

**Request for Proposals (RFP) are being solicited by the
New York City Off-Track Betting Corporation**

For

**Public Outreach and Strategic Communications
Services**

October 2009

RFP Number: OTB5035COMMSVCS

Contract Period: One (1) year, with NYCOTB having the option to extend the contract for up to an additional period of three (3) years.

Proposals Due: October 26, 2009 @ 3 p.m.

Designated Contact: Sam Amorese, Esq.
Agency Chief Contracting Officer
New York City Off-Track Betting Corporation
1501 Broadway, 11th Floor
New York, NY 10036
Voice: 1-212-221-5200, ext. 5989
Fax: 1-212-704-5162
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1. Introduction

1.1 Overview

The New York City Off-Track Betting Corporation ("NYCOTB") is seeking to retain a qualified full-service communications firm with a broad range of strategic and tactical expertise to assist NYCOTB with the development and/or implementation of public education and stakeholder outreach as described more fully in this Request For Proposals ("RFP"). The firm will provide assistance to NYCOTB's executive staff in formulating key strategic messages and delivery platforms to help better inform and educate the general public, stakeholders and decision makers regarding NYCOTB's core mission and matters relating to the implementation of initiatives to restructure and reorganize its operations.

NYCOTB, a public benefit corporation established pursuant to the laws of the State of New York, offers pari-mutuel wagering on thoroughbred and harness horse racing world-wide at locations throughout the five boroughs of New York City, as well through its account wagering center to registered account holders. NYCOTB has approximately 56 branch offices, three teletheaters, eight restaurant branches, a service facility in Queens, and an account betting center and Corporate headquarters in Manhattan (1501 Broadway). NYCOTB also conducts Internet wagering via a wagering site, www.ibetOTB.com.

The contract that NYCOTB will award as a result of this RFP will be for a term of one (1) year, with NYCOTB having the option, exercisable in its sole discretion, to extend the contract for up to an additional period of three (3) years.

NYCOTB reserves the right to cancel the contract at any time without cause and for its convenience upon thirty (30) days written notice.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Sam Amorese, Esq., Agency Chief Contracting Officer, New York City Off-Track Betting Corporation, has been designated the ONLY contact for this procurement solicitation and may be reached by email, voice or fax for all inquiries regarding this solicitation. Mr. Amorese's contact information is as follows:

Sam Amorese, Esq.
Agency Chief Contracting Officer
New York City Off-Track Betting Corporation
1501 Broadway, 11th Floor
New York, NY 10036
Voice: 1-212-221-5200, ext. 5989
Fax: 1-212-704-5162
E-mail: samorese@otbnyc.com

1.3 Minimum Bidder Qualifications

The following minimum qualifications must be met by each proposing entity:

Proposer shall be required to have a minimum of five (5) years satisfactory experience under the proposer's present business/trade name performing services similar to the services it proposes to perform, as specified in this RFP.

Proposer must not handle, at the time of award of the contract, the New York Racing Association, or any other New York State or New Jersey harness or thoroughbred track or any other New York State regional off-track betting corporation or other NYCOTB competitor as a client. Nor may Proposer, if it is awarded the contract, take on any such assignment during the term of the contract without NYCOTB's prior written approval.

1.4 Mandatory Pre-Bid Conference

Proposers are required to attend a mandatory pre-bid conference. The mandatory pre-bid conference will be held on October 16, 2009 at 3 p.m. at NYCOTB Corporate offices, 1501 Broadway, 12th floor, New York, NY 10036. In addition, it would be helpful if proposers contact Sam Amorese by e-mail (see Section 1.2 – Designated Contact) to register if you plan to attend. However, a failure to register will not prevent a proposer from attending the mandatory pre-bid conference.

The purpose of this pre-bid conference is to solicit questions and clarify expectations concerning the RFP.

If there are any questions proposers would like addressed at the pre-bid conference, proposers should submit them in writing as instructed in Section 2.1 – RFP Questions and Clarifications, to the designated contact prior to the date of the conference. Questions during the pre-bid conference will be permitted; however, only questions submitted in writing and answered via addendum to this RFP will be considered official and therefore to be relied upon in connection with this bid process.

