composite score of the top-three ranked Firms.

Finalists will be notified of the date, location, and time of their interview. The interview will be designed to allow finalists to demonstrate their ability to provide the required services. The proposed Engagement Partner and Project Manager, as well as other key personnel who would be responsible for providing the required services, should be present and participate in the interview.

Further information with regard to the format of this stage of the evaluation may be provided to the Consultant/Firm prior to the interview. The interview should substantiate the characteristics and attributes claimed by the Consultant/Firm in the written response to the RFP. Technical scores may be revised based on the information gained from Finalist interviews. However, the interviews will not be an opportunity to cure material omissions in Consultants'/Firms' proposals and are not a substitute for a well-written proposal.

In the event that there is only one Finalist Consultant/Firm, the Chamber may choose to forego the interview at its discretion.

Final Composite Score

The final composite score for each responsive Consultant/Firm will be calculated by adding the final Technical Proposal points, MWBE Diversity Practices points, and Cost Proposal points for each Firm. The Consultant/Firm with the highest final composite score will be identified and selected as the successful Firm.

4 Award of Contract/Debriefing

4.1 Contract Award

The Chamber expects to award one contract as a result of this RFP. However, the Chamber reserves the right to not award a contract, at its sole discretion.

1. Notification of selection/non-selection will be sent to Firms by email.
2. Contract award is subject to approval of the Office of the Attorney General and the Office of the State Comptroller.

3. Upon contract award, public announcements or news releases pertaining to the contract shall not be made without the prior written consent of the Chamber.
4. Upon notification of selection, the following administrative forms will be required:
 - State Finance Law Section 163(4) (g) imposes certain reporting requirements on contractors doing business with New York State. Concerning these reporting requirements, the selected Consultant/Firm agrees to complete and submit an initial planned employment data report. The selected Consultant/Firm also agrees to submit an annual employment report by May 15 of each year of the contract.
 - A Sales Tax Certification is required for review and approval of the contract by the Comptroller's Office.
 - Proof of Workers' Compensation and Disability Insurance as required by Sections 57 and 220 of the New York State Workers' Compensation Law (WCL).

These forms can be reviewed in Appendix B (Sample Contract/Post Award Forms) of the RFP.

4.2 Debriefings

Unsuccessful Consultants/Firms shall be notified upon the Chamber's selection of a Contractor. Consistent with New York State Finance Law §163, Firms may, within fifteen (15) calendar days of notification of selection/non-selection, request a debriefing to discuss the evaluation of their proposal.

5 Contractual Requirements

The written contract with the awarded Consultant/Firm shall be a State contract that includes the "Standard Clauses for New York State Contracts", attached to this RFP as Appendix A. The entire Agreement shall consist of the documents, appendices and forms listed below. Conflicts between these documents shall be resolved in the following order of precedence:

1. Appendix A: Standard Clauses for NYS Contracts;
2. The Contract, including all exhibits, appendices, forms and attachments;
3. The RFP and any and all modifications and clarifications thereto; and
4. The Contractor's Proposal and any clarifications thereto.

The written contract will be modeled off of the attached sample contract presented in Appendix B. Firms offer their proposals accepting the terms and conditions of the sample contract.

6 Reservation of Rights

The Chamber reserves the right to:

- Reject any or all proposals received in response to the RFP;
- Withdraw the RFP at any time, at the Chamber's sole discretion;

- Accept a proposal and any subsequent proposal for the contract from someone other than the lowest cost Consultant/Firm consistent with the criteria for the evaluation of proposals;
- Make an award under the RFP in whole or in part;
- Disqualify any Consultant/Firm whose conduct and/or proposal fails to conform to the requirements of the RFP;
- Seek clarifications and revisions of proposals;
- Use proposal information obtained through site visits, management interviews and the State's investigation of a Firm's qualifications, experience, ability or financial standing, and any material or information submitted by the Consultant/Firm in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
- Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct Firms to submit proposal modifications addressing subsequent RFP amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Firms;
- Waive any requirements that are not material;
- Negotiate with the successful Consultant/Firm within the scope of the RFP in the best interests of the State;
- Conduct contract negotiations with the next responsible Consultant/Firm, should the Chamber be unsuccessful in negotiating with the selected Firm;
- Utilize any and all ideas submitted in the proposals received;
- Request best and final offers; and
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Firm's proposal and/or to determine a Firm's compliance with the requirements of the solicitation.
- Negotiate with the next highest-rated, qualified Consultant/Firm for purposes of executing a contract, if it is subsequently determined by the Chamber that the successful Consultant/Firm is not responsible.
- Assign any contract resulting from this RFP to another Executive Agency at the Chamber's sole discretion.

7 Freedom of Information Law

New York State's Freedom of Information Law (FOIL) (Public Officers Law, Article 6, Sections 84-90), available at: <https://www.dos.ny.gov/coog/foil2.html>, promotes the public's right to know the process of governmental decision-making and grants maximum public access to governmental records. All proposals submitted in response to this RFP may be subject to disclosure under FOIL.

However, pursuant to Section 87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful Firm's contract which are "trade secrets" or submitted to an agency by a commercial enterprise or derived from information obtained from a

commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.

Please note that all information that a Consultant/Firm may claim as proprietary, copyrighted or rights-reserved is not necessarily protected from disclosure under FOIL.

If there is information in a Firm's proposal that a Consultant/Firm claims meets the definition set forth in Section 87(2)(d), the Consultant/Firm should indicate so on Form 10 and provide a letter in its Administrative Proposal outlining any specific concerns.

Failure to identify the information which a Consultant/Firm believes should be protected by Section 87(2)(d) may result in such information being disclosed if a request is received.

It is a Consultant's/Firm's responsibility to consult an attorney with any questions the Consultant/Firm may have about New York State's Freedom of Information Law. All work products described herein may also be subject to FOIL disclosure.

The State will not honor any attempt by a Consultant/Firm either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.

The selected Consultant/Firm must provide to the Chamber all information, records, and other written material it produces, possesses, or relies upon if such material is the object of a legitimate request to the Chamber pursuant to the Freedom of Information Law.

8 Ethics

8.1 Ethics Requirements

The Consultant/Firm and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Consultant/Firm certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under any resulting contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Consultant/Firm or its subcontractors and who is disqualified from providing services under any resulting contract pursuant to any Ethics Requirements may share in any net revenues of the Consultant/Firm or its subcontractors derived from any resulting contract. The Consultant/Firm shall identify and provide the State with notice of those employees of the Consultant/Firm and its subcontractors who are former employees of the State that are proposed to perform services under any resulting contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Consultant/Firm provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work

performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate any resulting contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

8.2 Vendor Responsibility Determination

The Chamber will conduct a review of each prospective Firm's Vendor Responsibility Questionnaire (Form 7) to provide reasonable assurances that the Consultant/Firm is responsible.

The Chamber will make a finding of responsibility or non-responsibility before making a contract award, considering any information that comes to its attention concerning the Vendor's responsibility.

If the Chamber identifies potentially negative information in its review, the Chamber will notify the Firm. If the Chamber makes a preliminary finding that the Consultant/Firm is non-responsible, the Chamber will detail in writing to the Consultant/Firm the reasons(s) for the preliminary determination, and will provide an opportunity for the Consultant/Firm to respond before the determination is finalized.

A Consultant/Firm awarded a contract is required to update their responsibility determination if a material event occurs requiring an amendment. The awarded Consultant/Firm is also required to update vendor responsibility questionnaires as new information becomes available.

The Consultant/Firm awarded a contract shall at all times during the contract term remain responsible. During the term of this contract, any changes in the provided Questionnaire shall be disclosed to the Chamber, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract. Furthermore, the awarded Consultant/Firm agrees, if requested by the Chamber, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

The Chamber, in its sole discretion, reserves the right to suspend any or all activities under the contract, at any time, when it discovers information that calls into question the responsibility of the awarded Firm. In the event of such suspension, the awarded Consultant/Firm will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the awarded Consultant/Firm must comply with the terms of the suspension order. Contract activity may resume at such time as the Chamber issues a written notice authorizing a resumption of performance under the contract.

Upon written notice to the awarded Firm, and a reasonable opportunity to be heard by the appropriate Chamber officials or staff, the contract may be terminated by the Chamber at the Firm's expense where the Consultant/Firm is determined by the Chamber to be non-responsible. In such event, the Chamber may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

The Chamber reserves the right to terminate a contract for non-responsibility, including failure to disclose information.

This provision shall also apply to any proposed subcontractor performing services under the resulting contract in excess of \$100,000.

8.3 Public Officers Law

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a “lifetime bar” from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

9 Minority- and Women-Owned Businesses (MWBE)

9.1 NYS Executive Law Article 15-A

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the Chamber is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of Chamber contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Chamber shall establish MWBE participation goals inclusive of New York State-certified Minority-owned Business Enterprises (“MBE”) participation and New York State-certified Women-owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs) when each SOW is issued under the Contract. If required in the SOW, a Contractor on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the Consultant/Firm agrees that the Chamber may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Chamber will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR§142.8.

The Consultant/Firm understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR§142.13, the Consultant/Firm further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set

forth in the Contract resulting from this RFP and subsequent SOWs, such finding constitutes a breach of Contract and the Chamber may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplies under the Contract.

By submitting a bid or proposal, a Consultant/Firm agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals as may be included in the SOW by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Consultant/Firm may arrange to provide such evidence via a non-electronic method by contacting the DOB's Contract Office at contracts@budget.ny.gov.

If MWBE goals are set forth in a SOW, the Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan included in the SOW, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Chamber, but must be made no later than prior to the submission of a request for final payment on the Contract.

If MWBE goals are set forth in a SOW, the successful Contractor will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to the Chamber by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Consultant/Firm agrees with all of the terms and conditions of the Sample Contract (Appendix B) and the Standard Clauses for All New York State Contracts (Appendix A) including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Consultant/Firm is required to ensure that it and any subcontractors awarded a subcontract 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 Firm, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, gender identity or expression, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Consultant/Firm will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement. If Firm, or any of its subcontractors, does not have an existing EEO policy statement the Chamber may require the Contractor or subcontractor to adopt the model statement (Form 5.2).

