



Division of the Budget

REQUEST FOR PROPOSALS FINANCIAL ADVISORY SERVICES

Issued: October 16, 2015

Submission Deadline: November 12, 2015 by 12:00 PM ET

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until State Comptroller approval of the Contract. **Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below** (refer to RFP A-7 Procurement Lobbying Form and <http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>).

Designated Contacts for this Procurement:

Contracts Officer:	Jason DiGianni
Contract Administrator:	Barbara Farley
Additional Contacts:	Glen Dame, Michelle Heaslip

All contacts/inquiries shall be made by email to the following address:
Contracts@budget.ny.gov

This RFP is posted on the Division of the Budget website:
<http://www.budget.ny.gov/contract/index.html>

Firms that electronically access this RFP or receive it from a source other than the Division should email contracts@budget.ny.gov to provide contact information.

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1 Introduction

1.1 Summary

The purpose of this Request for Proposal (RFP) is to solicit proposals and award a contract to an independent financial advisory firm experienced in providing financial advisory services to states or large municipalities. The New York State Division of the Budget ("DOB" or "the Division") is seeking to engage a Firm with demonstrated expertise in public finance to assist the State in effectively managing the State's debt portfolio, provide technical assistance, guidance and advice on the State's financing programs, and perform other assignments, as requested.

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

1.2 Key Dates

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Table 1 – Key Dates

Date	Event
October 16, 2015	Issuance of Request for Proposals
October 26, 2015 by 12:00 PM ET	Firm Inquiries Due
On or about October 29, 2015	Division's Response to Firm Inquiries
November 12, 2015 by 12:00 PM ET	Proposal Submission Deadline
On or about December 15, 2015	Finalist Interviews
December - January	Proposal Evaluation and Selection
March 1, 2016	Anticipated Contract Start Date

Please note, the Division reserves the right to change any of the dates stated in this RFP. If such change occurs, the Division will notify all Firms who received the RFP from the Division.

1.3 Definitions

The term "Offerer" shall be defined as an individual, organization, or company that is external to the State of New York and submits a bid for this procurement opportunity. For the purposes of this RFP, the following terms will be used interchangeably: Offerer, Bidder, Consultant, Contractor, Firm, Proposer, and Vendor.

2 Background

2.1 Division of the Budget

The Division works to promote the best use of State resources, to ensure the financial integrity of the State, and to assist the Governor in managing State fiscal matters. Each year, consistent with the New York State Constitution, the Division prepares an Executive Budget and Financial Plan under the Governor's direction and executes the budget as adopted by the Legislature. The Division, through the Budget Director, serves as the Governor's primary advisor on fiscal matters. Accordingly, the Division plays a central role in the development and management of the State's fiscal policy.

Further background on the structure and operation of the Division, as well as copies of budgetary documents, are available on the Division's website:

<http://www.budget.ny.gov>.

2.2 State's Authorities

The Division analyzes and coordinates the issuance of State debt through the State's public authorities ("Authorized Issuers"). The Authorized Issuers, who issue bonds on behalf of New York State, include the Empire State Development Corporation (ESDC), Environmental Facilities Corporation (EFC), the Dormitory Authority of the State of New York (DASNY), the New York State Thruway Authority (NYSTA) and the Housing Finance Agency (HFA). All of these Authorized Issuers utilize State-related bonds to finance a portion of the State's Five-Year Capital Program and Financing Plan ("the Plan").

For the majority of the State's debt, the Authorized Issuers issue State Personal Income Tax (PIT) and Sales Tax (ST) Revenue Bonds. In addition, the Authorize Issuers may issue bonds under older programs, such as the Dedicated Highway and Bridge Trust Fund Bonds, and Mental Health Services Facilities Improvement Revenue Bonds. Also, DOB coordinates with the Office of the State Comptroller (OSC) to issue General Obligation bonds for other State capital purposes.

In addition, the Division is also tasked with ongoing management initiatives such as ensuring bonds are issued in accordance with the provisions of the Debt Reform Act of 2000, monitoring the market for refunding opportunities, as well as other costs savings initiatives, and using variable rate instruments (including interest rate swaps) to prudently balance the State's portfolio and reduce costs.

3 Request for Proposal (RFP) Overview

3.1 Services Required

The Division is seeking two qualified **Financial Advisors**, one to serve as the primary Financial Advisor (the highest composite scorer) and the other as secondary (the next highest composite scorer). Upon request, the Financial Advisor may be asked to provide services, technical assistance, guidance or advice in a variety of areas including, but not limited to, the following:

- Evaluate the existing State-related debt portfolio, including the risk and value of variable rate and swap instruments. Provide advice as necessary.
- Analyze the State's database of the existing portfolio of State-supported debt to evaluate refunding opportunities. This includes the development of strategic approaches to issue such refundings, in the context of the State's new money issuance needs.
- Monitor market conditions for potential issues or adverse changes which could affect the State-related debt portfolio, as well as the State's General Fund and annual budget.
- Review and evaluate various financing proposals, including those prepared by underwriters and other members of the financial community. Provide recommendations and advice as needed.
- Assist the Division in preparing for and participating, as needed, in discussions with underwriters, investors, rating agencies and other market participants, as needed.
- Determine the most advantageous use of State monies to defease existing debt; including the structuring of escrows.
- Assist the Division in preparing the State's Annual Swap Report, published each October.
- Prepare information and analytical documents, as requested, on various public finance topics, policies, and legislation.
- Provide financial and policy advice on joint projects that involve the Division and other State agencies or public authorities.
- Analyze the Division's debt policies and provide suggestions to improve the State's debt practices as necessary. Provide comparable information from other large states.
- Participate in discussions with the State on emerging issues, and assist the State in developing strategic responses.
- Analyze primary and secondary market pricing and trends for State-related bonds.
- Prepare analyses to periodically evaluate the performance and selection of underwriters for State-related bond transactions.
- Provide other unanticipated services that may be necessary to effectuate bond issuances or related financial transactions in the marketplace.
- Provide other related services as requested.

3.2 Utilization of the Primary and Secondary Contractors

The Primary Contractor shall be given first opportunity to accept an assignment, unless in the case of a condition noted below. There is no commitment by the Division that the

secondary firm will be required to provide any services. The Division will award assignments to the Secondary Contractor under the following conditions:

1. The Primary Contractor has an actual or potential conflict of interest that, in the sole determination of the Division, could prevent the Contractor from satisfactorily or ethically performing the assignment;
2. The Secondary Contractor has a demonstrated expertise that, in the sole determination of the Division, is superior to that of the Primary Contractor for purposes of a particular assignment;
3. The Division determines that the Primary Contractor cannot undertake or complete an assignment or make appropriate staff available within the time frames and costs established by the Division for the assignment;
4. The Division and the Primary Contractor are unable to come to agreement on the requirements and/or cost to complete an assignment; or
5. The Primary Contractor and the Division mutually agree that work on a specific project be performed by a Secondary Contractor.

Further, Contractors entering into this contract with the Division do so with the understanding that the Division may or may not engage the Contractors during the course of the contract period.

3.3 Contract Term

The contract period is expected to commence on March 1, 2016 and expire on February 28, 2021.

3.4 Bidder Inquiries

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section, by **12:00 P.M. ET on October 26, 2015** 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 Division's website and notice of such posting will be sent to all Firms who have been furnished the RFP by the Division.