1.5 Key Events

The Table below outlines the tentative schedule for important action dates.

Key Events (Estimated)

NYCOTB issues Request For Proposals (RFP)	October 5, 2009
Proposer questions due to NYCOTB	October 14, 2009
NYCOTB issues responses to questions	(at pre-bid conference)
Mandatory Pre-Bid Conference	October 16, 2009 @3 p.m.
Proposals due to NYCOTB	October 26, 2009 @3 p.m.
Contract start date	TBD

2. Proposal Submission

2.1 RFP Questions and Clarifications

Questions and requests for clarification regarding this RFP shall only be directed to:

Sam Amorese, Esq.
Agency Chief Contracting Officer
New York City Off-Track Betting Corporation
1501 Broadway, 11th Floor
New York, NY 10036
Voice: 1-212-221-5200, ext. 5989
Fax: 1-212-704-5162
E-mail: samorese@otbnyc.com

Questions and requests for clarification are only accepted via e-mail.

Deadline for submission of questions will be as stated in Key Events – Section 1.5

Official answers to questions will be provided via written addendum at the mandatory pre-bid conference.

2.2 Proposal Format and Content

In order for NYCOTB to evaluate proposals fairly and completely, proposers should follow the format set forth herein and provide all of the information requested. All items identified in the following list must be addressed as concisely as possible in order for a proposal to be considered complete. Failure to conform to the stated requirements may result in rejection of the proposal.

All bids must include at a minimum the following major information topics:

1. **Approach:** A general statement of the firm's approach with particular focus on distinguishing characteristics or services.
2. **Work Proposed to be Performed:** A discussion of the firm's general understanding of the scope of services to be provided and the major work tasks to be performed.
3. **Key Personnel:** The proposal must include information about the firm's personnel, stating their proposed role in this project, education, title, related qualifications, past relevant experience and the date on which that person joined the firm. The qualification package must specifically identify the personnel to be assigned, including a statement of qualifications, demonstrating experience and previous projects successfully completed.
4. **Timely Response to Assignments:** The proposal must address the ability of the firm to assemble, in a timely manner, key personnel to meet the aggressive schedules expected to accompany the assignments. The firm must address its approach to making key personnel available for initial assignment and follow-up work in light of other responsibilities. 24/7 availability, year-round, for communications services is required.
5. **Relevant Experience and References:** A statement of the firm's past relevant experience in the gaming, horse racing, or related industries; relevant case histories and a list of clients and/or former clients over the past five (5) years demonstrating success in performing services similar to those sought by this RFP.
6. **Compensation Schedule:** The proposal must list and identify the classification of the key personnel to be assigned in performing the services and the corresponding fixed hourly rate (the rates shall be firm during the duration of the contract awarded pursuant to this RFP). The Consultant will be reimbursed for actual and reasonable out-of-pocket expenses that have been incurred with NYCOTB's prior written approval.

2.3 Instructions for Bid Submission

Only those proposers who furnish all required information will be considered for evaluation. Submit all required proposal contents, including attachments, exhibits, supporting documents, and proposal addenda if any, by sending or delivering the materials to New York City Off-Track Betting Corporation at the following address:

New York City Off-Track Betting Corporation
1501 Broadway, 11th Floor
New York, NY 10036

NYCOTB requires **written** proposals from qualified entities interested in providing these services.

E-mail or fax proposal submissions are not acceptable and will **not** be considered.

Under no circumstances shall NYCOTB be held liable for any cost incurred by the proposer for work performed in the preparation and production of a proposal or for any work performed prior to the formal execution of a contract.

Proposals must be received in the above office on or before **3:00 PM** on **October 26, 2009**.

Proposals must remain open and valid for 120 days from the due date. A proposal shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 day period until either tentative award of the contract(s) by NYCOTB is made or notice of withdrawal of the proposal in writing by proposer is received by NYCOTB. Tentative award of the contract(s) shall consist of written notice to that effect by NYCOTB to the successful proposer(s), who shall thereupon be obligated to execute a formal contract. This RFP remains the property of NYCOTB at all times, and all responses to this RFP, once delivered, become the property of NYCOTB.

