

**REQUEST FOR PROPOSALS
FOR**

Third Party Administration of NYS-Ride, a Qualified Transportation Fringe Benefit

Issued on August 28, 2020 by:

New York State Governor's Office of Employee Relations
Agency Building 2, 11th Floor
2 Empire State Plaza
Albany, NY 12223

Schedule of Key Events

RFP Release Date	August 28, 2020
Written Questions Due	September 11, 2020
Responses to Written Questions	September 18, 2020
Proposal Due Date	October 15, 2020
Selection Review Begins	October 16, 2020
Notification of Award	December 8, 2020
Project/Contract Start Date	January 1, 2021

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2. Appendix A Standard Clauses for all New York State Contracts
3. GOER/LMC Copyright Policy
4. GOER's Travel and Lodging Reimbursement Policy for Consultants
5. GOER Data Security Policy
6. Web Style Guide
7. Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Business
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1. INTRODUCTION

1.1. Purpose of the Request for Proposals

The intent of this Request for Proposals (RFP) is to secure the services of a Third-Party Administrator (TPA) of NYS-Ride, a qualified transportation fringe benefit (QTB) authorized by Internal Revenue Code (IRC) Section 132(f). The New York State Governor's Office of Employee Relations (GOER) will provide oversight.

NYS-Ride allows eligible state employees to set aside pre- and post-tax payroll deductions for qualified transit expenses. Approximately 200,000 New York State (NYS) employees are eligible to participate in this benefit. NYS-Ride has about 8,000 state employees regularly participating with a goal of continually increasing participation in the benefit. NYS-Ride is offered to employees of the Executive Branch, The Unified Court System, and the Legislature.

The selected contractor will be responsible for implementing all systems necessary to administer and provide a QTB plan to eligible NYS employees. The bidder must meet each of the mandatory requirements, respond to the 14 major areas described in Section 2 and comply with Section 4 of this RFP, and provide all required samples in order to be considered responsive.

Although allowable under IRC Section 132(f), NYS-Ride does not currently allow for state employees to set aside pre-tax deductions for parking expenses. However, during the term of the contract, parking may be added as a deliverable as a result of collective bargaining, legislation or GOER's statutory authority, and is considered within the scope of this RFP. The selected contractor should expect to implement the parking benefit within three months of notification by GOER. The selected contractor could expect up to 15,000 participants if parking is implemented. In the event that GOER requests to implement any other benefit allowable under IRC Section 132(f) as a result of collective bargaining, legislation or GOER's statutory authority, the benefit will be considered within the scope of this RFP and the selected contractor should expect to implement such benefit within three months of notification by GOER.

Changes to State or Federal laws, or Internal Revenue Service (IRS) rules and regulations proposed or adopted during the term of this contract that require a change to the benefit must be incorporated and will be considered within the scope of this RFP. If, however the change impacts the selected contractor's level of effort or cost, GOER reserves the right to renegotiate the monthly administrative fee with the selected contractor. Renegotiations will be subject to OSC approval.

The term of the contract will be defined in the Contract Agreement but is anticipated to begin January 1, 2021 and end on December 31, 2024. Two optional one-year renewals for the periods January 1, 2025 – December 31, 2025 and January 1, 2026 – December 31, 2026 will be allowable. The optional one-year renewals will be at GOER's discretion with the same terms, conditions, and prices as the initial Contract Agreement and will be subject to OSC approval. The Contract Agreement will also reflect an amount anticipated to be made available to the selected contractor over the initial contract term.

In the event that changes in federal laws result in the loss of favorable tax status for QTB plans the contract may be terminated or modified by GOER.

1.2. Description of the Governor's Office of Employee Relations

GOER is the Governor's representative for negotiating and administering the collective bargaining agreements with 14 different units represented by ten public employee unions, for approximately 175,000 employees. The Employee Benefits Management Unit (EBMU) is responsible for negotiating and administering employee health insurance and pre-tax benefits.

The ten (10) unions that represent public employees are:

- Civil Service Employees Association
- Public Employees Federation
- United University Professions
- New York State Correctional Officers & Police Benevolent Association
- Council 82
- District Council 37
- New York State Police Investigators Association
- Police Benevolent Association of the New York State Troopers
- Police Benevolent Association of New York State, Inc.
- Communications Workers of America/Graduate Student Employees Union

GOER's mission is to advance the performance of state government through collaborative labor relations, workforce training, education, and benefits. Additional information about GOER can be found on our website at <http://www.goer.ny.gov>.

1.3. GOER Responsibilities

GOER will oversee the implementation of the contract resulting from this RFP. GOER staff will also maintain scheduling responsibilities and primary communication with the selected contractor. Funding for the activities outlined in this

RFP will come from funds appropriated for this purpose and may include other New York State agency funds if requested by a state agency and subsequently approved by GOER.

1.4. Terms Used in this RFP

For the purposes of this RFP, and unless otherwise specified, the following terms will be used as defined below:

Compatibility – all web pages and applications for NYS-Ride must be designed for the widest possible audience, including those using less powerful technology and adaptive technology, and for use on Macs, PCs, tablets, and smart phones.

Customization – shall include modification of the selected contractor's products to meet the specific requirements of NYS' QTB. Bidders should note that such customization will entail using the NYS Branding Guidelines, available upon request, for publications, correspondence, and promotional items, but will also include much more extensive modifications for payroll interface, and online enrollment systems.

Employee ID (Empl ID) – a unique 9-digit alpha/numeric identifier assigned by the State of New York to each employee in lieu of a social security number. This number is used in the transfer of payroll information between the State and the selected contractor and in all reports.

Fare Media – shall include but not be limited to: transit passes, vouchers, van pooling payments, rechargeable debit cards, smart card (stored value cards), mobile ticketing, and contactless payment, with the potential for parking passes or any other cutting-edge technology used to purchase fares and fare media.

GOER – indicates the agency or staff of the Employee Benefits Management Unit.

Mail – shall include but not be limited to: electronic transmission of correspondence, the electronic loading of electronic media (e.g., the loading of smart phone apps or mobile ticketing), PDF documents, US Postal Service, and distribution. Resolution of invalid email addresses will be the responsibility of the selected contractor.

NYS-Ride – the program name of the QTB program available to NYS employees for fare media and van pooling. NYS-Ride does not currently allow parking, or any other IRC 132(f) benefit but may during the term of the contract.

OSC – refers to the Office of the State Comptroller, the agency responsible for administering NYS' payroll system.

Qualified Transportation Fringe Benefit (QTB) – refers to benefits under IRC Section 132 (f) that allow employees to use pre-tax dollars towards commuting expenses. The tax law in general defines qualified transportation fringe benefits as fare media, qualified parking, and van pools.

Third Party Administrator (TPA) – refers to the provision of the full range of services necessary to administer NYS-Ride.

Selected Contractor – the bidder awarded the contract.

2. SCOPE OF WORK

In developing a response to this RFP, the bidder should have a mission consistent with excellence in service and describe any formal recognition for industry leadership. Proposals should demonstrate an ability to accommodate the highly customized plan designs and unique needs of the NYS-Ride program. The selected contractor can expect to begin the project on January 1, 2021 and begin providing full TPA services on October 2, 2021.

2.1. Mandatory Requirements

Bidders who do not meet these mandatory requirements will be considered non-responsive and their proposals will be removed from further consideration.

- 2.1.1. The selected contractor will implement and administer NYS-Ride, the QTB for New York State employees including process employee enrollment. The selected contractor will be required to adhere to the deadlines and benchmarks as identified in the *Performance Standards and Penalties*, Section 2.13, and as agreed upon with GOER during Start-up and Implementation. The system is expected to be fully operational, successfully tested, and approved by GOER by August 20, 2021.
- 2.1.2. The selected contractor must provide fare media that are accepted by local transit authorities and used throughout New York State and other locations where New York State employees regularly commute. Including, but not limited, to states immediately surrounding New York State, as well as Chicago, IL, and Washington, D.C.
- 2.1.3. The selected contractor will mail fare media directly to employees on a regular monthly basis, for use on the first of the benefit month. See Section 1.4 for definitions of “mail” and “fare media” and Section 2.13 for

performance standard.

- 2.1.4. The selected contractor must offer an Annual or Unlimited Ride MetroCard valid for unlimited rides on MTA NYC Transit subway and local buses for a 12-month period that can be used continuously for unlimited local rides, 7 days a week, 365 days a year. The monthly cost for this annual card should be the same as the 30-day Unlimited Ride MetroCard.
- 2.1.5. The bidder must have a minimum of five (5) years' experience and expertise in the administration of Section 132(f) pre-tax transportation programs as defined by the IRC.
- 2.1.6. The bidder must have a minimum of five (5) years' experience providing third party administration services to large (minimum of 50,000 employees), multi-site employers with a geographically diverse employee population.
- 2.1.7. In the event of a benefit design change, the selected contractor agrees that its compensation will change only if the selected contractor is able to provide detailed documentation of increased costs to the selected contractor as a result of the design change. GOER reserves the right to renegotiate the monthly administrative fee with the selected contractor. Renegotiations will be subject to OSC approval.
- 2.1.8. The bidder must guarantee its ability to meet the payroll interface requirements with OSC, as defined by Section 2.4, *Payroll Interface*.
- 2.1.9. The selected contractor must provide the following payroll interface reports on a weekly basis in a Microsoft Excel Spreadsheet:
 - Reject Report – all rejected transactions on the NBEN902U Rejected NBEN902 Transactions File
 - Change File Report – any change made to an employee's record as a result of the NBEN530 Employee Change File
 - Discrepancy Report – any discrepancies between the amounts requested on the NBEN902 Payroll Deduction File and actual amount received according to the NPAY518 Payroll Deduction Detail File
 - Refund Report – any refunds issued
- 2.1.10. The bidder must guarantee its ability to record, retrieve, and archive all telephone calls, including enrollment, changes, and terminations, to satisfy the New York State Finance Law requirements of obtaining authorization to take or adjust payroll deductions from employees who enroll, change, or

terminate their participation in NYS-Ride via telephone. Each incoming telephone call must be date and time stamped in the participant's account record. Telephone calls received from non-participant state employees shall also be documented, recorded, and available upon request from GOER. Archived records must be available for retrieval for a period of not less than seven years in accordance with federal and state regulations.

- 2.1.11. The selected contractor will maintain records of all participant account activity for the balance of the calendar year in which they occurred and for six (6) additional years thereafter, for a total of seven (7) years in accordance with federal and state regulations.
- 2.1.12. The selected contractor will be expected to provide a system for tracking and reporting employee enrollments, changes, and terminations in accordance with the timeframes established by OSC and GOER.
- 2.1.13. The selected contractor will be expected to provide a monthly report including employee name, Employee ID, Department ID, bargaining unit code, transit provider, total amount in payroll deductions, and total amount of benefits delivered. These reports should be available on a monthly and cumulative year-to-date basis.
- 2.1.14. The selected contractor will be expected to provide monthly customer service reports to GOER that include the number of NYS-Ride calls received, average waiting time for calls to be answered, the number of abandoned calls and the nature of the participant inquiry (e.g., account balance, complaint of service, request for information, response time, and action taken).
- 2.1.15. The bidder must guarantee that the customer service operations that serve NYS-Ride participants or eligible employees will not be subcontracted to a company or operation (including business partners) located outside of the United States. Additionally, any data collected shall not be transmitted outside of the United States.
- 2.1.16. The bidder must guarantee that the information technology operations that serve NYS-Ride and its participants or eligible employees will not be subcontracted to a company or operation (including business partners) located outside of the United States. Additionally, any data collected shall not be transmitted outside of the United States.
- 2.1.17. Systems, applications, and websites for NYS employee use must be

compatible as defined in Section 1.4, and comply with the Website Style Guide (Attachment 6), and ITS policies found at <https://its.ny.gov/tables/technologypolicyindex>.

- 2.1.18. The bidder must agree to comply with all data related policies and requirements of this RFP.
- 2.1.19. The selected contractor will be expected to develop and implement an innovative and creative marketing campaign, subject to GOER approval, to promote NYS-Ride and increase participation among state employees.
- 2.1.20. The selected contractor will be expected to develop, distribute, and report the results of an annual Participant Satisfaction Survey from a random sampling of at least fifteen (15) percent of participants that covers every department ID and negotiating unit. The survey requires GOER approval prior to distribution. The annual survey should be distributed via email during the first quarter of the calendar year with results reported to GOER by May 31 of each year throughout the term of the contract.
- 2.1.21. The bidder must guarantee its ability to meet the compliance requirements as defined by Section 2.11, *Compliance*.
- 2.1.22. The bidder must guarantee its ability to carry out a turnover plan as defined in Section 2.12, *Turnover Plan at the End or Termination of the Contract Resulting from this RFP*.
- 2.1.23. Samples pertaining to pre-tax transit programs the bidder currently administers must be included with each copy of the bid. Bidders are expected to provide samples of the following from their current book of business:
 - Marketing materials
 - Letters/email communication to participants
 - Examples of current enrollment systems
 - Reporting documents outlined in Section 2.9
 - Files with artificial data the vendor currently receives, process, or exchanges.
- 2.1.24. The selected contractor, as a condition of the contract resulting from this RFP, must provide GOER with an irrevocable Standby Letter of Credit (SLOC) that must be maintained in force and effect with GOER as required in Section 6.2 of this RFP. Each bidder's proposal must include a statement

that it is committed to providing the required SLOC and a statement as to how it will be provided. This statement must confirm the selected contractor as the applicant and be accompanied by a written commitment from a financial institution to provide GOER with the SLOC no later than 30 business days after notification from GOER that the contract has been approved by OSC or September 1, 2021, whichever date is later. The SLOC must be irrevocably maintained for the duration of the contract. The applicant for the SLOC cannot be a subcontractor.

2.2. Program Design

NYS-Ride is administered in compliance with IRC Section 132(f). Bidders should describe their proposed solutions for addressing at a minimum the items below.

- 2.2.1. Bidders should state their mission and describe any formal recognition for industry leadership or excellence in service delivery.
- 2.2.2. The bidder should possess expertise in database system management, programming, and all varieties of fare and electronic media. The bidder should also possess experience, flexibility, and creativity in dealing with large, complex systems.
- 2.2.3. Currently NYS-Ride operates with a two-month deferral which is described in detail in Section 2.4 *Payroll Interface*. The contractor sends two payroll deduction request files according to OSC's requirements in order to receive funds to purchase the participant's pass on their behalf. The current program requires that employees enroll by January 1 for the March benefit. GOER is interested in minimizing or offsetting this two-month deferral and prefers bidders provide employees with multiple benefit options. All benefit options should be fully described in detail and should adhere to the current process at a minimum, but preferably encompass a variety of payment schedules and allow for more flexibility in enrollment and ordering deadlines within the file submission requirements of OSC.

In addition to the current process, GOER is interested in offering the following options during the term of the contract and bidders should indicate whether their company currently provides, or demonstrate their ability and willingness to incorporate these options:

- Allow participants to choose between 12 or 24 total deductions over the course of the year for the Annual/Unlimited MetroCard.
- Load funds on a Commuter Card as soon as the deduction is received

from OSC within the statutory limits. This selection provides the most flexibility. The Commuter Card will be based on 24 bi-weekly payroll deductions, that allow the participant to choose a monthly dollar amount.

- 2.2.4. Currently, in the event of a transit provider fare increase, the contractor advances the difference in cost to the affected employees to avoid the interruption of delivery of their fare media. In order to be reimbursed as soon as practicable, the contractor transmits the employees' increased deduction to OSC through the regular file transmission schedule. If the contractor is not able to recoup this advance directly from the employee, the contractor is reimbursed through the monthly administrative invoice by reducing the NYS-Ride forfeitures credit (see Section 2.2.5 for more information on forfeitures).
- 2.2.5. As part of the monthly administrative fee invoice procedure, the selected contractor should expect to reconcile and return any unused participant funds (forfeitures) to GOER or the forfeitures can be applied as a credit to the monthly administrative fee invoice.
- 2.2.6. The selected contractor should anticipate incorporating benefit design changes, such as parking or any other IRC Section 132(f) benefit, resulting from collective bargaining, legislation, or that are within the statutory discretion of GOER and in compliance with IRC Section 132(f).
- 2.2.7. The selected contractor should anticipate assisting GOER with the evaluation of proposed benefit design changes and implementing changes as negotiated.

2.3. Employee Enrollment

It will be the responsibility of the selected contractor to process NYS-Ride enrollments, order changes, and benefit terminations. The current contractor will be responsible for processing enrollments, changes, and terminations through October 1, 2021 and for fulfilling passes through the December 2021 benefit month. The selected contractor as a result of this RFP will assume processing all NYS-Ride enrollments, changes, and terminations effective October 2, 2021 (for the January 2022 benefit month).

OSC provides a weekly NPAY579 Employee Eligibility File (see Attachment 8) that contains the following data elements of employees who are eligible for the NYS-Ride benefit:

- Employee ID
- Department ID
- Bargaining Unit Code

It will be the responsibility of the selected contractor to validate employee eligibility against that file when processing enrollments, and not allow ineligible employees to enroll. GOER will provide the selected contractor with a list of eligible and ineligible Department IDs, Bargaining Unit Codes, and corresponding pay cycles. If an employee transfers from an eligible bargaining unit to an ineligible bargaining unit, OSC will automatically terminate the deduction and the selected contractor will notify the employee.

Bidders should describe how they plan to process and manage employee enrollment based on limited eligibility data provided by OSC and without intervention from GOER, and address the following:

- 2.3.1. NYS-Ride participants should have a choice in how they enroll including, the ability to enroll themselves online or by calling a customer service representative. Bidders should fully describe the enrollment options they will make available to NYS-Ride participants.
- 2.3.2. It is important for the selected contractor's system to allow for the temporary suspension of deductions without cancellation or requiring re-enrollment. Bidders should fully describe the systems' capability to allow for this or to incorporate this feature.

2.4. Payroll Interface

As stated in *Mandatory Requirements*, Section 2.1.8, the bidder must be able to perform all payroll deduction management functions.

Scores for this portion of bidders' proposals will be weighted to reflect the overall importance of the bidders' ability to interface with the New York State payroll system in the formats defined by OSC.

Bidders please note: OSC is the source for files when defining them as inbound or outbound. Outbound files are from OSC to the selected contractor; inbound files are from the selected contractor to OSC.

The selected contractor will interface with the New York State payroll system, in the format defined by OSC as outlined in this section, examples of which are provided in

Attachment 8, OSC File Layouts. The payroll is split into two (2) alternating biweekly pay cycles (Administration and Institution) with files due to OSC every week.

The selected contractor will communicate with OSC via file exchange, using OSC's secure file transfer protocol (SFTP). The selected contractor will be required to open a Transmission Control Protocol/Internet Protocol account with OSC. Instructions will be provided to the selected contractor by OSC.

The selected contractor will be required to generate the following inbound files:

- NBEN902- Payroll Deduction File
- NPAY515- Payroll Refund File

The selected contractor will be required to receive and process the following outbound files from OSC:

- NPAY579- Employee Eligibility File
- NBEN902U- Rejected NBEN902 Transactions
- NPAY518- Payroll Deduction Detail File
- NBEN530- Employee Change File

The selected contractor will be required to submit a weekly NBEN902 Payroll Deduction File to OSC on specified dates and at times specified by OSC. The file must contain all fields required by OSC. The current NBEN902 Payroll Deduction File layout requires the following elements:

- Department ID (ex, 11200)
- Name
- Employee ID (ex, N01234567)
- Pre-Tax Deduction Code (421)
- Post-Tax Deduction Code (422)
- Effective Date
- Deduction End Date
- Deduction Amount

OSC will provide payroll processing calendars and schedules indicating payroll period, deduction effective dates, check dates, and file submission dates and the selected contractor will be required to comply with OSC's timetables and deadlines (see Attachment 9 Vendor Submission Schedule).

Bidders please note: If during the term of the contract OSC implements changes to the Vendor Submission Schedule or the date or time files are due to OSC, it will be

considered within the scope of this RFP for the selected contractor to use the revised schedule or due dates or times.

Bidders please note: when there are three payroll dates in one month, OSC will only take deductions from the first two payrolls.

The NBEN902 Payroll Deduction File is submitted to OSC in order to begin, change, or stop participants' deductions.

OSC will notify the selected contractor of any deductions not processed via the NBEN902U Rejected NBEN902 Transactions File. The selected contractor and GOER will work to resolve the errors and ensure those transactions are updated and processed on the next NBEN902 Payroll Deduction File.

OSC will communicate actual payroll deductions to the selected contractor via the NPAY518 Deduction Detail File.

OSC will communicate changes to employee's payroll record to the selected contractor via the NBEN530 Employee Change File. The selected contractor will be expected to use this file to update the employee's record in their database and ensure changes are processed in time to appear on the following NBEN902 Payroll Deduction File.

Bidders please note: If during the term of the contract OSC implements file format changes, it will be considered within the scope of this RFP for the selected contractor to use the revised file formats.

In the event a participant refund is necessary, the refund will be initiated by GOER, and be sent by the selected contractor to OSC via the NPAY515 Payroll Refund File (see Attachment 8). Refunds are expected to be resolved within one pay cycle. The refund will be identified as a negative deduction on the following NPAY518 Payroll Deduction Detail File from OSC (see Attachment 8).

To help ensure the success of the file transmission and accurate deduction processing, a three- to four-week testing period with OSC will be required prior to the implementation of NYS-Ride. Testing will include the transmission, receipt, and processing of all files described in this section. The selected contractor must meet mutually agreed-upon testing schedules or deadlines with OSC during the testing process.

The selected contractor will receive monies weekly by Automated Clearing House (ACH) from the State and make proper allocation of such monies to the accounts of

NYS-Ride participants.

The State will make a weekly payment to the selected contractor through direct deposit totaling the amount of actual deductions taken for NYS-Ride benefits.