3.5 Addenda: Revisions to this RFP

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 Bidder discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, immediately notify the contact person, Jason DiGianni, of such error and request clarification or modification to the document. The Division shall make RFP

modifications by addenda, provided that any such modifications would not materially benefit or disadvantage any particular Firm. Such clarification will be given by written notice to all parties who have been furnished an RFP by the Division.

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

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

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

3.6 M/WBE Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (M/WBE) may request that their firm's contact information be included on a list of M/WBE firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on the Division's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS M/WBE certification to contracts@budget.ny.gov. Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

3.7 Restriction of Communications

Interested Bidders are prohibited from contact related to this procurement with any New York State employee other than designated personnel from the date this RFP is issued until the contract has been approved. Violation of this provision may be grounds for immediate disqualification.

All inquiries concerning this procurement must be addressed to the following designated contacts for this Procurement:

Contracts Officer:	Jason DiGianni
Contract Administrator:	Barbara Farley
Additional Contacts:	Glen Dame, Michelle Heaslip

New York State Division of the Budget
State Capitol - Room 128
Albany, NY 12224
contracts@budget.ny.gov

Further information about this restriction may be found at:
<http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html>

4 Proposal Requirements

The Bidder should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

To assist Bidders, we have provided a **Proposal Checklist** located in Appendix F of this RFP. A proposal that does not provide all the information requested below may be subject to rejection. The State does not require, nor desire, any promotional material which does not specifically address the response requirements of this RFP.

A complete proposal for this RFP is comprised of three (3) separate sealed proposals: *Technical, Cost, and Administrative*. Please see below for content and submission details.

4.1 Technical Proposal

Below is a listing of the technical information to be provided by the Bidder. The proposal should contain sufficient information to assure the Division of its completeness. Firms are requested to keep the submission to a **maximum of 25 pages (not including appendices, resumes, and letters of reference)**. No information is required beyond what is specifically requested. The Division requests that all technical proposals be **bound and organized with dividers identified to match the specific information requested below**:

- A. Table of Contents
- B. Executive Summary
- C. Firm Experience and Qualifications
- D. Staff Experience and Qualifications
- E. Discussion Topics

The purpose of the Technical Proposal is to provide Firms with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner which complies with applicable laws and regulations, and the requirements of the RFP. The Technical Proposal should specifically detail the Firm's experience and qualifications in providing the services sought by the Division. **There should be no dollar unit or costs included in the Technical Proposal document.**

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 Firm's Technical Proposal should be provided. **Firms are reminded that cost should not be included in this section.**

C. Firm Experience and Qualifications

In this section of the Technical Proposal, Firms should demonstrate relevant experience by providing the following:

1. A summary of the Firm's technical expertise that describes the unique capabilities of the Firm. This narrative should discuss the Firm's ability to provide successful and timely financial advisory services to the Division, as well as a discussion of the Firm's approach to project management.
2. Include a chart of the types of businesses (i.e., municipal financing, debt service savings, etc.) the Firm is involved in, the number of clients the Firm serves, the dollar amounts the Firm was paid for providing these services and the number of staff dedicated to the various types of businesses.
3. A detailed description of the direct prior experience of the Firm comparable to those services detailed in Section 3.1 relating to the direct issuance of bonds, in the last five (5) years. Specifically, Firms should detail three similar engagements of actual client projects that demonstrate the depth and breadth of the Bidder's expertise and experience. At least two of the examples should discuss experience as the primary financial advisor to a municipal entity involving the issuance of bonds with a par value in excess of \$750 million. Examples that successfully demonstrate experience of this magnitude will be evaluated more favorably.

Please indicate, for each financing or advisory service completed:

- a. Name of client organization
 - b. Role of the Firm
 - c. Type of client (e.g. government entity (local, State, Federal), private company etc.)
 - d. Project description
 - e. Project duration including start/end dates
 - f. Number of Firm staff (FTEs) involved in the review
 - g. The name of the issuer, if applicable; and
 - h. The par value amount and date of the issuance, if applicable.
 - i. Any other information regarding the project that would assist the Division in determining the success experienced by the client
4. A detailed description of the direct prior experience of the Firm comparable to those services detailed in Section 3.1 related to providing strategic or policy advice and planning on an issuer's existing debt portfolio and/or debt

practices, in the last five (5) years. Specifically, Firms should detail two similar engagements of actual client projects that demonstrate the depth and breadth of the Bidder's expertise and experience serving as the primary financial advisor.

Please indicate, for each financing or advisory service completed:

- a. Name of client organization
 - b. Role of the Firm
 - c. Type of client (e.g. government entity (local, State, Federal), private company etc.)
 - d. Project description
 - e. Project duration including start/end dates
 - f. Number of Firm staff (FTEs) involved in the review
 - g. The name of the issuer, if applicable; and
 - h. Any other information regarding the project that would assist the Division in determining the success experienced by the client
5. The Bidder is asked to supply the Division with letters of reference (on Client Firm letterhead) for at least two (2) of the engagements described in 3 and 4 above.

Reference letters should include:

- Name of the Bidder
- Name of the Client Firm
- Client business address
- Client contact name and title
- Client contact telephone number and email address
- Brief description of the type and scope of services of the engagement
- Engagement term start and end dates
- Quality of work performed during the engagement

Information provided by references may be used by the Division for proposal evaluation purposes. The Division may seek additional information from references regarding subjects that 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 Bidder to the client during the engagement.

The State reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the State deems to be the most effective and efficient manner.

D. Staff Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate that the staff proposed have the knowledge and ability to perform the services described in the RFP.

1. Bidders should identify the Engagement Partner, Project Manager, and other staff to be assigned to the engagement consistent with the title definitions in Appendix E: Cost Proposal of the RFP. Please indicate the availability of the key person(s) (staff proposed in the Engagement Partner and Project Manager titles) for consultation with the Division, including but not limited to his or her ability to meet in Albany, New York.
2. Supply a project organization chart, with names, showing the individuals to be assigned to the project with a specific indication of what role the individual will have on this project. The chart should include the title of each individual.
3. State all relevant information regarding the number, qualifications and experience of the staff to be specifically assigned to this engagement. Indicate how the staff competency level over the term of the contract will be assured.
4. In an appendix of the Firm's Technical Proposal, please include resumes for all members of the consulting team, including subcontract personnel who are likely to work on the engagement. Resumes do not count toward the 25 page limit.
5. The Bidder is asked to supply the Division with at least one (1) letter of reference (on Client Firm letterhead) for the each proposed Engagement Partner and Project Manager, who can comment on the experience of the proposed staff.

Reference letters should include:

- Name of the Bidder
- Staff Member Name and proposed title (Engagement Partner or Project Manager)
- Name of the Client Firm
- Client business address
- Client contact name and title
- Brief description of the type and scope of services of the engagement
- Engagement term start and end dates
- Quality of work performed during the engagement

Information provided by references may be used by the Division for proposal evaluation purposes. The Division may seek additional information from references regarding subjects that 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 Bidder to the client during the engagement.

Note: Resumes and letters of reference do not count toward the 25 page limit for the Technical Proposal.

6. Commitment Certifying Staff Availability

Firms are to include a statement certifying their acknowledgement that, if selected, the staff proposed in the Technical Proposal will be available for the duration of the engagement. If the Firm believes certain staff may not be assigned to this engagement for the entire contract period, the response should explain such potential staff turnover and how any negative effects on the audit will be mitigated. Please note, replacement staff are subject to the approval of the Division during the engagement. The Division reserves the right to reject any proposed staff member's participation in the engagement.