NO CONSIDERATION WILL BE GIVEN TO PROPOSALS RECEIVED AFTER THE STATED DATE AND TIME.

2.4 Packaging of RFP Response

NYCOTB requires one (1) original and six (6) exact proposal copies. The **Compensation Schedule must be in a separately sealed envelope, clearly marked "Compensation Schedule" and included within the proposal package**. The proposal documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- Proposer's complete name and address
- Proposal/RFP Number – OTB5035COMMSVCS
- Proposal Due Date and Time: October 26, 2009 @ 3:00 PM
- Proposal for Public Outreach and Strategic Communications Services

2.5 Mailed Bids

Submitters mailing their proposal must allow sufficient mail delivery time to ensure receipt of their proposal no later than the specified date and time.

3. Administrative Information

3.1 Issuing Office

This RFP is being released by the New York City Off-Track Betting Corporation.

3.2 Method of Award

Award will be made to a responsive and responsible bidder(s) based on best value (See Section 4.1 – Proposal Evaluation).

3.3 Term of Contract

The contract that NYCOTB will award as a result of this RFP will be for a term of one (1) year, with NYCOTB having the option, exercisable in its sole discretion, to extend the contract for up to an additional period of three (3) years.

3.4 Price

Proposers are required to submit pricing as set forth in Section 2.2 - Proposal Format and Content.

3.5 Glossary of Terms

“Issuing Office” shall mean the New York City Off-Track Betting Corporation.

“Contractor” or “Consultant” shall mean a successful company awarded a contract pursuant to this RFP.

“Request For Proposals” or “RFP” shall mean this document.

“Proposer” or “Bidder” or “Vendor” shall mean any person, partnership, firm, corporation or other authorized entity submitting a proposal to NYCOTB pursuant to this RFP.

3.6 Rules of Construction

Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this RFP, refer to this RFP.

4. Evaluation and Selection Process

4.1 Proposal Evaluation

Proposals will be independently evaluated based upon the criteria set forth in this Section. Proposals will be evaluated for best value to NYCOTB.

NYCOTB may request that Proposers submitting responsive and responsible proposals provide oral presentations, covering the major points of their proposals. The presentations will be given on a date, time and location to be designated by NYCOTB.

A committee of NYCOTB employees and/or consultants will evaluate each proposal and initially determine whether a proposal is responsive to the requirements of the RFP. Taking into consideration the criteria set forth below, the committee will subsequently recommend to the Board of Directors and/or President of NYCOTB one or more proposals of responsive and responsible bidder(s) which provides the best value to NYCOTB based upon the weighting/scoring of the following criteria:

1. Firm's Approach and Understanding of Services - 15%
2. Relevant Experience and References - 15%
3. Agency Background and Key Personnel Qualifications - 40%
4. Compensation - 30%

4.2 Notification of Award

After the evaluation, all Proposers offering proposals will be notified of the name(s) of the selected Proposer(s). The selected Proposer(s) will be notified that their submitted proposal has been selected and that a contract will be forthcoming for execution. The original proposal, and any additions or deletions to the proposal become part of the contract.

5. Scope of Work

NYCOTB seeks assistance in meeting its public education and stakeholder outreach goals by retaining the services of a full-service communications firm with a broad range of strategic and tactical expertise. To achieve these goals and to implement other significant initiatives, NYCOTB will require well-coordinated, comprehensive, and multi-channel strategic and tactical communications undertakings by the Consultant. Stakeholders for these efforts include, but are not limited to the general public, the racing industry, civic organizations, local, state and regulatory agencies, and public officials. The firm, working with NYCOTB executive staff, will formulate key strategic messages and delivery platforms to help inform stakeholders and decision-makers, as NYCOTB seeks to implement initiatives to restructure and reorganize its operations.

The Consultant selected as a result of this RFP will be required to provide NYCOTB with the following list of services upon award of a contract. Consultant shall perform such specific tasks as directed by designated NYCOTB personnel. Such services shall include, but not be limited to the following:

- Assist in the development and implementation of strategic communications elements and plans to help better inform and educate the general public, stakeholders and decision-makers regarding NYCOTB's core mission and matters relating to the implementation of initiatives to restructure and reorganize its operations.
- Assist in the development, implementation, management and monitoring of strategies and plans for coordinated and comprehensive media relations.
- Help to ensure that NYCOTB conveys a consistent external message to include, but not limited to, the collection, distribution and analysis of relevant media coverage.
- Monitor, collect and organize public comments and Corporate-related input. Draft appropriate responses for review by NYCOTB executive staff when appropriate and/or requested.
- 24/7 availability, year-round, for communications services is required.