In the event NYS-Ride is extended beyond the current eligible employees of the Executive Branch, Unified Court System, and the Legislature, the selected contractor will be expected to execute piggyback (joinder) agreements which ensure the agencies pay the same monthly cost per participant as GOER. The selected contractor will be responsible for establishing procedures to process separate automated or manual payroll files for these state entities, who would be responsible for all costs under the joinder agreement. The selected contractor will invoice these agencies directly and therefore should not include those costs in their response to this RFP.

In the event the selected contractor experiences a 5% failure when processing a payroll file from OSC, the selected contractor's system will be expected to automatically stop the file from loading and report the issue immediately to GOER.

Bidders should describe in detail their previous experience in receiving, processing and generating the types of files described in this section and their ability to customize their system to allow for a combination of traditional and non-traditional data elements as bulleted above. Samples of files with artificial data the bidder is currently receiving, processing or generating are required.

2.5. Account Management

Bidders should describe how they propose to handle account management of the contract. GOER requests that the selected contractor:

- 2.5.1. Assign an account manager to oversee all matters arising in the administration and management of NYS-Ride. The account manager should be fully authorized to negotiate with the State and make final decisions on all administrative and programmatic matters in the day-to-day operation of NYS-Ride. The account manager should anticipate being responsible for coordinating and leading weekly conference calls between the selected contractor's appropriate departments and GOER to discuss and resolve both client and employee issues. Please provide resumes.
- 2.5.2. Assign a single IT expert to whom GOER has direct access when unusual and unexpected technical problems occur. Upon GOER request, the IT expert should expect to join conference calls to discuss and resolve

technical issues. Please provide resumes.

- 2.5.3. Monitor compliance within the monthly federal maximums or increases in the maximum as designated by the Internal Revenue Code.
- 2.5.4. Provide GOER with read-only, real-time, online access to participants' accounts to view their case history, including but not limited to enrollment status, actual biweekly pre- and post-tax payroll deductions, and customer service call records.

2.6. Benefit Distribution

Proposals should address how bidders plan to distribute benefits directly to employees. The selected contractor will be responsible for obtaining participants' recurring orders from the current NYS-Ride contractor and providing those orders in an uninterrupted manner. Bidders should also address the following desired features:

- 2.6.1. Arrange to have participant's deductions loaded on to their smart card or mobile ticket, until the participant misses a payroll deduction or terminates enrollment. As permitted by IRS guidelines, should an employee receive only one deduction in a month, the selected contractor can expect to be responsible for loading the single biweekly deduction on the employee's stored value card or mobile ticket.
- 2.6.2. Provide fare media vouchers at no additional cost to participants who elect that option.
- 2.6.3. Provide industry standard security measures to ensure secure delivery of all fare media.
- 2.6.4. Provide a procedure for handling lost or stolen vouchers, smart cards, or fare media that will require no or minimal involvement of GOER staff.
- 2.6.5. Provide a benefit delivery system that adheres to OSC's Vendor Submission Schedule (see Attachment 9). GOER's intention is to minimize the time between employee enrollment and the receipt of benefits.
- 2.6.6. Allow employee deductions of any amount within the federal maximum and any practical constraints (e.g., commuter check denominations).
- 2.6.7. Procure fare media from transit/parking or any other IRC Section 132(f)

benefits vendors on a timely basis.

- 2.6.8. Allow an unexpected deduction to post, in the event a participant changes payroll cycles and the deduction is received on an alternate payroll, to ensure that the employee's fare media order is not canceled due to the unexpected deduction.

2.7. Customer Service

It will be the responsibility of the selected contractor to provide accurate, efficient, courteous, and high-quality customer service to all current and prospective participants.

Bidders should describe how they propose to deliver exceptional customer service to NYS employees. At a minimum the proposal should address the following elements:

- 2.7.1. Customer service should be easily accessible to participants via phone and email. A live web chat option is desirable. New York State employees should be able to ask questions of customer service representatives via live web chat during normal customer service hours and receive answers back immediately via the live web chat.
- 2.7.2. Customer service representatives should be reachable at least twelve hours per day covering the core hours of 8 a.m. through 5 p.m. ET, Monday through Friday, excluding legal holidays observed by the State. Extended customer service hours and a dedicated team to answer New York State inquiries is desirable.
- 2.7.3. Customer service representatives should be knowledgeable, properly trained in rules and regulations specific to the NYS-Ride program and have immediate access to the tools necessary to field inquiries. The selected contractor should be prepared to develop and provide each customer service representative with a NYS-Ride-specific training manual, approved by GOER and updated as needed but annually, at a minimum.
- 2.7.4. Participants should have online access to their account information and be able to make changes to their elections or accounts at any time via the online account.
- 2.7.5. GOER should have the ability to occasionally review or listen to specific calls upon request.

- 2.7.6. The selected contractor should expect to provide effective two-way communication with participants about their NYS-Ride benefits, including at a minimum: written or electronic confirmation for new enrollees with instructions on how to make changes to their orders, when to expect delivery of their benefits, and how to contact customer service; written or electronic confirmation of any elections or account changes made, customized as necessary (for example, but not limited to, transit fare increases), monthly emails to participants confirming their orders; and for participants without email addresses, provide program updates and reminders, in hard copy format by U.S. Mail, on a semi-annual basis.
- 2.7.7. For the term of the contract, the selected contractor should assign a single point of contact, at a supervisory level, in the customer service department to whom GOER has direct access. The customer service contact can expect to partner with GOER to resolve customer service and participant issues in order to provide exemplary customer service to New York State employees. Please provide resumes.

October 1, 2021 is the deadline for the selected contractor to have the toll-free customer service line and Telecommunications Devices for the Deaf (TDD) line adequately staffed. The toll-free line should be completely tested and fully operational by September 1, 2021 in order to begin answering calls October 2, 2021.

2.8. Communications and Marketing

The selected contractor should expect to:

- 2.8.1. Develop, design, print, and distribute all marketing materials customized for NYS-Ride. GOER requires prior approval on the design and content of all promotional material.

Bidders are requested to include printing and mailing costs in their cost per participant proposal for two marketing campaigns during the term of the contract. Specified quantities of materials will be authorized by GOER. All costs of marketing materials and distribution will be the responsibility of the selected contractor. For purposes of this proposal, the bidder can estimate production of the following marketing materials produced twice during the term of the contract:

- 214,000 5x7 double-sided, color postcards to be distributed to each

- state employee via 240 agency payroll offices
- 4,100 11x17 color posters to distribute to 260 agency worksites, and small informational flyers for GOER to distribute at employee health fairs and union-sponsored functions
- 7,500 one (1) page, double-sided, 8½ x 11, color, small informational flyers

Postage costs associated with mailing and distributing marketing materials to employees and state agencies should be included in the monthly cost per participant and cannot be billed separately. PDF and plain text versions of all print materials should be provided to GOER.

- 2.8.2. Provide 2,500 (not to exceed \$5.00 per unit or comparable value) promotional items each year of the contract. Promotional items will include customized NYS-Ride program branding and be approved by GOER prior to ordering and production. All promotional items are expected to be made in the U.S.A and included in the monthly cost per participant.
- 2.8.3. GOER prefers the amount proposed for marketing materials to be flexible between printed materials and promotional giveaways. In the event GOER does not make a marketing request during any year, it is understood that the amount will accumulate and not expire for the term of the contract or GOER reserves the right to negotiate a lower monthly cost per participant based on the savings from reduced communication and marketing expenses. Renegotiations are subject to OSC approval.
- 2.8.4. Currently, approximately 130 NYS-Ride participants do not provide the selected contractor with their e-mail address. The selected contractor should expect to provide user agreements to those NYS-Ride participants who do not have an email address on file or have not accessed their online accounts.

2.9. Reporting

Weekly, monthly, quarterly, annual, and other periodic reporting will be a condition of payment for services rendered. GOER staff will meet with the selected contractor to finalize reporting details including the format, number of reports needed, and other specifics. Reports should be provided in electronic format in compliance with the GOER Data Security Policy (see Attachment 5). The selected contractor should indicate their ability to provide reports to GOER and provide sample reporting documents (see Section 2.1.23).

- 2.9.1. GOER prefers to access these reports on demand and download as a Microsoft Excel spreadsheet.
- 2.9.2. The selected contractor should provide a monthly report of lost and/or stolen vouchers or fare media, including name, date reported, date compensated, and amount compensated, if requested by GOER.
- 2.9.3. Upon request of GOER, the selected contractor may be asked to provide ad hoc reports regarding, but not limited to, participation, elections, and geographic usage.

2.10. Website Hosting and Maintenance

GOER will host and maintain its own informational website (<https://goer.ny.gov/nys-ride>). It will be the responsibility of the selected contractor to host and maintain an enrollment system and account management tools for administrator and employee use. The selected contractor should:

- 2.10.1. Designate a primary point of contact for all enrollment system and account management matters.
- 2.10.2. Be innovative. If during the term of this contract, new technology emerges, consistent with IRS Regulations, it will be considered within the scope of this RFP for the selected contractor to implement this technology.

2.11. Compliance

By submitting a proposal, the bidder certifies agreement to comply with the following terms and conditions. These terms and conditions are not considered part of the rating criteria and, therefore, will not be evaluated by the Selection Committee. These terms and conditions are mandatory requirements.

- 2.11.1. The selected contractor will be expected to provide GOER with any necessary legal advice with respect to administrating NYS-Ride in compliance with IRC Section 132(f) and any other relevant federal laws or regulations.
- 2.11.2. The selected contractor will be expected to assist and advise GOER with respect to the program's qualification under IRC Section 132(f) and any other relevant federal laws or regulations
- 2.11.3. Changes to State or Federal laws, or IRS rules and regulations proposed or

adopted during the term of this contract that require a change to the benefit must be incorporated and will be considered within the scope of this RFP. If, however the change impacts the selected contractor's level of effort or cost, GOER reserves the right to renegotiate the monthly administrative fee with the selected contractor. Renegotiations will be subject to OSC approval.

2.11.4. The selected contractor will pay for and will cooperate in any audit requested by the State, including:

- Annual financial or performance audits
- Any special audit ordered by the State
- Audits of the effectiveness of the selected contractor's voucher payment procedures performed by the State or independent external auditors

2.12. Turnover Plan at the End or Termination of the Contract Resulting from this RFP

The selected contractor resulting from this RFP will be expected to ensure participants have uninterrupted access to NYS-Ride benefits, ensure continuity of program operations, provide a seamless transition to a successor contractor, and provide GOER with unrestricted rights to state data. A turnover plan that provides for the complete transfer of all NYS-Ride program operations and data to the State or a successor contractor will be required and should not exceed nine months. This includes, but is not limited to, all 14 major areas described in Section 2, *Scope of Work*, in this RFP.

As part of the cost proposal for this RFP, the bidder is required to submit a turnover budget for turnover costs over and above the cost per participant.

In the event of a turnover of NYS-Ride to a successor contractor, the contractor selected under this RFP must have the ability to provide services on a month-to-month basis after the end of the contract to ensure a smooth transition. It is anticipated this time period would be no more than six months. The cost will be negotiated at that time but will not exceed the prorated turnover budget and/or cost per participant.

By submitting a proposal, the bidder certifies agreement to the terms and conditions stated in the requirements listed below, which are not considered part of the rating criteria and, therefore, will not be evaluated by the Selection Committee.

2.12.1. In the event of a turnover, the selected contractor will be expected to provide, upon request, a detailed, updated turnover plan to GOER within

thirty (30) days of notice from GOER. The State will withhold payment of outstanding invoices until such plan is submitted to and accepted by GOER. The written plan for transition will be expected to outline, at a minimum, the tasks, milestones, and deliverables associated with:

- Transition of program data, including but not limited to, payroll records, enrollment information, and any other data the successor contractor may request, and that GOER approves.
- Transfer of any unused participant account balances, pending orders, and fare media balances to the successor contractor.
- Completion of all such contractor-provided services associated with transit orders made before the end or termination date of the contract.
- Keeping dedicated phone and fax lines open with adequate available staffing and transferring calls as appropriate to the successor contractor's phone lines.
- Continued GOER access to key personnel, any online payroll deduction history, enrollment history, and online reporting systems.
- Account management of retroactive payroll deduction adjustments for the last year of the contract and completion of all required reports in the reporting section of this RFP.

- 2.12.2. The selected contractor will be expected to help tailor the turnover plan to the requirements of a successor selected contractor.
- 2.12.3. The selected contractor will be expected to provide GOER and successor selected contractor with any required technical assistance and advice during the turnover period.
- 2.12.4. The selected contractor will be expected to cooperate fully with GOER and any successor selected contractor during a turnover period to ensure the timely, smooth transfer of information necessary to administer the program.
- 2.12.5. Within a mutually agreed upon timeframe, GOER will either approve the turnover plan or notify the selected contractor, in writing, of any changes required to the turnover plan.
- 2.12.6. Within fifteen (15) business days from the selected contractor's receipt of GOER's required changes, the selected contractor will incorporate the changes into the turnover plan and submit a revised turnover plan to GOER.
- 2.12.7. Provide routine inventory management during turnover to avoid any shortages of program supplies.

2.12.8. Attend (in person or remotely) meetings as required by GOER, with state representatives and designees.

2.12.9. The selected contractor will be responsible for transitioning the program in accordance with the approved turnover plan.

2.13. Performance Standards and Penalties

GOER has established performance standards and penalties and will monitor the selected contractor’s performance results against the standards. By submitting a proposal, the bidder certifies agreement to adhere to the following performance standards and penalties. The decision of GOER will be final and controlling as to the dollar amount of the penalties assessed in accordance with the performance standards and penalties below and will not be negotiated. The performance standards and penalties are not considered part of the rating criteria and, therefore, will not be evaluated by the Selection Committee.

Deliverable	Performance Standard	Performance Penalty
Program	Full TPA Services in place by October 2, 2021.	Up to \$100,000 for failure to deliver
Program Implementation	Conceptual design and implementation schedule due by February 8, 2021.	Up to \$10,000 for failure to provide a conceptual design and program implementation schedule.
Employee Enrollment	System is expected to be fully operational, successfully tested, and approved by GOER by August 20, 2021.	Up to \$10,000 for failure to provide a fully operational system by August 20, 2021 and \$1,000 for every day thereafter that the system is not in place.
Payroll Interface: maintaining payroll timetables and deadlines	The selected contractor will comply with OSC’s timetables and deadlines 100% of the time (See Attachment 9, OSC’s <i>Vendor Submission Schedule</i>).	Up to \$5,000 for each missed deadline and up to \$7,500 for each missed deadline thereafter, unless the failure is solely the fault of the State.
Payroll Interface:	Must meet mutually agreed-upon	\$5,000 for each missed

Deliverable	Performance Standard	Performance Penalty
testing period with OSC	testing schedules or deadlines with OSC during the testing process.	deadline, unless the failure is solely the fault of the State.
Call center standards measured and reported to GOER monthly	<ul style="list-style-type: none"> • The telephone line, including the TDD line, will be operational and available to employees 12 hours per day, five (5) days per week, Monday through Friday, at least 99.5% of the time, calculated on an annual basis. • At least 99% of incoming calls will be greeted by the selected contractor's call handling system within seven (7) seconds. • At least 90% of incoming calls will be answered by a Customer Service Representative within an average of 30 seconds, calculated on an annual basis. • The percentage of incoming calls in which the caller disconnects prior to the call being answered during regular business hours will not exceed 5%, calculated on an annual basis. The measurement will not include calls abandoned in less than 20 seconds. • The percentage of incoming calls in which a caller receives a busy signal will not exceed 0%. 	Up to \$1,000 per 2% variance in each of the five areas measured on an annual basis.
Web Hosting and Maintenance: Unscheduled Internet downtime	Participant account management tools and enrollment portals will be available 24 hours per day, seven (7) days per week at least 99% of the time, calculated on an annual basis. Access will be restored within 24 hours of the commencement of service disruption.	Up to \$1,000 for each 24 hours after the first 24 hours. The penalty will be waived if the service disruption is a result of a Force Majeure as defined in Section 6.29.
Benefit Distribution	Employees will receive their fare media order prior to the first of the month	Up to \$1,000 per participant for each

Deliverable	Performance Standard	Performance Penalty
	100% of the time.	monthly occurrence in which the selected contractor fails to meet the deadline.
Customer Service	<ul style="list-style-type: none"> Return 100% of calls and answer 100% of emails within one (1) business day. Resolve 99% of routine problems, such as enrollments, order changes, cancellations, missed deductions, undelivered fare media, within three (3) business days. 	Up to \$1,000 per 2% variance in each of the areas, measured on an annual basis.
Call center recordings	100% of incoming calls must be recorded, archived and retrievable.	Up to \$1,000 per instance when a specific documented call is not provided.
Security Breach	The selected contractor will comply with Section 6.33, <i>Information and Security Breach and Notification Act</i> , and Section 6.34, <i>Breach / Cloud</i> of this RFP 100% of the time.	Up to \$10,000 for each security breach event or one year of Identity Theft Protection Services for potentially impacted NYS employees.
Call Center Operations	Ensure the toll-free and TDD line are completely tested and fully operational by September 1, 2021	Up to \$5,000 for failure to provide a fully operational toll-free and TDD line.

2.14. Parking and other IRC Section 132(f) Benefits

NYS-Ride is administered in compliance with IRC Section 132(f). Bidders should indicate whether they currently or have provided parking and other IRC Section 132(f) benefits to other employers. Bidders should describe in general how they provide these benefits.

3. 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

3.1. NEW YORK STATE LAW

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

3.2. Business Participation Opportunities for MWBEs

For purposes of this solicitation, GOER hereby establishes an overall goal of 30% for MWBE 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) for all funds outside of personal service where Contractor has discretion in the selection of NYS Certified MWBE vendors for these funds. A contractor (“Contractor”) on the subject contract (“Contract”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that GOER may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at <https://ny.newnycontracts.com/>. For guidance on how GOER will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8. GOER will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

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

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 MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and GOER 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 MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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 foregoing:

- 3.2.1. Bidders are required to submit a Contractor’s MWBE Utilization Plan on GOER Form #ADM-145 with their bid or proposal. The Contractor’s MWBE Utilization Plan, GOER Form #ADM-145, is available at <https://goer.ny.gov/public-forms-index>. 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 GOER.
- 3.2.2. GOER will review the submitted Contractor’s MWBE Utilization Plan and advise the Bidder of GOER’s acceptance or issue a notice of deficiency within 30 days of receipt.
- 3.2.3. If a notice of deficiency is issued, the Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to GOER, Division for Administration, 2 Empire State Plaza 8TH FL, Albany, NY 12223, phone 518-473-3467 and fax 518-473-6725, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by GOER to be inadequate, GOER 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 GOER Form #ADM-149. The MWBE Waiver Request GOER Form #ADM-149 is available at <https://goer.ny.gov/public-forms-index>.
- 3.2.4. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- 3.2.5. GOER may disqualify a Bidder as being non-responsive under the following circumstances:
 - 3.2.5.1. If a Bidder fails to submit a MWBE Utilization Plan
 - 3.2.5.2. If a Bidder fails to submit a written remedy to a notice of deficiency
 - 3.2.5.3. If a Bidder fails to submit a request for waiver
 - 3.2.5.4. If GOER determines that the Bidder has failed to document good faith efforts

Contractors will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE 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 GOER, 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 MWBE Quarterly Payment Report, GOER Form #ADM-146, via email to fsa@goer.ny.gov by the 10th calendar 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. GOER Form #ADM-146 is available at <https://goer.ny.gov/public-forms-index>.

3.3. 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 – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women OR Authority equivalent to Appendix A. 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, 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.

The Bidder will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, GOER Form #ADM-311, with its bid or proposal. GOER Form #ADM-315 is available at: <https://goer.ny.gov/public-forms-index>.

If awarded a Contract, the Bidder shall submit on a Quarterly basis during the term of the Contract a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report on GOER Form #ADM-326, identifying the workforce actually utilized on the Contract. GOER Form #ADM-326 is available at <https://goer.ny.gov/public-forms-index>.

Pursuant to Executive Order #162, contractors and subcontractors will also be

required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and Subcontractors will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or as a victim of domestic violence, 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.

- 3.3.1. The Contractor agrees to be bound by the provisions of Article 15-A of the Executive Law and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- 3.3.2. The Contractor shall comply with the following provisions of Article 15-A:
 - 3.3.2.1. The Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 3.3.2.2. The Contractor shall submit an EEO policy statement to GOER within seventy-two (72) hours after the date of the notice by GOER to award the Contract to the Contractor.
 - 3.3.2.3. If the Contractor or Subcontractor does not have an existing EEO policy statement, GOER may require the Contractor or Subcontractor to adopt a model statement (see GOER Form #ADM-315), available at <https://goer.ny.gov/public-forms-index>.
 - 3.3.2.4. The Contractor's EEO policy statement shall include the following language:

- The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
- The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
- 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 employment agency, union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection and Paragraph "E" of this Section, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

3.3.3. Equal Employment Opportunity Staffing Plan - GOER Form #ADM-311, available at <https://goer.ny.gov/public-forms-index>.

To ensure compliance with this Section, the Contractor shall submit an Equal Employment Opportunity Staffing Plan on GOER Form #ADM-311, to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender and Federal occupational categories. Contractors shall complete the Staffing Plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the Contract.

3.3.4. Workforce Utilization Report ("Workforce Report") - GOER Form #ADM-326,

available at <https://goer.ny.gov/public-forms-index>.

- 3.3.4.1. Once a contract has been awarded and during the term of the Contract, the Contractor is responsible for updating and providing notice to GOER of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- 3.3.4.2. Separate forms shall be completed by the Contractor and any Subcontractor performing work on the Contract.
- 3.3.4.3. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.
- 3.3.5. The Contractor shall comply with the provisions of the Human Rights Law and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or as a victim of domestic violence, 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.

3.4. Diversity Practices

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (MWBEs) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private and public entities. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs.

GOER has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of bidders is practical, feasible and appropriate. Accordingly, bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire, GOER Form #ADM-327. Bidders will be evaluated using the Diversity Practices Questionnaire Scoring Matrix. The weight assigned to diversity practices for this procurement is equal to 5% of the total possible Technical Score. The total maximum number of points that may be awarded based on the score of the bidder's Diversity Practices Questionnaire is 40.