E. Discussion Topics

Firms should include their written responses to the following discussion topics as part of their Technical Proposal. In responding to these discussion topics, Firms should also demonstrate an understanding of New York and its need for the services described in Section 3.1 of this RFP.

1. Describe two possible future opportunities or transactions that the State might pursue to reduce its current debt service expenses or other support costs.
2. Describe two future opportunities or transactions that the State should pursue to reduce risk associated with its variable rate bond and swap portfolio.
3. Describe strategies the Firm would recommend to manage the State's outstanding bond and swap portfolio more efficiently.
4. Describe the methodology the Firm uses to determine the counterparty exposure or other risks associated with swaps or other derivative transactions. Please discuss how this methodology may change with the implementation of GASB statement No. 72, Fair Value Measurement and Application.
5. Recommend a strategy or set of policies for the possible use of additional variable rate debt. Specifically, make recommendations on approaches to maximize the value and savings from the use of variable rate debt over a long-term horizon and under various market conditions, as well as strategies to minimize the various inherent risks therefrom.

6. Recommend a strategy or set of policies for the use of limited advance refunding opportunities. This should take into consideration balancing the competing goals of achieving budgetary savings versus the limited opportunities for exercising call options on an advance refunding basis, as well as possible negative arbitrage.
7. Given the State's policy goal of selling 50 percent of new debt issuances on a competitive basis, under what circumstances would the State be best served by competitive and negotiated sales, respectively, taking into account the State's new money needs and refunding opportunities during a fiscal year? What aspects of a financing would the Firm review to choose the best option to lower costs for the State? Please describe how the Firm would approach preparing an annual analysis comparing the results on competitive and negotiated State-related bond sales. Please give examples of the Firm's experience advising New York State authorities, other comparable authorities, public benefit corporations, other States or larges municipalities and describe the Firm's philosophy and thought process.

4.2 Cost Proposal

Among the selection criteria is the fee the Bidder will charge the Division for the services described in this RFP. **Proposals with a fee format different from the format indicated in Appendix E – Cost Proposal Form will be deemed non-responsive and will not be considered for evaluation. All fees must be presented as a fixed dollar amount. An official authorized to contractually bind the prospective Bidder must sign the Cost Proposal.**

The Cost Proposal is an integral component of a Bidder's three-part submission. Bidders should take particular care to ensure the Cost Proposal is completed fully and in complete accordance with the instructions. Bidders are advised to submit questions about or requests for clarification of the Cost Proposal by October 26, 2015, the due date for submission of Bidder Inquiries.

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

- The Cost Proposal Form should include the not-to-exceed hourly rate for each person performing the services described in Section 3.1 of the RFP. Please specify each person by name next to the corresponding title provided on the Form. Firms are required to use the titles provided, even if these titles are not consistent with the Firm's existing titles.
- The Cost Proposal must include the not-to-exceed hourly rate (U.S. dollars) for each title described below. Do not leave blanks or enter a zero dollar amount for any rate. Do not fail to provide a rate for each title.
- The cost proposal must include only one rate for each title.

- Hourly fees shall be inclusive of personnel, travel, computer charges, postage and all other expenses.
- The Cost Proposal Form should be signed by the individual who signs the proposal Bidder Information and Attestation page (an individual authorized to bind the bidding Firm contractually).
- Payments to the selected Bidder will only be made for actual hours worked, and will not exceed the proposed hourly rate.
- The Division will compensate the successful Contractor following submission of an approvable invoice, as further described in RFP Section 7.3.4: Compensation/Manner of Payment. Invoices should be submitted on a monthly basis, in the month following when services were performed.

4.3 Administrative Proposal

Appendix A-1 of this RFP states standard requirements that must be included in every contract entered into with the Division. The successful Bidder must agree to abide by these requirements and provide any information requested by the Division in connection with these requirements. Bidders should also complete and submit the administrative components listed below. **Failure to submit any of the requirements below may result in the rejection of a Firm's proposal.**

- Appendix A-2: Bidder Information and Attestation.
- Appendix A-3: Non-Collusive Bidding Certification.
- Appendix A-4: Assurances of No Conflict of Interest or Detrimental Effect.
- Appendix A-5: M/WBE subcontractor participation and Equal Employment Opportunities Requirements, including the Firm's Diversity/Equal Opportunity Employment Policy.
- Appendix A-6: Vendor Responsibility Questionnaire (or indication that the Questionnaire has been electronically submitted in the State's VendRep system).
- Appendix A-7: Procurement Lobbying Form.
- Appendix A-8: Iran Divestment Act Certification.
- Disclosure of Pending or Prior Lawsuits:

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

- Freedom of Information Law Redaction Request:

If there is specific information in a Firm's proposal that a Firm claims to be proprietary and/or trade secret information that meets the definition set forth in Section 87(2)(d), the 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).

Failure to submit each item above in the Administrative Proposal may result in disqualification of a Firm's proposal.

Neither the Division nor the State of New York will be liable for any costs incurred by a proposer in the preparation and production of a proposal, or for the costs of any services performed prior to the selection of the Contractor and the Contract start date.

4.4 Reservation of Rights

The Division reserves the right to:

- Reject any or all proposals received in response to the RFP;
- Withdraw the RFP at any time, at the Division's sole discretion;
- Accept a proposal and any subsequent proposal for the contract from someone other than the lowest cost Bidder consistent with the criteria for the evaluation of proposals;
- Make an award under the RFP in whole or in part;
- Disqualify any Bidder 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 Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder 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 bidders 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 Bidders;
- Waive any requirements that are not material;
- Negotiate with the successful Bidder within the scope of the RFP in the best interests of the State;
- Conduct contract negotiations with the next responsible Bidder, should the agency be unsuccessful in negotiating with the selected Bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening;
- 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 an Offerer's proposal and/or to determine an Offerer's compliance with the requirements of the solicitation.

In addition, if it is subsequently determined by the Division that the successful Firm is non-responsible, the Division may then invite the next highest rated, qualified Firm to enter into negotiations for purposes of executing a contract.

4.5 Submission of a Complete Three-Part Proposal

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, electronic transmission) will not be accepted. When submitting each proposal (Technical, Cost, and Administrative), Firms will comply with the following:

1. Technical Proposals, Cost Proposals, and Administrative Proposals must be submitted in separately sealed packages;
2. "Original" documents must have an original signature; copied or electronic signatures will not be accepted;
3. "Original" proposals (Technical, Cost, and Administrative) must clearly be marked "Original" on the Bidder Information and Attestation page;
4. Clearly mark the outside packaging for each set of sealed proposals (Technical, Cost, and Administrative);
5. Clearly mark the original and each copy as "**RFP – Financial Advisory Services Proposal submitted by [Bidder's name];**" and
6. Each Bidder must submit:
 - Two (2) originals, four (4) hardcopies and one (1) text-searchable electronic copy in CD format of the *Technical Proposal*.
 - Two (2) originals and one (1) text-searchable electronic copy in CD format of the *Cost Proposal*.
 - Two (2) originals and one (1) text-searchable electronic copy in CD format of the *Administrative Proposal*.

A Proposal Checklist is located in Appendix F to assist Bidders in compilation of proposals.

Note: The sealed, separate proposal packages may be submitted within one complete package for mailing.

A complete package (Technical, Cost, and Administrative Proposals) must be received before **12:00 p.m. ET on November 12, 2015**. Proposals should be sent to the following address:

Jason DiGianni
New York State Division of the Budget
State Capitol, Room 128
Albany, NY 12224

Late proposals will not be considered for award.