6. Contract Clauses and Requirements

6.1 Appendix A / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated June 2006, attached hereto, is hereby expressly made a part of this solicitation document as applicable, as fully as if set forth at length herein. Appendix A is a separate document to this RFP and shall be retained for reference by the proposer.

The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A
2. The Contract
3. NYCOTB Request for Proposals OTB5035COMMSVCS (This Document)
4. Selected Contractor's Proposal

6.2 Procurement Lobbying Requirement

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between NYCOTB and an Offerer/Proposer during the procurement process. An Offerer/Proposer is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by NYCOTB to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. NYCOTB employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Proposer 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 four-year period, the Offerer/Proposer is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

6.3 Contractor Insurance Requirements

The cost of any and all insurance coverage required under the terms of the contract to be awarded pursuant to this RFP, as set forth below, must be included in the fee proposal.

1. Prior to commencing work under this Agreement the Consultant shall procure and maintain in force during the entire period of rendering of services described hereunder, policies of insurance providing insurance coverage of the kinds and in the minimum limits hereinafter specified from insurance companies authorized to do business in the State of New York with a Best's rating of AX or better as follows:

- (a) Workers' Compensation, including Employer's Liability, with the following limits:

Bodily Injury by Accident (Unlimited) By Accident

Bodily Injury by Disease (Unlimited) Policy Limit

Bodily Injury by Disease (Unlimited) Each Employee

- (b) Comprehensive General Liability \$1,000,000 Each Occurrence Limit:

\$1,000,000 Personal Injury & Advertising Injury Limit
\$2,000,000 General Aggregate Limit/Per Location Aggregate
\$1,000,000 Products/Completed Operations Aggregate

(c) Umbrella Liability \$5,000,000 Each Occurrence/\$5,000,000 Aggregate

(d) Standard Advertising Agency Errors and Omissions insurance coverage with minimum limits of \$5,000,000 each claim/\$5,000,000 policy limit. The Corporation is to be included as an additional insured for any loss that may occur.

(e) Non-owned and Hired Automobile Liability:

\$1,000,000 Combined Single Limit

2. All liability features of all applicable policies must include the Corporation as an additional insured for any loss that may occur.

3. All such policies shall bear endorsements that the insurance coverage offered thereby shall not be subject to material coverage reduction or restriction, non-renewal, or cancellation for any reason whatsoever on less than thirty (30) days prior written notice to the Corporation.

4. In lieu of delivering original policies of such insurance, the Consultant may deliver to the Corporation certificates from its respective insurance companies certifying as to the kinds and limits of coverage provided by the policies therein referred to. However the Corporation reserves the right to require submission of actual policies upon seven (7) days notice. All policies must be issued in such form and by such companies as are satisfactory to the Corporation.

5. Certificates of insurance must be provided to the Corporation within ten (10) days of execution of the contract.

6. Consultant shall be required to provide the Corporation with new certificates of insurance evidencing the renewal of all required insurance policies no less than forty-five (45) days prior to the respective scheduled expiration dates of the policies.

6.4 Tax and Finance Clause

TAX LAW § 5-A:

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractors, when requested by NYCOTB, shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. Failure to make these filings may render a bidder non-responsive and non-responsible.

Vendors may call DTF at **1-800-698--2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>

6.5 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process.

Should you feel your firm's bid/proposal contains any such trade secrets or other confidential or proprietary information, **you must submit a request to except such information from disclosure.** Such request must be in writing, must state the reasons why the information should be excepted from disclosure and must be provided at the time of submission of the subject information.

Requests for exemption of the entire contents of a bid/proposal from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm.