If awarded a Contract, Consultant/Firm shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by the Chamber on a quarterly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, gender identity or expression, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

10 Service-Disabled Veteran-Owned Business Enterprises (SDVOB)

NYS Executive Law Article 17-B

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Chamber recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Chamber contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Firms are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

A. For each SOW, the Chamber may set overall goals for SDVOB participation. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to DOB’s Contracts Office at contracts@budget.ny.gov. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’

Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Where SDVOB Contract Goals have been established in the SOW, the Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see Required Good Faith Efforts clause below).

SDVOB Utilization Plan

- A. For each SOW where SDVOB Contract Goals have been established and in accordance with 9 NYCRR § 252.2(i), Contractors are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their response to a SOW.
- B. The Utilization Plan shall list the SDVOBs that the Consultant/Firm intends to use to perform the Contract, a description of the work that the Consultant/Firm intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Consultant/Firm acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Chamber.
- C. The Chamber will review the submitted SDVOB Utilization Plan and advise the Contractor of the Chamber’s acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, the Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the Chamber a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Chamber to be inadequate, the Chamber shall notify the Contractor and direct the Contractor to submit, within five business days of notification by the Chamber, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth in the SOW.
- F. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Chamber shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, the Contractor shall contact DOB's Contracts Office (contracts@budget.ny.gov) for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in the Required Good Faith Efforts clause below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Contractor may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Chamber at that time, the provisions of Paragraphs (C), (D) & (E) of the SDVOB Utilization Plan clause will apply. If the documentation included with the Contractor's waiver request is complete, the Chamber shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the SOW. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Chamber, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If the Chamber, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals established in the SOW, and no waiver has been issued in regards to such non-compliance, the Chamber may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the Chamber.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to Contractors' solicitation was not selected.
3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Chamber with certified SDVOBs whom the Chamber determined were capable of fulfilling the SDVOB goals set in the Contract.
4. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

5. Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to the Chamber during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using Form SDVOB 101 and should be completed by the Contractor and submitted to the Chamber, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: contracts@budget.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

APPENDICES/FORMS

APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

October 2019

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the

State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with SubChamber 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of

Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the

acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider

compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Chamber 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 subChamber 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
Chamber for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Chamber of Minority and Women's Business
Development

11 633 Third Avenue
12 New York, NY 10017
13 212-803-2414
14 email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Chamber 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 subChamber that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to

this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

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

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

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

covered agency determines that such action is in the best interest of the State.

Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

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

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

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

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

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

APPENDIX B: SAMPLE CONTRACT / POST AWARD FORMS

CONTRACT NO. _____

**THE NEW YORK STATE EXECUTIVE CHAMBER
AND**

**FOR AFTER-ACTION REVIEW AND RELATED SERVICES
FOR THE PERIOD
_____, 2022 THROUGH _____, 2024**

THIS IS AN AGREEMENT (the "AGREEMENT") by and between the NEW YORK STATE EXECUTIVE CHAMBER (hereinafter referred to as the "CHAMBER"), and _____ (hereinafter referred to as "_____" or "CONTRACTOR"), with offices located at _____.

WITNESSETH

WHEREAS, the CHAMBER requires the services of a consultant to provide After-Action Review (AAR) and related services relating to the Corona Virus Disease (COVID-19) response in New York State ("State"); and

WHEREAS, to assist the CHAMBER, a Request for Proposals ("RFP") for After-Action Review and Related Services was issued on July 20, 2022, a copy of which is incorporated hereto as Appendix B; and

WHEREAS, after an evaluation of the proposals submitted for the performance of such work, the CHAMBER has determined that _____ is a responsible and qualified consultant to perform the CHAMBER's After-Action Review and Related Services based upon its Proposal dated August 17, 2022, a copy of which is incorporated hereto as Appendix C; and

WHEREAS, the CONTRACTOR is willing to serve as a consultant to the CHAMBER, as outlined in the RFP and herein;

NOW, THEREFORE, in consideration of the terms and conditions of this AGREEMENT, it is hereby mutually agreed upon by and between the CHAMBER and the CONTRACTOR (each individually a "PARTY" and collectively "PARTIES"), as follows:

I. SERVICES

- A. The CHAMBER does hereby engage _____ to provide After Action Review and related services consistent with Section 1 of the RFP.

[Final scope of services to be inserted here.]

Statement of Work

In all cases, the CONTRACTOR will mutually agree with the CHAMBER on a Statement of Work (“SOW”) that details the required services, any specific deliverables, and the project cost. In the event that implementation assistance is desired, a separate Statement of Work may be developed and agreed upon by the CONTRACTOR and the CHAMBER.

In all cases, all costs and compensation defined in the SOW shall be established based on the hourly rates set forth in Section III. The CONTRACTOR and the CHAMBER will agree to establish and document in a mutually agreed-upon SOW the method of compensation, which may consist of time and materials, fixed-price payments, or not-to-exceed payments, among others.

- B. The CONTRACTOR agrees to perform and furnish the services and/or deliverables required in connection herewith in accordance with all conditions, covenants and representations contained in this AGREEMENT.
- C. Deliverable Acceptance: The CHAMBER will be responsible for review and acceptance of the Services and/or Deliverables. Acceptance of the Services and/or Deliverables shall be in accordance with the following:
 - 1. Notification: The CONTRACTOR will submit to the CHAMBER written notification indicating the Services and/or Deliverables that were completed, a summary of each of the completed Services and/or Deliverables, and a copy of the completed Deliverable(s) (“Notification”), if necessary.
 - 2. Acceptance Criteria: The acceptance criteria for the Services and/or Deliverables shall be its substantial conformance to the requirements and descriptions set forth in any SOW (“Acceptance Criteria”).
 - 3. Acceptance: The CHAMBER shall have a twenty (20) business day acceptance period, unless otherwise mutually agreed to by the CHAMBER and CONTRACTOR, to approve Services and/or Deliverables that conform in all material respects to the Acceptance Criteria. The acceptance period shall begin upon transmittal by CONTRACTOR to the CHAMBER of a written Notification that the Services and/or Deliverables have been completed and are ready for approval, and shall be counted from and include the first working day following the delivery of the Notification to the CHAMBER. The CHAMBER shall provide CONTRACTOR (i) with written approval of the Services and/or Deliverables or (ii) with a written statement which identifies in reasonable detail, with references to the applicable Acceptance Criteria, all of the deficiencies preventing approval (“Deficiencies”). All Services and/or Deliverables shall require the written approval by the CHAMBER that such Services and/or Deliverables conform in all material respects with the Acceptance Criteria.

CONTRACTOR shall have ten (10) business days (or such other period mutually agreed to by the CHAMBER and CONTRACTOR) to complete all such corrective actions or changes in order for such Services and/or Deliverables to conform in all material respects with the Acceptance Criteria. The count of such business days shall begin on the first business day following CONTRACTOR’s receipt of the written statement of Deficiencies and/or required corrective actions identified by the CHAMBER.

The CHAMBER shall have twenty (20) business days to review the revised Services and/or Deliverables (or such other period mutually agreed to by the CHAMBER and CONTRACTOR) and to notify CONTRACTOR in writing of acceptance or rejection in accordance with the foregoing provisions of this Section. If the CHAMBER has not approved the Services and/or Deliverables after correction by CONTRACTOR, the CONTRACTOR and the CHAMBER may mutually agree to further steps to correct outstanding material deficiencies. However, in no event shall the total time allocated for review, correction and re-review of material Deficiencies in Services and/or Deliverables, exceed ninety (90) days.

The CHAMBER shall have final sign-off responsibility on all Services and/or Deliverables. Services and/or Deliverables may be provided concurrently to the CHAMBER for review and acceptance in accordance with this Section.

II. TERM

_____ agrees to perform the aforesaid services for a one-year period beginning _____ and ending _____ with two one-year renewal options.

Notwithstanding the expiration of this AGREEMENT, a SOW may require the CONTRACTOR to work beyond that date through the completion of a specific project, in which event the terms and conditions of this AGREEMENT shall survive expiration of the AGREEMENT term and apply through completion of project and acceptance by the STATE.

III. COMPENSATION

A. _____'s rates for services rendered under this AGREEMENT shall not exceed the hourly rates as shown below:

Title*	Hourly Rate		
	Initial Term	Optional Renewal Periods	
	Contract Year 1 2022-23	Contract Year 2 2023-24	Contract Year 3 2024-25
Engagement Partner			
Project Manager			
Subject Matter Expert			
Senior Management/ Research Analyst			
Management/ Research Analyst			
Junior Management/ Research Analyst			

The above rates shall apply to all hourly compensation paid under this AGREEMENT. The hourly rates are inclusive of personnel, travel, postage, reproduction and all other expenses related to the engagement.

The CONTRACTOR will bill for travel expenses in accordance with the State of New York Office of State Comptroller Travel Manual (currently located at <http://www.osc.state.ny.us/agencies/travel/manual.pdf>). When State travel rates are not available, mutually agreed-upon amounts related to travel will be reimbursed.

- B. Payment under this AGREEMENT shall not exceed \$_____ for the contract term.
- C. CONTRACTOR will be compensated only for services that are performed in accordance with a mutually agreed upon SOW as described in Section I of this AGREEMENT.
- D. Billings for services rendered shall be submitted to the CHAMBER as specified in the SOW.
- E. The CONTRACTOR acknowledges that it will not receive payment on any invoices submitted under this AGREEMENT unless or until it complies with the State Comptroller's electronic payment procedures.
- F. Fees shall become payable by the STATE upon receipt of an invoice in accordance with this section. Properly invoiced fees not paid within 30 days of receipt of the invoice and services will be paid with interest in accordance with Article 11-A of New York State Finance Law. Any and all such invoices shall contain a detailed itemization of requested compensation which shall, at the minimum include:
 - 1. The number assigned to this AGREEMENT (_____), the CONTRACTOR's New York State Vendor Identification Number, an invoice number, and invoice date;
 - 2. Name(s) and title(s) (as identified in this section) of the CONTRACTOR staff providing services;
 - 3. Specific identification of the services provided;
 - 4. Amounts to be compensated as defined in the SOW; and
 - 5. Dates upon which the services were performed.