5 Evaluation Process

5.1 General Information

The Division 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 Offerers” shall be selected for award (State Finance Law, Article 11, § 163).

The Division, at its sole discretion, will determine which proposal best satisfies its requirements. The Division reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this document may be eliminated from consideration. Qualified staff/individuals will evaluate all submitted proposals. The Division may request clarification of a proposal. The evaluation process will include separate technical and cost evaluations and will be conducted as set forth herein.

Upon review of proposals submitted by Offerers, the Division may, at its discretion, submit to Proposers written questions and requests for clarification relating to their Technical, Administrative, and/or Cost Proposals. Offerers will be provided a reasonable period of time in which to submit written responses to the Division’s requests for clarification.

Other than to provide clarifying information as may be requested by the Division, no Proposer will be allowed to alter its proposal or add information.

5.2 Submission Review

The Division’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 4 of this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of the Division, may be rejected. All proposals passing the Submission Review will be evaluated.

5.3 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 Bidders with the highest probability of satisfactorily providing the services described in Section 3 of this RFP. Individual Panel member scores will be averaged to calculate a technical score for each responsive Offerer. The technical evaluation is 76 points of the final score with the following evaluation criteria categories:

- Firm Experience and Qualifications
- Staff Experience and Qualifications
- Responses to Discussion Topics

Evaluations will be based on the Offerer's demonstration of its ability to provide the services required through its Technical Proposal. Considering the above criteria, the Division may review and check Firm and/or staff references. Any missing letters of reference or the inability to contact a Firm or staff reference provided by a Bidder will not be looked upon favorably and may result in a reduction of points. Evaluation panel members may re-evaluate any technical scores as a result of these reference checks.

During the evaluation process, the Division may require clarifying information from a Firm. If specific sections of the written proposal require clarification, the Division will identify the section(s) and information requested in writing. The Bidder should respond by the deadline stated in the correspondence. In addition, the Division may use the proposal, information obtained through any interviews, and the Division's own investigation of a Firm's qualifications, experience, ability or financial standing, and any other material or information submitted by the 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.

5.4 M/WBE or SBE status (4 Points)

Proposers that are New York certified Minority and/or Women owned business or a New York State small business as defined in Executive Law Section 310(20) will receive an additional four (4) points for such status. Although a Proposer may meet more than one criteria, credit is to be awarded for only one category, not multiple categories. Bidders should indicate M/WBE or SBE status on Appendix A-2, Bidder Information and Attestation.

5.5 Cost Evaluation (20 Points)

The Division's Contract Office will examine the Cost Proposal documents and review them 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 Firms' proposed not-to-exceed hourly rates. 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 / Proposer's Bid)

5.6 Finalists

An Initial Composite Score for each responsive Offerer will be calculated by adding the Technical Proposal points and M/WBE or SBE points, to the Cost Proposal points to determine the Finalists. The Finalist Offerers will be the Firms with the three highest Initial Composite Scores and any Offerers within ten percent of the average Initial Composite Score of the top-three ranked Proposers.

5.7 Interviews

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 primary contact, as well as other key personnel, including the Engagement Partner and Project Manager 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 Firm prior to the interview. The interview should substantiate the characteristics and attributes claimed by the proposer 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 Firms' proposals and are not a substitute for a well-written proposal.

In the event that there is only one or two Finalist Offerer(s), the Division may choose to forego the interview at its discretion.

5.8 Final Composite Score

The Final Composite score will be the sum of the final Technical, M/WBE - SBE status, and Cost scores for each Offerer. The Offerer with the highest final composite score will be selected as the Primary Contractor. The next highest final composite scorer will be selected as the Secondary Contractor.

6 Award of Contract/Debriefing

6.1 Contract Award

The Division expects to award a contract as a result of this RFP; however, the Division reserves the right to not award a contract, at its sole discretion.

1. Notification of selection/non-selection will be sent to Bidders by e-mail.
2. The Request for Proposals and all amendments/clarifications thereto, and the proposal submitted by the successful Firm and any clarifications thereto, will serve as the basis for, and will be included as appendices to, the contract with the Division.
3. As stated in Section 4.4 in this RFP, in the event an agreement cannot be made with the highest rated qualified Bidder, the Division has the right to negotiate with the next highest rated qualified Bidder.

4. The delivery of services based on an approved contract is expected to commence on or about March 1, 2016.
5. Contract award is subject to approval of the Office of the Attorney General and the Office of the State Comptroller.
6. Upon contract award, public announcements or news releases pertaining to the contract shall not be made without the prior written consent of the Division.

6.2 Debriefings

Unsuccessful Bidders shall be notified upon the Division's selection of a Contractor. Consistent with the New York State Procurement Guidelines, Proposers may, within five (5) business days of notification of selection/non-selection, request a debriefing to discuss the evaluation of their proposal.

7 Contractual Requirements

7.1 Written Contract

The written contract with the awarded Firm shall be a State contract including "Standard Clauses for New York State Contracts" (Appendix A-1). The entire Agreement shall consist of the documents and appendices listed below. Conflicts between these documents shall be resolved in the following order of precedence:

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

7.2 Appendices

Important information affecting Bidders is contained in the Appendices and should be carefully examined. In particular, please note the following:

Appendix A-1: The "Standard Clauses for New York State Contracts" must be included in the contract with the awarded Firm.

Appendix A-2: The Bidder Information and Attestation, which will be considered an integral part of the Proposal, should be signed and submitted with the Administrative Proposal. The Bidder Information and Attestation should be signed by an individual authorized to bind the Bidder contractually. A proposal with an unsigned Bidder Information and Attestation page may be rejected. **Modified forms will not be accepted.**

Appendix A-3: Non-Collusive Bidding Certification. This form should be signed and submitted with the Administrative Proposal.

Appendix A-4: 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.**

Appendix A-5: Article 15-A Requirements. Complete and submit the following with the Administrative Proposal:

- Equal Employment Opportunity (EEO) Policy Statement.
- Attachment A-5.1 Workforce Composition Form.
- Attachment A-5.2 Firm's intended Utilization Plan for M/WBE subcontractor participation. The successful Bidder will be required to formally submit the Utilization Plan within three days of notification of selection.
- If applicable, other forms in Appendix A-5 should also be included in the Administrative proposal, in accordance with section 7.3.7: Provisions for New York Certified Minority- and Woman-Owned Business Enterprises and Equal Employment Opportunity.

Appendix A-6: A Vendor Responsibility Questionnaire should be certified and filed by the proposal submission deadline. The determination is required for review and approval of the contract by the State Comptroller's Office. Firms are invited to file online with the New York State VendRep System, or submit a paper questionnaire.

Appendix A-7: Procurement Lobbying Form should be completed and submitted with the proposal confirming and certifying compliance with the Procurement Lobbying Law, including disclosure of any findings of non-responsibility.

Appendix A-8: Clauses stating compliance with Iran Divestment Act of 2012. This form should be signed and submitted with the Administrative Proposal.

Appendix B: 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 Firms agree to complete and submit an initial planned employment data report (Form A) upon notification of selection by the Division. The Firm also agrees to submit an annual employment report (Form B) by May 15 of each year of the contract. Both Form A and B are obtained as indicated in Appendix C.

Appendix C: A Sales Tax Certification should be submitted upon notification of selection by the Division, as it is required for review and approval of the contract by the Comptroller's Office.