6.6 General Requirements

1. The Proposer agrees to adhere to all State and Federal laws and regulations in connection with the contract.
2. The Proposer agrees to notify NYCOTB of any proposed changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
3. The Proposer agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
4. The Proposer agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the President of NYCOTB.
5. For reasons of safety and public policy, in any contract resulting from this RFP, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
6. For purposes of any contract resulting from this RFP, NYCOTB will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
7. NYCOTB's interpretation of specifications shall be final and binding upon the Contractor.
8. NYCOTB will make no allowance or concession to the Proposer for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Proposer has based its proposal on the more expensive option. Final decision will rest with NYCOTB.
10. INSPECTION – For purposes of any contract resulting from this RFP, the quality of service is subject to inspection and may be made at any reasonable time by NYCOTB. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, NYCOTB may terminate the

contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor and its surety shall be liable to NYCOTB for costs incurred on account thereof.

11. STOP WORK ORDER - NYCOTB reserves the right to stop the work covered by this RFP and any contract(s) resulting therefrom at any time that it is deemed the successful proposer is unable or incapable of performing the work to NYCOTB's satisfaction. In the event of such stopping, NYCOTB shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Proposer and its surety shall be liable to NYCOTB for any such costs on account thereof. In the event that NYCOTB issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective.
12. It is the Contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
13. NYCOTB reserves the right to reject and bar from any of its facilities any employee hired by the Contractor.

6.7 Contract Terms

All applicable provisions and requirements of Appendix A, Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this RFP, and will be binding upon the parties to such contract.

All provisions and requirements, which are attached hereto and form a part hereof, will be incorporated into any contract resulting from this RFP, and will be binding upon the parties to such contract.

It is stipulated and agreed by the parties that the law of the State of New York shall solely and in all respects govern with relation to any dispute, litigation, or interpretation arising out of or otherwise in connection with any contract resulting from this RFP.

Any contract resulting from this RFP shall not be deemed executed, valid or binding unless and until approved in writing by NYCOTB's Board of Directors, and to the extent applicable, the New York State Racing and Wagering Board.

6.8 Subcontractors

Before any part of the contract shall be sublet, the Contractor shall submit to NYCOTB, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as NYCOTB may require concerning the proposed subcontractor's ability and qualifications.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the Contract Documents including, but not limited to the General Conditions and Requirements.

6.9 Procurement Rights

NYCOTB reserves the right to:

1. Reject any and all proposals received in response to this RFP.
2. Disqualify a Proposer from receiving the award if the Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Waive or modify minor irregularities in proposals received, after prior notification to the Proposer.
4. Utilize any and all ideas submitted in the proposals received.
5. Negotiate with Proposers responding to this RFP within the RFP requirements to serve the best interests of NYCOTB.
6. NYCOTB may begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of NYCOTB should NYCOTB be unsuccessful in negotiating a contract within a reasonable period of time.
7. Waive any non-material requirement not met by all Proposers.

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8. Re-issue or withdraw this RFP; not make an award from this RFP.
 9. If two or more offers are found to be substantially equivalent, NYCOTB, at its sole discretion, will determine award.
 10. NYCOTB reserves the right to make multiple contract awards pursuant to the RFP.
 11. NYCOTB retains the right to have any service completed via separate competitive bid or other means, as determined to be in the best interest of NYCOTB.
 12. Seek clarifications of proposals.
 13. Make an award under this RFP in whole or in part.

6.10 Extent of Services

NYCOTB reserves the right to re-negotiate at its discretion, to expand or reduce the amount of services provided under any contract resulting from this solicitation. This expansion or reduction in services shall be effectuated by written amendment to the contract. Compensation for these services shall be negotiated and/or adjusted accordingly.

6.11 Termination

NYCOTB may, upon thirty (30) days notice, terminate the contract resulting from this RFP in the event of the awarded Bidder's failure to comply with any of the proposal's requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, NYCOTB may also terminate any contract resulting from this RFP upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of creditors.

Furthermore, NYCOTB shall have the right, in its sole discretion, at any time to terminate a contract resulting from this RFP, or any unit portion thereof, with or without cause, by giving thirty (30) days written notice of termination to the Contractor.