Diversity Practices Questionnaire, GOER Form #ADM-327, is available at <https://goer.ny.gov/public-forms-index>.

4. PROPOSAL REQUIREMENTS

4.1. Format and Content

4.1.1. Administrative Requirements, Technical Proposal and Cost Proposal

For the purposes of evaluation, each proposal must be submitted in three (3) parts. Part I consists of the "Administrative Requirements". Part II consists of the "Technical Proposal". Part III consists of the "Cost Proposal". Each part must be complete so the evaluation of all parts can be accomplished independently and concurrently and so that the Technical Proposal can be evaluated strictly on the basis of its merits. Cost information is **not** to be included in Part I or II. All parts must be **sealed separately**.

The rules established for proposal content and format will be enforced as well as all rules set forth in this and other sections of the RFP.

4.1.2. General Requirements and Appearance

All proposals should be completed in ink or machine produced and on CD-ROM or flash drive. Proposals should have one-inch margins, single spaced,

and include page numbers. Proposals should also be three-hole punched and in a three-ring binder or bound. Responses should be organized using the same section heading, sub-headings and numbering systems as in the RFP. Each section should be separated by tabs or otherwise clearly marked.

4.2. Administrative Requirements

The following administrative information will apply to this RFP and resulting contract. The Administrative Requirements must be submitted separately from the Technical and Cost Proposals.

4.2.1. Projected RFP Timetable

- 4.2.1.1. RFP Release Date - August 28, 2020
- 4.2.1.2. Written Questions Due - September 11, 2020
- 4.2.1.3. Response to Written Questions - September 18, 2020
- 4.2.1.4. Proposal Due Date - October 15, 2020
- 4.2.1.5. Selection Review Begins - October 16, 2020
- 4.2.1.6. Project/Contract Start Date - January 1, 2021

4.2.2. Policy and Prohibitions Regarding Permissible Contact - Restrictions on Contact

Pursuant to State Finance Law Sections 139-j and 139-k, this RFP includes and imposes certain restrictions on communications between a Governmental Entity and a prospective bidder/contractor during the procurement process.

From December 19, 2019 the date notice was given regarding the development of this RFP, through final award/approval as referenced above, all contacts concerning this RFP/Procurement Contract must be directed to the designated staff, as of the date hereof, identified on page 1 of this RFP unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j (3)(a). This is referred to as the "restricted period."

GOER is also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the prospective bidder/contractor pursuant to these two provisions of statute. Certain findings of non-responsibility can result in rejection of a contract award and in the event of two findings within a 4-year period, the prospective bidder/contractor is debarred from obtaining governmental Procurement

Contracts. Prospective bidders/contractors are directed to Attachment 1, to read the full policy and guidelines.

4.2.3. Bidders' Questions Concerning this RFP

Bidders may submit typed questions via electronic mail to Kasey.Currier@goer.ny.gov and Brandy.Snyder@goer.ny.gov, fax to 518-473-3581, or by mail to the address provided below. Questions regarding the RFP will be accepted until 5:00 p.m. ET September 11, 2020. No telephone inquiries will be accepted. Answers to all questions received by this date will be posted on the GOER website at <https://goer.ny.gov/vendor-information-page> no later than September 18, 2020. Prospective bidders may obtain a hard copy of the questions and answers upon request.

EBMU, NYS-Ride
Governor's Office of Employee Relations
2 Empire State Plaza, 11th Floor
Albany, NY 12223

If a bidder discovers what they believe to be an error in this RFP, immediately notify Kasey Currier and Brandy Snyder via email at Kasey.Currier@goer.ny.gov and Brandy.Snyder@goer.ny.gov of such error and request clarification or modification to the document. Any such notice shall be given prior to the proposal submission deadline. GOER shall make RFP modifications by addenda, provided that such modifications would not materially benefit or disadvantage any particular vendor.

If, prior to the proposal submission deadline, a bidder fails to notify GOER 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.

4.2.4. Expenses Prior to Contract Execution

GOER is not liable for any costs incurred by a bidder in the preparation and production of a bid proposal or for any work performed prior to contract execution. By submitting a proposal, the bidder agrees not to make any claims for, or have any right to, damages resulting from any misunderstanding or misrepresentation of the specifications, or because of any misinformation or lack thereof.

4.2.5. Required Forms and Other Agreements

4.2.5.1. Application for Competitively Bid Contract - GOER Form #ADM-28

- Bidders are required to complete GOER Form #ADM-28, Application for Competitively Bid Contract, which includes certification by the bidder that all information provided with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.
- This form also includes a statement indicating the bidder's willingness to enter into a contractual agreement, which will include those terms and conditions as set forth in "Appendix A, Standard Clauses for New York State Contracts" (Attachment 2). Therefore, an official authorized to commit the company to a contract must sign this form.
- GOER Form #ADM-28 is located at <https://goer.ny.gov/public-forms-index>.

4.2.5.2. Vendor Responsibility Questionnaire

- New York State Procurement Law requires that state agencies award contracts only to responsible vendors. GOER 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/enroll.htm> or go directly to the VendRep System online at <https://onlineservices.osc.state.ny.us/Enrollment/login?0>.
- Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID please contact one of the designated contacts listed on the face page of this RFP, or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ITServiceDesk@osc.state.ny.us.
- Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact GOER or the Office of

the State Comptroller's Help Desk for a copy of the paper form. The questionnaire is also available at <https://goer.ny.gov/public-forms-index>.

- Bidders should acknowledge either online or paper filing of the Vendor Responsibility Questionnaire as part of their Application for Competitively Bid Contract, GOER Form #ADM-28 – question #11.

4.2.5.3. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors – Contractor Certification Form, ST-220-TD and Contractor Certification to a Covered Agency Form, ST-220-CA.

- Bidders are required to complete and submit directly to the New York State Department of Taxation and Finance (DTF), Contractor Certification Form ST-220-TD. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form ST-220-TD must be filed with DTF.
- Bidders are required to complete and submit to GOER the Contractor Certification to a Covered Agency Form, ST-220-CA, certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.
- General information on this requirement, including links to [Publication 223](#), Questions and Answers Concerning Tax Law Section 5-a, and Forms [ST-220-TD](#) and [ST-220-CA](#), can be obtained on the DTF Website at www.tax.ny.gov.

4.2.5.4. Non-Collusive Bidding Certificate Required by Section 139-d of the State Finance Law, GOER Form #ADM-320

Bidders are required to complete the Non-Collusive Bidding Certification, GOER Form #ADM-320, located at <https://goer.ny.gov/public-forms-index>.

Refer to Appendix A – Standard Clauses for NYS Contracts which is attached to the RFP as Attachment 2, for additional information concerning this requirement.

4.2.5.5. Nondiscrimination in Employment in Northern Ireland: Macbride Fair Employment Principles Certification - GOER Form #ADM-321

Bidders are required to complete the Nondiscrimination in Employment in Northern Ireland: Macbride Fair Employment Principles Certification, GOER Form #ADM-321, located at <https://goer.ny.gov/public-forms-index>. Refer to Appendix A – Standard Clauses for NYS Contracts, which is attached to the RFP as Attachment 2, for additional information concerning this requirement.

4.2.5.6. Confidentiality and Nondisclosure Agreement - GOER Form #ADM-319

Bidders are required to complete the Confidentiality and Nondisclosure Agreement, GOER Form #ADM-319, located at <https://goer.ny.gov/public-forms-index>.

4.2.5.7. Contractor's MWBE Utilization Plan - GOER Form #ADM-145

Bidders are required to complete the Contractor's MWBE Utilization Plan, GOER Form #ADM-145, located at <https://goer.ny.gov/public-forms-index>. Refer to Section 3 – *Minority and Women Business Enterprise and Equal Employment Opportunity* for additional information concerning this requirement.

4.2.5.8. Equal Employment Opportunity Staffing Plan - GOER Form #ADM-311

Bidders are required to complete the Equal Employment Opportunity Staffing Plan, GOER Form #ADM-311, for the anticipated workforce to be utilized on the contract. The form is located at <https://goer.ny.gov/public-forms-index>.

4.2.5.9. MWBE and EEO Policy Statement - GOER Form #ADM-315

Bidders are required to provide an MWBE and EEO Policy Statement. If a Bidder does not have an existing EEO policy statement, they may provide GOER's MWBE and EEO Policy Statement, GOER Form #ADM-315, available at <https://goer.ny.gov/public-forms-index>.

4.2.5.10. SDVOB Utilization Plan – GOER Form #ADM-328

Bidders are required to complete the SDVOB Utilization Plan, GOER Form #ADM-328 located at <https://goer.ny.gov/public-forms-index>. Refer to Attachment 7 – Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Business for additional information concerning this requirement.

4.2.5.11. Diversity Practices Questionnaire – GOER Form #ADM-327

Bidders are required to complete the Diversity Practices Questionnaire, GOER Form #ADM-327 located at <https://goer.ny.gov/public-forms-index>. Refer to Section 3 – *Minority and Women Business Enterprise and Equal Employment Opportunity* for additional information concerning this requirement.

4.2.5.12. Executive Order 177 Certification – GOER Form #ADM-331

Bidders are required to complete Executive Order 177 Certification, GOER Form #ADM-331 located at <https://goer.ny.gov/public-forms-index> certifying that they do not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or as a victim of domestic violence, or other protected status under the Human Rights Law.

Executive Order 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

4.3. Technical Proposal

The Technical Proposal must be submitted separately from the Administrative Requirements and the Cost Proposal.

To ensure that all proposals are evaluated on the same basis, all the following are to be included. Failure to include the required documents and information described

below may result in the proposal not being considered.

4.3.1. Summary of Services Being Bid

The project summary should outline significant features of the proposal, summarize the bidder's overall experience, and include a brief description of any related activities currently being provided by the bidder to New York State.

4.3.2. References

Provide a list of other clients for whom the bidder has provided similar services or performed similar activities. Also provide five (5) references with whom the bidder has worked within the past five (5) years and who can attest to the bidder's qualifications, by listing the organization name, address, contact person, telephone number and email address. These five (5) references should reflect the desired bidder expertise as indicated in Section 2 of this RFP. The references will be used in the initial pre-screening of bids. It is recommended that you confirm contact information for the references and inform them that failure to timely respond to GOER with respect to this RFP may cause your proposal to be eliminated from consideration. References will be contacted by phone, Monday-Friday, from 9:00 a.m. to 4:00 p.m. ET. Bids will be rejected as non-responsive if references are not provided.

4.3.3. Service Description

Provide a thorough and detailed description of the services to be provided for each deliverable outlined in Section 2, organized using the same section heading, subheadings and numbering system.

Clearly state and specifically identify in your proposal any subcontractors, subcontracts, or business partners that are to be used to deliver any of the services contained in this RFP. Describe the subcontractor's experience, how the relationship will work, and how seamless service will be provided.

4.3.4. Staff Expertise

Include the number of professional and support personnel to be assigned, using the chart below. Describe the qualifications and expertise of key personnel who will be assigned to this project.

Deliverable	FTE's to be assigned
Program Design	
Employee Enrollment	
Payroll Interface	
Account Management	
Benefit Distribution	
Customer Service	
Communications and Marketing	
Reporting	
Website Hosting and Maintenance	
Compliance	
Information Security and Security Procedures	
Turnover Plan	

4.3.5. Bidder Status (Fiscal Stability)

Provide a brief description of bidder organization including the history, range of services provided, organizational structure, and significant changes likely to occur within the next year, number of employees, and geographic locations. The selected bidder may be required to provide, in a timely manner, a copy of its most recent annual audited financial statement, including the opinion of an independent certified public accountant, and statements that indicate the firm's financial stability and ability to conduct the proposed project prior to GOER drafting a contract.

4.3.6. Experience with Similar Employers

Describe your organization's experience performing similar services for other large and diverse public employers.

4.3.7. Performance Standards

Submit your performance standard guarantees and affirm your ability to meet the specified performance standards as stated in Section 2.13 of this RFP.

4.3.8. Samples

Per Section 2.1.23, include a set of all requested samples with each bid marked with your firm's name.

4.4. Cost Proposal

The Cost Proposal attached as Attachment 10 must be submitted separately from the Administrative Requirements and Technical Proposal. NYS-Ride, QTB RFP Cost Proposal - Budget Form is the NYS-Ride Cost Proposal, located at <https://goer.ny.gov/vendor-information-page>. GOER expects to pay for the deliverables outlined in Section 2 as part of the monthly cost per participant except for parking and any other IRC Section 132 (f) benefits costs, start-up and implementation fees and turnover plan fees.

Bidders are asked to separate out costs for start-up and implementation (excluding all parking and other IRC Section 132 (f) benefits costs). GOER expects program design, payroll interface testing, and other services prior to full TPA services to be included in start-up and implementation. Start Up and Implementation costs will be paid upon successful implementation of full TPA services. Costs of normal design upgrades should be factored into the monthly cost per participant as applicable.

Bidders should separate out costs for the Turnover Plan. Bidders should be aware that turnover costs will be paid when turnover services are completed.

Bidders are asked to provide a communications and marketing budget amount on the appropriate line in the Cost Proposal. This should include costs for printing and mailing. GOER will not rate the amount provided but will use it to track the spending on marketing campaigns as described in Section 2.8, *Communications and Marketing*. The amount budgeted for marketing should be included in the monthly cost per participant and cannot be billed separately.

Bidders should include separate parking and other IRC Section 132 (f) benefits cost estimate that will be effective only if GOER implements a parking or other IRC Section 132 (f) benefit. Bidders are asked to include separate costs for start-up and implementation associated with administering parking or other IRC Section 132 (f) benefits for up to 15,000 State employees. GOER reserves the right to renegotiate the monthly cost per participant for the parking and other IRC Section 132 (f) benefits in the event enrollment does not meet or exceeds expectations. Renegotiations will be subject to OSC approval.

4.5. Process for Proposal Submission

4.5.1. Proposal Due Date

Proposals are due no later than 4:00 p.m. ET October 15, 2020. Any

proposals or unsolicited amendments to proposals received after the due date and time will not be considered in the review process. Bidders are responsible for submitting their proposals on time. GOER takes no responsibility for any third-party error in the delivery of proposals (e.g. U.S. Post Office, Federal Express, UPS, courier, etc.).

4.5.2. Proposal Mailing Instructions

The delivery/mailing address is:

EBMU, NYS-Ride
Governor's Office of Employee Relations
2 Empire State Plaza, 11th Floor
Albany, NY 12223

Mark the outside mailing label of the package with the RFP title and "Bid Documents".

- 4.5.2.1. Bidders should submit one (1) hard copy of administrative requirements and one copy on CD-ROM or flash drive. Do not include any technical or cost information with the administrative requirements (see following paragraphs).
 - 4.5.2.2. Bidders should submit six (6) hard copies of the completed technical proposal and one copy on CD-ROM or flash drive in PDF format. Do not include any cost information in the technical proposal (see next paragraph).
 - 4.5.2.3. All cost information and required budget forms must be submitted in a separate, sealed envelope and marked clearly as the bidder's cost proposal. Bidders should submit three (3) hard copies of the cost proposal and one copy on CD-ROM or flash drive.
 - 4.5.2.4. Mark the label of each sealed envelope of the proposal with the RFP title, bidder's name and administrative requirements, technical proposal or cost proposal.
 - 4.5.2.5. Faxed proposals will not be accepted.
 - 4.5.2.6. Handwritten proposals will not be accepted.
- #### 4.5.3. Submission of Proposals

All evidence and documentation requested under this RFP should be provided at the time the proposal is submitted. All proposals and accompanying documentation will become the property of the State of New York and will not be returned. The content of each bidder's proposal will be held in strict confidence (subject to GOER's responsibilities to disclose such proposal under any applicable law) during the bid evaluation process. The successful bidder's proposal and the RFP will be made part of the Contract.

5. REVIEW OF SELECTION PROCESS

Members of the Selection Committee will independently review each proposal received by the submission deadline. The Selection Committee will be comprised of representatives of the Governor's Office of Employee Relations and/or other State agency staff who will individually review and evaluate the technical proposal against established selection criteria. The cost proposal will be reviewed separately. Bidders may be required to clarify their response to this RFP, either in person or in writing.

5.1. Initial Screening Process

Each proposal received in response to this RFP will be screened to determine whether it is responsive as outlined below. The purpose of this initial review is to ensure that the requirements of this RFP are properly and adequately addressed, including compliance with all requested documents. Failure to address the required deliverables or furnish the forms and documents specified in this RFP may eliminate a proposal from further review.

Screening criteria includes the following:

5.1.1. Administrative requirements, Technical, and Cost proposals submitted in separate sealed envelopes submitted by the 4:00 p.m. ET October 15, 2020 deadline.

5.1.2. Administrative Requirements

5.1.2.1. One (1) hard copy of administrative requirements and one copy on CD-ROM or flash drive

5.1.2.2. Application for Competitively Bid Contract with original signature,

GOER Form #ADM-28

- 5.1.2.3. Vendor Responsibility Questionnaire (hard copy or electronic filing)
- 5.1.2.4. Contractor Certification to Covered Agency Form, ST-220-CA
- 5.1.2.5. Non-Collusive Bidding Certificate Required by Section 139-d of the State Finance Law, GOER Form #ADM-320
- 5.1.2.6. Nondiscrimination in Employment in Northern Ireland: Macbride Fair Employment Principles Certification, GOER Form #ADM-321
- 5.1.2.7. Confidentiality and Non-Disclosure Agreement, GOER Form #ADM-319
- 5.1.2.8. Contractor's MWBE Utilization Plan, GOER Form #ADM-145
- 5.1.2.9. Equal Employment Opportunity Staffing Plan, GOER Form #ADM-311
- 5.1.2.10. MWBE and EEO Policy Statement, GOER Form #ADM-315
- 5.1.2.11. SDVOB Utilization Plan, GOER Form #ADM-328
- 5.1.2.12. Diversity Practices Questionnaire, GOER Form #ADM-327
- 5.1.2.13. Executive Order 177 Certification, GOER Form #ADM-331
- 5.1.3. Technical Proposal
 - 5.1.3.1. Six (6) hard copies of the completed Technical Proposal and one copy on CD-ROM or flash drive in PDF format
 - 5.1.3.2. Confirm bidder responded to each deliverable, Section 2
 - 5.1.3.3. Confirm bidder's ability to comply with Section 2.1, *Mandatory Requirements*
 - 5.1.3.4. Confirm bidder responded to each deliverable, Section 4.3
 - 5.1.3.5. Confirm bidder did not include any reference to cost

5.1.3.6. Five (5) references submitted

5.1.4. Cost Proposal

Three (3) hard copies of the completed Cost Proposal and one copy on CD-ROM or flash drive in PDF format in a separate sealed envelope.

5.1.5. Reference Check

As part of the initial screening process, references will be contacted for each bidder. Each reference will be asked to respond to a series of pre-determined questions regarding the quality of the services provided, the bidder's responsiveness and the bidder's flexibility. Reference checks will be scored on a pass or fail basis. Bidders must pass two (2) reference checks in order for their bids to be further reviewed and rated.

5.2. Evaluation of Proposals

The evaluation process will determine the relative strengths and weaknesses of each proposal against the applicable stated criteria.

The Selection Committee will rank the individual technical proposals using a numerical ranking device against the established selection criteria. Cost evaluation will be done separately.

The individual rankings will be compiled by the Selection Committee to determine the highest ranked bid. The scores from the technical evaluation and the cost evaluation will be combined. The proposal that receives the highest combined score of technical and cost, while meeting the minimum specifications, will be awarded the contract.

5.3. Method of Selection

The method of selection will be based on a point system with the required technical portion of the rating criteria weighted at 80% of the total, and cost being 20% of the total. The highest possible total score is 1,000 points. In computing points, numbers will be rounded to the nearest whole integer. The Technical component is worth 800 points (80% of Total Score), and the Cost component is worth 200 points (20% of Total Score).

Technical Rating Section	Possible Points	Score
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2.1 Mandatory Requirements – not rated	0	
2.2 Program Design	120	
2.3 Employee Enrollment	70	
2.4 Payroll Interface	150	
2.5 Account Management	50	
2.6 Benefit Distribution	110	
2.7 Customer Service	110	
2.8 Communications and Marketing	40	
2.9 Reporting	40	
2.10 Website Hosting and Maintenance	20	
2.11 Compliance – not rated	0	
2.12 Turnover Plan – not rated	0	
2.13 Performance Standards and Penalties – not rated	0	
2.14 Parking and other IRC Section 132 (f) benefits	10	
3.4 Diversity Practices (5%)	40	
4.3.4 Staff Expertise	10	
4.3.5 Bidder Status (Fiscal Stability)	10	
4.3.6 Experience with Similar Employers	20	
Total Score for Technical Criteria	800	
Cost Rating Section	Possible Points	Score
1. Monthly Cost Per Participant	100	
2. Start-up and Implementation	50	
3. Turnover	25	
4. Parking and other IRC Section 132 (f) benefits	25	
Total Score for Cost Criteria	200	
Total Combined Score	1000	

5.4. Selection Criteria

5.4.1. Adequacy of Proposal

Proposals will be rated on the adequacy and extent to which they fully address the State’s needs as described in Section 2 of the RFP.

5.4.2. Staff Expertise

Proposals will be rated on the professional expertise of key staff assigned to the project, particularly as such expertise relates to the program

requirements as outlined in the RFP.

5.4.3. Bidder Status (Fiscal Stability)

Proposals will be rated on the fiscal viability of the organization to provide the services required by the RFP.

5.4.4. Experience with Similar Employers

The bidder's previous or current experience with other public employers, large, multi-site employers, and unionized employee populations will be taken into consideration for rating purposes.

5.4.5. Samples

Samples will be carefully reviewed and rated as a demonstration of the bidder's potential responsiveness to State employees' needs.

5.4.6. Diversity Practices

Bidders will be evaluated using the Diversity Practices Questionnaire Scoring Matrix. The weight assigned to diversity practices for this procurement is equal to 5% of the total possible Technical Score.