Appendix D: Proof of Workers' Compensation and Disability Insurance as required by Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) should be submitted by the Insurer upon notification of selection.

Appendix E: The Cost Proposal Form must be signed and submitted separately from the Technical and Administrative Proposals.

Appendix F: The Proposal Checklist should be completed and submitted.

7.3 Additional Provisions

In addition to the established provisions in Standard Clauses for NYS Contracts (Appendix A-1), the contract that results from this RFP is expected to substantially contain the terms and conditions set forth in this section:

1. Relationship between the Division and Contractor

The relationship of the Contractor to the Division 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 Division 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 Division or the State, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.

2. Use by Other State Agencies, Public Authorities or Entities

Any contract entered into pursuant to an award of this RFP may contain a provision that grants the option to extend the terms and conditions of such contract to any other State agency, Public Authority or Entities in New York. However, any response to this RFP shall be based solely on the purpose of this RFP and shall not factor in the possibility that this contract may, in the future, be applicable to other State agencies. Please be advised that any award made pursuant to this RFP shall be based on the specific requirements of this RFP only.

3. Additional Services Requested

The Division may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (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 the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Division, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

4. Compensation/Manner of Payment

Reimbursement of the Contractor will be based upon the fees stipulated in the Contract. The Division will compensate the Contractor following submission of an approvable invoice.

The Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and

supporting documentation required by the Contract, the Division and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Director of the Budget, in his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at: www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by telephone 518-486-1255.

In order for the selected Consultant(s) to do business with NYS, they must obtain a Vendor ID within the Statewide Financial System (SFS). Transactions with Firms cannot be processed unless the Firm has secured a Vendor ID. For more information about this process or obtaining a Vendor ID, please contact OSC's Vendor Management Unit at VMU@osc.state.ny.us or call them at 855-233-8363.

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

5. Vendor Responsibility Determination

The Division will conduct a review of each prospective Contractor's Vendor Responsibility Questionnaire (Appendix A-6) to provide reasonable assurances that the Contractor is responsible.

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

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

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

6. Freedom to Undertake

With respect to any contract or employment as an independent contractor or employee of New York State, or any New York public corporation as defined in Section 66 of the New York General Construction Law or any agency or department of either, pursuant to the terms of any other present or future agreement, expressed, implied, entered into with such entity, if any, the Firm by submitting a proposal thereby covenants and represents that there is no conflict as to hours required to be worked or duties required to be performed pursuant to the terms of this proposal and any aforesaid contract or employment.

7. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

Pursuant to New York State Executive Law Article 15-A, the Division recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of Division contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the Division establishes goals for maximum feasible participation of New York State Certified minority- and women- owned business enterprises ("M/WBE") and the employment of minority groups members and women in the performance of New York State contracts.

Appendix A-5 contains additional M/WBE and Equal Employment Opportunity information and required reporting forms.

Business Participation Opportunities for M/WBEs

For the purposes of this solicitation, the Division hereby establishes an overall goal of 30% for M/WBE participation, 15% for Minority-Owned Business

Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A Contractor on the subject Contract must document good faith efforts to provide meaningful participation by M/WBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that the Division may withhold payment pending receipt of the required M/WBE documentation. The directory of New York State Certified M/WBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>. For guidance on how the Division will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR§142.8.

In addition, a listing of certified M/WBE Firms that have expressed a specific interest in this RFP (see RFP section 3.7) will be posted to the Division of the Budget’s web page for this procurement. The Division’s procurement website can be accessed at: <http://www.budget.ny.gov/contract/index.html>

In accordance with 5 NYCRR§142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the M/WBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and the Division may withhold payment from the Contractor as liquidated damages.

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

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its M/WBE Utilization Plan, 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 Division, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor’s Quarterly M/WBE Contractor Compliance & Payment Report to the Division by the 5th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the M/WBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A-1 including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, 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, 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.

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 sub-contractors will 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.

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.

8. Reports and Findings

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

The Contractor shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during the course of its performance under the terms of the contract.

The Division reserves the right to require the successful vendor to execute a Non-Disclosure Agreement, and to require that Contractor staff sign the Division's Information Security Acceptance Form.

9. Records Access

Division staff, others authorized by the Division 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 involved in transactions relating to the contract during the contract period and for a period of six (6) years after final payment for said services. The Contractor will make all

records, including related documents of any and all subcontractors, available to New York State.

10. Work Paper Retention and Availability

The work papers to be prepared by a Contractor during the engagement will be the Contractor's property although copies thereof and access to them will be made available, upon request, to the Division, representatives of the Federal government and State agencies when authorized by the Division, 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 Division.

The Contractor selected 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 contract.

11. Performance Monitoring

The Contractor's performance will be assessed by the State according to the achievement of Contractor's contractual obligations in a timely and professional manner, as set forth herein. The Division 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.

12. Disputes and Dissatisfaction/Conflict Resolution

In the event the Division 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 Division shall notify the Contractor of the dispute in writing. In the event the Contractor has any disputes with the Division, the Contractor shall notify the Division 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".

If either the Division or the Contractor (each individually, a "Party" and collectively, the "Parties") 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.

In the event of a dispute, both Parties will continue to fulfill their performance obligations under the Agreement.

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.

13. Termination

The Division reserves the right to terminate the services of the Contractor, in whole or in part, upon thirty (30) days written notice for any reason, including convenience, 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 Division. In the event of such termination other than for cause, the Contractor shall be entitled to compensation for (a) services performed through the date of termination that are accepted by the State, (b) any subsequent services rendered in connection with any successor consultants and contractors, including transfer of records or briefings, and (c) any other services deemed necessary or desirable by the Division. The Contractor agrees to cooperate to the fullest respect with any successor consultants and contractors.

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.

The Contractor shall submit its termination claim to the Division 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 Division upon written request of the Contractor within such 30-day period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Division 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.

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 Division.

The Contractor agrees to transfer title to the Division, and to deliver in the manner, at the time, and to the extent, if any, directed by the Division, such information and work products for which the Contractor produced and received compensation by the Division.

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

14. Indemnification and Contractor Liability

The Contractor shall be fully liable for any act or omission of the Contractor, its employees, subcontractors and agents, and shall fully indemnify and hold harmless the Division and the State from third-party 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 Contract, without limitation; provided, however, that the Contractor shall not be obligated to indemnify the Division and the State for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act by the Division and the State or the acts of third parties, other than those provided by the Contractor to perform under the resulting contract. In connection with the foregoing, the Division and the State shall give 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 Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

Except as otherwise set forth as being without limitation in this indemnification paragraph above, the limit of liability shall be as follows: Contractor's liability for any damages arising out of, or related to the Contract, whether in contract, tort or otherwise, shall in no case exceed direct damages in an amount equal to the greater of (i) two times the amount disbursed by the State to the Contractor, or (ii) one million dollars (\$1,000,000).

Notwithstanding the above, the Contractor and the Division/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 Division and the State, the Contractor, or by others.

The Contractor shall be fully responsible for performance of work by and conduct of its staff and subcontractor's staff and that the Division reserves the right to request removal of any Contractor staff or subcontractor staff if, in the Division's discretion, such staff is not performing in accordance with the Contract.

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 Division 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.

15. Notices

All notices, demands, instructions, claims, approvals, and disapprovals are required to be given to either Party at the addresses set forth in the final contract document or to such other address as either Party shall have provided the other.

16. Waiver, Modification, Execution, or Severability

No waiver or modification of the contract 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 contract, 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.