Any termination by NYCOTB under this Section 6.11 shall in no event constitute or be deemed a breach of any contract resulting from this RFP and no liability shall be incurred by or arise against NYCOTB, its agents and employees therefore for lost profits or any other damages.

6.12 Vendor Responsibility Questionnaire

Contractor agrees to fully and accurately complete the Vendor Responsibility Questionnaire, which is attached hereto and hereby incorporated by reference and made a part hereof as fully as if set forth at length herein (hereinafter the "Questionnaire"). The Contractor acknowledges that NYCOTB's execution of any Agreement resulting from this RFP is contingent upon NYCOTB's determination that the Contractor is responsible, and that NYCOTB will be relying upon the Contractor's responses to the Questionnaire in making that determination. The parties agree that if it is found by NYCOTB that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, NYCOTB may terminate the Agreement resulting from this RFP by providing ten (10) days written notification to the Contractor. In no case shall NYCOTB's termination hereunder be deemed a breach of the Agreement resulting from this RFP, nor shall NYCOTB be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such a termination.

6.13 Ethics Compliance

All proposers/contractors and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Contract, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations, etc., involving NYCOTB, New York State, and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

6.14 Required Forms

The following forms are to be completed and returned with the proposal in response to this RFP:

- **Individual, Corporation, Partnership, or LLC Acknowledgement**
- **New York State Vendor Responsibility Questionnaire**
- **Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law Section 139-j (3) and Section 139-j (6) (b)**
- **Offerer Disclosure Of Prior Non-Responsibility Determinations**
- **Offerer's Certification of Compliance with State Finance Law Section 139-k(5)**
- **Non-Collusive Bidding Certification**
- **MacBride Fair Employment Principles**

6.15 Attachments

- **Appendix A Standard Clauses for New York State Contracts**

STATE OF _____ }
 _____ : ss.:
 COUNTY OF _____ }

Town of _____, County of _____, State of _____, and further that:

[Check One]

(☐ **If an individual**): _he executed the foregoing instrument in his/her name and on his/her own behalf.

(☐ **If a corporation**): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(☐ **If a partnership**): _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(☐ **If a limited liability company**): _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public
Registration No.

New York State Standard Vendor Responsibility Questionnaire

Each Contracting Agency conducts a review of prospective contractors ("vendors") to provide reasonable assurances that the vendor is responsible. This questionnaire is used for all non-construction contracts with a contract value of \$100,000.00 or more (or upon request by the Contracting Agency regardless of contract value) and is designed to provide information to assess a vendor's authorization to do business in New York State, as well as your business integrity, financial and organizational capacity, and performance history.

Each vendor must answer every question contained in this questionnaire. Where a response requires additional information, the vendor must attach a written response that adequately details the requested information. Please number each response to match the question number. The completed questionnaire and attached responses will become part of the procurement record.

In order to expedite the required review, when providing additional information for a "YES" answer to Questions 14 a-s, or any other response which requires additional explanation, your information and responses should address the relationship of the issue to the proposed contract. Be brief, concise and to the point. Discuss as appropriate the following:

- Provide a description of the issue and identify the actions taken or currently being implemented to ensure that the issue will not occur again.
- State whether the staff and/or organizational component involved in the identified issue(s) will work on the proposed contract. If so, provide information to assure the agency that the issue will not be repeated.
- Identify the relationship (or lack thereof) between the product/services involved in the issue and the type of product/services proposed for this contract.
- State whether the issue will affect your financial or organizational ability to perform under the proposed contract.
- Provide copies of relevant documents or any other information that would assist the agency in its vendor responsibility evaluation.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing vendor's business and operations, as an owner or officer of the vendor must attest to the questionnaire information. Please be advised that at the end of this questionnaire, you must certify, under oath, all responses given.