All invoices should be submitted electronically to the CHAMBER at contracts@budget.ny.gov.

- G. The CONTRACTOR shall not be reimbursed for the preparation of invoices or billing statements or for the time spent correcting any error in previously submitted invoices or billing statements.

IV. RELATIONSHIP OF PARTIES

The relationship of the CONTRACTOR to the CHAMBER shall be that of an independent contractor. In accordance with such status as an independent contractor, the CONTRACTOR covenants and agrees to act consistent with such status: to neither hold itself out as, nor claim to be, an officer or employee of the CHAMBER or the STATE by reason hereof; and not to, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the CHAMBER or the STATE, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership credit.

V. STAFF

- A. The CONTRACTOR shall assign _____ as the Engagement Manager, _____ as the Project Manager, and the other personnel referenced in its proposal, but is not limited in its utilization of other personnel for its duties hereunder, subject to the approval of the CHAMBER.
- B. CONTRACTOR staff assigned to work on this project shall be subject to approval by the CHAMBER. It is highly desirable that staff assigned to work on a project continue to work on the project until completion. The CHAMBER reserves the right to require security clearance and criminal history checks of the CONTRACTOR and/or staff.
- C. The CONTRACTOR specifically represents and agrees that its members, officers, employees, agents, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder. All employees of the CONTRACTOR, or of its subcontractors, who shall perform the services under this AGREEMENT, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform services under this AGREEMENT on behalf of CONTRACTOR shall, in performing the services, comply with all applicable Federal and STATE laws concerning employment in the United States.
- D. This AGREEMENT is intended to secure the professional services of the CONTRACTOR because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the CONTRACTOR.
- E. The CONTRACTOR shall be fully responsible for performance of work by and conduct of its staff and subcontractor's staff. The CHAMBER reserves the right to request removal of any CONTRACTOR staff or subcontractor staff if, in the CHAMBER's sole discretion, such staff is not performing in accordance with the AGREEMENT.
- F. The CONTRACTOR shall notify the CHAMBER immediately of any proposed changes in staff. The CHAMBER has an absolute right and discretion to approve or disapprove any proposed changes in staff. The CHAMBER, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld. The replacement staff must have the skills, experience and expertise that is comparable to or better than that of the person they will replace, and will be provided at the same or lower hourly rate.
- G. The CONTRACTOR and its staff must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other STATE codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with the STATE. Failure to comply with these requirements may result in termination of the AGREEMENT and/or other civil or criminal proceedings as required by law.

VI. SUBCONTRACTING

The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the CHAMBER. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subcontractors, subject to approval of the CHAMBER. If the CONTRACTOR determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to the CHAMBER. The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts dated October 2019, and Appendix B – Request for Proposals dated July 20, 2022. Unless waived in writing by the CHAMBER, all subcontracts between the CONTRACTOR and subcontractors shall expressly name the STATE, through the CHAMBER, as the sole intended third party beneficiary of such subcontract. The CHAMBER reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the CHAMBER or the STATE a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the CHAMBER.

The CHAMBER reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONTRACTOR and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this AGREEMENT.

The CONTRACTOR shall give the CHAMBER immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the CONTRACTOR's duties under the AGREEMENT. Any subcontract shall not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of the AGREEMENT.

VII. RESERVATIONS

The CHAMBER reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. In that event, the CONTRACTOR will, as directed by the CHAMBER, cooperate and work in harmony with such consultants and contractors.

VIII. CHAMBER REPRESENTATIVES

- A. The CHAMBER, with the commencement of this AGREEMENT, designates as its representatives, [State Project Manager] and Jen McCormick, or their designee(s).

- B. Such representatives shall request, oversee, supervise and accept performance of services performed by the CONTRACTOR and shall receive any required submissions. Whenever an agreement action is to be taken or approval for services is to be given by the CHAMBER such action or approval may be given only by such representative(s) designated pursuant to this Section.
- C. All Notices under this AGREEMENT shall be directed to the representatives identified in this Section, or their designee(s).
- D. The CHAMBER may, on written notice, designate other individuals as its representatives.

IX. CONFLICTS OF INTEREST

- A. The CONTRACTOR has provided a form (Firm Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other contract currently in force with the STATE, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.
- B. The CONTRACTOR hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONTRACTOR's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the CHAMBER immediately of any such actual or potential conflicts of interest.
- C. In conjunction with any subcontract under this AGREEMENT, the CONTRACTOR shall obtain and deliver to the CHAMBER, prior to entering into a subcontract, a Firm Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The CONTRACTOR shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the CHAMBER a signed and completed Firm Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.
- D. The CHAMBER and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The CHAMBER will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the CHAMBER, a real or potential conflict of interest cannot be cured.

X. PUBLIC OFFICERS LAW

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their

separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a “lifetime bar” from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

XI. ETHICS REQUIREMENTS

The CONTRACTOR and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). The CONTRACTOR certifies that all of its employees and those of its subcontractors who are former employees of the STATE and who are assigned to perform services under this AGREEMENT shall be assigned in accordance with all Ethics Requirements. During the term, no person who is employed by the CONTRACTOR or its subcontractors and who is disqualified from providing services under this AGREEMENT pursuant to any Ethics Requirements may share in any net revenues of the CONTRACTOR or its subcontractors derived from this AGREEMENT. The CONTRACTOR shall identify and provide the STATE with notice of those employees of the CONTRACTOR and its subcontractors who are former employees of the STATE that will be assigned to perform services under this AGREEMENT, and make sure that such employees comply with all applicable laws and prohibitions. The STATE may request that the CONTRACTOR provide it with whatever information the STATE deems appropriate about each such person’s engagement, work cooperatively with the STATE to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the STATE, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The STATE shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The STATE shall have the right to terminate this AGREEMENT at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

XII. WARRANTIES

The CONTRACTOR warrants that it will perform services in good faith and in a professional manner and that the services will conform in all material respects to the description of such services set forth herein. The warranties expressly set forth in this AGREEMENT are in lieu of all other warranties, expressed or implied including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

The CONTRACTOR warrants that its services shall be performed in accordance with applicable professional standards and that the CONTRACTOR shall correct, at no charge to the CHAMBER or the STATE, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

XIII. PERFORMANCE MONITORING

The CONTRACTOR's performance will be assessed by the CHAMBER according to the achievement of CONTRACTOR's contractual obligations in a timely and professional manner, as set forth herein. The CHAMBER will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

XIV. INDEMNIFICATION AND LIABILITY

- A. The CONTRACTOR shall be fully liable without monetary limitation for any act or omission of the CONTRACTOR, its employees, subcontractors and agents, and shall fully indemnify and hold harmless the STATE from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or tangible personal property or intellectual property caused by fault or negligence of CONTRACTOR, its employees, subcontractors or agents arising from the CONTRACTOR's performance of the AGREEMENT, provided, however, that the CONTRACTOR shall not be obligated to indemnify the STATE for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act by the STATE or the acts of third parties, other than those provided by the CONTRACTOR to perform under the AGREEMENT. In connection with the foregoing, the STATE shall give the CONTRACTOR: (i) prompt written notice of any action, claim or threat of suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at the CONTRACTOR's sole expense, and (iii) assistance in the defense of any such action at the expense of the CONTRACTOR.
- B. Except as otherwise set forth as being without monetary limitation in the indemnification paragraph above, the limit of liability shall be as follows: CONTRACTOR liability for any damages arising out of, or related to the AGREEMENT, whether in contract, tort or otherwise, shall in no case exceed: (i) an amount equal to two (2) times the amount paid to the CONTRACTOR for work performed under this AGREEMENT, or (ii) one million dollars (\$1,000,000), whichever is greater.
- C. Notwithstanding the above, the CONTRACTOR and the CHAMBER/STATE shall not be liable for any consequential, indirect or special damages of any kind which may result from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the CHAMBER/STATE, the CONTRACTOR, or by others. CONTRACTOR shall not be liable for any missed or lost revenue associated with, or related to, the services provided pursuant to this contract.

XV. REPORTS AND FINDINGS

Any and all reports and findings rendered to the CHAMBER by the CONTRACTOR shall be the exclusive property of the CHAMBER and subject to its exclusive use and control. The CONTRACTOR hereby waives any and all rights to such reports and findings and the control thereof.

XVI. OWNERSHIP

CONTRACTOR will retain all rights, title and interest in and to all materials developed by it prior to the effective date of this AGREEMENT and/or developed outside of CONTRACTOR's obligations hereunder.

XVII. CONFIDENTIALITY

- A. CONTRACTOR agrees that it will not use confidential or proprietary information disclosed to CONTRACTOR in connection with the services ("Confidential Information") for any purpose other than in connection with the services. The CONTRACTOR is fully responsible for its staff, its subcontractor(s) and any subcontractor's staff with regard to Confidential Information.
- B. Information which falls into any of the following categories shall not be considered Confidential Information:
1. information that is previously rightfully known to the CONTRACTOR without restriction on disclosure;
 2. information that becomes, from no breach of this AGREEMENT on the part of the CONTRACTOR, generally known in the relevant industry, or is otherwise publicly available; and
 3. information that is independently developed by CONTRACTOR without use of the confidential information.
- C. Except as specifically permitted in this AGREEMENT, CONTRACTOR shall not, at any time, in any fashion, form or manner, divulge, disclose, communicate or use, any Confidential Information other than in connection with the services or as otherwise provided herein.
- D. CONTRACTOR may disclose Confidential Information if such information is required to be disclosed by CONTRACTOR by any law, rule, regulation, judicial or administrative process or applicable professional standards, provided that, to the extent permitted by applicable law or regulation, the CONTRACTOR notifies the CHAMBER prior to any such required disclosure.
- E. CONTRACTOR agrees not to issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding the services without the express advance written approval of CHAMBER.
- F. CONTRACTOR agrees that, as between the PARTIES, all Confidential Information in its possession is at all times the sole property of the STATE.
- G. Notwithstanding anything herein to the contrary, CONTRACTOR shall have the right to retain one copy of the Confidential Information and any summaries, analyses, notes or extracts prepared by CONTRACTOR which are based on or contain portions of the Confidential Information evidencing its services for the STATE as required by law, regulation, professional standards or reasonable business practice.