The written contract for which the Contractor is selected shall contain the sole and entire agreement between the Parties and shall supersede any and all other agreements between the Parties.

The Parties hereto shall execute such other further documents as may be required to effectuate the terms of the contract.

In the event that any provision of the resulting 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.

17. Freedom of Information Law

New York State's Freedom of Information Law (FOIL) (Public Officers Law, Article 6, Sections 84-90), available at: <http://www.dos.state.ny.us/coog/index.html>, promotes the public's right to know the process of governmental decision-making and grants maximum public access to governmental records. The proposal of the successful Bidder and the proposals of unsuccessful Bidders 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 Bidder'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 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 Firm claims meets the definition set forth in Section 87(2)(d), the Firm should provide a letter in its Administrative Proposal outlining any specific concerns.

Failure to identify the information which a 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 Firm's responsibility to consult an attorney with any questions the 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 Bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.

The Contractor must provide to the Division 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 Division pursuant to the Freedom of Information Law.

18. Force Majeure

Neither Party will be liable for losses, defaults, or damages under the resulting Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of the 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.

19. Executory Clause

The resulting 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 Division beyond the amount appropriated. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request appropriate, or make available moneys for the purpose of the Agreement.

20. Proposal Ownership

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

21. Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the Division. It is highly desirable that staff assigned to work on this project

continue to work on this project until completion. The Division reserves the right to require security clearance and criminal history checks of the Contractor and/or staff.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP 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.

The Contractor should notify the Division of any proposed changes in staff immediately. The Division has an absolute right and discretion to approve or disapprove any proposed changes in staff. The Division, 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 Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, 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.

22. Reservations

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

8 APPENDICES

APPENDIX A-1: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

January 2014

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated

value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

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

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

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export

Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the

Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property

and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors,

and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to

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

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also

agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

APPENDIX A-2: BIDDER 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>Financial Advisory Services</u>				
Proposal Date: _____				
1	Information Regarding the Proposer'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 Proposer 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	Proposer Guarantees:	<ul style="list-style-type: none"> a. The Proposer certifies it can and will provide and make available, as a minimum, all services set forth in the RFP. b. The Proposer has read Section 7, Contractual Requirements, and agrees that the rights and prerogatives as detailed in that Section are retained by the Division of the Budget. c. The Proposer agrees to be bound by the Contractual Requirements found in Section 7 of the RFP. 	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6	Proposer Warranties:	<ul style="list-style-type: none"> 1. Proposer warrants that it is willing and able to comply with New York laws with respect to foreign (non-New York) corporations. 2. Proposer 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. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the written permission of the Division. 4. Proposer 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	Appendix A-1:	The Proposer has read, understands, and accepts the provisions of Appendix A-1, Standard Clauses for NYS Contracts, which will be incorporated, without change or amendment, into the contract entered into between the Division and the selected Proposer.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8	M/WBE Status:	Is Proposer a New York State Certified Minority-owned Business? Is Proposer a New York State Certified Women-owned Business?	<input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No
9	SBE Status:	Is Proposer a Small Business as defined in New York State Executive Law Section 310(20)? By indicating yes, Proposer certifies that it meets the criteria as defined in New York State Executive Law Section 310(20).	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10	<p>By my signature on this Bidder Information and Attestation, I certify that I am authorized to bind the 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>			

APPENDIX A-3: NON-COLLUSIVE BIDDING CERTIFICATION

In accordance with New York State Finance Law, § 139-d, by submitting its bid, each Bidder and each person signing on behalf of any other Bidder 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 Bidder or with any competitor;
- [2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
- [3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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: _____

**APPENDIX A-4: 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, 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 or will not create any conflict of interest, or perception thereof, with any current role or responsibility 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; and,
- 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.

Firms responding to this Request for Proposals should note that the Division recognizes that conflicts may occur in the future because a Firm may have existing or establish new relationships. The Division 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.

Name, Title: _____

Signature: _____ Date: _____

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

**APPENDIX A-5: M/WBE AND EQUAL EMPLOYMENT OPPORTUNITIES
REQUIREMENTS**

**CONTRACTOR REQUIREMENTS AND OBLIGATIONS UNDER 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 bidder on the Contract (“Bidder”) agrees to submit the following documents and information as evidence of compliance with the requirements and procedures established in Section 7.3.7 of this RFP:

- A. Bidder agrees to submit with the bid a Workforce Composition Plan (Attachment A-5.1) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the Division, a workforce utilization report identifying the workforce actually utilized on the Contract if known.
- B. Bidders are required to submit a MWBE Utilization Plan (Attachment A-5.2) and Notice of Intent to Participate (Attachment A-5.3) with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Division.
- C. The Division will review the submitted MWBE Utilization Plan and advise the Bidder of the Division’s acceptance or issue a notice of deficiency within 30 days of receipt.
- D. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Division, 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 Division to be inadequate, the Division shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on the Request for Waiver form (Attachment A-5.4). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. The Division may disqualify a Bidder as being non-responsive under the following circumstances:
 - a. If a Bidder fails to submit a MWBE Utilization Plan;
 - b. If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c. If a Bidder fails to submit a request for waiver; or
 - d. If Division determines that the Bidder has failed to document good faith efforts.

- F. Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance Report (Attachment A-5.5) to the Division, by the 5th 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.

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:

- Attachment A-5.1 – Workforce Composition
- Attachment A-5.2 – M/WBE Utilization Plan
- Attachment A-5.3 – Notice of Intent to Participate
- Attachment A-5.4 – Request for Waiver
- Attachment A-5.5 – Sample Quarterly M/WBE Contractor Compliance Report

ATTACHMENT A-5.1: WORKFORCE COMPOSITION FORM

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

Proposer 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 AMERICA		DISABLED		VETERAN	
				M	F	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.

ATTACHMENT A-5.2: M/WBE UTILIZATION PLAN

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete this M/WBE Utilization Plan and submit it as part of their proposal. The Plan must contain a detailed description of the services to be provided by each Minority and/or Woman-Owned Business Enterprise (M/WBE) identified by the Proposer.				
Proposer Name:			Federal Identification No.:	
Address:			Procurement No.:	
City, State, Zip Code:			M/WBE Goals: MBE: 15% WBE: 15%	
1. M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary.)	5. Dollar Value of Subcontracts/Supplies
A.	NYS ESD Certified <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD Certified <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
6. WAIVER REQUESTED: MBE: <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, submit Attachment A-5.4. WBE: <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, submit Attachment A-5.4.				
PREPARED BY (Signature): _____			TELEPHONE NO.:	EMAIL ADDRESS:
NAME AND TITLE OF PREPARER (Print or Type): _____				
DATE: _____ Proposer's Certification Status: <input type="checkbox"/> MBE <input type="checkbox"/> WBE			*****FOR DOB USE ONLY*****	
<p>SUBMISSION OF THIS FORM CONSTITUTES THE PROPOSER'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN NONCOMPLIANCE AND/OR PROPOSAL DISQUALIFICATION.</p>			REVIEWED BY: _____ DATE: _____	
			UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____	
			MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO WBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO	
			WAIVER GRANTED: <input type="checkbox"/> YES <input type="checkbox"/> NO Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/>	
			NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____	

**ATTACHMENT A-5.3: M/WBE SUBCONTRACTORS AND SUPPLIERS NOTICE OF INTENT TO PARTICIPATE
NEW YORK STATE DIVISION OF THE BUDGET**

INSTRUCTIONS: A separate Notice of Intent to Participate must be completed by each M/WBE identified on the M/WBE Utilization Plan (Attachment A-5.2). Parts A & C must be completed by the Proposer and Part B must be completed by MBE and/or WBE subcontractors/suppliers. Signed and completed form(s) must be returned as part of your proposal.