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

1. **LEGAL BUSINESS NAME:** _____

2. **FEDERAL EMPLOYER ID NO. (FEIN):** _____

3. **D/B/A — Doing Business As** (if applicable): _____

COUNTY FILED: _____

4. **WEBSITE ADDRESS** (if applicable): _____

5. **PRINCIPAL PLACE OF BUSINESS ADDRESS:** _____

6. **TELEPHONE NUMBER:** _____

7. **FAX NUMBER:** _____

8. **AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE:**

Name: _____

Title: _____

Telephone Number: _____ **Fax Number:** _____

E-mail: _____

9. **TYPE OF BUSINESS:** (please check appropriate box and provide additional information):

a) ☐ **Corporation** **State of Incorporation:** _____

b) ☐ **Sole Proprietor** **State/County filed in:** _____

c) ☐ **General Partnership** **State/County filed in:** _____

d) ☐ **Not-for-Profit Corporation** **Charities Registration Number:** _____

e) ☐ **Limited Liability Company (LLC)** **Jurisdiction filed:** _____

f) ☐ **Limited Partnership** **State/County filed in:** _____

g) ☐ **Other — Specify:** _____ **Jurisdiction Filed (if applicable):** _____

10. IF NOT INCORPORATED OR FORMED IN NEW YORK STATE, PLEASE PROVIDE A CURRENT CERTIFICATE OF GOOD STANDING FROM YOUR STATE OR APPLICABLE LOCAL JURISDICTION.

11. LIST NAME AND TITLE OF EACH PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), DIRECTOR AND MEMBER, as applicable:

-
-
- a) _____
- b) _____
- c) _____
- d) _____
- e) _____
- f) _____
- g) _____
- h) _____

12. AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:

Name: _____

Title: _____

Telephone Number: _____ **Fax Number:** _____

E-mail: _____

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

13. DOES THE VENDOR USE, OR HAS IT USED IN THE PAST FIVE (5) YEARS, ANY OTHER BUSINESS NAME, FEIN, OR D/B/A OTHER THAN WHAT IS LISTED IN QUESTIONS 1-3 ABOVE?

☐ Yes ☐ No

If yes, provide the name(s), FEIN(s) and d/b/a(s) and the address for each such company and d/b/a on a separate piece of paper and attach to this response.

14. WITHIN THE PAST FIVE (5) YEARS, HAS THE VENDOR, ANY PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), AFFILIATE¹ OR ANY PERSON INVOLVED IN THE BIDDING, CONTRACTING OR LEASING PROCESS BEEN THE SUBJECT OF ANY OF THE FOLLOWING:

(a) a judgment or conviction for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?

☐ Yes ☐ No

(b) a criminal investigation or indictment for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?

☐ Yes ☐ No

(c) an unsatisfied judgment, injunction or lien for any business related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency?

☐ Yes ☐ No

(d) an investigation for a civil or criminal violation for any business related conduct by any federal, state or local agency?

☐ Yes ☐ No

(e) a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?

☐ Yes ☐ No

(f) a federal, state or local government suspension or debarment from the contracting process?

☐ Yes ☐ No

(g) a federal, state or local government contract suspension or termination for cause prior to the completion of the

term of a contract?

☐ Yes ☐ No

¹"Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

STATE OF NEW YORK

Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

(h) a federal, state or local government denial of a lease or contract award for non-responsibility? ☐ Yes ☐ No

(i) an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease? ☐ Yes ☐ No

(j) a federal, state or local determination of a willful violation of any public works or labor law or regulation? ☐ Yes ☐ No

(k) a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license? ☐ Yes ☐ No

(l) a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws? ☐ Yes ☐ No

(m) an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful? ☐ Yes ☐ No

(n) a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles? ☐ Yes ☐ No

(o) a citation, violation order, pending administrative hearing or proceeding or determination issued by a federal, state or local government for violations of:

- health laws, rules or regulations ☐ Yes ☐ No

- unemployment insurance or workers' compensation coverage or claim requirements ☐ Yes ☐ No

- ERISA (Employee Retirement Income Security Act) ☐ Yes ☐ No

- human rights laws ☐ Yes ☐ No

- federal U.S. Citizenship and Immigration Services laws ☐ Yes ☐ No

- Sherman Act or other federal anti-trust laws ☐ Yes ☐ No

(p) entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity? ☐ Yes ☐ No

(q) a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status? ☐ Yes ☐ No

(r) a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract? ☐ Yes ☐ No

(s) a finding of non-responsibility by an agency or authority due to a violation of State Finance Law §139-j? ☐ Yes ☐ No

FOR EACH YES ANSWER TO QUESTIONS 14 a-s, PROVIDE DETAILS ON ADDITIONAL SHEETS REGARDING THE FINDING, INCLUDING BUT NOT LIMITED TO CAUSE, CURRENT STATUS, RESOLUTION, ETC.