5.5. Cost Criteria

The bidder must demonstrate an ability to provide the required services at a reasonable cost to the State. Cost information and the required budget forms will be reviewed and rated separately from the technical proposal. Therefore, submission in a separate, sealed envelope is required (see Section 4). Once proposals pass the initial screening, the cost information and budgets will be rated using pre-defined criteria.

The Cost portion of the bidder's cost proposal will be evaluated on the amount shown on each line of the cost proposal budget form (attachment 10) for Monthly Cost Per Participant, Start-up and Implementation, and Turnover and worth the amount of points indicated in Section 5.3. The parking and other IRC Section 132 (f) benefits cost will be rated based on the total estimated annual cost.

Each cost section will be ranked according to lowest cost. The **lowest bidder** in each section will receive the maximum points for that section. The second lowest

bidder will receive the next highest points; each section will be ranked according to cost from lowest to highest and awarded points based on the formula as follows: each section will be divided into the lowest bid for that section and multiplied by the amount of points available per section. In computing points, numbers will be rounded to the nearest whole integer.

Example: Vendor A provides the lowest Turnover cost at \$50,000 and Vendor F bid \$65,000.

$$\text{Points for Vendor F} = (\$50,000 \div \$65,000) \times 25 = 19$$

5.6. Letter of Intent

GOER's Contract Unit will advise the successful bidder of our intent to award a contract by mailing a "Letter of Intent." Once the successful bidder has fulfilled requirements stated in the "Letter of Intent," a contract, subject to contract negotiations, will be transmitted to the Contractor for review and signature.

Each bidder whose proposal is not selected will also be notified in writing.

5.7. Debriefing

Once a letter of intent is issued, unsuccessful bidders may request a meeting to discuss their proposal. Please note this meeting will be limited only to the strengths and weaknesses of the bidder's proposal and will not include any discussion of other proposals. Requests must be received no later than fifteen (15) calendar days from date of award announcement.

6. CONTRACT INFORMATION AND REQUIREMENTS FOR AWARDEES

By submitting a proposal, bidders agree to the following requirements and clauses.

6.1. Contract Award

A Contract defining all deliverables and the responsibilities of the Contractor and GOER will be developed for signature by both parties and for approval and processing in accordance with State policy and practice.

NOTE: The Contract does not become legally binding upon the State of New York until it is executed by the Office of the New York State Comptroller.

6.2. Standby Letter of Credit (SLOC)

The selected contractor must deliver a fully-executed SLOC, in the full aggregate amount set forth below, to GOER by September 1, 2021 or 30 business days after notification from GOER that the contract has been approved by OSC, whichever date is later. The current Standby Letter Of Credit (SLOC) value is \$2,200,000. If the vendor fails to deliver the SLOC by the date above, the failure will constitute a breach of contract and the contract will be terminated for cause unless GOER grants an extension of time to deliver the SLOC. The right to grant an extension shall be within the sole discretion of GOER. However, GOER also retains the right to deny a request for an extension and immediately terminate the contract.

The selected contractor must maintain the SLOC in the full aggregate amount set forth below until completion of the contract term. Any failure to maintain the SLOC shall constitute a breach of contract. GOER will not excuse the failure to maintain the SLOC under any circumstances and the contract shall be terminated.

The issuing financial institution is required to provide the State with a written notice of any failure of the vendor to replenish the SLOC to the full aggregate amount or any failure of the financial institution to renew the SLOC. The State must be entitled to present a written draft at sight on the issuing financial institution. All drafts made under and in compliance with the terms and conditions of the SLOC must be duly honored by the issuing financial institution upon presentment. The State's failure to make such demand for a particular action shall not be deemed a waiver of its rights under the SLOC.

The issuing financial institution must stipulate and agree that, for value received, the obligations of the financial institution and its irrevocable SLOC must be in no way impaired or affected by any extensions of the times within which the State may receive, review, accept or pay for deliverables under the contract, or within which the vendor may furnish a SLOC, or by any waiver by the State of any of the requirements of the contract. The issuing financial institution must waive notice of any such extensions or waivers.

The executed SLOC must be maintained by the vendor at all times during the SLOC Term in an aggregate amount equal to two (2) months of NYS-Ride participant payroll deductions the vendor maintains possession of for longer than two (2) business days.

In the event the State makes a partial or complete drawing against the SLOC, the amount of such drawing must be replenished by the vendor to the full aggregate amount within five (5) business days of any individual draws against the SLOC. Failure of the vendor to replenish the SLOC within the required timeframe will be considered a material breach of contract.

The issuing financial institution may designate a separate address for receipt of the State's draft. However, presentment will be deemed to occur within the State of New York regardless of the physical location designated for receipt of the State's draft. Any actions or proceedings under the SLOC will be governed by the laws and heard in courts of the State of New York.

The selected contractor must be responsible for payment of all fees associated with obtaining and maintaining the SLOC for the duration of the contract term, including any extension periods.

6.3. Appendix A (Standard Clauses for NYS Contracts) – Attachment 2

The terms of Appendix A, Standard Clauses for New York State Contracts, attached hereto, are hereby incorporated into this RFP and any resulting Contract. The Contractor is required to adhere to the clauses of Appendix A.

6.4. State Consultant Services Reporting

Chapter 10 of the Laws of 2006 amended certain sections of the State Finance Law and the Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State.

The winning bidders for procurements involving consultant services must complete a State Consultant Services Contractor's Planned Employment, Form A, from Contract start date through end of Contract term to be submitted with the signed contract in order to be eligible for a Contract.

Winning bidders must also agree to complete a State Consultant Services Contractor's Annual Employment Report, Form B, for each state fiscal year included in the resulting Contract. This report must be submitted annually to the GOER, the Office of the State Comptroller, and the Department of Civil Service.

Form A and Form B are located at <https://goer.ny.gov/public-forms-index>.

6.5. Workers' Compensation and Disability Benefit Coverage Certification

WORKERS' COMPENSATION REQUIREMENTS UNDER WCL § 57

A vendor seeking to enter into a contract with GOER must provide evidence of compliance with the Workers' Compensation Law (WCL). To comply with coverage provisions of the WCL, a vendor must:

- be legally exempt from obtaining workers' compensation insurance coverage; or
- obtain such coverage from insurance carriers; or be a Board-approved self-insured employer or participate in an authorized group self-insurance plan.

Therefore, to assist the State in enforcing Section 57 of the WCL, a vendor must provide one of the following forms to GOER before a contract can be approved:

- Acceptable evidence of exemption from the law:
 - CE-200 - Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, that NYS Workers' Compensation And/OR Disability Benefits Insurance Coverage Is Not Required.

This form may be completed electronically on the Worker's Compensation Board's website, at <http://www.wcb.ny.gov> under the heading "Forms." Vendors filing electronically will be able to print a finished Form CE-200 immediately upon completion of the electronic application. Vendors may also obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers' Compensation Board. Vendors using the manual process may wait up to four weeks before receiving a CE-200.

PLEASE NOTE: The vendor must sign and date this form whether filed electronically or in hard copy.

OR

- Acceptable evidence of coverage under the law:
 - C-105.2 - Certificate of Workers' Compensation Insurance (a vendor's insurance carrier will send this form to GOER on request). PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
 - SI-12 - Certificate of Workers' Compensation Self-Insurance (the vendor can obtain this certificate by calling the Board's Self-Insurance Office at 518-402-0247); OR
 - GSI-105.2 - Certificate of Participation in Worker's Compensation Group Self-Insurance (the vendor's Group Self-Insurance Administrator will send this form to GOER upon request).

PLEASE NOTE: ACORD forms are not acceptable proof of workers' compensation coverage.

DISABILITY BENEFITS REQUIREMENTS UNDER WCL § 220 SUBDIVISION 8

To comply with coverage provisions of the Workers' Compensation Law, a vendor may:

- be legally exempt from obtaining disability benefits insurance coverage; or
- obtain such coverage from insurance carriers; or
- be a Board-approved self-insured employer.

Therefore, to assist the State in enforcing Section 220, subdivision 8, of the Workers' Compensation Law, a vendor **must** provide **one** of the following forms to GOER before a contract can be approved.

- a. Acceptable evidence of exemption from the law:
 - CE-200 - Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required.

This form may be completed electronically on the Board's website, at <http://www.wcb.ny.gov> under the heading "Forms." Vendors filing electronically will be able to print a finished Form CE-200 immediately upon completion of the electronic application. Vendors may also obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers' Compensation Board. Vendors using the manual process may wait up to four weeks before receiving a CE-200.

PLEASE NOTE: The vendor must sign and date this form whether filed electronically or in hard copy.

OR

- b. Acceptable evidence of coverage under the law:
 - DB-120.1 - Certificate of Disability Benefits Insurance (the vendor's insurance carrier will send this form to GOER upon request); OR
 - DB-155 - Certificate of Disability Benefits Self-Insurance (the vendor can obtain this Certificate by calling the Board's Self-Insurance Office at 518-402-0247).

If you have any questions or require additional information, please contact the Workers' Compensation Board, Bureau of Compliance, at 518-462-8882 or 866-298-7830. The above forms are available at: <http://www.wcb.ny.gov> under the heading "Forms".

6.6. Indemnification

The Contractor agrees to obtain and maintain in effect a general policy of liability insurance in an amount determined by GOER. The Contractor shall provide GOER with a certificate of insurance naming the State of New York as an additional insured. The Contractor agrees that it will require any and all subcontractors with whom it subcontracts pursuant to this Contract to obtain and maintain a general policy of liability insurance in the same amount.

6.7. Publicity

News releases or any other public announcements regarding this project may not be released without prior approval from GOER. Publicity includes, but is not limited to, news conferences, news releases, advertising, brochures, reports, discussions and/or presentations at conferences or meetings. The inclusion of our materials, our agency name, or other such reference to New York State and/or The Governor's Office of Employee Relations in any document or forum is considered publicity. This provision shall survive the termination, suspension, cancellation or expiration of the Contract.

6.8. Contract Period and Renewal

The anticipated term of the Contract will be defined in the Face Page of the Contract Agreement, but is expected to begin January 1, 2021 and continue for four (4) years with two optional one-year renewals beginning January 1, 2025 and January 1, 2026. The optional renewals will be at GOER's discretion with the same terms, conditions, and prices, and will be subject to OSC approval.

6.9. Service Delivery Location

During the term of the original Contract, GOER will request the selected consultant(s) to deliver services as needed. Services resulting from this RFP may be delivered in any location throughout the State and selected consultants will need to identify geographic limitations to service delivery.

6.10. Consultant/Instructor Substitutions

Recognizing that the consultant may need, during the term of the Contract, to add, change staff, or hire subcontractors who can be deployed to work under this Contract, GOER reserves the right to review staff credentials and accept or reject staff for GOER projects. GOER Program Managers will be responsible for obtaining the appropriate resumes, credential documentation, etc. for determination of

deploying such staff.

It is the Contractor's responsibility when utilizing subcontractors to comply with New York State's requirements regarding vendor responsibility. Refer to Vendor Responsibility Questionnaire located at <https://goer.ny.gov/public-forms-index>. Once the subcontractor meets the requirements and is determined to be a responsible subcontractor, the subcontractor may provide services for the Contractor.

6.11. Cancellation

Cancellation for Convenience: GOER retains the right to cancel the Contract without reason provided that the Contractor is given at least twenty days' written notice of its intent to cancel. This provision should not be understood as waiving GOER's right to terminate the Contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision.

6.12. Suspension of Work

GOER reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State or Issuing Entity. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, awaiting settlement of collective bargaining, or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any work deployment request, and shall comply with the suspension order. Activity may resume at such time the Director of GOER, or authorized designee, issues a formal written notice authorizing a resumption of work.

6.13. Mandatory Contract Termination Provisions

6.13.1. GOER reserves the right to terminate this Contract in the event it is found that the certification filed by the prospective bidder/Contractor in accordance with New York State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, GOER may exercise its termination right by providing written notification to the Contractor.

6.13.2. If a Contractor fails to make the certifications required by section 5-a of New York State Tax Law, the Contract cannot take effect. If during the term of the Contract, the Department of Taxation and Finance or the covered agency discovers that a certification is false, then such false certification

may subject the Contractor to civil or criminal sanctions, and a finding of non-responsibility for future procurements. Under certain circumstances, the statute provides that the Contract shall be subject to termination if the covered agency determines that termination of the Contract is in the best interests of New York State.

- 6.13.3. Any Contractor who willfully and intentionally fails to comply with the MWBE participation requirements as set forth in this Contract shall be liable to GOER for liquidated or other damages, as otherwise specified in the Contract, and shall provide for other appropriate remedies on account of such breach. Damages shall include, but not be limited to, actual costs incurred by GOER related to GOER expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified MWBE programmatic goals and Affirmative Action and Equal Opportunity compliance, actual costs to reprocur, and any additional funds GOER expends on the subsequently reprocured contract.
- 6.13.4. Contractor Responsibility -The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Director of GOER or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- 6.13.4.1. Suspension of Work (for Non-Responsibility) - The Director of GOER or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Director of the GOER or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- 6.13.4.2. Termination (for Non-Responsibility) - Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate GOER officials or staff, the Contract may be terminated by the Director of GOER or his or her designee at the Contractor's expense where the Contractor is determined by the Director of GOER or his or her designee to be non-responsible. In such event, the Director of GOER or his or her designee may complete the contractual requirements in

any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

6.14. Minority and Women-Owned Business Enterprise (MWBE)

This section relates to the utilization of New York State certified Minority and Women- Owned Business (MWBE) enterprises and the successful bidder.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE 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 GOER, 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 MWBE Quarterly Payment Report, GOER Form #ADM-146 located at <https://goer.ny.gov/public-forms-index>, to EMBU via email at fsa@goer.ny.gov by the 10th calendar 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.

Contractors are required to submit a Workforce Utilization Report, GOER Form #ADM-326 located at <https://goer.ny.gov/public-forms-index>, to EMBU via email to Nicholas.Giuliano@goer.ny.gov by the 10th calendar day following each end of quarter over the term of the Contract to report actual workforce utilized in the performance of the Contract broken down by job title.

6.14.1. Compliance reports shall be submitted by the Contractor for which a utilization plan was required and approved by GOER.

6.14.2. Contractor compliance reports shall be filed quarterly.

6.14.3. A Contractor compliance report shall include, but not be limited to, the following information:

6.14.3.1. The name, address and telephone number of each certified minority or woman-owned business enterprise the Contractor is using or intends to use to comply with the utilization plan;

6.14.3.2. A brief description of the Contract scope of work to be performed for the Contractor by each certified minority or woman-owned business

enterprise and the scheduled dates for performance;

6.14.3.3. A statement of whether the Contractor has a written agreement with each certified minority or woman-owned business enterprise, and if requested, copies of such agreements, the Contractor is using or intends to use;

6.14.3.4. The actual total cost of the Contract scope of work to be performed by each certified minority or woman-owned business enterprise for the Contract; and

6.14.3.5. The actual amounts of any payments made by the Contractor to each certified minority or woman-owned business enterprise as of the date the compliance report was submitted.

6.15. Service-Disabled Veteran-Owned Business (SDVOB)

The Contractor is required to report monthly SDVOB Contractor Compliance to GOER during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form ADM-329 located at <https://goer.ny.gov/public-forms-index> and should be completed by the Contractor and submitted to GOER, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: Nicholas.Giuliano@goer.ny.gov.

6.16. Non-Resident New York State Taxes

Individuals living in other states or firms incorporated out of the State of New York may be liable for New York State non-resident taxes on income earned through this Contract. Please contact the New York State Department of Taxation and Finance, Taxpayer Services Unit at 1-800-225-5829 if you have any questions concerning this requirement.

6.17. GOER Rights Reserved

In order to serve the best interests of the State, GOER reserves the right to:

6.17.1. Postpone or cancel this RFP upon notification to all bidders.

6.17.2. Amend the specifications after their release with appropriate notice to all bidders.

- 6.17.3. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation.
- 6.17.4. Request bidders to present supplemental information clarifying their proposal, either in writing or in a formal presentation.
- 6.17.5. Waive or modify minor irregularities in proposals received after prior notification to the bidder.
- 6.17.6. Reject any and all proposals received in response to this RFP.
- 6.17.7. Contact bidders' references as a check on qualifications.
- 6.17.8. Award the contract to other than the lowest bidder.
- 6.17.9. Award contracts to more than one bidder.
- 6.17.10. Change any of the scheduled dates.
- 6.17.11. Negotiate with the successful bidder within the scope of the RFP in the best interests of the State.
- 6.17.12. Negotiate with the next highest rated bidder if negotiating a contract with the selected bidder(s) cannot be accomplished within an acceptable time frame (no bidder will have any rights against GOER arising from such negotiations).
- 6.17.13. Cancel the project contract on 20 days' written notice and/or make any payment contingent upon the submission of specific deliverables.
- 6.17.14. Withdraw the RFP at any time, at the agency's sole discretion.
- 6.17.15. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP.
- 6.17.16. Utilize any and all ideas submitted in the proposals received.
- 6.17.17. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders.

6.17.18. 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.

6.17.19. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening.

6.18. Assurances

The bidder warrants that it has carefully reviewed the needs of the State as described in the RFP, its attachments and other communications related to the RFP and that it has familiarized itself with the specifications and requirements of the RFP and warrants that it can provide such services as represented in the bidder's proposal. The bidder agrees that it will perform all of its obligations in the resultant Contract in accordance with all applicable federal, State, and local laws, regulations and policies now or hereafter in effect. The bidder affirms that the terms of the RFP and the attachments do not violate any contracts or agreements to which it is a party, and that its other contractual obligations will not adversely influence its capabilities to perform under the Contract.

6.19. Electronic Files or Data

If electronic files are to be exchanged as a part of this proposal or as a product of the Contract, they must conform to agency information management guidelines.

6.20. Notices

6.20.1. All notices permitted or required under the Contract shall be in writing and shall be transmitted either:

- Via certified or registered United States mail, return receipt requested.
- By facsimile transmission.
- By personal delivery.
- By expedited delivery service.
- By email.

6.20.2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile

transmission or email, upon receipt.

6.20.3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Contract by giving fifteen (15) days' written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purpose of receiving notices under this Contract. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

6.21. Contract Payments

The Contractor shall provide complete and accurate billing invoices to the Business Services Center (BSC) in order to receive payment. Billing invoices submitted to the BSC must contain all information and supporting documentation required by the resulting Contract, GOER, BSC 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, in the Director's 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. Information regarding Electronic Payment (ePayment) is available in the Statewide Financial System Vendor Portal at https://esupplier.sfs.ny.gov/psc/fscm/SUPPLIER/ERP/c/NUJ_FRAMEWORK.PT_LANDINGPAGE.GBL?Page=PT_LANDINGPAGE&Action=U&LP=ERP.SUPPLIER.NY_SUP_PUB_HOMEFG_FL&. Inquiries related to the Electronic Payments program should be directed to the State Comptroller's Vendor Management Unit by email at epayments@osc.state.ny.us. The Contractor acknowledges that it will not receive payment on any invoices submitted under the resulting Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.

6.22. Non-Discrimination/Americans with Disabilities Act (ADA)/NYS Human Rights Law (HRL)

It is the policy of the State of New York to provide for and promote equal opportunity in employment and equal access to all programs and services without discrimination on the basis of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or as a victim of domestic violence, arrest record, previous conviction record, and any other status or condition

protected by law. A reasonable accommodation will be provided on request, where required by law.

Any product(s) developed as a result of this RFP must be in a format that can be converted for use by individuals with disabilities to meet the reasonable accommodation standards established by the ADA and/or the HRL.

6.23. Executive Order 177 - Prohibiting State Contracts with Entities that Support Discrimination

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

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

Generally, the Human Rights Law applies to:

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

Executive Order 177 ("EO 177") directs New York State agencies and authorities not to enter into any contracts with entities that have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis.

In accordance with Executive Order 177, the Contractor shall certify that it does not

have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis, or other protected status under the Human Rights Law. GOER Form # ADM-331 is available on GOER's website at <https://goer.ny.gov/public-forms-index>.

6.24. State Finance Law Section 139-I Sexual Harassment Prevention Certification

State Finance Law §139-I requires bidders on state procurements to certify that they have and have implemented a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment prevention training (that meets the Department of Labor's model policy and training standards) to all its employees. In accordance with State Finance Law Section 139-I, bidders certify that by submitting a 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 its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law. However, if the bidder cannot make the certification, the bidder may provide a signed statement with their bid detailing the reasons why the certification cannot be made.

6.25. Conflict of Interest

Bidders may be requested to provide evidence that the award of the Contract from this RFP will not result in a conflict of interest with regard either to other work performed by the Contractor, or to potential conflict of interest among specific Contractor staff or subcontractors.

6.26. Ownership of Materials

All materials developed with funding provided by the State and all proposals, work plans and budgets become the property of New York State. All materials produced, either in whole or in part, through funding provided by New York State shall belong exclusively to GOER and to the State of New York. GOER may use any of the materials developed with project funds for any GOER or other State purpose. GOER, upon specific request and where it deems appropriate, may grant a successful bidder permission to use any materials produced, either in whole or in part, as a result of a Contract between a successful bidder and GOER.

Ownership of Materials for Website Development includes: All materials, including but not limited to, information, software, photographs, video, graphics, music, HTML, sounds, logos, compilation and design, developed with funding provided by the State and all proposals, work plans and budget becomes the property of New York State. All materials produced, either in whole or in part, through funding provided by New York State shall belong exclusively to GOER and to the State of New York. GOER may use any of the materials developed with project funds for any GOER or other State purpose.