PART A

Proposer Name: _____ Federal Identification No.: _____
 Address: _____ Telephone No.: _____
 City, State, Zip Code: _____ Email Address: _____

PART B

THE UNDERSIGNED INTENDS TO PROVIDE SERVICES OR SUPPLIES IN CONNECTION WITH THE ABOVE PROCUREMENT:

Name of M/WBE: _____ Federal Identification No.: _____
 Address: _____ Telephone No.: _____
 City, State, Zip Code: _____ Email Address: _____

DESCRIPTION OF SERVICES OR SUPPLIES:

DESIGNATION: MBE Subcontractor WBE Subcontractor MBE Supplier WBE Supplier

PART C

WAIVER Requested: **MBE:** YES NO **If YES, submit Attachment A-5.4.** **WBE:** YES NO **If YES, submit Attachment A-5.4.**

THE QUALIFICATION OF THE UNDERSIGNED AS A MBE AND/OR WBE IS CONFIRMED (CHECK ONE):

- The undersigned is a certified M/WBE by the New York State Division of Minority and Woman-Owned Business Development (MWBD) (copy of certifying letter attached).
- The undersigned has applied to New York State's Division of Minority and Woman-Owned Business Development (MWBD) for M/WBE certification.

THE UNDERSIGNED IS PREPARED TO PROVIDE SERVICES OR SUPPLIES AS DESCRIBED ABOVE AND WILL ENTER INTO A FORMAL AGREEMENT WITH THE PROPOSER CONDITIONED UPON THE PROPOSER'S EXECUTION OF A CONTRACT WITH THE DIVISION OF THE BUDGET.

The estimated dollar amount of the agreement is: \$ _____

Date: _____

Signature of Authorized Representative of M/WBE Firm

Printed or Typed Name and Title of Authorized Representative of M/WBE Firm

ATTACHMENT A-5.4: REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.		
Proposer Name:	Federal Identification No.:	
Address:	Procurement No.:	
City, State, Zip Code:	M/WBE Subcontract Goals: MBE: 15% WBE: 15%	
By submitting this form and the required information, the company certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under this procurement.		
Proposer is requesting a: <input type="checkbox"/> Total <input type="checkbox"/> Partial <input type="checkbox"/> Certification <input type="checkbox"/> Conditional		
<p>1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested.</p> <p>2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested.</p> <p>3. <input type="checkbox"/> ESD Certification Waiver – A waiver of the requirement that the MBE/WBE be certified by Empire State Development (ESD). (Check here if MBE/WBE is NOT ESD certified.)</p> <p>4. <input type="checkbox"/> Conditional Waiver – (Attach separate sheet outlining special conditions or extenuating circumstances.)</p>		
Prepared By (Signature)	Date	
Printed or Typed Name and Title of Preparer	Telephone Number	Email Address
***** FOR DIVISION USE ONLY *****		
SUBMISSION OF THIS FORM CONSTITUTES THE PROPOSER'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN NONCOMPLIANCE AND/OR PROPOSAL DISQUALIFICATION.	REVIEWED BY:	DATE:
	M/WBE Certified: <input type="checkbox"/>	
	M/WBE Not Certified: <input type="checkbox"/>	
	Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency *Comments:	

M/WBE REQUIREMENTS AND WAIVER SUBMISSION

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 10, as listed below. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for M/WBE participation were published in any of the above publications.
4. A list of all M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all M/WBEs.
6. Provide copies of responses made by M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Contractor, and the M/WBEs undertaken for purposes of complying with your M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of contractor's representative authorized to discuss this waiver request.

Note: Unless a Total Waiver has been granted, Proposers will be required to submit all reports and documents pursuant to the provisions set forth in the procurement and/or contract, as deemed appropriate by the Division, to determine M/WBE compliance. In cases where the Division grants a full or partial waiver of M/WBE participation goals, the waiver request will be posted to the Division's website.

**ATTACHMENT A-5.5 QUARTERLY M/WBE CONTRACTOR COMPLIANCE REPORT
NEW YORK STATE DIVISION OF THE BUDGET**

INSTRUCTIONS: BEGINNING AFTER A CONTRACT IS AWARDED, QUARTERLY COMPLIANCE REPORTS ARE DUE BY THE TENTH DAY OF EVERY STATE FISCAL QUARTER FOR THE PRECEDING QUARTER'S ACTIVITY (ASSUMING THAT SERVICES HAVE BEEN PROVIDED).			
Contractor's Name:		Federal Identification No.:	
Address:		Contract No.:	
City, State, Zip Code:		Date & Quarter:	
Telephone No.:			
AS EVIDENCE OF THE PROGRESS MADE TOWARDS ACHIEVEMENT OF THE MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) GOAL(S), CONTRACTOR IS REQUIRED TO COMPLETE AND SUBMIT THE FOLLOWING FOR EACH MBE OR WBE. (PLEASE USE A SEPARATE FORM FOR EACH MBE OR WBE.)			
1. Copy(ies) of the written agreement with certified M/WBEs, or provide an attestation that the written agreement includes the provisions of Article 15-A, of the New York State Executive Law §310–318, as required by the primary Contractors Agreement with the Division (submit with first quarterly report, and upon any update to any subcontractor agreements).			
2. List below the name, address and telephone number(s) of the certified M/WBE(s) utilized during the preceding quarter:			
NAME	TELEPHONE NO.	LOCATION OF WORK PERFORMED	
ADDRESS			
CITY, STATE, ZIP			
3. Description of the work performed by the certified M/WBE (attach separate sheet if needed):			
4. Scheduled dates for performance of the work by the certified M/WBE:			
5. Actual total expenditures of the contract work performed by the certified M/WBE in Quarter ___ (Quarter Covered by this Report): \$			
6. Actual total amount(s) of any payments made over the life of the contract by the Contractor to the certified M/WBE as of the date the compliance report is being submitted: \$			
PREPARED BY (Signature):		DATE:	
SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.			
NAME AND TITLE OF PREPARER (Print or Type):		TELEPHONE NO.:	
		EMAIL ADDRESS:	
Quarterly reports should be submitted to the following address: New York State Division of the Budget Contracts Office State Capitol, Room 128 Albany, NY 12224 Telephone: (518) 474-7423		FOR DIVISION OF BUDGET USE ONLY	
		REVIEWED BY:	
		DATE:	

APPENDIX A-6: VENDOR RESPONSIBILITY QUESTIONNAIRE INSTRUCTIONS

A contracting agency is required to conduct a review of a prospective contractor to provide reasonable assurances that the vendor is responsible. The Division of the Budget 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/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us/wps/portal>.

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 ciohelpdesk@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 Division of the Budget 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 bidder or Proposer's authorization to do business in New York, business integrity, financial and organizational capacity, and performance history.

To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Contractors 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.

APPENDIX A-7: 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:
<http://ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.asp>.

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:	Jason DiGianni
Contract Administrator:	Barbara Farley
Additional Contacts:	Glen Dame, Michelle Heaslip

PROCUREMENT LOBBYING FORM

1. Offerer/Bidder certifies that it understands and agrees to comply with the procedures of the NYS Division 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/Bidder certifies that all information provided to the Division 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: _____

APPENDIX A-8: IRAN DIVESTMENT ACT CERTIFICATION

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

In accordance with the Iran Divestment Act, the Contractor/Bidder certifies that if it engages in investment activities in Iran, it does not provide goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran or is not a financial institution that extends twenty million dollars (\$20,000,000) or more in credit for a minimum of 45 days to a person for purposes of providing goods or services in the energy sector of Iran.