H. CONTRACTOR shall retain all Confidential Information in confidence, exercising the same standard of care used by CONTRACTOR to protect its own confidential and proprietary information, to prevent the disclosure of Confidential Information to any third party. CONTRACTOR shall not use Confidential Information for any purpose other than in furtherance of its professional services for the CHAMBER.

I. CONTRACTOR understands that if it breaches, or threatens to breach this AGREEMENT, the CHAMBER shall have the right to seek all equitable and legal rights (including the right to seek injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable legal fees) for losses or damages resulting from such breach. CONTRACTOR acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the confidential or proprietary information identified in this AGREEMENT.

XVIII. RECORDS ACCESS

CHAMBER staff, others authorized by the CHAMBER such as representatives of the Federal government, or other STATE agencies authorized by STATE law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the CONTRACTOR, including any and all subcontractors, involved in transactions relating to this AGREEMENT during the contract period and for a period of six years after final payment for said services.

XIX. WORK PAPER RETENTION AND AVAILABILITY

A. The work papers to be prepared by the CONTRACTOR during the AGREEMENT will be retained by the CONTRACTOR although copies thereof and access to them will be made available, upon request, to the CHAMBER, representatives of the Federal government and STATE agencies when authorized by the CHAMBER, and other STATE agencies authorized by existing law, for a period of six (6) years following the date of the final payment under the contract. All such requests, and their disposition, shall be authorized by the CHAMBER.

B. The CONTRACTOR agrees to make personnel available to explain fully all data, materials, and work papers developed during the engagement for a period of six (6) years following the date of the final payment under the AGREEMENT.

XX. DISPUTES AND DISSATISFACTION/CONFLICT RESOLUTION

A. In the event the CHAMBER is dissatisfied with the CONTRACTOR's performance of the services provided under the AGREEMENT, including but not limited to a breach of the AGREEMENT on the part of the CONTRACTOR, the CHAMBER shall notify the CONTRACTOR of the dispute in writing. In the event the CONTRACTOR has any disputes with the CHAMBER, the CONTRACTOR shall notify the CHAMBER in writing. Such notification in both cases shall hereinafter be referred to as "Notice of Conflict", or in the case of contract breach, "Notice of Default".

B. If either the CHAMBER or the CONTRACTOR notifies the other of such dispute or dissatisfaction, the PARTY receiving the notification shall then make good faith efforts to

amicably resolve the problem or settle the dispute, including meeting with the notifying PARTY's representatives to diligently attempt to reach a mutually satisfactory result.

- C. In the event of a dispute, both PARTIES will continue to fulfill their performance obligations under the AGREEMENT.
- D. Nothing shall limit either PARTY's ability to pursue all legal remedies. If the PARTIES are unable to amicably resolve the dispute after the steps described above, then either PARTY may seek legal or equitable relief in a court of competent jurisdiction in the State of New York.

XXI. TERMINATION

- A. The CHAMBER reserves the right to terminate the services of the CONTRACTOR, in whole or in part, upon thirty (30) days written notice for any reason, or immediately for cause. Upon notice of termination, the CONTRACTOR shall stop work immediately and complete only those specific assignments, if any, subsequently approved by the CHAMBER. In the event of termination other than for cause, the CONTRACTOR shall be entitled to compensation for services performed through the date of termination that are accepted by the CHAMBER, and for any subsequent services that are accepted by the CHAMBER, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the CHAMBER. The CONTRACTOR agrees to cooperate to the fullest respect with any successor consultants and contractors.
- B. After receipt of the notice of termination, the CONTRACTOR shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice.
- C. The CONTRACTOR shall submit its termination claim to the CHAMBER promptly after receipt of a notice of termination, but in no event later than 30 days from the effective date thereof, unless one or more extensions in writing are granted by the CHAMBER upon written request of the CONTRACTOR within such 30-day period or authorized extension thereof. Upon failure of the CONTRACTOR to submit a termination claim within the time allowed, the CHAMBER may determine, on the basis of available information, the amount, if any, due to the CONTRACTOR by reason of termination, and shall thereupon pay to the CONTRACTOR the amount so determined.
- D. If the termination for cause results from unsatisfactory performance by the CONTRACTOR, the value of the work performed by the CONTRACTOR prior to termination shall be established by the CHAMBER.
- E. The CONTRACTOR agrees to transfer title to the CHAMBER, and to deliver in the manner, at the time, and to the extent, if any, directed by the CHAMBER, such information and work products for which the CONTRACTOR produced and received compensation by the CHAMBER.

- F. In addition, non-compliance with the procurement laws as noted in Section XXXIII of this AGREEMENT will lead to contract termination.

XXII. FORCE MAJEURE

Neither PARTY will be liable for losses, defaults, or damages under this AGREEMENT which result from delays in performing, or an inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this AGREEMENT, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire or any other cause beyond the reasonable control of the PARTY that was so delayed or so unable to perform, provided that such PARTY was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such PARTY will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

XXIII. COMPLIANCE WITH PROCUREMENT LAWS

- A. By execution of this AGREEMENT, the CONTRACTOR certifies that information provided to the STATE with respect to the Vendor Responsibility Questionnaire, Procurement Lobbying Certifications, Contractor Disclosure Form A and Section 5-a of the Tax Law (Forms ST-220-TD and ST-220-CA) is complete, true and accurate.
- B. The CONTRACTOR hereby acknowledges that the Vendor Responsibility Questionnaire and certification are made part of its proposal and thereby this AGREEMENT and that any misrepresentation of fact in the Questionnaire and attachments, or in any CONTRACTOR responsibility information that may be requested by the CHAMBER, may result in termination of this AGREEMENT.

The CONTRACTOR shall at all times during the contract term remain responsible. During the term of this AGREEMENT, any changes in the provided Questionnaire shall be disclosed to the CHAMBER, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of this AGREEMENT. Furthermore, the CONTRACTOR agrees, if requested by the CHAMBER, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

The CHAMBER, in its sole discretion, reserves the right to suspend any or all activities under this AGREEMENT, at any time, when it discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. Contract activity may resume at such time as the CHAMBER issues a written notice authorizing a resumption of performance under this AGREEMENT.

Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard by the appropriate CHAMBER officials or staff, this AGREEMENT may be terminated by the CHAMBER at the CONTRACTOR's expense where the CONTRACTOR is determined by the CHAMBER to be non-responsible. In such event, the CHAMBER may complete

contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

- C. CONTRACTOR hereby acknowledges that State Finance Law Section 163(4)(g) imposes certain reporting requirements on the contractor doing business with the STATE. In furtherance of these reporting requirements, the CONTRACTOR agrees to complete and submit an initial planned employment data report and an annual employment report (Forms A and B respectively). Complete instructions and forms may also be accessed at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm>.

XXIV. REQUIREMENTS AND PROCEDURES FOR M/WBE PARTICIPATION

A. General Provisions

1. The CHAMBER is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all STATE contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
2. The CONTRACTOR agrees, in addition to any other nondiscrimination provision of the AGREEMENT and at no additional cost to the CHAMBER, to fully comply and cooperate with the CHAMBER in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority- and women-owned business enterprises ("MWBE"). The CONTRACTOR's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
3. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section XXV.G of this AGREEMENT and such other remedies are available to the CHAMBER pursuant to this AGREEMENT and applicable law.

B. Contract Goals

1. For purposes of this AGREEMENT, the goals for Minority- and Women-Owned Business Enterprises ("MWBE") participation shall be as designated in each Statement of Work (SOW) based on the current availability of qualified MBEs and WBEs.
2. For purposes of providing meaningful participation by MWBEs in this AGREEMENT and achieving the MWBE Contract Goals, the CONTRACTOR should reference the directory of New York State certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the CONTRACTOR is encouraged to contact the Division of Minority and Women Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on this AGREEMENT.

3. The CONTRACTOR understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.
4. Where MWBE Contract Goals have been established in each SOW, the CONTRACTOR must document “good faith efforts”, to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the AGREEMENT. Such documentation shall include, but not necessarily be limited to:
 - a. Evidence of outreach to MWBEs;
 - b. Any responses by MWBEs to the CONTRACTOR’s outreach;
 - c. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - d. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the CHAMBER with MWBEs; and,
 - e. Information describing specific steps undertaken by the CONTRACTOR to reasonably structure the contract scope of work to maximize opportunities for MWBE participation.

C. Equal Employment Opportunity (EEO)

1. The CONTRACTOR agrees to be bound by the provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the AGREEMENT.
2. In performing the AGREEMENT, the CONTRACTOR shall:
 - a. Ensure that each CONTRACTOR and each subcontractor performing work on this AGREEMENT shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - b. The CONTRACTOR shall submit an EEO policy statement to the CHAMBER within seventy-two (72) hours after the date of the notice by the CHAMBER to award the AGREEMENT to the CONTRACTOR.