6.27. Copyright

All documents created or prepared under this Contract must be in compliance with GOER/LMC Copyright Policy (Attachment 3). As indicated by this Copyright Policy, GOER adheres to and requires the successful bidder to adhere to the requirements of the Copyright Law, which is Federal law and contained in Title 17 of the United States Code, Sections 101 et seq. Such requirements include the following:

- When GOER contracts for the creation of training or instructional work and/or materials or curriculum, it is deemed under the Copyright Law as a work-made-for hire and GOER is the owner of the copyright thereto.
- The Contractor must contact GOER to incorporate or include previously copyrighted materials in the work being created or prepared under the Contract. The Contractor shall submit a copy of the previously copyrighted material and a draft of how the Contractor proposes to include or incorporate the previously copyrighted material in the work-made-for hire. GOER shall obtain written permission, where such written permission is necessary and required, from the copyright owner(s) or their legal representative(s) for such inclusion or incorporation of such previously copyrighted material.
- After GOER obtains written permission, GOER will transmit a copy of the written permission to the Contractor, and the Contractor shall include, on the appropriate page(s) of the work-made-for hire, a citation to the copyright owner(s) using the style as set forth in the written permission.
- Where a copyright owner requests a fee for permission, GOER shall pay the copyright owner(s) or legal representative(s) the agreed upon fee, if any, for the inclusion or incorporation of previously copyrighted material in the work-made-for hire. GOER, in its sole discretion, may determine that it will not pay such fee for the right to include or incorporate such previously copyrighted material. In such event, the vendor will be required to create new materials or use alternate, previously copyrighted materials (which shall also be subject to GOER's Copyright Policy).

- Bibliographic and footnote references and citations must be included where appropriate and must use the proper format as set forth in the Copyright Policy.
- The Contract will contain a warranty by which the Contractor shall warrant to GOER that he/she is the sole author of the material or work created or produced, except for the incorporated material for which copyright permission was obtained.
- The Contract will contain an indemnification in which the Contractor agrees to indemnify GOER against any legal action with respect to the warranty.
- When the consultant is using materials previously developed by that consultant and adopting or revising such materials for delivery to New York State employees, the consultant materials must comply with the requirements of GOER/LMC Copyright Policy.

6.28. Freedom of Information Law and Bidders' Proposals

The purpose of New York State's Freedom of Information Law (FOIL), which is contained in Public Officers Law (POL) Sections 84-90, is to promote the public's right to know the process of governmental decision making and to grant maximum public access to governmental records. Consequently, a member of the public may submit a FOIL request for contracts awarded by the State or for the proposals submitted to the State in response to Requests for Proposals. After formal contract award, the proposal of the successful bidder and the proposals of non-successful bidders are subject to disclosure under FOIL. However, pursuant to Section 87(2)(d) of the POL, a State agency may deny access to those portions of proposals or portions of a successful bidder's contract which "are trade secrets or are 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."

If a bidder believes that any information in its proposal meets the requirements of POL Section 87(2)(d) and wishes such information not to be disclosed if requested by a member of the public pursuant to FOIL, the bidder shall submit with its proposal, a letter, specifically identifying by page number, line or other appropriate designation, such information that is alleged to meet the requirements of POL Section 87(2)(d) and explaining in detail how such information allegedly meets such requirements.

A bidder's failure to submit with its proposal such a letter shall constitute a waiver by the bidder of any rights it may have otherwise under Section 89(5).

In no event will GOER consider information to be covered under POL Section 89(5) if that information is not the proprietary information or ideas of the bidder and so designated in the proposal, or if that information:

- was known to GOER before submission of such proposal
- properly became known to GOER thereafter through other sources or
- is in the public domain

Additionally, any such claim is subject to review by GOER and a court of competent jurisdiction pursuant to Section 89(5) of the POL.

6.29. Force Majeure

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Director in the performance of the Contract for which non-performance, by exercise of reasonable diligence, cannot be prevented. The Contractor shall provide the Director with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Director shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Director to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

6.30. Accessibility of State Agency Web-Based Intranet and Internet Information and Applications

Any network-based information and applications development, or programming delivered to or by the State pursuant to this contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the "Accessibility Policy"). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility

compliance testing will be conducted by the Contractor and any report on the results of such testing must be satisfactory to GOER before the network-based information and applications development, or programming will be considered a qualified deliverable under the Contract or procurement.

GOER will work with the successful bidder to provide an understanding of accessibility requirements. In addition, the website, application or programming will require GOER's prior final approval.

6.31. Security, Non-Disclosure, and Confidentiality

The Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under the Contract. The Contractor shall ensure that its personnel, agents, officers and subcontractors, if any are fully aware of the obligations arising under this section and shall take all commercially reasonable steps to ensure compliance. The Contract may be terminated by GOER for cause for a material breach of this section.

6.31.1. Security Procedures and Employee Dishonesty:

The Contractor will comply fully with all security procedures of GOER communicated to the Contractor in the performance of this Contract, including, but not limited to, New York State Information Security Policy, P03-002, see: <https://its.ny.gov/document/information-security-policy> as amended from time to time, or the successor. Applicable policies may be found at: <https://its.ny.gov/eiso/policies/security>. The Contractor shall hold GOER harmless from any loss or damage to GOER resulting from violations by the Contractor, its officers, agents, employees, and subcontractors, of any of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, while providing services as requested in the RFP under the contract.

GOER may terminate the Contract if it determines that the Contractor has violated a material term of this section. The terms of this section shall apply equally to the Contractor, officers, agents, employees, and subcontractors, if any. The Contractor agrees that all officers, agents, employees, and subcontractors, if any, shall be made aware of and shall agree to the terms of the Security, Non-Disclosure, and Confidentiality provisions of this Contract.

6.31.2. Nondisclosure and Confidentiality

6.31.2.1. Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any confidential information to which the Contractor, its officers, agents, employees, and subcontractors, if any have access. This representation shall survive termination of the contract. For purposes of the contract, all State information of which the Contractor, its officers, agents, employees, and subcontractors, if any becomes aware during the course of performing services as requested in the RFP for GOER shall be deemed to be confidential information (oral, visual, digital, audio or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered confidential information:

- Information that is previously rightfully known to the receiving party without restriction on disclosure
- Information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain
- Information that is independently developed by the Contractor without use of confidential information of the State

The Contractor shall hold the State harmless, without limitation, from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such confidential information.

6.31.2.2. The disclosure of any information about GOER/LMC information technology, State employees or the State workforce that the vendor/contractor may have access to in the course of this engagement to any individual not employed by GOER/LMC is prohibited unless explicitly specified in this RFP. Vendor personnel will be required to sign GOER's standard Non-Disclosure Agreement.

The vendor/contractor should follow New York State Cyber Security IT Standard S13-001, which outlines that security is to be included in every phase of development. Seventeen tasks are identified as part of the SSDLC process as part of the Standard.

6.32. Subcontractors

The Contractor may subcontract services as requested in the RFP provided under the contract, or any part of it, only upon the prior written approval of GOER.

A subcontractor shall be defined as any firm or person who is not an active employee of the Contractor, but who is otherwise engaged or assigned to perform work under the Contract. All agreements between the Contractor and its subcontractors shall be by bona fide written contract.

The Contractor shall include in all subcontracts in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions consistent with those found in the Contract, including, but not limited to:

- work performed by the subcontractor must be in accordance with the terms of the Contract
- the subcontractor shall comply with the provisions of Section 5-a of the Tax Law
- nothing contained in such subcontract shall impair the rights of GOER
- nothing contained therein shall create any contractual relation between any subcontractor and GOER
- the subcontractor shall maintain all records with respect to work performed by the subcontractor in the same manner as required of the Contractor
- GOER shall have the same authority to audit the records of all subcontractors as it does those of the Contractor

The Contractor shall be fully responsible to GOER for the acts and omissions in the performance of services as requested in the RFP under the Contract of the subcontractors and/or persons either directly or indirectly employed by it or by the subcontractors, as it is for the acts and omissions in the performance of services as requested in the RFP under the Contract or persons directly employed by the Contractor. The Contractor shall not in any way be relieved of any programmatic or financial responsibility under the Contract by its agreement with any subcontractor or by GOER's approval of such an agreement with a subcontractor.

GOER reserves the right to reject any proposed subcontractor for any reason, which may include, but is not limited to: (i) that the proposed subcontractor is on the Department of Labor's list of companies with which New York State cannot do business; or (ii) GOER determines that the proposed subcontractor is not qualified or has previously provided unsatisfactory contract performance or service.

6.33. Information and Security Breach and Notification Act

In accordance with the Information Security Breach and Notification Act (ISBNA) (General Business Law § 889-aa; State Technology Law § 208), the Contractor shall be responsible for complying with the provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by the Contractor under this Project (Private Information) that is within the control of the Contractor either on GOER's information security systems or the Contractor's information security systems (System). In the event of a breach of the security of the System (as defined by ISBNA) the Contractor shall immediately commence an investigation, in cooperation with GOER, to determine the scope of the breach and restore the security of the System to prevent any further breaches. The Contractor shall also notify GOER of any breach of the security of the System immediately following discovery of such breach. Except as otherwise instructed by GOER, the Contractor shall, to the fullest extent possible, first consult with and receive authorization from GOER prior to notifying any individuals, the State Consumer Protection Board, the Office of the Attorney General (OAG) and the Office of Cyber Security and Critical Infrastructure Coordination or any consumer reporting agencies of a breach of the security of the System or concerning any determination to delay notification due to law enforcement investigations. The Contractor shall be responsible for providing the notice to all such required recipients and for all costs associated with providing such notice. Nothing herein shall in any way impair the authority of the OAG to bring an action against the Contractor to enforce the provisions of the ISBNA or limit the Contractor's liability for any violations of the ISBNA. Additional information relative to the law and the notification process is available at: <https://its.ny.gov/eiso/breach-notification>.

6.34. Breach/Cloud

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

- 6.34.1. Notify the ITS Enterprise Information Security Officer (EISO) and GOER, or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Contractor has knowledge of a Data Breach;
- 6.34.2. Consult with and receive authorization from GOER as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by GOER;

- 6.34.3. Coordinate all communication regarding the Data Breach with the ITS EISO and GOER;
- 6.34.4. Cooperate with GOER and the ITS EISO in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
- 6.34.5. Take corrective action in the timeframe required by GOER. If the Contractor is unable complete the corrective action within the required timeframe, in addition to the remedies provided, GOER may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to GOER, or until GOER has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period.

Nothing herein shall in any way (a) impair the authority of the OAG to bring an action against the Contractor to enforce the provisions of the ISBNA or (b) limit the Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

6.35. Data Ownership, Access, and Location

6.35.1. Data Ownership

GOER shall own all rights, title and interest in Data.

6.35.2. GOER Access to Data

GOER shall have access to its Data at all times, through the term of the contract. GOER shall have the ability to import or export Data in piecemeal or in its entirety at GOER's discretion, without interference from the Contractor. This includes the ability for GOER to import or export Data to/from other Contractors.

6.35.3. Contractor Access to Data

The Contractor shall not copy or transfer Data unless authorized by GOER. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. The Contractor shall not access any Data for any purpose other than fulfilling the service. The Contractor is prohibited from Data Mining, cross tabulating, monitoring GOER's Data usage and/or access, or performing any other Data Analytics other than those required within the Contract. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by GOER, be copied, disclosed, or retained by the Contractor or any party related to the

Contractor. Contractors are allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to GOER upon request. The Contractor must comply with any and all security requirements within the Contract.

6.35.4. Data Location and Related Restrictions

All Data shall remain in the Continental United States (CONUS). Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within the CONUS. All Data at rest or in process must be protected in accordance with FIPS-140-2 cryptographic modules (level 1 or higher). Data in transit must employ cryptographic protocol TLS2 (or successor).

6.35.5. Support Services

All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from outside CONUS.

6.35.6. Infrastructure Support Services

Infrastructure support services that do not directly or indirectly access Data may be provided in a Follow the Sun format, if expressly outlined within the Contract.

6.36. Transferring of Data

6.36.1. General

The Contractor will not transfer Data unless directed to do so in writing by GOER. At the request of GOER, the Contractor will provide the services required to transfer Data from existing Databases to physical storage devices, to facilitate movement of large volumes of Data. GOER may require several Cloud providers to share or transfer Data for a period of time. This will be provided for in the Contract or shall be assumed to be limited to a six-month duration.

6.36.2. Transfer of Data at end of Contract and/or Contract Term

At the end of the Contract Term, the Contractor may be required to transfer Data to a new Contractor. This transfer must be carried out as specified by the GOER, in the Contract. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats.

6.36.3. Transfer of Data; Charges

Charges for the transfer of Data are to be defined in the contract or in the Price List if not included in the Contract. In the absence of a definition of such expenses in the Contract or Price List, this shall be done at no charge to GOER.

6.36.4. Transfer of Data; Contract Breach or Termination

In the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Contractor.

6.37. Encryption

All Data must be encrypted at all times unless specifically outlined otherwise in the Contract. At a minimum, encryption must be carried out at the most current NYS Encryption Standard (NYS-S14-007), or successor policy(ies) with key access restricted to GOER, unless with the express written permission of GOER. The Contract shall specify the respective responsibilities of GOER and the Contractor for the encryption of Data.

6.38. Requests for Data by Third Parties

Unless prohibited by law, the Contractor shall notify GOER in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than GOER, and the Contractor shall secure written acknowledgement of such notification from GOER before responding to the request for Data. Unless compelled by law, the Contractor shall not release Data without GOER's, prior written approval.

6.39. Security Processes

If requested by GOER, the Contractor shall complete a Consensus Assessment Initiative Questionnaire (CAIQ) including on an annual basis thereafter. The form is available at Cloud Security Alliance (<https://cloudsecurityalliance.org/>). The CAIQ may be used to assist GOER in building the necessary assessment processes when engaging with Cloud providers.

In addition to a request for a CAIQ, the Contractor shall cooperate with all reasonable requests for a written description of the Contractor's physical/virtual security and/or internal control processes. GOER shall have the right to reject any Contractor's response or terminate a Contract when such a request has been denied.

6.40. Upgrades, System Changes and Maintenance/Support

The Contractor shall give a minimum of five (5) business days advance Written notice to GOER, or their designated contact person(s) of any upgrades or system changes that will impact services as provided in the Contract.

6.41. Secure Data Disposal

When requested by GOER, the Contractor shall destroy Data in all of its forms, including all back-ups. Data shall be permanently deleted and shall not be recoverable, according to ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor. Certificates of destruction, in a form acceptable to GOER, shall be provided by the Contractor to GOER.

6.42. Piggybacking

New York State Finance Law section 163(10)(e) allows the Commissioner of the NYS Office of General Services to consent to the use of this Contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

7. SUMMARY OF DOCUMENTS REQUIRED WITH PROPOSAL AND CONTRACT

Below is a table summarizing the documents to be completed and submitted with the bidder's proposal as well as the forms that the winning bidder will need to complete prior to a contract being approved. These forms are located at <https://goer.ny.gov/public-forms-index>.

Document Name	Required with Proposal	Required with Contract
Application for Competitively Bid Contract, GOER Form #ADM-28 with original signature	√	
Vendor Responsibility Questionnaire	√ Hardcopy must be submitted with proposal or if filed via the VendRep System, must be electronically filed by proposal due date.	

Document Name	Required with Proposal	Required with Contract
Contractor Certification Form, ST-220-TD	No. Send directly to NYS Department of Taxation and Finance by proposal due date.	
Contractor Certification to a Covered Agency Form, ST-220-CA	√	
Cost Proposal/Budget Forms	√	
Nondiscrimination in Employment in Northern Ireland: Macbride Fair Employment Principles Certification, GOER Form #ADM-321	√	
Non-Collusive Bidding Certificate Required by Section 139-d of the State Finance Law, GOER Form #ADM-320	√	
Confidentiality and Nondisclosure Agreement, GOER Form #ADM-319	√	
Contractor's MWBE Utilization Plan, GOER Form #ADM-145	√	
Contractor's MWBE Quarterly Payment Report, GOER Form #ADM-146		√
MWBE Waiver Request Form, GOER Form #ADM-149	If applicable	If applicable
Equal Employment Opportunity Staffing Plan, GOER FORM #ADM-311	√	
Workforce Utilization Report, GOER Form #ADM-326		√
MWBE/EEO Policy Statement, GOER Form #ADM-315	√	
Diversity Practices Questionnaire, GOER Form #ADM-327	√	

Document Name	Required with Proposal	Required with Contract
SDVOB Utilization Plan, GOER Form #ADM-328	√	
Contractor's Monthly SDVOB Compliance Report, GOER Form #ADM-329		√
SDVOB Waiver Form, GOER Form #ADM-330	If applicable	
Executive Order 177 Certification, GOER Form #ADM-331	√	
Form A		Form A is required with the signed contract
Form B		Form B is due at the end of the fiscal year.
Proof of Workers' Compensation coverage and Disability Benefits Insurance and/or Attestation of Exemption(s)		√
Certificate of Liability Insurance Naming State of New York as an Additional Insured		√

Attachment 1

**Governor's Office of Employee Relations/Statewide Labor-Management Committees
Policy and Guidelines for Implementing the New York State Procurement Lobbying Law
Sections 139-j and 139-k of the New York State Finance Law**

I. Overview

Chapter 1 of the Laws of 2005 (the "Law"), which amended the Legislative Law (the "Lobbying Act") and the State Finance Law, was enacted on August 23, 2005 by Governor George E. Pataki. The Law regulates attempts to influence state and local Governmental Entity procurement contracts in order to increase transparency and accountability in New York State's procurement process. The Law was subsequently modified in 2005, 2006, 2007, 2009 and 2010.

Generally, the Law:

- Makes the Lobbying Act applicable to attempts to influence procurements and contracts once the procurement process has been commenced by a State agency, unified court system, State legislature, public authority, certain industrial development agencies and local benefit corporations;
- Requires the above-mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- Requires governmental entities to designate the persons who may be contacted relative to the governmental procurement by that entity in a restricted period;
- Authorizes the New York State Joint Commission on Public Ethics (JCOPE) (f/n/a the NYS Commission on Public Integrity) to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- Directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to the Law and those who have been debarred and publish such list on its website;
- Requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- Expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal-State Agreements, and procurement contracts;
- Modifies the governance of JCOPE to provide that opinions of JCOPE shall be binding only on the person to whom such opinion is rendered;
- Increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- Establishes the Advisory Council on Procurement Lobbying.

Primarily, the Law regulates two related aspects of procurements: (i) activities by the business and lobbying community seeking procurement contracts (through

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Policy and Guidelines for Implementing the New York State Procurement Lobbying Law
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amendments to the Legislative Law) and (ii) activities involving governmental entities establishing procurement contracts (through amendments to the State Finance Law).

II. Applicability of the Policy and Guidelines (hereinafter "Policy")

The Governor's Office of Employee Relations, in addition to its own procurement activities, provides administrative and contracting services for the Statewide Joint Labor-Management Committees. This policy applies to all of the above entities (referred to in the policy collectively as "the agency").

In general, this policy applies to every procurement involving an estimated annualized expenditure in excess of \$15,000 for:

- Commodity;
- Service;
- Technology;
- Public work;
- Construction;
- Revenue contract;
- The purchase, sale or lease of real property; or
- The acquisition or granting of other interest in real property.

Procurements under \$15,000 are not covered by changes to the Law or this policy.

Contacts between employees of the agency and an Offerer are restricted at the point in time when the agency issues its first written document soliciting a response from Offerers which is intended to result in a procurement contract (see State Finance Law § 139-j (1) (f)). This is referred to as the "Restricted Period" as used in this policy. Contacts between Offerers and the agency prior to the Restricted Period of procurement are acceptable. Therefore, communications between Offerers and the agency during the preparation of specifications, bid documents, RFPs, IFBs, are not governed by State Finance Law Sections 139-j and 139-k. Communications at this stage, however, are governed by the provisions set forth in State Finance Law Sections 163 and 163-a and other applicable law, including registration and reporting requirements of the Lobbying Act.

Offerers and agency personnel may communicate prior to the Restricted Period in the form of a Request for Information (RFI) by the agency and the response thereto by an Offerer. RFIs are generally used as a means to collect information upon which to base a decision by an agency to proceed with procurement. RFIs are not a tool employed to award a contract.

The Law and this policy apply to sole source and single source contracts, in addition to competitive procurements. Amendments authorized under the terms of a contract as it

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was finally awarded or approved by the Comptroller are not subject to the Restricted Period. Supplements to a contract incorporating other amendments, renewals, extensions or any other material change in a contract resulting in a financial benefit to the Offerer are subject to the Restricted Period.

III. Permissible Contacts During the Restricted Period

The "Restricted Period" begins with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, request for services, or solicitation of proposals, or any other method for soliciting a response from Offerers with regard to a procurement opportunity or contract. This period ends with the final procurement decision or contract award and, if applicable, approval by the State Comptroller. However, the negotiation of a contract by an Offerer who has been tentatively awarded a contract is permitted and would need to be recorded as a Contact in the procurement record.

The following represent instances where communication with someone other than the designated Contact person(s) for a procurement may be necessary:

- Submission of a written bid, proposal or response to a solicitation intending to result in a procurement contract;
- Submission of written questions by a method set forth in the solicitation when all written questions and responses are to be provided to all Offerers who have expressed an interest in the solicitation;
- Participation in a conference, demonstration or other means for exchange of information in a setting open to all potential bidders provided for in the solicitation;
- Complaints by an Offerer to office of general counsel of the procuring agency where the designated person for the procurement contract of the agency fails to respond in a timely manner, provided that such written complaints become part of the procurement record;
- Negotiations with the agency after a tentative award;
- Debriefings about a procurement contract award;
- Complaints of alleged improper conduct in a Governmental Procurement to the attorney general, inspector general, district attorney or court of competent jurisdiction;
- Protests, appeals or other review proceedings to the agency conducting the Governmental Procurement seeking a final administrative determination or in a subsequent judicial proceeding;

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- Protests, appeals or complaints to the State Comptroller during the process of contract approval provided that the State Comptroller makes a record of such communications and any responses thereto to keep in the procurement record;
- Communications between Offerers and the agency that solely address a responsibility determination of the Offerer being made by the agency;
- Communications relating to a Governmental Procurement made by certain preferred source providers except for communications which attempt to influence the issuance or terms of the specifications that serve as the basis for bid documents, requests for proposals, invitations for bids, or solicitations of proposals, or any other method for soliciting a response from Offerers intending to result in a procurement contract with the agency; and
- Communications from the agency exercising an oversight role in a Governmental Procurement with Offerers regarding the status of the review, oversight or approval of that Governmental Procurement.