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

15. DURING THE PAST THREE YEARS, HAS THE VENDOR FAILED TO:

(a) FILE RETURNS OR PAY ANY APPLICABLE FEDERAL, STATE OR LOCAL GOVERNMENT TAXES?

☐ Yes ☐ No

If yes, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability:

(b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE?

☐ Yes ☐ No

If yes, indicate the years the company failed to file/pay the insurance and the current status of the liability:

16. HAVE ANY BANKRUPTCY PROCEEDINGS BEEN INITIATED BY OR AGAINST THE VENDOR OR ITS AFFILIATES WITHIN THE PAST SEVEN YEARS (WHETHER OR NOT CLOSED) OR IS ANY BANKRUPTCY PROCEEDING PENDING BY OR AGAINST THE VENDOR OR ITS AFFILIATES, REGARDLESS OF THE DATE OF FILING?

☐ Yes ☐ No

If yes, indicate if this is applicable to the submitting vendor or one of its affiliates:

If it is an affiliate, include the affiliate's name and FEIN:

Provide the court name, address and docket number:

Indicate if the proceedings have been initiated, remain pending or have been closed: _____

If closed, provide the date closed: _____

17. DOES VENDOR HAVE THE FINANCIAL RESOURCES NECESSARY TO FULFILL THE REQUIREMENTS OF THE PROPOSED CONTRACT? ☐ Yes ☐ No

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

State of)
) ss:
County of)

CERTIFICATION:

The undersigned, personally and on behalf of the vendor identified in questions 1-3 above, does hereby state and certify to the New York City Off-Track Betting Corporation that the information given above is true, accurate and complete. It is further acknowledged that the State of New York and the New York City Off-Track Betting Corporation will rely upon the information contained herein and in any attached pages for purposes of evaluating our company for vendor's responsibility for contract award and the New York City Off-Track Betting Corporation may, in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein. It is further acknowledged that intentional submission of false or misleading information may constitute a felony under Penal Law Section 175.35 or may constitute a misdemeanor under Penal Law Sections 175.30, 210.35 or 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination.

Name of Business	Signature of Officer
Address	Typed Copy of Signature
City, State, Zip	Title

Sworn to before me this _____
day of _____ 20__.

Notary Public:
Registration No:
State:

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

New York State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

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

By: _____ Date:_____

Name: _____

Title: _ _____

Contractor Name: ____

Contractor Address: _

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law

§139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

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

Instructions:

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

Offerer Disclosure of Prior Non-Responsibility Determinations

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

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

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

No _ _ Yes _ _

If yes, please answer the next questions:

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

No _ _ Yes _ _

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

No _ _ Yes _ _

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

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

No _ _ Yes _ _

6. If yes, please provide details below.

Governmental Entity: _

Date of Termination or Withholding of Contract: _

Basis of Termination or Withholding: _

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature

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

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

Offerer Certification:

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

By: _____ Date: ____ _

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Procurement Lobbying Termination

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

Bidder is required to sign both sections on this page

MacBride Fair Employment Principles

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with Chapter 807 of the Laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either: (answer yes or no to one or both of the following, as applicable:

1. Have business operations in Northern Ireland,

☐ Yes ☐ No

If yes:

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

☐ Yes ☐ No

(Contractor's Signature)

(Name of Business)

Non-Collusive Bidding Certification

By submission of this bid, each bidder and each person signing on behalf of any 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 knowledge and belief) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor) 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; an) 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.

(Contractor's Signature)

(Name of Business)

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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1. Executory Clause
2. Non-Assignment Clause
3. Comptroller's Approval
4. Workers' Compensation Benefits
5. Non-Discrimination Requirements
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9. Set-Off Rights
10. Records
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12. Equal Employment Opportunities For Minorities and Women
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19. MacBride Fair Employment Principles
20. Omnibus Procurement Act of 1992
21. Reciprocity and Sanctions Provisions
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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor

its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office 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 State Finance Law §165. (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
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

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