- c. If the CONTRACTOR, or any of its subcontractors, does not have an existing EEO policy statement, the CHAMBER may require the CONTRACTOR or subcontractor to adopt a model statement (see Form 5.4 Equal Employment Opportunity Policy Statement).
- d. The CONTRACTOR's EEO policy statement shall include the following language:
 - 1) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - 2) The CONTRACTOR shall state in all solicitations or advertisements for employees that, in the performance of the AGREEMENT, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - 3) 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.
 - 4) The CONTRACTOR will include the provisions of Subdivisions (1) through (3) of this Subsection D and Paragraph "5" of this Section C, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the AGREEMENT.

3. Staffing Plan

To ensure compliance with this section, the CONTRACTOR shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the AGREEMENT by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The CONTRACTOR shall complete the staffing plan form and submit it within a reasonable time, as directed by the CHAMBER.

4. Workforce Employment Utilization Report ("Workforce Report")

- a. The CONTRACTOR shall submit a Workforce Report, and shall require each of its subcontractors to submit a Workforce Report, in such form as shall be required by the CHAMBER on a QUARTERLY basis during the term of the AGREEMENT.
- b. Separate forms shall be completed by the CONTRACTOR and any subcontractors.

- c. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
5. The CONTRACTOR shall comply with the provisions of the Human Rights Law, and all other STATE and Federal statutory and constitutional non-discrimination provisions. The CONTRACTOR and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

D. MWBE Utilization Plan

1. The CONTRACTOR represents and warrants that the CONTRACTOR has submitted an MWBE Utilization Plan, through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the CONTRACTOR may arrange to provide such evidence via a non-electronic method to the CHAMBER, either prior to, or at the time of, the execution of the AGREEMENT.
2. The CONTRACTOR agrees to use such MWBE Utilization Plan for the performance of MWBEs on this AGREEMENT pursuant to the prescribed MWBE goals set forth in Section XXV.B.1.
3. The CONTRACTOR further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of this AGREEMENT. Upon the occurrence of such a material breach, the CHAMBER shall be entitled to any remedy provided herein, including but not limited to, a finding that the CONTRACTOR is non-responsive.

E. Waivers

1. For waiver requests, the CONTRACTOR should use the NYSCS, provided, however, that CONTRACTOR may arrange to provide such evidence via a non-electronic method to the CHAMBER.
2. If the CONTRACTOR, after making good faith efforts, is unable to comply with MWBE goals, the CONTRACTOR may submit a Request for Waiver documenting good faith efforts by the CONTRACTOR to meet such goals. If the documentation included with the waiver request is complete, the CHAMBER shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
3. If the CHAMBER, upon review of the MWBE Utilization Plan and updated QUARTERLY MWBE Contractor Compliance Reports determines that the CONTRACTOR is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the CHAMBER may issue a notice of deficiency to the

CONTRACTOR. The CONTRACTOR must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

F. Quarterly MWBE Contractor Compliance Report

The CONTRACTOR is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the CONTRACTOR may arrange to provide such report via a non-electronic method to the CHAMBER by the 10th day following the end of each quarter during the term of this AGREEMENT documenting the progress made towards achievement of the MWBE goals of this AGREEMENT.

G. Liquidated Damages - MWBE Participation

1. Where the CHAMBER determines that the CONTRACTOR is not in compliance with the requirements of this AGREEMENT and the CONTRACTOR refuses to comply with such requirements, or if the CONTRACTOR is found to have willfully and intentionally failed to comply with the MWBE participation goals, the CONTRACTOR shall be obligated to pay to the CHAMBER liquidated damages.
2. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - a. All sums identified for payment to MWBEs had the CONTRACTOR achieved the contractual MWBE goals; and
 - b. All sums actually paid to MWBEs for work performed or materials supplied under the AGREEMENT.
3. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the CHAMBER, the CONTRACTOR shall pay such liquidated damages to the CHAMBER within sixty (60) days after they are assessed. Provided, however, that if the CONTRACTOR has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the CONTRACTOR following the complaint process

XXV. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

A. General Provisions

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. The CHAMBER recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of CHAMBER contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, CONTRACTORS are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the AGREEMENT. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

B. Contract Goals

SDVOB participation goals shall be established in each SOW based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the CONTRACTOR should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/default.asp>. Questions regarding compliance with SDVOB participation goals should be directed to the Division's Contracts Office at contracts@budget.ny.gov.

Additionally, CONTRACTOR is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the AGREEMENT.

Where contract goals have been established in the SOW, the CONTRACTOR must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of any SOW under the AGREEMENT (see Required Good Faith Efforts clause below).

SDVOB Utilization Plan

- A. For each SOW where SDVOB contract goals have been established and in accordance with 9 NYCRR § 252.2(i), CONTRACTOR will be required to submit a completed SDVOB Utilization Plan on Form SDVOB 100.
- B. The Utilization Plan shall list the SDVOBs that the CONTRACTOR intends to use to perform the services in the SOW, a description of the work that the CONTRACTOR intends the SDVOB to perform to meet the goals in the SOW, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the CONTRACTOR acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs for each SOW during the term of the AGREEMENT must be reported on a revised SDVOB Utilization Plan and submitted to the CHAMBER.
- C. The CHAMBER will review the submitted SDVOB Utilization Plan and advise the CONTRACTOR of CHAMBER acceptance or issue a notice of deficiency within 20 days of receipt.

- D. If a notice of deficiency is issued, CONTRACTOR agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the CHAMBER a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the CHAMBER to be inadequate, the CHAMBER shall notify the CONTRACTOR and direct the CONTRACTOR to submit, within five business days of notification by the CHAMBER, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. For each SOW under the AGREEMENT, CONTRACTOR certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the SOW pursuant to the prescribed SDVOB contract goals set forth in the SOW.
- F. CONTRACTOR further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the AGREEMENT. Upon the occurrence of such a material breach, the CHAMBER shall be entitled to any remedy provided herein, including but not limited to, a finding of CONTRACTOR non-responsibility.

Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, the CONTRACTOR shall contact the Division of the Budget's Contracts Office (contracts@budget.ny.gov) for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a CONTRACTOR that is able to document good faith efforts to meet the goal requirements, as set forth in the Required Good Faith Efforts clause below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A CONTRACTOR may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the CHAMBER at that time, the provisions of Paragraphs (C), (D) & (E) of the SDVOB Utilization Plan clause will apply. If the documentation included with the CONTRACTOR's waiver request is complete, the CHAMBER shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. CONTRACTOR shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the SOW. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the AGREEMENT to the CHAMBER, but must be made no later than prior to the submission of a request for final payment on the AGREEMENT.
- D. If the CHAMBER, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that CONTRACTOR is failing or refusing to comply with the contract goals established in the SOW, and no waiver has been issued in regards to such non-compliance, the CHAMBER may issue a notice of deficiency to

the CONTRACTOR. The CONTRACTOR must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

E. Waiver requests should be sent to the CHAMBER.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), CONTRACTOR must document their good faith efforts toward utilizing SDVOBs on any SOW under the AGREEMENT. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to CONTRACTOR's solicitation was not selected.
3. Dates of any pre-bid, pre-award or other meetings attended by CONTRACTOR, if any, scheduled by the CHAMBER with certified SDVOBs whom the CHAMBER determined were capable of fulfilling the SDVOB goals set in the SOW under the AGREEMENT.
4. Information describing the specific steps undertaken to reasonably structure the SOW under the AGREEMENT for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
5. Other information deemed relevant to the waiver request.

XXVI. WAIVER, MODIFICATION, EXECUTION, OR SEVERABILITY

No waiver or modification of the AGREEMENT or any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the PARTIES hereto, and no evidence of any waiver or modification shall be offered or received in evidence in any action between the PARTIES hereto arising out of or affecting the AGREEMENT, or the rights or obligations of any PARTY hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the PARTIES further agree that the provisions of the paragraph may not be waived except as herein set forth.

In the event that any provision of the AGREEMENT shall be declared void, voidable, illegal or invalid for any reason, such provision shall be of no force and effect only to the extent that it is so declared void, voidable, illegal or invalid. All of the provisions of the AGREEMENT not specifically found to be so deficient shall remain in full force and effect.

XXVII. CONDITIONS PRECEDENT

This AGREEMENT and any subsequent amendments to this AGREEMENT shall not be deemed executed, valid or binding unless and until approved in writing by the Offices of the Attorney General and State Comptroller.

XXVIII. USE BY OTHER STATE AGENCIES, PUBLIC AUTHORITIES OR ENTITIES

The CHAMBER shall have the option to extend the terms and conditions related to the scope of services covered by this AGREEMENT to any other STATE agency, public authority or entities in New York.

XXIX. ADDITIONAL SERVICES

The CHAMBER may, at any time, by written notice, request changes or additions to work or services within the general scope of this AGREEMENT (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of this AGREEMENT, an equitable adjustment shall be agreed upon by the PARTIES and made in the price using the billing rates set forth in the AGREEMENT, and the CONTRACTOR shall be notified in writing accordingly. A change to the scope of the AGREEMENT would be subject to the approval of the Office of the State Comptroller and Office of the Attorney General.

XXX. ENTIRE AGREEMENT

This AGREEMENT and the Appendices identified in this section (“Appendices”) constitute the entire AGREEMENT between the PARTIES hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This AGREEMENT shall not be changed, modified or altered in any manner except by an instrument in writing executed by the PARTIES hereto. The Appendices are hereby made a part of this AGREEMENT as if fully set forth at length herein. In the event of any discrepancy, disagreement or ambiguity among the following documents, they shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

- A. Appendix A – Standard Clauses for New York State Contracts dated October 2019;
- B. This AGREEMENT as it appears prior to the signature page incorporated herein;
- C. Appendix B – Request for Proposals dated July 20, 2022 including any amendments thereto; and
- D. Appendix C – CONTRACTOR’s Proposal in response to the RFP and any clarifications thereto.

XXXI. EXECUTORY CLAUSE

This AGREEMENT shall be deemed executory only to the extent of moneys annually appropriated and available for this purpose, and no liability on account thereof shall be incurred by the CHAMBER beyond the amount appropriated. It is understood that neither this assignment nor any representation by any public employee or officer creates any legal or moral obligation to request to appropriate, or make available, moneys for the purpose of the AGREEMENT.