Impermissible contact with the agency occurs when the Offerer contacts a person in the agency who is not the designated contact person for the procurement in an attempt to influence a procurement. The obligations under the Law and this policy are activated when an Offerer or anyone working on behalf of the Offerer has any oral, written, or electronic communication with the agency that a reasonable person would believe is intended to influence a procurement being made by the agency.

IV. Agency Requirements

This policy has certain requirements that apply to the agency, while other requirements apply to Offerers. The agency will collect certain information about a person or organization contacting us about a procurement in an attempt to influence such procurement during the Restricted Period. In addition, the agency will obtain information from Offerers about any findings by any Governmental Entity of non-responsibility made within the previous four years and if the finding of non-responsibility was due to (1) engaging in impermissible contacts with a Governmental Entity or (2) the intentional provision of false or incomplete information to a Governmental Entity.

This information will be solicited in the initial bid documents on forms developed for this purpose. If any employee of our agency is contacted, that employee must record the contact, obtaining the following specific information for each contact:

- Name of Person and Organization
- Address
- Telephone Number
- Place of Principal Employment
- Occupation

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- Record whether the person/organization making the contact was the Offerer or was retained employed or designated by, or on behalf of, the Offerer to appear before or contact the agency regarding the procurement.

These records of contact will be included in the procurement record for the procurement contract using the agency's "Record of Contact" form, and must be forwarded to the Contract Manager in the agency's Administration Unit.

It is the policy of the agency to make a determination of responsibility before awarding a procurement contract to an Offerer. In addition to responsibility factors such as financial and organizational capacity, legal authority, integrity, and past performance, this policy requires us to take into consideration any violation of the permissible contact requirements of State Finance Law Section 139-j and the disclosure requirements of State Finance Law Section 139-k. A determination of non-responsibility will be made if it is found that the Offerer knowingly and willfully made an impermissible contact or failed to timely disclose accurate and complete information or otherwise cooperate in providing the information required by State Finance Law Section 139-k.

This agency is precluded from awarding a procurement contract to an Offerer that has been determined to be non-responsible because of a knowing and willful violation of the prohibitions of State Finance Law Section 139-j against impermissible contacts during the Restricted Period, unless the agency finds that an award is necessary to protect public property or public health or safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. An Article of Procurement is defined as a commodity, service, technology, public work, construction, revenue contract, purchase, sale or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a Governmental Procurement.

Furthermore, if an Offerer has a second knowing and willful violation within four years of a previous determination of non-responsibility, the Offerer can be debarred for four years.

Communications received by the agency from legislative staff or members of the State Legislature when those persons are acting in their official capacity are not considered "Contacts" during the Restricted Period and thus do not have to be recorded pursuant to the State Finance Law. Also, communications that a reasonable person would infer are not intended to influence a procurement by the agency do not have to be recorded.

For purposes of this policy, the agency will include a record of contacts about a particular procurement and determination of non-responsibility (if any) in the procurement file where it will remain as a part of the procurement record. The procurement file will be retained for that period of time already designated under the

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agency's Records Retention Policy, currently six (6) years after the expiration of the related contract, or final payment, whichever is later.

V. Offerers Requirements and Responsibilities

Offerers have certain requirements under the State Finance Law and under this policy if they, or their designated representative, choose to respond to a Request for Proposals or attempt to influence a procurement. Under the Law and this policy, an Offerer or his/her representative is generally prohibited from contacting anyone other than the designated contact persons at this agency with regard to a procurement during the Restricted Period. Offerers are also required to disclose whether there has been a finding of non-responsibility with regard to their compliance under the law within the past four years. Furthermore, an Offerer must affirm that they understand and agree to comply with this policy relating to permissible contacts during a procurement and certify that all information provided to the agency is complete, true and accurate.

If an Offerer is found to have engaged in impermissible contacts with this agency, the Offerer will be denied a contract under this policy. However, this denial does not preclude the agency from awarding such Offerer another procurement contract if this non-responsibility determination is the first such determination against the Offerer in four years.

VI. Violations of This Policy

Alleged violations of this policy will be reviewed by the agency's Ethics Officer. The Ethics Officer shall immediately investigate the allegation and if sufficient cause exists to believe that the allegation is true, the Ethics Officer shall give the Offerer reasonable notice that the investigation is ongoing and an opportunity to be heard. The Offerer's response to the alleged violation will become a part of the investigative or review record and will be given due consideration by the agency during the review or investigation.

VII. Questions About This Policy

Questions about this policy should be directed to the DFA Contract Manager in GOER's Administration Unit at 518-473-3467.

Attachment 2

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with 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 (2 NYCRR § 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's 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 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

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

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

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

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

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

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

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

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

Attachment 3

**GOER/LMC
COPYRIGHT POLICY**

PURPOSE OF THE COPYRIGHT LAW

The Copyright Law is found in 17 United States Code (USC) Sections 101 et seq. The primary purpose of the Copyright Law is to encourage the creation and production of original works of authorship, including literary, dramatic, musical, artistic, and other intellectual works. The law provides authors of such works or the owner of copyright with exclusive rights to reproduce and distribute their work.

THE OWNER OF THE COPYRIGHT

The Copyright Law provides that the copyright in a work becomes the property of the author who created the work. The author, as the owner of the copyright, can enter into contracts or agreements, which transfer or assign to others some or all of her/his rights as copyright holder.

However, if a work is a “work made for hire,” then the Copyright Law provides that the employer or other person for whom the work was prepared owns the copyright.

- < A work created by an employee within the scope of his or her employment is a “work made for hire.” For example, copyright ownership vests with GOER, when a GOER staff member authors a training manual as part of that staff member’s job duties.

- < If a work is created by an independent contractor, and fits within one of the nine categories of works set forth in the law, and there is a written agreement between the parties specifying that the work is a “work made for hire,” then the person for whom the work was prepared owns the copyright. For example, when GOER contracts with an independent contractor to write/create a curriculum, GOER would own the copyright, as this would be a “work made for hire.”

RIGHTS OF THE OWNER OF THE COPYRIGHT

Section 106 of the Copyright Law grants the ***owner of the copyright the exclusive right to do and to authorize others to do*** the following:

- to reproduce the copyrighted work;
- to prepare derivative works based upon the copyrighted work;

- to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending (this includes distribution of free copies to students);
- to perform the copyrighted work publicly with respect to literary, musical, dramatic, and choreographic works, pantomimes, motion pictures, and other audiovisual works;
- to display the copyrighted work publicly in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work;
- to perform the copyrighted work publicly by means of a digital audio transmission in the case of sound recordings.

IT IS ILLEGAL FOR ANYONE TO VIOLATE ANY OF THE RIGHTS PROVIDED BY THE COPYRIGHT LAW TO THE OWNER OF THE COPYRIGHT.

Where GOER is the copyright owner, GOER holds all of the above rights.

These exclusive rights of the copyright holder are, however, subject to important exceptions. Certain public and private uses of copyrighted works are allowed under the law without the copyright holder's permission if they can be determined to be **Fair Use**. Fair use is discussed more fully in the following pages.

Mere ownership of a book, manuscript, painting, or any other copy does not include ownership of the copyright. *This is the case even when one acquires the original work. For example, if a person were to acquire the original manuscript of John Grisham's, "The Firm," the owner of the copyright would still be John Grisham, or the person(s) he has assigned the copyright to. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.*

WORKS PROTECTED BY COPYRIGHT

In order for a work to receive copyright protection, it must be an **original** work of authorship representing an appreciable amount of creativity and must be fixed in a tangible medium of expression. The primary categories of works in the Copyright Law are literary works, musical works, dramatic works, pantomimes, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works.

These categories are viewed broadly. For example, textbooks, computer programs and most compilations may be registered as literary works; maps and architectural plans may be registered as a pictorial, graphic, or sculptural work.

Copyright protects the words or pictures or graphics chosen by the author to describe, explain or illustrate an idea or system. However, it gives the copyright owner no exclusive rights in the idea, method, or system described or depicted.

For example, an author wrote a book setting forth his theory of what happened to Jimmy Hoffa. The copyright in the book prevents others from reproducing, copying or distributing the text and illustrations used by the author to describe his theory. It does not give the author any copyright to the theory set forth in the book. Other persons may write their own books or plays using the theory. However, they may not use the author's words.

WHEN COPYRIGHT PROTECTION BEGINS

Normally, the act of publishing a document and securing copyright protection occur at the same time. For example, a copyright notice is fixed on a work when it is printed. Under the law in effect after 1978, copyright protection is secured the moment a work is fixed in tangible form. Thus a work still enjoys copyright protection even if there is no copyright symbol or other copyright notice. Furthermore, a work fixed in tangible form, but not published, is protected by copyright.

Publishing, also referred to as publication, though is important for many reasons. Published works are subject to mandatory deposit requirements (with the Federal Copyright Office), publication affects the limitations on the exclusive rights of a copyright owner, publication year determines the duration of copyright for anonymous works and works made for hire, and publication with notice puts the public on notice that the work is protected by copyright. Publication, and therefore publishing, is defined as:

The distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

When we copy a curriculum or manual and distribute it to State employees in a training session we are publishing the document. If the work that GOER has published contains the copyrighted material of others, without the appropriate permissions, GOER has **violated the Copyright Law**.

WORKS NOT PROTECTED BY COPYRIGHT

1. Works, which were never copyrighted.

Works published prior to January 1, 1978 without copyright notice are not protected and may be reproduced without restriction. However, works published after January 1, 1978 without notice of copyright are protected by the Copyright Law.

2. Published works whose copyrights have expired.

Generally, all copyrights have expired for works originally created and published or registered before March 1, 1922. Although a pre-1978 work may not contain the required copyright notice, it is best to assume that all works dated 1922 or later is covered by a valid copyright.

3. United States Government publications.

United States Government publications may be copied freely. They are deemed to be in the public domain and are not copyrightable. This category consists of documents prepared by an officer or employee of the U.S. Government as part of that person's official duties. It does not extend to documents published by others with the support of Government grants and contracts. These works may or may not be protected by copyright depending on the specifics of the contract under which they were created. *Note: Publications of the State of New York and other states are copyrightable.*

4. Ideas, methods and systems.

Copyright protection is not available for ideas or procedures for doing, making or building things, scientific or technical methods or discoveries, business operations or procedures, mathematical principles, formulas, algorithms, or any other concept, process, or method of operation.

Section 102 of the Copyright Law, clearly expresses this principle: "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work."

5. Names, titles and short phrases.

Even if a name, title or short phrase, is novel, distinctive, or lends itself to a play on words, it cannot be protected by copyright. There is no copyright protection to combinations of words such as: names of products or services, names of businesses, pseudonyms, titles of works, catchwords, mottoes, slogans, and mere listings of ingredients. Some of these may be protected by trademark.

6. Works that have not been fixed in a tangible form of expression.

Works must be fixed in a tangible form of expression in order to be protected. Choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded are not subject to copyright protection.

7. Works consisting entirely of information that is common property and containing no original authorship.

Standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources are not subject to copyright protection.

COPYRIGHT NOTICE

Works published prior to January 1, 1978 were required to contain a copyright notice in order to be protected by Copyright Law. However, works published after January 1, 1978 do not have to contain copyright notice in order to be protected by the Copyright Law.

Proper copyright notice has three parts:

- 1) a symbol "©," the word "Copyright," or the abbreviation "Copr.",
- 2) the year a work is first published, and,
- 3) the name of the copyright owner.

Sometimes the statements such as "All Rights Reserved" or "No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical [etc., etc.]" are printed underneath a copyright notice. These statements do not override any rights to **Fair Use** provided by the Copyright Law.

DURATION OF COPYRIGHT

1. Works Originally Created on or After January 1, 1978.

After January 1, 1978, a work is automatically protected from the moment it is fixed in tangible form for a term of the author's life, plus an additional 70 years after the author's death. For a joint work prepared by two or more authors who did not work for hire, the term lasts for 70 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 95 years from first publication or 120 years from creation, whichever is shorter.

2. Works Originally Created Before January 1, 1978, but Published or Registered After That Date.

These works have been automatically brought under the statute and are now given copyright protection. The duration of copyright in these works will generally be

computed in the same way as for works created on or after January 1, 1978.

3. Works Originally Created and Published or Registered Before January 1, 1978.

Under the law in effect before 1978, copyright was secured either on the date a work was published or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a term of 28 years from the date it was secured. The law amended as of 1978 provides that copyrights in existence prior to January 1, 1978 may be renewed.

Generally, all copyrights have expired for works originally created and published or registered before March 1, 1922. Although a pre-1978 work may not contain the required copyright notice, it is best to assume that all works dated 1922 or later are covered by a valid copyright.

Determining the copyright status of some post 1922, but pre 1978 works, may not be easy. For difficult issues, we may have to seek the assistance of the U.S. Copyright Office, who will investigate the copyright status of a work on an hourly fee basis.

FAIR USE DOCTRINE

The Fair Use provisions of the Copyright Law are set forth in Section 107 and contain exceptions to the copyright owner's exclusive rights to reproduction and distribution. Fair Use permits limited copying without the copyright owner's permission for purposes such as criticism, comment, scholarship, research or teaching.

The law does not establish specific limits of what constitutes Fair Use of a copyrighted work. However, it does provide that in determining whether a particular use would be deemed a Fair Use of a copyrighted work, the four factors set forth in Section 107 must be considered:

1. **the purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. **the nature** of the copyrighted work;
3. **the amount and substantiality** of the portion used in relation to the work as a whole; and
4. **the effect of the use** upon the potential market for or value of the copyrighted work.

Because of the Fair Use provision of the law, what would otherwise be considered copyright infringement is permitted. Authors may quote from or reproduce small amounts of material for purposes of criticism, comment or to illustrate or support their own ideas.

For example, two or three paragraphs of a book or periodical article, a stanza of a poem, a single chart or graph may be copied. Use of a more extensive quotation must be analyzed on a case-by-case basis under the four factors of Fair Use and where necessary, express permission of the copyright owner must be obtained. Whether or not permission is needed, any sources used should always be credited using the proper citation format. *Kate L. Turabian, A Manual for writers of Term Papers, Theses, and Dissertations, Sixth Ed.* (Chicago: The University of Chicago Press, 1996) should be referred to for the proper citation format, and a helpful summary is provided in the document *Guidelines for Documenting Sources* which is included at the end of this manual.

EVALUATING FAIR USE UNDER THE FOUR STATUTORY FACTORS

1. Purpose and character of the use.

A nonprofit educational purpose makes it more likely, but does not ensure, that the use would be considered fair. A copy made to avoid purchasing the original and used in place of the original would not be considered Fair Use. A quote for purposes of comment or criticism is more acceptable than quoting to support one's position.

2. Nature of the copyrighted work.

A use would be more likely to be considered fair when the copyrighted work was a compilation of facts or information, rather than a creative or imaginative work. Copying of books out-of-print or materials unavailable for purchase, newspaper or journal (not newsletter) articles of current interest, or material designed for distribution to the general public are more likely to be considered Fair Use. In the context of classroom use (which would include GOER training programs), copying from textbooks and other materials prepared primarily for the educational market (particularly consumable workbooks) is not considered Fair Use.

3. Amount and substantiality of the material used in relation to the copyrighted work as a whole.

In evaluating this factor both the amount of the work being copied and the significance or importance of the portion being copied must be examined. As a general rule, quotes should be limited to one or two consecutive paragraphs or stanzas. The material quoted should be but a small portion of the copyrighted work and should not contain the essence or principal element of the copyrighted work. Substantial paraphrasing is considered mere copying and Fair Use analysis must be used to determine if permission is required.

4. Effect of the use on the potential market for or value of the copyrighted work.

A use is not considered fair where it would diminish or lower the value of the copyrighted work.

Clearly, the determination as to what is and what is not Fair Use requires a review of the facts on a case-by-case basis. Any questions on whether a particular use would be considered a Fair Use under the Copyright Act should be directed to GOER's Counsel's Office.

COPYING OF COPYRIGHTED MATERIALS FOR EDUCATIONAL PURPOSES

Copying for educational purposes can be an infringement of the rights of the copyright holder. The creators of the Copyright Act of 1976 recognized a need for guidance about what constituted permissible amounts of photocopying of copyrighted materials for educational purposes. To offer some guidance, "Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" (hereafter Classroom Guidelines) was written by representatives of various educational organizations and was included, as part of the legislative history of the Act. The Classroom Guidelines provide standards for both single copying by teachers and multiple copying for classroom use. The guidelines, which set forth the minimum, not maximum, of educational Fair Use, are summarized below.

For simplicity sake, where the materials being copied are for educational purposes, and consist of a single copy or multiple copies for classroom use, consider the copying "as is." Refer to section "Steps in Copyright Analysis" for further clarification.

A. Single Copying by Teachers or Instructors

At the very least, a teacher may make a single copy of any of the following for scholarly research or in preparing to teach a class:

- a chapter from a book;
- an article from a periodical or newspaper;
- a short story, short essay, or short poem, whether or not from a collective work;
- a chart, diagram, graph, drawing, cartoon or picture from a book, periodical, or newspaper.

All single use copying of copyrighted works must comply with the four factors of Fair Use as set forth previously. Under the following conditions, photocopying would most likely be considered Fair Use:

- where staff were unable to locate another copy of the work because it was not available from the library or other source and cannot be obtained within required time constraints;
- where the material will be copied only once and will not be distributed to others;
- where the amount of material photocopied is a small proportion of the entire work.

As a general rule, most single copy photocopying for individual use in research may be considered Fair Use.

B. Copying for Classroom Use

The Classroom Guidelines permit distribution by a teacher of multiple copies of materials to students in a class, without obtaining prior permission to do so from the copyright owner, under the following conditions (all conditions must be met):

1. The distribution of the same photocopied material does not occur every semester, is for only one course, with only one copy provided to each student, which copy becomes the student's property, and no charge is made for the copy beyond the actual cost of reproduction;
2. The amount of material distributed does not exceed certain brevity standards:
 - a. for prose--a work may be copied in its entirety if it is less than 2500 words in length. If the work is longer, the excerpts copied should not exceed 1000 words, or 10% of the work, whichever is less;
 - b. for poetry--250 words is the suggested limit;
 - c. for illustrations--one is the rule of thumb;
3. The copying is at the instance and inspiration of the individual teachers such that the decision to use the material did not allow adequate time to request permission prior to use; and
4. The appropriate copyright notice appears on the first page of the photocopied material.

The best rule of thumb, which can be garnered from these guidelines, is that photocopying should not be done as a substitute for purchasing the material, particularly for multiple

copy classroom use. Photocopying practices must not have a significant detrimental impact on the market for the original copyrighted work. As with single use copying, all multiple use copying of copyrighted works must comply with the four factors of Fair Use set forth previously.

PHOTOCOPYING AND DUPLICATION WHICH REQUIRE PERMISSION

Following are some guidelines to help in determining when photocopying and duplication require permission. Again, all such copying must be analyzed under the four factors of Fair Use.

1. Repetitive Copying: The classroom or reserve use of photocopied materials in multiple courses for successive years would require advance permission from the copyright owner.
2. Copying for Profit: Where the students are charged more than the actual cost of photocopying the material.
3. Consumable Works: The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks, normally requires permission from the copyright owner.
4. Creation of Anthologies as Basic Text Material for a Course: Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts used together as the basic text for a course will in most instances require the permission of the copyright holders. Such photocopying is considered a substitute for purchase of a book and not a Fair Use.

USE OF AUDIO-VISUAL MATERIALS

The rules governing the use of excerpts of audiovisual work are the same as those governing any other copyrighted performance. Audiovisual works, for the purpose of these guidelines, include audiotapes, videotapes, CDs, DVDs, and computer recorded and stored media such as mp3 files and YouTube© videos. Therefore, employees must analyze whether a particular use is a Fair Use under the four statutory factors mentioned above.

As a general rule, employees should only use a brief excerpt of an audiovisual work and the excerpt should not constitute more than a small portion of the work from which they were extracted. If the excerpt used supplants what otherwise would have been the sale of an audiovisual work, a copyright infringement may occur.

The following represents guidelines that, if followed, tend to make the use of an excerpt from an audiovisual work "fair use" for a nonprofit educational purpose. They are derived from a variety of sources including Section 110 of the United States Copyright Law, the

Guidelines for Off-Air Taping for Educational Purposes (Kastenmeier Guidelines), and various policies of educational institutions.

A. Audiovisual Works in the Classroom

The limited use of an audiovisual work for a nonprofit educational purpose is generally permissible, provided the following conditions are met:

1. The work must be shown as part of the instructional program.
2. The work must be shown by a program participant or instructor to only program participants and the instructor.
3. The work must be shown either in a classroom or other location devoted to instruction.
4. The work must be shown either in a face-to-face setting or where participants and instructors are in the same building or general area.
5. The work must be shown using a legally reproduced copy with the copyright notice included.

Even the limited use of an audiovisual work is prohibited when:

6. The work is used for any purpose unrelated to a teaching activity.
7. The work is shown in a public performance, to an audience not confined to program participants, and is not related to nonprofit educational instruction.
8. The use involves an illegally acquired or illegally duplicated copy of the work.
9. The work is transmitted by radio or television (either closed or open circuit) from an outside location.

B. Broadcast Programming

The following apply to "off-air recording" of a broadcast program (including cable television programs) for a nonprofit educational purpose:

1. An "off-air recording" may be kept for no more than 45 calendar days after the recording date, at which time the tapes must be erased.
2. The "off-air recording" may be used by an individual instructor in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary in classrooms, during the first 10 consecutive work days in the 45 calendar retention period. "Work days" are defined as days when GOER is open for business within the 45 calendar day retention period.
3. The "off-air recording" may be viewed after the 10 day consecutive period for teacher evaluation purposes, such as to determine whether or not to include the "off-air recording" for future teaching curriculum.
4. All copies of the "off-air recording" must include the copyright notice on the broadcast program as recorded.
5. The "off-air recording" may not be physically or electronically altered or combined with others to form anthologies. However, the "off-air recording" need not be used or shown in its entirety.
6. If several different instructors want to use the same "air recording," duplication is permitted but all copies are subject to restrictions of the original recording.
7. These guidelines are for commercial television broadcasts and some public television broadcasts, unless there are other negotiated rights or licensing agreements.