By entering into a Contract resulting from this RFP, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the STATE may approve a request for Assignment of Contract

During the term of the Contract, should the STATE receive information that a person is in violation of the above-referenced certification the STATE will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the STATE shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

Name: _____ Title: _____

Signature: _____

APPENDIX B: 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), Division of the Budget 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 Division**.

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 Division. 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>.

APPENDIX C: 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 Division. 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.

APPENDIX D: COMPLIANCE WITH NYS WORKERS' COMPENSATION LAW

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Division 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 Division, successful Bidders 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 Division. 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 DIVISION 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 DIVISION. 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 DIVISION.

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 DIVISION 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 DIVISION; 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 E: COST PROPOSAL

Please submit two (2) originals and one (1) CD of the Cost Proposal, as part of your proposal, in a separately sealed package, to the addressee noted in Section 4.5 (Submission of a Complete Three-Part Proposal).

The Cost Proposal is an integral component of a Bidder's three-part submission. Bidders should take particular care to ensure the Cost Proposal is completed fully and in complete accordance with the instructions. Bidders are advised to submit questions about or requests for clarification of the Cost Proposal by 4/22/15, the due date for submission of Bidder Inquiries.

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

- The Cost Proposal Form should include the not-to-exceed hourly rate for each person performing the services described in Section 3.1 of the RFP. Please specify each person by name next to the corresponding title provided on the Form. Firms are required to use the titles provided, even if these titles are not consistent with the Firm's existing titles.
- The Cost Proposal must include the not-to-exceed hourly rate (U.S. dollars) for each title described below. Do not leave blanks or enter a zero dollar amount for any rate. Do not fail to provide a rate for each title.
- The cost proposal must include only one rate for each title.
- Hourly fees shall be inclusive of personnel, travel, computer charges, postage and all other expenses.
- The Cost Proposal Form should be signed by the individual who signs the proposal Bidder Information and Attestation page (an individual authorized to bind the bidding Firm contractually).
- Payments to the selected Bidder will only be made for actual hours worked, and will not exceed the proposed hourly rate.
- The Division will compensate the successful Contractor following submission of an approvable invoice, as further described in RFP Section 7.3.4: Compensation/Manner of Payment. Invoices should be submitted on a monthly basis, in the month following when services were performed.

Description of Titles

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

Qualifications of Engagement Partner: The Engagement Partner should have significant direct experience (greater than five years) in Financial Advisory Services, including but not limited to those services specifically outlined in Section 3.1 of the RFP.

Qualifications of Project Manager: The Project Manager will coordinate and delegate the assignments to the staff, and serve as the point of contact for the Division regarding new issues, project status, meetings, and deliverables. The Project Manager should have at least three years of experience providing Financial Advisory Services.

Qualifications of Senior Analyst: The Senior Analyst working under the Project Manager will be responsible for performing the more complex analytical work, depending on the project, as well as day-to-day activities. The Senior Analyst should have at least two years of experience in Financial Advisory Services in the public sector, with a minimum of one year in Financial Advisory Services.

Qualifications of Analyst: The Analyst will complete day-to-day project activities under the supervision of the Project Manager and with the Senior Analyst. The Analyst should have at least one year of experience in relevant Financial Advisory Services.

**APPENDIX E:
 NYS Division of the Budget
 Request for Proposals: Financial Advisory Services
 Cost Proposal Form**

Firm Name: _____

Fee Schedule

Staff Not-to-Exceed Hourly Rate(s)						
Name(s)	Title	Contract Year 1 (3/1/16-2/28/17)	Contract Year 2 (3/1/17-2/28/18)	Contract Year 3 (3/1/18-2/28/19)	Contract Year 4 (3/1/19-2/29/20)	Contract Year 5 (3/1/20-2/28/21)
	Engagement Partner					
	Project Manager					
	Senior Analyst					
	Analyst					

Authorized Signatory for the Firm

Name (print or type)

Title

Date

APPENDIX F: PROPOSAL CHECKLIST

Financial Advisory Services RFP

Firm Name _____

Date _____

Technical Proposal (2 originals, 4 hardcopies and 1 CD)

1. Does the proposal contain 2 originals, 4 hardcopies and 1 CD of the Technical Proposal? Yes _____ No _____
2. Does the proposal contain all components of the Technical Proposal, as stated below?
 - A. **Table of Contents** Yes _____ No _____
 - B. **Executive Summary** Yes _____ No _____
 - C. **Firm Experience and Qualifications** Yes _____ No _____
 - Summary of technical expertise and capabilities Yes _____ No _____
 - Chart including types of services provided, number of clients, etc. Yes _____ No _____
 - Direct prior experience (3 examples, with at least 2 examples providing Financial Advisory Services involving the issuance of bonds with a par value in excess of \$750 million) Yes _____ No _____
 - Direct prior experience (2 examples serving as primary financial advisor providing strategic or policy advice and planning) Yes _____ No _____
 - Two (2) Letters of Reference for the Firm Yes _____ No _____
 - D. **Staff Experience and Qualifications** Yes _____ No _____
 - Identify staff consistent with definitions in Appendix E Yes _____ No _____
 - Project Organizational Chart Yes _____ No _____
 - Number, qualifications and experience of staff assigned Yes _____ No _____
 - Staff resumes Yes _____ No _____
 - One (1) Letter of Reference for each proposed staff (Engagement Partner and Project Manager) Yes _____ No _____
 - Commitment Certifying Staff Availability Yes _____ No _____
 - E. **Discussion Topics** Yes _____ No _____
 - Responses to topic 1 through 7 Yes _____ No _____
3. Excluding staff resumes, letter of reference for the firm, and letter of reference for each proposed staff, is the Technical Proposal 25 pages or less? Yes _____ No _____

Cost Proposal (2 originals and 1 CD)

1. Does the proposal contain 2 originals and 1 CD of the Cost Proposal? Yes _____ No _____
2. Did the Firm complete and sign Appendix E: Cost Proposal Form? Yes _____ No _____

Administrative Proposal (2 originals and 1 CD)

- | | | |
|--|-----------|----------|
| 1. Does the proposal contain 2 originals and 1 CD of the Administrative Proposal? | Yes _____ | No _____ |
| 2. Did the Firm submit executed copies of: | Yes _____ | No _____ |
| • Appendix A-2: Bidder Information and Attestation | Yes _____ | No _____ |
| • Appendix A-3: Non-Collusive Bidding Certification | Yes _____ | No _____ |
| • Appendix A-4: Assurances of No Conflict of Interest or Detrimental Effect | Yes _____ | No _____ |
| • Appendix A-5: Equal Opportunity Employment Requirements | Yes _____ | No _____ |
| • Appendix A-6: Vendor Responsibility Questionnaire (hardcopy or submitted electronically in the State's VendRep system) | Yes _____ | No _____ |
| • Appendix A-7: Procurement Lobbying Form | Yes _____ | No _____ |
| • Appendix A-8: Iran Divestment Act Certification | Yes _____ | No _____ |
| • Disclosure of pending or prior lawsuits | Yes _____ | No _____ |
| • Freedom of Information Law Redaction Request | Yes _____ | No _____ |