C _____

IN WITNESS WHEREOF, each of the PARTIES hereto has caused this AGREEMENT to be executed by its duly authorized officers on the day and year stated below.

Agency Certification

In addition to the acceptance of this AGREEMENT, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Approved by:

**NEW YORK STATE
EXECUTIVE CHAMBER**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

**Attorney General:
LETITIA JAMES**

By: _____
Date: _____

**State Comptroller:
THOMAS P. DINAPOLI**

By: _____
Date: _____

POST AWARD FORMS:

CONTRACTOR DISCLOSURE FORMS SALES TAX CERTIFICATION INSTRUCTIONS COMPLIANCE WITH NYS WORKERS' COMPENSATION LAW

CONTRACTOR DISCLOSURE FORMS

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as "contracts entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services" ("covered consultant contract" or "covered consultant services"). The amendments also require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), Executive Chamber and the Department of Civil Service (CS).

To meet these new requirements, the selected Firm agrees to complete:

Form A – Contractor's Planned Employment Form. The successful Contractor must complete this form upon notification of **selection by the Chamber**.

Form B – Contractor's Annual Employment Report. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the Chamber. For each covered consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such contract was in effect during such prior State fiscal year Contractor reports the:

1. Total number of employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such employees.
3. Total compensation paid to all employees that performed consultant services under such Contract.*

*NOTE: The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to the Department of Civil Service and the Office of the State Comptroller as designated below:

Department of Civil Service
Alfred E. Smith State Office Building
Albany, NY 12239

Office of the State Comptroller
Bureau of Contracts
110 State St., 11th Floor
Albany, New York
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual employee names or social security numbers are set forth on a document, the State agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information regarding the Contractor Consultant Law requirements and report Forms A and B is available in the Office of the State Comptroller's Guide to Finance Operations, Chapter XI, Section 18.C: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp>.

SALES TAX CERTIFICATION INSTRUCTIONS

The Tax Law was amended to require contractors with State agencies to certify to the Department of Taxation and Finance (DTF) that they, their affiliates, their subcontractors and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. Tax Law Section 5-a applies to all contracts in excess of **\$100,000** for the purchase by a covered agency of commodities or services, awarded pursuant to Article XI of the State Finance Law.

The successful Contractor must complete Contractor Certification Form ST-220-CA upon notification of selection by the Chamber. This certification to the procuring agency, also made under penalty of perjury, states that the requisite (ST-220-TD) certification has been made to DTF and, to the best of the Contractor's knowledge, that the requisite (ST-220-TD) certification is correct and complete.

If Contractor has any questions regarding either forms, ST-220-CA or ST-220-TD, the New York State Comptroller's Guide to Financial Operations will provide background information and the forms (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/#XI/18/D.htm?Highlight=st-220>).

Contractors can refer to the Department of Taxation and Finance website, or the NYS Tax Law, Section 5-a, *Contractor Affiliate, Subcontractor, and Subcontractor Affiliate Sales and Compensating Use Tax Registration* for additional information and guidance.

COMPLIANCE WITH NYS WORKERS' COMPENSATION LAW

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Chamber of the Budget shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the Chamber, successful Firms will be required to verify, on forms authorized by the New York State Workers' Compensation Board, that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms used to demonstrate compliance with the WCL are indicated below.

Please Note: *The insurance provider of the successful contractor must submit this insurance verification information upon notification of selection by the Chamber. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to comply with the requirements of this appendix will be grounds for disqualification of an otherwise successful bid.*

Workers' Compensation Requirements under WCL § 57:

To comply with coverage provisions of the WCL, Contractor must:

- A) Be legally exempt from obtaining workers' compensation insurance coverage; OR
- B) Obtain such coverage from insurance carriers; OR
- C) Be a Board-approved self-insured employee or participate in an authorized group self-insurance plan.

To verify compliance with the above, the CHAMBER must receive one of the following properly executed Workers' Compensation Board forms from the Contractor, the Contractor's insurance carrier or the Workers' Compensation Board, depending on which form is appropriate:

- 1) CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage. This form is completed electronically on the Board's website and printed out, http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp; OR
- 2) C-105.2 – Certificate of Workers' Compensation Insurance. The Contractor's insurance carrier sends this form to the CHAMBER. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
- 3) SI-12 – Certificate of Workers' Compensation Self-Insurance. The Contractor contacts the Board's Self-Insurance Office at 518-402-0247 to obtain this form; OR
- 4) GSI-105.2 – Certificate of Participation in Worker's Compensation Group Self-Insurance. Contractor's Group Self-Insurance Administrator sends this form to the CHAMBER.

Disability Benefits Requirements under WCL § 220(8):

To comply with the coverage provisions of the WCL regarding disability benefits, Contractor may:

- A) Be legally exempt from obtaining disability benefits insurance coverage; OR
- B) Obtain such coverage from insurance carriers; OR
- C) Be a Board-approved self-insured employer.

To verify compliance with the above, the CHAMBER must receive one of the following properly executed Workers' Compensation Board forms from the Contractor, the Contractor's insurance carrier or the Workers' Compensation Board, depending on which form is appropriate:

- 1) CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage. This form is completed electronically on the Board's website and printed out, http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp; **OR**
- 2) DB-120.1 – Certificate of Disability Benefits Insurance. The business's insurance carrier sends this form to the CHAMBER; **OR**
- 3) DB-155 – Certificate of Disability Benefits Self-Insurance. The Contractor contacts the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

APPENDIX C: PROPOSAL CHECKLIST
After-Action Review and Related Services

 Consultant/Firm Name

 Date

Technical Proposal

- | | | | | |
|--|-----|-------|----|-------|
| 1. Did the Consultant/Firm an electronic version of the Technical Proposal? | Yes | _____ | No | _____ |
| 2. Does the proposal contain all components of the Technical Proposal, as stated below? | Yes | _____ | No | _____ |
| A. Table of Contents | Yes | _____ | No | _____ |
| B. Executive Summary | Yes | _____ | No | _____ |
| C. Mandatory Qualifications for Independence | Yes | _____ | No | _____ |
| D. Consultant/Firm Experience and Qualifications | | | | |
| • Overview of the Firm’s experience | Yes | _____ | No | _____ |
| • Detailed description of the direct prior experience of the Consultant/Firm | Yes | _____ | No | _____ |
| • Two similar engagements that demonstrate the Consultant’s/Firm’s expertise and experience | Yes | _____ | No | _____ |
| E. Staff Experience and Qualifications | | | | |
| • Identify core staff, provide a description of each member’s functional area of responsibility and qualifications and experience of staff | Yes | _____ | No | _____ |
| • Summary of access to talent | Yes | _____ | No | _____ |
| • Staff resumes | Yes | _____ | No | _____ |
| F. Reference Letters | | | | |
| • At least two (2) letters of reference for Firm’s engagements | Yes | _____ | No | _____ |
| • One (1) letter of reference each for Engagement Partner and Project Manager | Yes | _____ | No | _____ |
| 3. Excluding table of contents, staff resumes, and letters of reference, is the Technical Proposal 30 pages or fewer? | Yes | _____ | No | _____ |

Cost Proposal

- | | | | | |
|--|-----|-------|----|-------|
| 1. Did the Consultant/Firm provide an electronic version of the Cost Proposal? | Yes | _____ | No | _____ |
| 2. Did the Consultant/Firm complete and sign Form 1: Cost Proposal Form? | Yes | _____ | No | _____ |

Administrative Proposal

- | | | | | |
|--|-----|-------|----|-------|
| 1. Did the Consultant/Firm provide an electronic version of the Administrative Proposal? | Yes | _____ | No | _____ |
| 2. Did the Consultant/Firm submit signed copies of: | | | | |
| • Form 2: Firm Information and Attestation | Yes | _____ | No | _____ |
| • Form 3: Non-Collusive Bidding Certification | Yes | _____ | No | _____ |

- Form 4: Firm Assurances of No Conflict of Interest or Detrimental Effect Yes _____ No _____
- Form 5: MWBE and Equal Employment Opportunities Requirements, Forms 5.1 and 5.2 Yes _____ No _____
- Form 6: Response to the Diversity Practices Questionnaire, with supporting documentation Yes _____ No _____
- Form 7: Vendor Responsibility Questionnaire (hardcopy or submitted electronically in the State's VendRep system) for the Consultant/Firm and any subcontractor anticipated to receive a subcontract in excess of \$100,000 Yes _____ No _____
- Form 8: Procurement Lobbying Form Yes _____ No _____
- Form 9: Disclosure of Pending or Prior Lawsuits, Conflicts of Interest, or Investigations or Disciplinary Actions Yes _____ No _____
- Form 10: Freedom of Information Law Redaction Request Yes _____ No _____
- Form 11: Executive Order No. 177 Certification Yes _____ No _____
- Form 12: Sexual Harassment Prevention Certification Yes _____ No _____
- Form 13: Certification Under Executive Order No. 16 Yes _____ No _____

FORM 1: COST PROPOSAL

Please submit an electronic copy as part of your proposal, to the addressee noted in Section 2.5 (Submission of a Complete Three-Part Proposal).

The Cost Proposal is an integral component of a Firm's three-part submission. Firms should take particular care to ensure the Cost Proposal is completed fully and in complete accordance with the instructions. Firms are advised to submit questions about or requests for clarification of the Cost Proposal by **July 29, 2022**, the due date for submission of Consultant/Firm Inquiries.