C. Public Broadcasting Service/Programs

Many of the programs and series distributed by the Public Broadcasting Service (PBS) include a 7-day re-record right. The 7-day re-record rights allow:

1. Only a single copy of the program may be recorded for a nonprofit educational purpose and it may not be duplicated.
2. A program may be recorded and shown each time a program is broadcast.
3. The program may be retained for 7 consecutive days following the broadcast but must be erased at the end of the 7th day.
4. The program may be shown as often as needed during the 7-day period.

D. Audiovisual Work - Distribution and Duplication

Rights to make multiple copies of an audiovisual work and distribute that work beyond the GOER/LMC can vary depending on the work. Employees should not assume that they have the right to duplicate and distribute a work simply because they have purchased a copy. For example, distribution and duplication rights may have to be purchased from the producer or the distributor. Additionally, there may be no rights available from any source at any cost.

E. Digital Distance Education

Digital distance education, such as webinars or video conferencing, is an emerging educational technique being used in lieu of traditional classroom learning. The Technology, Education, and Copyright Harmonization Act of 2002 ("TEACH Act") clarifies what uses of copyrighted material are permissible with regard to distance education when permission of the copyright holder has not been sought. Furthermore, the TEACH Act outlines the specific requirements that the information technology staff and students must abide by in order to be in compliance with the current copyright laws. The Act permits teachers and students of an accredited, nonprofit education institution or government body to transmit performances and displays of copyrighted material as part of a course if certain conditions have been met. If these conditions are not or cannot be met, use of the material will have to qualify as a fair use or have the permission of the copyright holder to be lawful.

Questions regarding the use of copyrighted materials in a digital distance educational environment must be directed to GOER's Counsel's Office prior to the distribution and use of those materials.

AGENCY COPYRIGHT POLICY

1. Photocopying of Copyrighted Educational Materials at GOER.

The summary of the Classroom Guidelines set forth above may be used in determining the minimum standards of educational Fair Use for making single and multiple photocopies of works protected by copyright.

All staff are required to comply with the educational Fair Use guidelines for copying. Staff must write for permission from the holder of the copyright for all photocopying requests which may exceed educational Fair Use limits.

2. Copyright of Published Materials and Works.

All materials and works published shall contain a notice of copyright. Refer to page 4 for the meaning of the word “publication.” For materials and works published by GOER, the following copyright notice shall be used:

Copyright © 1997 by The New York State Governor’s Office of Employee Relations.

For materials and works published by the LMCs, the same format should be used but the LMC name should be inserted instead of GOER. For example:

Copyright © 1997 by The New York State Child Care Advisory Committee.

3. Copyright Registration.

Copyright registration is a legal formality by which a public record is made of a particular copyright and additional rights accrue to the copyright owner including the right to sue others for copyright infringement. Registration is accomplished by mailing to the Register of Copyrights a completed application form for each work to be registered, paying a \$20 fee for each application and submitting two complete copies of the work to be registered.

The decision to register materials and works will be determined on a case-by-case basis by the GOER Director in consultation with the program manager and Counsel’s Office. The factors that will be considered when making the decisions to register include, but are not limited to, the following:

- The length of time the material or work will be used.
- The number of uses for the material or work.
- The time, effort and money expended for the creation of the material or work.
- The number of copies to be distributed.
- The scope of the distribution of copies of the material or work.

- Whether others will be given permission to copy the material or work.
- The uniqueness of the subject matter of the material or work.

STEPS IN COPYRIGHT ANALYSIS

Following is an outline of the process to follow in analyzing whether or not permission must be obtained.

1. Is this Incorporation or Copying “as is”?

2. Incorporation - Where the material is being incorporated into a publication of GOER.

- a. Is the material being incorporated from a copyrighted work?
- b. If the material being incorporated is copyrighted, then the Fair Use doctrine applies and the use must be analyzed. Consult with GOER’s Counsel’s Office as needed.
- c. If the use is Fair then no permission is required, but proper citation format must be used.
- d. If the use exceeds the Fair Use guidelines, then permission must be requested. Permissions must be granted in writing.

2. Copying “as is” - Where the material is being copied for educational purposes and a single copy or multiple copies for classroom use are being made.

- a. Is the material being copied from a copyrighted work?
- b. If the material is from a copyrighted work, then the summary of classroom guidelines set forth on pages 61 through 66 should be consulted and the use must be analyzed. Consult with GOER’s Counsel’s Office as needed.
- c. If the use is Fair, then no permission is required, but copyright notice must appear on the first page of all copies.
- d. If the use exceeds what is permitted for educational copying, then permission must be obtained. Permissions must be granted in writing.

WRITING FOR PERMISSION: SAMPLE LETTERS

When a use of copyrighted material requires permission, GOER’s Counsel’s Office will secure the appropriate permission. Program managers and staff who need permission

to use materials should contact GOER's Counsel's Office and provide the following informational materials:

1. Copy of original copyrighted material in its entirety. This material should provide the Counsel's Office with the copyright holder's information. If it does not, the copyright holder's name and address should be provided to the Counsel's Office.
2. A draft copy of how the original copyrighted material will be incorporated into the GOER or LMC curriculum or materials the program manager or staff is producing, if applicable.

The process of granting permission requires time for the publisher to check the status of the copyright and to evaluate the nature of the request. Therefore, allow substantial lead time for the Counsel's Office to obtain the permission before the materials are needed in final form.

COPYRIGHT REQUIREMENTS FOR CONTRACTORS:

When contracting with consultants for curriculum development and/or delivery, the following language will be included in our Request for Proposals, Contracts, and Purchase Order agreements, and compliance will be required of our consultants:

- **Ownership of Materials:** All materials developed with funding provided by the State and all proposals, work plans and budgets become the property of New York State. All materials produced, either in whole or in part, through funding provided by New York State shall belong exclusively to GOER and to the State of New York. GOER may use any of the materials developed with project funds for any GOER or other State purpose.
- **Copyright:** All documents created or prepared under this contract must be in compliance with GOER/LMC Copyright Policy. As indicated by this Copyright Policy, GOER adheres to and requires the successful bidder to adhere to the requirements of the Copyright Law, which is Federal law and contained in Title 17 of the United States Code, Sections 101 et seq. Such requirements include, but are not limited to, the following:
 - When GOER contracts for the creation of a training or instructional work and/or materials or curriculum, it is deemed under the Copyright Law as a Work-Made-for-Hire Agreement and GOER is the owner of the copyright thereto.

- The vendor must contact GOER to incorporate or include previously copyrighted materials in the work being created or prepared under the contract. The vendor shall submit a copy of the previously copyrighted material, a draft of how the vendor proposes to include or incorporate the previously copyrighted material in the Work-Made-for-Hire. GOER shall obtain written permission, where such written permission is necessary and required, from the copyright owner(s) or their legal representative(s) for such inclusion or incorporation of such previously copyrighted material.
- After GOER obtains written permission, GOER will transmit a copy of the written permission to the vendor and, the vendor shall include, on the appropriate page(s) of the Work-Made-For-Hire, a citation to the copyright owner(s), using the style as set forth in the written permission.
- Where a copyright owner requests a fee for permission, GOER shall pay the copyright owner(s) or legal representative(s) the agreed upon fee, if any, for the inclusion or incorporation of previously copyrighted material in the work-made-for-hire. GOER, in its sole discretion, may determine that it will not pay such fee for the right to include or incorporate such previously copyrighted material. In such event, the vendor will be required to create new materials or use alternate previously copyrighted materials (which shall also be subject to GOER's Copyright Policy).
- Bibliographic and footnote references and citations must be included where appropriate and must use the proper format as set forth in the Copyright Policy.
- The contract will contain a warranty by which the contractor shall warrant to GOER that he/she is the sole author of the material or work created or produced, except for the incorporated material for which copyright permission was obtained.
- The contract will contain an indemnification in which the contractor agrees to indemnify GOER against any legal action with respect to the warranty.

Where the consultant is using materials previously developed by that consultant and adapting or revising such materials for delivery to New York State employees, the consultant materials must comply with the requirements of GOER/LMC Copyright Policy.

COPYRIGHT REFERENCES

Grossman, John, Editor. *The Chicago Manual of Style, 14th Edition*. Chicago: The University Chicago Press, 1993.

Guidelines for Classroom Copying in Not-for-Profit Educational Institutions. H.R. Judiciary Comm. Rep. No. 94-1476, 94th Congress, 2d Session, pp. 68-71.

State University of New York at Albany. *Copyright Policies*. Albany: SUNY Albany, 1987.

Title 17, United States Code Sections 101 et seq.

Turabian, Kate L. *A Manual for Writers of Term Papers, Theses, and Dissertations, 6th Edition*. Chicago: The University of Chicago Press, 1996.

United States Copyright Office, Circular 1, *Copyright Basics*.

United States Copyright Office, Circular 9, *Works-Made-For-Hire Under the 1976 Copyright Act*.

United States Copyright Office, Circular 31, *Ideas Methods, or Systems*.

United States Copyright Office, Circular 34, *Copyright Protection Not Available for Names, Titles, or Short Phrases*.

Attachment 4

GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS (GOER)/
NEW YORK STATE LABOR-MANAGEMENT COMMITTEES (LMCs)

Travel and Lodging Reimbursement Policy for Consultants

Reimbursement for consultant travel and meal/lodging expenses is subject to the same limitations that apply to New York State employees. These limitations are described below.

Reimbursement rates cited in this policy are subject to change. Updates to this policy are located on the GOER website at <https://goer.ny.gov/vendor-information-page>.

TRAVEL REIMBURSEMENT ALLOWANCES (effective 10/1/2020 - 9/30/2021)				
Location	Method I (Unreceipted) Lodging & Meals	Method II (Lodging Receipted)		Maximum Per Diem
		Lodging	Meals	
Albany County	\$40.00	\$114.00	\$61.00	\$175.00
Broome County - Binghamton	\$40.00	\$101.00	\$61.00	\$162.00
Dutchess County - Poughkeepsie	\$35.00	\$106.00	\$66.00	\$172.00
Erie County - Buffalo	\$40.00	\$106.00	\$66.00	\$172.00
Essex County - Lake Placid				
Essex (Oct 1-Feb 28)	\$35.00	\$125.00	\$66.00	\$191.00
Essex (Mar 1-Jun 30)	\$35.00	\$112.00	\$66.00	\$178.00
Essex (Jul 1-Aug 31)	\$35.00	\$182.00	\$66.00	\$248.00
Essex (Sep 1-Sep 30)	\$35.00	\$125.00	\$66.00	\$191.00
Monroe County - Rochester	\$40.00	\$114.00	\$61.00	\$175.00
Nassau County - Floral Park, Garden City, Great Neck	\$50.00	\$150.00	\$71.00	\$221.00
New York City - (Manhattan), Bronx, Brooklyn (Kings), Queens, Staten Island (Richmond)				
NYC (Oct 1-Dec 31)	\$50.00	\$286.00	\$76.00	\$362.00
NYC (Jan 1-Feb 28)	\$50.00	\$159.00	\$76.00	\$235.00
NYC (Mar 1-June 30)	\$50.00	\$258.00	\$76.00	\$334.00
NYC (July 1-Aug 31)	\$50.00	\$220.00	\$76.00	\$296.00
NYC (Sep 1 – Sep 30)	\$50.00	\$286.00	\$76.00	\$362.00
Niagara County - Niagara Falls				
Niagara Falls (Oct 1-May 31)	\$40.00	\$96.00	\$56.00	\$152.00
Niagara Falls (June 1- August 31)	\$40.00	\$115.00	\$56.00	\$171.00
Niagara Falls (Sep 1 - 30)	\$40.00	\$96.00	\$56.00	\$152.00
Onondaga/Oswego Counties - Syracuse	\$40.00	\$101.00	\$61.00	\$162.00
Orange County - West Point	\$35.00	\$110.00	\$61.00	\$171.00
Rensselaer County - Troy	\$40.00	\$108.00	\$61.00	\$169.00
Rockland County - Nyack, Palisades	\$50.00	\$117.00	\$66.00	\$183.00
Saratoga/Schenectady Counties				
Saratoga/Schenectady (Oct 1-Jun 30)	\$40.00	\$116.00	\$61.00	\$177.00
Saratoga/Schenectady (Jul 1-Aug 31)	\$40.00	\$180.00	\$61.00	\$241.00
Saratoga/Schenectady (Sep 1-Sep 30)	\$40.00	\$116.00	\$61.00	\$177.00
Suffolk County - Long Island, Riverhead, Ronkonkoma, Melville				
Suffolk (Oct 1-May 31)	\$50.00	\$145.00	\$71.00	\$216.00
Suffolk (Jun 1-Aug 31)	\$50.00	\$145.00	\$71.00	\$216.00
Suffolk (Sep 1-Sep 30)	\$50.00	\$145.00	\$71.00	\$216.00

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Travel and Lodging Reimbursement Policy for Consultants

TRAVEL REIMBURSEMENT ALLOWANCES (effective 10/1/2020 - 9/30/2021)				
Location	Method I (Unreceipted) Lodging & Meals	Method II (Lodging Receipted)		Maximum Per Diem
		Lodging	Meals	
Tompkins County - Ithaca				
Tompkins (Oct 1-Nov 30)	\$35.00	\$134.00	\$66.00	\$200.00
Tompkins (Dec 1-Jan 31)	\$35.00	\$104.00	\$66.00	\$170.00
Tompkins (Feb 1-Sept 30)	\$35.00	\$134.00	\$66.00	\$200.00
Ulster County - Kingston	\$35.00	\$113.00	\$66.00	\$179.00
Warren County - Glens Falls				
Warren (Oct 1-June 30)	\$35.00	\$102.00	\$66.00	\$168.00
Warren (July 1- August 31)	\$35.00	\$168.00	\$66.00	\$234.00
Warren (Sep 1 - 30)	\$35.00	\$102.00	\$66.00	\$168.00
Westchester Co - Tarrytown, White Plains, New Rochelle				
	\$50.00	\$142.00	\$76.00	\$218.00
NYS Counties below: <i>Allegany, Chemung, Clinton, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Montgomery, Oneida, Otsego, Putnam, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Washington, Yates</i>	\$35.00	\$96.00	\$55.00	\$151.00
NYS Counties below: <i>Cattaraugus, Cayuga, Chautauqua, Chenango, Columbia, Cortland, Delaware, Genesee, Greene, Livingston, Madison, Ontario, Orleans, Schoharie, Tioga, Wayne, Wyoming</i>	\$40.00	\$96.00	\$55.00	\$151.00

For more detailed per diem rates, including rates outside New York State, please visit the U.S. General Services Administration (GSA) website located at www.gsa.gov/portal and click on per diem rates.

MEAL ALLOWANCE PER DIEM BREAKDOWN FOR OVERNIGHT TRAVEL

MEAL ALLOWANCE	\$55	\$56	\$61	\$66	\$71	\$76
Breakfast (max)	\$11	\$11	\$12	\$13	\$14	\$15
Dinner (max)	\$44	\$45	\$49	\$53	\$57	\$61

METHOD I PER DIEM

This is for overnight travel without receipts. Reimbursement is a flat rate for each county. The flat rate includes meals and incidental expenses. *You may qualify for an additional meal if you left one hour or more prior to your official work start time, or returned two hours or more after your official work end time. The meal reimbursement is the same as the unreceipted day trip: \$5 for breakfast, \$12 for dinner.

METHOD II PER DIEM

When in travel status (35 miles or more from home and official station), each overnight meal per diem begins with dinner the evening of your stay and ends with breakfast the following morning. One per diem is allowed for each overnight and must be accompanied by a lodging receipt that clearly shows travel dates. *You may qualify for an additional meal if you left one hour or more prior to your official work start time, or returned two hours or more after your official work end time. Meal per diem amounts vary by county. Additional meals will be paid at the rate for the county to which you traveled.

GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS (GOER)/
NEW YORK STATE LABOR-MANAGEMENT COMMITTEES (LMCs)

Travel and Lodging Reimbursement Policy for Consultants

UNRECEIPTED MEAL ALLOWANCE FOR SINGLE DAY TRIP - ALL LOCATIONS

Breakfast (max) \$5.00/Dinner (max) \$12.00

(All Single Day Trip Meal Reimbursements are Taxable Income)

Requirements: Must be in travel status (*35 miles or more from home and official station*). *You may qualify for a meal if you left one hour or more prior to your official work start time, or returned two hours or more after your official work end time. Reimbursement of day trip meals up to the amount of a per diem for the county visited is allowable when accompanied by a receipt.

**If your early departure or late return is because you stopped for a meal or for personal reasons, you are not entitled to the meal per diem. Trips that include extra meal per diems MUST have a START and END time.*

LODGING LETTER: GOER can provide consultants with a letter requesting that they be afforded, at the discretion of the hotel/motel management, the same discounted lodging rates provided state employees. However, unless a consultant has tax exempt status, we also will pay for hotel taxes in excess of the allowable hotel per diems.

LUNCH: Lunch expenses are not reimbursable.

INCIDENTALS: Incidental expenses such as tips for bellmen and porters are included in meal allowances and are not individually reimbursed.

CLAIM FOR TRAVEL REIMBURSEMENT BY A NON-EMPLOYEE (AC3257-S) – This form located at http://www.osc.state.ny.us/agencies/forms/ac3257s_fe.pdf should be completed and submitted with invoice and supporting documentation.

TRANSPORTATION: Consultants should use the most efficient and cost effective method of transportation available.

PERSONAL CAR MILEAGE: To view the **GSA POV Mileage Reimbursement Rates**, please go to [GSA Portal](#) and click on **POV Mileage Reimbursement**. All mileage claims *must* state beginning point and destination point.

RECEIPTS REQUIRED: Receipts must be submitted in accordance with the chart below.

Expense Type	Documentation Required
Transportation by Common Carrier (e.g. train, bus, airplane, subway)	Ticket stub if purchase price is printed on the stub; receipt and ticket stub if purchase price is not printed on the stub
Taxi	Receipt
Rental Car	Receipt showing return time
Tolls - EZ Pass	EZ pass statement with applicable charges indicated
Tolls - Cash	Receipt
Gas	Receipt
Day Trip Meals - Receipted	Receipt
Hotels - Receipted	Receipt
Parking	Receipt
Miscellaneous Expenses	Receipt

Attachment 5

GOER Data Security Policy

To facilitate the secure sharing of information, appropriate security measures must be in place commensurate with the sensitivity and confidentiality of the personal information being shared. Because the data in question may be personally identifiable and of a financial nature, for information to be released outside GOER or shared between GOER and the contractor a process must be established that:

- evaluates and documents the sensitivity of the information to be released or shared;
- identifies the responsibilities of each party for protecting the information;
- defines the minimum controls required to transmit and use the information;
- records the measures that each party has in place to protect the information;
- defines a method for compliance measurement;
- provides a signoff procedure for each party to accept responsibilities;
- establishes a schedule and procedure for reviewing the controls.

At a minimum, we require that data transmissions between the parties be encrypted (256-bit) and that periodic security reviews be undertaken to ensure the integrity, security and availability of the information. Please refer to NYS Information Technology Policy on encryption, NYS-S14-007 at <https://its.ny.gov/document/encryption-standard>. A range of network controls must be undertaken to maintain security, both in the Contactor's internal network and to ensure the protection of connected State services and networks. Wherever necessary, we require that special controls be implemented to safeguard data integrity and confidentiality of the data while passing over public networks (e.g., the Internet).

GOER and the LMC's requirements for IT work performed by outside contractors, as well as requirements for information management appear below.

Requirements for IT Work Performed by Outside Contractors

- 1) When a contractor is required to provide a web site as a result of any contract entered into by GOER or the LMCs, that web site must conform to State policies found at <https://its.ny.gov/tables/technologypolicyindex> including NYS Information Technology Policy NYS-P08-005 at <https://its.ny.gov/document/accessibility-web-based-information-and-applications-compliance-reporting>, which requires that State entity web sites are accessible to individuals with disabilities and which provides the standards web sites must meet in order to comply.

When a contractor is required to provide a web site as a result of any contract entered into by GOER or the LMCs, ownership of web site content and any applicable domain names must be clearly addressed in the contract.

2) When a contractor is required to provide a web site as a result of any contract entered into by GOER or the LMCs, acceptance of the web site and completion of the contract must be contingent on an agency review of the web site for accessibility, usability, suitability, and receipt of all appropriate documentation.

3) When a contractor is responsible for the collection or manipulation of information as a result of any contract entered into by GOER or the LMCs, the GOER Risk Management Officer (RMO) must be informed and consulted regarding adherence to agency standards for data definition and storage. Ownership of the information and provisions for the future of the information after the expiration of the contract period must also be clearly addressed in the contract.

4) When a contractor is responsible for the collection or manipulation of information as a result of any contract entered into by GOER or the LMCs, the Information Security Officer (ISO) and the RMO must be informed and consulted regarding adherence to agency standards for data security.

5) When a vendor/contractor is responsible for the collection or manipulation of information as a result of any contract/work agreement entered into by GOER or an LMC, completion of the contract must be contingent upon a review of the work by the RMO and receipt of complete documentation of the data system in use.

6) The following language must be incorporated into all RFPs and work agreements with outside vendors, whether engaged via a purchase order or via contract:

"The disclosure of any information about GOER/LMC information technology, State employees or the State workforce that the vendor/contractor may have access to in the course of this engagement to any individual not employed by GOER/LMC is prohibited unless explicitly specified in the RFP, contract or purchase order/work agreement. Vendor personnel will be required to sign GOER's standard Non-Disclosure Agreement.