The Cost Proposal Form must be completed in its entirety according to the following instructions:

- The Cost Proposal must include an hourly rate (U.S. dollars) for each title described below and each Contract Year listed in Form 1 including the optional renewal year (Contract Years 2 and 3). **Do not leave blanks or enter a zero dollar amount for any rate.**
- Firms must include a price for every title even if the Consultant/Firm does not currently employ an individual in that title.
- Firms are required to use the titles provided, even if these titles are not consistent with the Firm's existing titles.
- The Cost Proposal should include only one rate for each title in each contract year.
- Each person proposed to perform services in response to this RFP should be listed next to the corresponding title provided on the Form.
- Hourly fees must include reproduction, travel, postage and any other expenses related to these services.
- The Cost Proposal Form must be signed by an individual authorized to bind the bidding Consultant/Firm contractually.
- **Please note, if the information requested on Form 1 is not complete, the CHAMBER may not be able to calculate a cost score, and the proposal may be rejected as non-responsive.**

Description of Titles

The following represents the general descriptions for the staffing categories to be utilized in the Firm's proposal.

Qualifications of Engagement Partner

The Engagement Partner will serve as the Firm's engagement manager. Individuals named to this title must have significant direct experience in providing services similar to those in Section 1 of the RFP at a management level. This individual must also be available to meet with Chamber staff in Albany or New York City.

Qualifications of Project Manager:

The Project Manager will be responsible for developing a project work plan and a schedule for deliverables, coordinating and delegating the assignments for consultant staff, and serving as the point of contact for the Chamber regarding new issues, project status, meetings, and deliverables. The Project Manager will also be responsible for updating the Engagement Partner on the status of a project and any issues that may arise. The Project Manager must have at least seven years of experience in after-action review or similar services, two of which must be in public sector projects. This individual must also be available to meet with CHAMBER staff in Albany or New York City.

Qualifications of Subject Matter Expert:

The Subject Matter Expert shall work with the Project Manager and Analyst to provide expert level expertise and advice as may be needed for a particular assignment. The Subject Matter Expert must have at least five years of experience one or more of the Areas/Sectors listed in Section 1.3 of the RFP, two of which must be in public sector projects.

Qualifications of Senior Management/Research Analyst:

The Senior Management/Research Analyst, working under the Project Manager, will be responsible for the research, review and analysis on which the Chamber seeks advice or guidance. These issues include, but are not limited to those outlined in Section 1.3 of the RFP. The Senior Analyst should have at least four years' experience in after-action review or similar services, one of which must be in public sector projects.

Qualifications of the Management/Research Analyst:

The Analyst, working under the Project Manager and with the Senior Analyst, will serve in a capacity similar to that of the Senior Analyst. The Analyst must have at least two years' experience in action review or similar services (public sector experience preferred).

Qualifications of the Junior Management/Research Analyst:

The Junior Analyst will assist in the completion of day-to-day project activities under the supervision of the Senior Analyst or Analyst. The Junior Analyst should possess a Bachelor's degree and some experience in consulting/research work.

**FORM 1:
NYS Executive Chamber
Request for Proposals: After Action Review and Related Services
Cost Proposal Form**

**Consultant/Firm
Name:** _____

Title*	Hourly Rate		
	Initial Term	Optional Renewal Periods	
	Contract Year 1 2022-23	Contract Year 2 2023-24	Contract Year 3 2024-25
Engagement Partner			
Project Manager			
Subject Matter Expert			
Senior Management/ Research Analyst			
Management/ Research Analyst			
Junior Management/ Research Analyst			

* Include an hourly for every title even if your Consultant/Firm may not have an individual currently in at role.

** Include a rate for every contract year including those for the optional renewal periods.

Authorized Signatory for the Firm

Name (print or type)

Title

Date

FORM 2: CONSULTANT INFORMATION AND ATTESTATION

PLEASE SUBMIT WITH ADMINISTRATIVE PROPOSAL

Please Note: A “No” response to questions three through seven (3-7) may be grounds for disqualification from this procurement.

RFP Name: <u>After Action Review and Related Services</u>				
Proposal Date: <u>August 17, 2022 @ 12:00 PM ET</u>				
1	Information Regarding the Firm’s Firm:	Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: _____ Taxpayer ID: _____ NYS Vendor ID: _____		
2	Primary Contact Concerning this Proposal:	Name: _____ Title: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: _____ Email address: _____		
3	Irrevocable Offer:	The rates quoted are an irrevocable offer that is good through the execution of a contract.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4	Willingness to Perform All Services:	The Consultant/Firm is willing to, and capable of performing all of the deliverables and services described in this RFP.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5	Consultant/Firm Guarantees:	The Consultant/Firm certifies it can and will provide and make available, at a minimum, all services set forth in the RFP.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6	Consultant/Firm Warranties:	<ol style="list-style-type: none"> 1. Consultant/Firm warrants that it is willing and able to comply with New York laws with respect to foreign (non-New York) corporations. 2. Consultant/Firm warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof. 3. Consultant/Firm warrants that it will not delegate or subcontract its responsibilities under an agreement without the written permission of the Chamber. 4. Consultant/Firm warrants that all information provided by it in connection with this proposal is true and accurate. 	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7	RFP and Contractual Requirements:	<ol style="list-style-type: none"> 1. The Consultant/Firm agrees to be bound by the Contractual Requirements found in Section 5 of the RFP. 2. The Consultant/Firm has read Section 6, Reservation of Rights, and agrees that the rights and 	<input type="checkbox"/> Yes	<input type="checkbox"/> No

		<p>prerogatives as detailed in that Section are retained by the Chamber of the Budget.</p> <p>3. The Consultant/Firm has read, understands, and accepts the provisions of Appendix A, Standard Clauses for NYS Contracts, and Appendix B, Sample Contract, without change or amendment.</p>		
8	Minimum Qualification for Independence	<p>The Consultant certifies that it:</p> <ol style="list-style-type: none"> 1. has <u>not</u> contracted with NYS Agencies and Authorities to advise on the State's COVID response, help set up COVID response, relief and recovery programs, or provide support services; and 2. has disclosed any work that it has previously performed to advise on, helped set up or supported the COVID response in NYS in the Technical Proposal. 	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9	<p>By my signature on this Consultant/Firm Information and Attestation, I certify that I am authorized to bind the Consultant/Firm contractually and that the above information is true and accurate.</p> <hr/> <p>Typed or Printed Name of Authorized Representative of the Firm</p> <hr/> <p>Title/Position of Authorized Representative of the Firm</p> <hr/> <p>Signature</p> <hr/> <p>Date</p>			

FORM 3: NON-COLLUSIVE BIDDING CERTIFICATION

In accordance with New York State Finance Law, § 139-d, by submitting its bid, each Consultant/Firm and each person signing on behalf of any other Consultant/Firm certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

- 1) The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Consultant/Firm 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 Consultant/Firm and will not knowingly be disclosed by the Consultant/Firm prior to opening, directly or indirectly, to any other Consultant/Firm or to any competitor; and
- 3) No attempt has been made or will be made by the Consultant/Firm to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Name: _____ Title: _____

Signature: _____

Joint or combined bids by Companies or Firms must be certified on behalf of each participant.

Legal name of Person, Firm or Corporation

Name: _____

Title: _____

Legal name of Person, Firm or Corporation

Name: _____

Title: _____

FORM 4: FIRM ASSURANCES OF NO CONFLICT OF INTEREST OR DETRIMENTAL EFFECT

The Firm offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, or subcontractor, or consultant, attests that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

- a. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
- b. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
- c. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
- d. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
- e. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
- f. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
- g. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
- h. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or

director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this Request for Proposals should note that the Chamber recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The Chamber will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Firm Name: _____

Name, Title: _____

Signature: _____ Date: _____

This form must be signed by an authorized executive or legal representative.

**FORM 5: MWBE AND EQUAL EMPLOYMENT OPPORTUNITIES REQUIREMENTS
CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY
NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY
MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE
CONTRACTS)**

By submitting a bid or proposal, a Consultant/Firm will be required to submit the following documents and information as evidence of compliance with the requirements and procedures established in Section 9 of this RFP:

- A. Consultant/Firm agrees to submit with the bid a Workforce Composition Plan (Form 5.1) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the Chamber, a workforce utilization report identifying the workforce actually utilized on the Contract if known.
- B. Firms are required to submit a Minority- and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement (Form 5.2) to the Chamber with its bid or proposal. If Firm, or any of its subcontractors, does not have an EEO Policy, the Chamber may require the Contractor or subcontractor to adopt the attached model statement.

Please Note: Failure to comply with the requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions of enforcement proceedings as allowed by the Contract.

Attachments:

- Form 5.1 – Workforce Composition Form
- Form 5.2 – Equal Employment Opportunity Policy Statement - If Firm, or any of its subcontractors, does not have an existing EEO policy statement, the Chamber may require the Consultant/Firm or subcontractor to adopt the attached model statement.

FORM 5.1: WORKFORCE COMPOSITION FORM

INSTRUCTIONS: All Firms submitting responses to this procurement must complete and submit this Workforce Composition Form as part of their proposal. Firms should include only the staff that will provide services under this procurement.

Firm Name:	Federal Identification No.:
Address:	Procurement No.:
City, State, Zip Code:	

Description of Work:

Enter the total number of incumbents by race, sex, and ethnic group status in each of the EEO – Job Categories identified. See below for information regarding race/ethnicity identification and protected class group members.

EEO – JOB CATEGORY	TOTAL	MALE (M)	FEMALE (F)	WHITE		BLACK		HISPANIC		ASIAN		NATIVE AMERICAN		DISABLED		VETERAN	
				M	F	M	F	M	F	M	F	M	F	M	F		
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	

_____ PREPARED BY (Signature)	_____ Date	
_____ PRINTED OR TYPED NAME AND TITLE OF PREPARER	_____ TELEPHONE NO.	_____ EMAIL ADDRESS

CLASS DEFINITIONS

Hispanic – All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
American Indian or Alaskan Native – All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
Vietnam Era Veteran – A veteran who served at any time between and including January 1, 1963 and May 7, 1975.

Black (Not of Hispanic origin) – All persons having origins in any of the Black racial groups of Africa.
Asian or Pacific Islander – All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.
Disabled Individual – Any person having a physical or mental impairment that substantially limits one or more major life activity, has a record of such an impairment; or is regarded as having such an impairment.

**FORM 5.2: MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES –
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

EEO

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and 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.
- (b) This organization shall state in all solicitation 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 disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subChambers will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 2____ - _____

By: _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____TBD___percent Minority and Women’s Business Enterprise Participation

_____TBD___percent Minority Business Enterprise Participation

_____TBD___percent Women’s Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____

FORM 6: MWBE DIVERSITY PRACTICES

Pursuant to New York State Executive Law §313-a, and 5 NYCRR §142.3, all agencies and authorities must evaluate the diversity practices of Firms to best value procurements expected to exceed \$250,000, whenever practical, feasible and appropriate. Evaluating diversity practices of Firms as part of the procurement process provides contractors with an incentive to develop mutually beneficial relationships with New York State certified MWBEs outside of the context of state contracting. These relationships help to build the capacity of MWBEs, and enhance their ability to perform ever increasing roles in state contracting.

Diversity practices are intended to be applied on procurements in which agency personnel exercise their subjective judgment in selecting one or more successful contractors on the basis of best value, not on procurements that are awarded based on lowest price.

For this procurement, the Chamber has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Firms to this solicitation is practical, feasible and appropriate.

Accordingly, Firms are required to submit responses, including documentation, to the Diversity Practices Questionnaire, Form 6.1, to the Chamber as part of its Administrative Proposal. The questionnaire consists of seven (7) questions for Firms to answer. Please note that some questions request supporting documentation to support certain answers. A scoring rubric for the Diversity Practices Questionnaire can be found in Form 6.2

Attachments:

- Form 6.1 – Diversity Practices Questionnaire
- Form 6.2 – Diversity Practices Scoring Matrix

FORM 6.1: DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals. No points will be awarded if the response simply identifies an individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e., those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide government-generated evidence, such as an agreement or acceptance letter, demonstrating the extent of your company's commitment to the governmental mentoring program. Government-generated documentation supporting your company's participation in a mentoring program must be provided to receive points.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of
Owner/Official

Printed Name of
Signatory

Title

Name of Business

Address

City, State, Zip

STATE OF _____
COUNTY OF _____) ss:

On the _____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

FORM 6.2: DIVERSITY PRACTICES SCORING MATRIX

Question #1 CDO or other person tasked with function					Yes	No	Total
					5 pts	0 pts	
Question #2 Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	20 pts	14 pts	10 pts	6 pts	2 pts	0pts	
Question #3 Percentage of overhead expenses paid to M/WBEs	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	16 pts	10 pts	7 pts	4 pts	1 pts	0pts	
Question 4 M/WBE Training			Robust	Moderate	Minimum	None	
			16 pts	8 pts	4 pts	0 pts	
Question #5 M/WBE Mentoring			Robust	Moderate	Minimum	None	
			12 pts	8 pts	4 pts	0 pts	
Question #6 Written M/WBE goals included in the Company's procurements			Robust	Moderate	Minimum	No	
			20 pts	12 pts	6 pts	0 pts	
Question #7 Formal Supplier Diversity Program			Robust	Moderate	Minimum	No	
			6 pts	4 pts	2 pts	0 pts	
				Total Diversity Score (Max 100 pts)			
				Weighted Score (Max 4 pts.)			

FORM 7: VENDOR RESPONSIBILITY QUESTIONNAIRE INSTRUCTIONS

A contracting agency is required to conduct a review of a prospective contractor (and each subcontractor whose anticipated fees for the project are estimated to be over \$100,000) to provide reasonable assurances that the vendor is responsible. The Chamber recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://www.osc.state.ny.us/vendrep/index.htm>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ITServiceDesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website <http://www.osc.state.ny.us/vendrep/> or may contact the Chamber or the Office of the State Comptroller's Help Desk for a copy of the paper form.

This questionnaire is designed to provide information to assist a contracting agency in assessing a vendor's responsibility prior to entering into a contract with the vendor. Vendor responsibility is determined by a review of each Consultant/Firm or Consultant's/Firm's authorization to do business in New York, business integrity, financial and organizational capacity, and performance history.

Contractors (and subcontractors) must answer every question in the questionnaire and where appropriate additional information may be required for the questionnaire to be complete and accurate. The completed questionnaire and responses will become part of the procurement record.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing contractor's business and operations as the questionnaire information must be attested to by an owner or officer of the vendor.

Vendor Responsibility Questionnaire Requirement:

The Consultant/Firm has (Please check the appropriate box):

Certified and filed the Vendor Responsibility Questionnaire on-line via the New York State VendRep System; **OR**

Included a properly executed paper copy of the Vendor Responsibility Questionnaire with the Administrative Proposal.

FORM 8: PROCUREMENT LOBBYING RESTRICTIONS

Pursuant to State Finance Law §§139-j and 139-k, certain restrictions are placed on contact with state agencies during the procurement process. 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 state agency 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.

The “Restricted Period” is the period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a Procurement Contract with a State agency and, ending with the final contract award and approval by, where applicable, the Office of the State Comptroller.

New York State employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer 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 is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found at: <https://ogs.ny.gov/acpl>.

Any Firm responding to the solicitation must complete the form found below and submit it to the State agency.

Questions regarding this form may be directed to the Designated Contacts for this solicitation:

Contracts Officer:	Michelle Heaslip
Contract Administrator:	Roxanne West
Additional Contacts:	Alisa Fortune

PROCUREMENT LOBBYING FORM

1. Offerer/ Firm certifies that it understands and agrees to comply with the procedures of the NYS Chamber of the Budget relative to permissible contacts as required by State Finance Law Section 139-j (3) and Section 139-j (6) (b).

2. **CONTRACTOR DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**
Pursuant to Procurement Lobbying Law (SFL §139-j)

(a) 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?
 Yes No

If yes, please answer the following question:

(b) Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?
 Yes No

If "Yes" was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

Yes No

If "Yes", please provide details regarding the finding of non-responsibility:

Governmental Entity: _____
Date of Finding of Non-Responsibility: _____
Basis of Finding of Non-Responsibility (attach additional sheets as necessary)

3. Has any governmental entity terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?
 Yes No

If yes, provide details:

Governmental Entity: _____
Date of Termination or Withholding of Contract: _____
Basis of Termination or Withholding: (add additional pages if necessary)

4. Offerer/ Firm certifies that all information provided to the Chamber of the Budget, with respect to State Finance Law Section 139-k is complete, true and accurate.

Name of Offerer's Firm/Company: _____

Offerer's Business Address: _____

Offerer's signature: _____ **Date:** _____

I understand that my signature represents that I am signing and responding to all certifications listed above.

Print Name: _____

Title of Person signing this form: _____

FORM 9: DISCLOSURE OF PENDING OR PRIOR LAWSUITS, CONFLICTS OF INTEREST, OR INVESTIGATIONS OR DISCIPLINARY ACTIONS

Disclosure of Pending or Prior Lawsuits, Conflicts of Interest, or Investigations or Disciplinary Actions must be documented and submitted with the Administrative Proposal. Please include the following information:

- A. Firms must provide a list of any legal proceedings or investigations concerning the Firm over the last five (5) years, if any, including the nature and outcome of any lawsuit if litigation is complete. Firms must also specifically note any prior or pending lawsuit(s) or litigation between the Firm and any New York State department, agency, board, or commission, if any. The nature of the lawsuit and its outcome, if litigation is complete, should be described briefly below.

*Does the Firm have any information pertaining to the above that must be disclosed? **If Yes, the Firm must disclose the requisite information as part of the Firm's Administrative Proposal.***

Yes _____ No _____

- B. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Firm or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your Firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

*Does the Firm have any information pertaining to the above that must be disclosed? **If Yes, the Firm must disclose the requisite information as part of the Firm's Administrative Proposal.***

Yes _____ No _____

- C. The Firm must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

*Does the Firm have any information pertaining to the above that must be disclosed? **If Yes, the Firm must disclose the requisite information as part of the Firm's Administrative Proposal.***

Yes _____ No _____

Firm Name: _____

Name, Title: _____

Signature: _____ Date: _____

FORM 10: FREEDOM OF INFORMATION LAW REDACTION REQUEST

The Consultant/Firm should indicate below if there is specific information in a Firm's proposal that a Consultant/Firm claims to be proprietary and/or trade secret information that meets the definition set forth in Section 87(2)(d), the Consultant/Firm should provide a letter in its Administrative Proposal outlining any specific concerns regarding disclosure under the New York State Freedom of Information Law (Article 6 of the Public Officers Law).

Is the Consultant/Firm submitting a Freedom of Information Law Redaction request? If Yes, Consultant/Firm should include the specific details of its request as part of the Firm's Administrative Proposal.

Yes _____ No _____

Consultant/Firm
Name:

Name, Title:

Signature:

Date:

FORM 11: EXECUTIVE ORDER NO. 177 CERTIFICATION

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Consultant/Firm hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Consultant/Firm
Name:

Name, Title:

Signature:

Date:

FORM 12: SEXUAL HARASSMENT PREVENTION CERTIFICATION

State Finance Law §139-I requires firms on state procurements to certify that they have a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment training to all its employees.

By submission of this bid, each Consultant/Firm and each person signing on behalf of any Consultant/Firm certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the Consultant/Firm has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

The Firm's signature below certifies its compliance with State Finance Law §139-I.

Consultant/Firm
Name:

Name, Title:

Signature:

Date:

FORM 13: CERTIFICATION UNDER EXECUTIVE ORDER NO. 16 PROHIBITING STATE AGENCIES AND AUTHORITIES FROM CONTRACTING WITH BUSINESSES CONDUCTING BUSINESS IN RUSSIA

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](#).

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, Firms who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Consultant/Firm an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

- No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16

The undersigned certifies under penalties of perjury that they are knowledgeable about the Firm’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Consultant/Firm
Name: _____

Name, Title: _____

Signature: _____

Date: _____