"Bidders may be required to submit a risk assessment plan for the management of confidential information. This plan, if required, must include technology and non-technology based approaches to managing the security of confidential information."

Information Management

Mainstream agency databases and applications must be developed, administered and maintained in accordance with the following basic framework, whether developed in-house or by an outside contractor:

- 1) Documentation must include data entity diagrams that clearly reveal the key relationships (primary and foreign) of all data elements in each database schema. Each data element must be defined along with its role in the schema. Database data dictionaries must be complete and published.
- 2) Data entity *types* must be in alignment with current agency requirements and standards.
- 3) Common *data groups* (tables, lists of values, etc.) e.g. bargaining units, agency ids must reside in one agency table only.
- 4) Access to data and specific manipulation rights must be administered by a central database authority in accordance with the application's unit management.
- 5) Data *editing procedures* must be complete and meet agency standards.
- 6) All data integrity must be enforced *at the database level* as opposed to the application level.

Attachment 6

PURPOSE

The purpose of this style guide is to provide standards and consistency for all public New York State websites and web pages.

New York State strives to produce sites that are accessible to and usable by the widest possible audience, including those using less powerful technology and individuals with disabilities using assistive technology.

QUESTIONS REGARDING INTERPRETATION OR IMPLEMENTATION

Questions regarding interpretation or implementation of these guidelines will be addressed with the selected bidder(s).

QUALIFYING WEBSITES

Any page provided to the public or our constituents as a distinct web address qualifies as a website under this policy. For the purposes of this policy, all of the following websites qualify:

FlexSpend Accounts
StateJobsNY
GOER/LMC Main Sites

In addition, any website that results from a contract entered into by GOER is subject to these standards.

Unless otherwise agreed upon, any qualifying website and its contents are the property of GOER, and any domain name used/associated with the site is the property of GOER.

NY.GOV Web Site Style Guide is available upon request.

Attachment 7

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

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

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

I. Contract Goals

- A. GOER hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to nicholas.giuliano@goer.ny.gov. Additionally, following Contract execution, the Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. The Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form ADM-328 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information

that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to GOER.

- C. GOER will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of GOER acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, the Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to GOER a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by GOER to be inadequate, GOER shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by GOER, a request for a partial or total waiver of SDVOB participation goals on ADM-330. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. GOER may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB 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 GOER determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, the Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. The Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, GOER shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor

shall speak to the Designated Contact at GOER for guidance.

- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form ADM-330, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by GOER at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, GOER shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. The Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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 GOER, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If GOER, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (ADM-329) determines that the Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, GOER may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to GOER.

IV. Required Good Faith Efforts

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

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

the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), the Contractor is required to report Monthly SDVOB Contractor Compliance to GOER during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form ADM-329 available on the GOER website and should be completed by the Contractor and submitted to GOER, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: nicholas.giuliano@goer.ny.gov.

VI. Breach of Contract and Damages

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

ALL FORMS ARE AVAILABLE AT: <https://goer.ny.gov/vendor-info/index.cfm>.

Attachment 8

OSC File Layouts

NPAY579- Employee Eligibility File

Outbound Eligibility File Format –

OUTBOUND – File Format

File name – Paysrp.npay579.Vendorname.dat.timestamp.pgp

<i>Field</i>	<i>Field Type</i>	<i>Length</i>	<i>Displacement</i>	<i>Comments</i>
Empl ID	Char	9	1-9	Alpha Numeric characters
Department ID	Char	10	10-19	Left justify, Blank fill
Negotiating Unit	Char	2	20-21	
Location Pay Amount	Char	9 (7v2)	22-30	Numeric characters only
Filler	Char	200	31-230	Filler

NBEN902- Payroll Deduction File

Inbound Interface File Layout -
Detail Record

Field	Field Type	Length	Displacement	Comments
Agency Code	Char	10	1-10	Left justify, Blank fill
Name	Char	50	11-60	Last,First MI (Mixed Case)
NYS Empl ID	Char	9	61-69	Letter "N" followed by 8 numbers
Deduction Code	Char	6	70-75	Left justify, Blank fill
Effective Date	Char	10	76-85	Beginning date of the payroll period that the change is to take effect Date Format: MM-DD-CCYY (includes dashes)
Deduction End Date	Char	10	86-95	Beginning date of the payroll period to stop taking the deduction. This field should be blank except for cancellations. Date Format: MM-DD-CCYY (includes dashes)
Deduction Amount	Nbr	8 (6.2)	96-103	Implied decimal point (For union dues or agency shop fees which are a percentage based on employee's salary, this field should be zero filled)

NBEN902 (U)-Rejected NBEN902 Transactions

Rejected Transactions Outbound Interface File Layout -

Filename: \$STAGE_OUT/nben902(u).\$COMMONNAME.dat.\$TIMESTAMP

where \$COMMONNAME is the name between nben902. and .input in the inbound filename.

Example: nben902 has a \$COMMONNAME of cst

Its outbound filename is \$STAGE_OUT/nben902.cst.dat.\$TIMESTAMP

If rejected transactions exist, each reason for rejection is given on a separate line as follows:
Detail Record

Field	Field Type	Length	Displacement	Comments
Agency Code	Char	10	1-10	Left justify, Blank fill
NYS Empl ID	Char	9	11-19	Letter "N" followed by 8 numbers
Name	Char	50	20-69	Last, First MI (uppercase), blank fill
Deduction Code	Char	6	70-75	Left justify, Blank fill
Deduction Amount	Nbr	10	76-85	Explicit decimal point (if exists), blank fill
Message Text	Char	50	86	Left justify

If no rejected transactions, a single line is printed stating, "NO REJECTED TRANSACTIONS"

NPAY518 – Payroll Deduction Detail File

Layout:

Header Record

Field	Field Type	Length	Displacement	Comments
Record Type	Char	1	1	'1' - Header
Check Date	Char	8	2-9	MMDDCCYY PS_PAY_CHECK.CHECK_DT
Filler	Char	191	10-200	

Detail Record

Field	Field Type	Length	Displacement	Comments
Record Type	Char	1	1	'2' - Detail
Check Date	Char	8	2-9	MMDDCCYY PS_PAY_CHECK.CHECK_DT
Name	Char	50	10-59	Last,First MI (Mixed Case) PS_PAY_CHECK.NAME
NYS Empl ID	Char	9	60-68	PS_PAY_CHECK.EMPLID
Agency Code	Char	5	69-73	PS_PAY_CHECK.DEPTID
Line Item	Char	5	74-78	Empty String
Deduction Code	Char	3	79-81	PS_PAY_DEDUCTION.ERNCD
Filler	Char	3	82-84	Spaces
Deduction Description	Char	30	85-114	PS_DEDUCTION_TBL.DESCR
Deduction Amount Taken	Sign	11 (S8.2)	115-125	Will be negative for Check Reversals and represents the net effect of a current deduction and refund amount. PS_PAY_DEDUCTION.DED_CUR
Refund Amount	Sign	11 (S8.2)	126-136	Deduction amount refunded to the employee due to error in processing (ex. Double deduction). PS_PAY_DEDUCTION.DED_CUR_REFUND
Deduction Amount Not Taken	Sign	11 (S8.2)	137-147	Unable to take the deduction due to insufficient gross salary PS_PAY_DEDUCTION.DED_NOT_TAKEN
Filler	Char	53	148-200	

Deduction Code Total Record

Field	Field Type	Length	Displacement	Comments
Record Type	Char	1	1	'3' - Deduction Code Total
Deduction Code	Char	3	2-4	PS_PAY_DEDUCTION.ERNCD
Filler	Char	3	5-7	Spaces
Deduction Description	Char	30	8-37	PS_DEDUCTION_TBL.DESCR

Record Count	Num	5	38-42	Includes Deductions Not taken
Total Amount for Deduction Code	Sign	12	43-54	Does not include Deductions Not Taken
Filler	Char	146	55-200	

Provider Total Record

Field	Field Type	Length	Displacement	Comments
Record Type	Char	1	1	'4' - Provider Total
Record Count	Num	6	2-7	Includes Deductions Not Taken
Total Amount for Provider	Sign	12	8-19	Does not include Deductions Not Taken
Filler	Char	181	20-200	

Select data from PS_PAY_CALENDAR, PS_PAY_CHECK, PS_PAY_DEDUCTION, PS_NY_DED_RECON

Selection criteria;
PS_PAY_CALENDAR.CHECK_DT equals Parameter passed in

NBEN530- Employee Change File

Change Interface File Layout -
Detail Record

Field	Field Type	Length	Displacement	Comments
Filler	Char	9	1-9	Space
Deduction Code	Char	6	10-15	
Name	Char	50	16-65	Last,First MI (Mixed Case)
NYS Empl ID	Char	9	66-74	
Change Code	Char	3	75-77	
Agency Code	Char	10	78-87	
Effective Date	Char	10	88-97	
Pay Cycle	Char	1	98-98	
Pay Proc Type	Char	1	99-99	
Filler	Char	10	100-109	Space
Change Data	Char	50	110-159	
Filler	Char	40	160-200	Space

CHANGE CODES AND NARRATIVES

804 Social Security Number Change
805 Transfer
806 Leave of Absence
807 Name Change
808 Termination
809 Deceased
810 Retirement
812 Return from Leave
818 Workers Compensation Supplemental Leave
819 On Leave
920 Negotiating Unit Change

All data is read in through an input file and then output to the output file.

NPAY515- Payroll Refund File

Refund Interface File Layout -

Refund Detail File

Detail Record

Field	Type	Length	Displacement	Comments
Trans_Type	Char	1	1	D: adjust PS_NY_DED_REFUND
DeptID	Char	5	6-10	
Filler	Char	5	11-15	
Empl ID	Char	9	16-24	Alpha/Numeric
Name	Char	50	25-74	
DedCd	Char	6	75-80	Deductions code
Filler	Char	3	81-83	
Refund_Amt	Char	11	84-94	Amount applied to Deductions table

Note: When an employee has both a pre-tax and a post-tax refund a separate transaction must be submitted for each refund.

Attachment 9

OSC's Vendor Submission Schedule

Vendor Submission Schedule 2019-20

PP Type	FISCAL YEAR 2019-20			Vendor Transmits Data to OSC by 6:00PM	Reject Report Transmitted to Vendor	Reports/Files Available to Vendor
	Payroll Period	Effective Dates	Check Date	Thursday	Friday/Monday NBEN902	Friday/Monday NBEN530 & NPAY518
Lag	Inst 1 Lag	3/28 - 4/10	4/25/2019	4/11/2019	4/12/2019	4/19/2019
Curr	Inst 2 Curr	4/11 - 4/24	4/25/2019	4/11/2019	4/12/2019	4/19/2019
Extra Lag	Inst 26 Extra Lag	3/21 - 4/3	4/25/2019	4/11/2019	4/12/2019	4/19/2019
Lag	Admin 1 Lag	4/4 - 4/17	5/1/2019	4/18/2019	4/19/2019	4/26/2019
Curr	Admin 2 Curr	4/18 - 5/1	5/1/2019	4/18/2019	4/19/2019	4/26/2019
Extra Lag	Admin 1 Extra Lag	3/28 - 4/10	5/1/2019	4/18/2019	4/19/2019	4/26/2019
Lag	Inst 2 Lag	4/11 - 4/24	5/9/2019	4/25/2019	4/26/2019	5/3/2019
Curr	Inst 3 Curr	4/25 - 5/8	5/9/2019	4/25/2019	4/26/2019	5/3/2019
Extra Lag	Inst 1 Extra Lag	4/4 - 4/17	5/9/2019	4/25/2019	4/26/2019	5/3/2019
Lag	Admin 2 Lag	4/18 - 5/1	5/15/2019	5/2/2019	5/3/2019	5/10/2019
Curr	Admin 3 Curr	5/2 - 5/15	5/15/2019	5/2/2019	5/3/2019	5/10/2019
Extra Lag	Admin 2 Extra Lag	4/11 - 4/24	5/15/2019	5/2/2019	5/3/2019	5/10/2019
Lag	Inst 3 Lag	4/25 - 5/8	5/23/2019	5/9/2019	5/10/2019	5/17/2019
Curr	Inst 4 Curr	5/9 - 5/22	5/23/2019	5/9/2019	5/10/2019	5/17/2019
Extra Lag	Inst 2 Extra Lag	4/18 - 5/1	5/23/2019	5/9/2019	5/10/2019	5/17/2019
Lag	Admin 3 Lag	5/2 - 5/15	5/29/2019	5/16/2019	5/17/2019	5/24/2019
Curr	Admin 4 Curr	5/16 - 5/29	5/29/2019	5/16/2019	5/17/2019	5/24/2019
Extra Lag	Admin 3 Extra Lag	4/25 - 5/8	5/29/2019	5/16/2019	5/17/2019	5/24/2019
Lag	Inst 4 Lag	5/9 - 5/22	6/6/2019	5/23/2019	5/24/2019	5/31/2019
Curr	Inst 5 Curr	5/23 - 6/5	6/6/2019	5/23/2019	5/24/2019	5/31/2019
Extra Lag	Inst 3 Extra Lag	5/2 - 5/15	6/6/2019	5/23/2019	5/24/2019	5/31/2019
Lag	Admin 4 Lag	5/16 - 5/29	6/12/2019	5/30/2019	5/31/2019	6/7/2019
Curr	Admin 5 Curr	5/30 - 6/12	6/12/2019	5/30/2019	5/31/2019	6/7/2019
Extra Lag	Admin 4 Extra Lag	5/9 - 5/22	6/12/2019	5/30/2019	5/31/2019	6/7/2019
Lag	Inst 5 Lag	5/23 - 6/5	6/20/2019	6/6/2019	6/7/2019	6/14/2019
Curr	Inst 6 Curr	6/6 - 6/19	6/20/2019	6/6/2019	6/7/2019	6/14/2019
Extra Lag	Inst 4 Extra Lag	5/16 - 5/29	6/20/2019	6/6/2019	6/7/2019	6/14/2019
Lag	Admin 5 Lag	5/30 - 6/12	6/26/2019	6/13/2019	6/14/2019	6/21/2019
Curr	Admin 6 Curr	6/13 - 6/26	6/26/2019	6/13/2019	6/14/2019	6/21/2019
Extra Lag	Admin 5 Extra Lag	5/23 - 6/5	6/26/2019	6/13/2019	6/14/2019	6/21/2019
Lag	Inst 6 Lag	6/6 - 6/19	7/3/2019	6/20/2019	6/21/2019	6/28/2019
Curr	Inst 7 Curr	6/20 - 7/3	7/3/2019	6/20/2019	6/21/2019	6/28/2019
Extra Lag	Inst 5 Extra Lag	5/30 - 6/12	7/3/2019	6/20/2019	6/21/2019	6/28/2019
Lag	Admin 6 Lag	6/13 - 6/26	7/10/2019	6/27/2019	6/28/2019	7/5/2019
Curr	Admin 7 Curr	6/27 - 7/10	7/10/2019	6/27/2019	6/28/2019	7/5/2019
Extra Lag	Admin 6 Extra Lag	6/6 - 6/19	7/10/2019	6/27/2019	6/28/2019	7/5/2019
Lag	Inst 7 Lag	6/20 - 7/3	7/18/2019	7/4/2019	7/5/2019	7/12/2019
Curr	Inst 8 Curr	7/4 - 7/17	7/18/2019	7/4/2019	7/5/2019	7/12/2019
Extra Lag	Inst 6 Extra Lag	6/13 - 6/26	7/18/2019	7/4/2019	7/5/2019	7/12/2019

Vendor Submission Schedule 2019-20

PP Type	FISCAL YEAR 2019-20			Vendor Transmits Data to OSC by 6:00PM	Reject Report Transmitted to Vendor	Reports/Files Available to Vendor
	Payroll Period	Effective Dates	Check Date	Thursday	Friday/Monday NBEN902	Friday/Monday NBEN530 & NPAY518
Lag	Admin 7 Lag	6/27 - 7/10	7/24/2019	7/11/2019	7/12/2019	7/19/2019
Curr	Admin 8 Curr	7/11 - 7/24	7/24/2019	7/11/2019	7/12/2019	7/19/2019
Extra Lag	Admin 7 Extra Lag	6/20 - 7/3	7/24/2019	7/11/2019	7/12/2019	7/19/2019
Lag	Inst 8 Lag	7/4 - 7/17	8/1/2019	7/18/2019	7/19/2019	7/26/2019
Curr	Inst 9 Curr	7/18 - 7/31	8/1/2019	7/18/2019	7/19/2019	7/26/2019
Extra Lag	Inst 7 Extra Lag	6/27 - 7/10	8/1/2019	7/18/2019	7/19/2019	7/26/2019
Lag	Admin 8 Lag	7/11 - 7/24	8/7/2019	7/25/2019	7/26/2019	8/2/2019
Curr	Admin 9 Curr	7/25 - 8/7	8/7/2019	7/25/2019	7/26/2019	8/2/2019
Extra Lag	Admin 8 Extra Lag	7/4 - 7/17	8/7/2019	7/25/2019	7/26/2019	8/2/2019
Lag	Inst 9 Lag	7/18 - 7/31	8/15/2019	8/1/2019	8/2/2019	8/9/2019
Curr	Inst 10 Curr	8/1 - 8/14	8/15/2019	8/1/2019	8/2/2019	8/9/2019
Extra Lag	Inst 8 Extra Lag	7/11 - 7/24	8/15/2019	8/1/2019	8/2/2019	8/9/2019
Lag	Admin 9 Lag	7/25 - 8/7	8/21/2019	8/8/2019	8/9/2019	8/16/2019
Curr	Admin 10 Curr	8/8 - 8/21	8/21/2019	8/8/2019	8/9/2019	8/16/2019
Extra Lag	Admin 9 Extra Lag	7/18 - 7/31	8/21/2019	8/8/2019	8/9/2019	8/16/2019
Lag	Inst 10 Lag	8/1 - 8/14	8/29/2019	8/15/2019	8/16/2019	8/23/2019
Curr	Inst 11 Curr	8/15 - 8/28	8/29/2019	8/15/2019	8/16/2019	8/23/2019
Extra Lag	Inst 9 Extra Lag	7/25 - 8/7	8/29/2019	8/15/2019	8/16/2019	8/23/2019
Lag	Admin 10 Lag	8/8 - 8/21	9/4/2019	8/22/2019	8/23/2019	8/30/2019
Curr	Admin 11 Curr	8/22 - 9/4	9/4/2019	8/22/2019	8/23/2019	8/30/2019
Extra Lag	Admin 10 Extra Lag	8/1 - 8/14	9/4/2019	8/22/2019	8/23/2019	8/30/2019
Lag	Inst 11 Lag	8/15 - 8/28	9/12/2019	8/29/2019	8/30/2019	9/6/2019
Curr	Inst 12 Curr	8/29 - 9/11	9/12/2019	8/29/2019	8/30/2019	9/6/2019
Extra Lag	Inst 10 Extra Lag	8/8 - 8/21	9/12/2019	8/29/2019	8/30/2019	9/6/2019
Lag	Admin 11 Lag	8/22 - 9/4	9/18/2019	9/5/2019	9/6/2019	9/13/2019
Curr	Admin 12 Curr	9/5 - 9/18	9/18/2019	9/5/2019	9/6/2019	9/13/2019
Extra Lag	Admin 11 Extra Lag	8/15 - 8/28	9/18/2019	9/5/2019	9/6/2019	9/13/2019
Lag	Inst 12 Lag	8/29 - 9/11	9/26/2019	9/12/2019	9/13/2019	9/20/2019
Curr	Inst 13 Curr	9/12 - 9/25	9/26/2019	9/12/2019	9/13/2019	9/20/2019
Extra Lag	Inst 11 Extra Lag	8/22 - 9/4	9/26/2019	9/12/2019	9/13/2019	9/20/2019
Lag	Admin 12 Lag	9/5 - 9/18	10/2/2019	9/19/2019	9/20/2019	9/27/2019
Curr	Admin 13 Curr	9/19 - 10/2	10/2/2019	9/19/2019	9/20/2019	9/27/2019
Extra Lag	Admin 12 Extra Lag	8/29 - 9/11	10/2/2019	9/19/2019	9/20/2019	9/27/2019
Lag	Inst 13 Lag	9/12 - 9/25	10/10/2019	9/26/2019	9/27/2019	10/4/2019
Curr	Inst 14 Curr	9/26 - 10/9	10/10/2019	9/26/2019	9/27/2019	10/4/2019
Extra Lag	Inst 12 Extra Lag	9/5 - 9/18	10/10/2019	9/26/2019	9/27/2019	10/4/2019
Lag	Admin 13 Lag	9/19 - 10/2	10/16/2019	10/3/2019	10/4/2019	10/11/2019
Curr	Admin 14 Curr	10/3 - 10/16	10/16/2019	10/3/2019	10/4/2019	10/11/2019
Extra Lag	Admin 13 Extra Lag	9/12 - 9/25	10/16/2019	10/3/2019	10/4/2019	10/11/2019

Vendor Submission Schedule 2019-20

PP Type	FISCAL YEAR 2019-20			Vendor Transmits Data to OSC by 6:00PM	Reject Report Transmitted to Vendor	Reports/Files Available to Vendor
	Payroll Period	Effective Dates	Check Date	Thursday	Friday/Monday NBEN902	Friday/Monday NBEN530 & NPAY518
Lag	Inst 14 Lag	9/26 - 10/9	10/24/2019	10/10/2019	10/11/2019	10/18/2019
Curr	Inst 15 Curr	10/10 - 10/23	10/24/2019	10/10/2019	10/11/2019	10/18/2019
Extra Lag	Inst 13 Extra Lag	9/19 - 10/2	10/24/2019	10/10/2019	10/11/2019	10/18/2019
Lag	Admin 14 Lag	10/3 - 10/16	10/30/2019	10/17/2019	10/18/2019	10/25/2019
Curr	Admin 15 Curr	10/17 - 10/30	10/30/2019	10/17/2019	10/18/2019	10/25/2019
Extra Lag	Admin 14 Extra Lag	9/26 - 10/9	10/30/2019	10/17/2019	10/18/2019	10/25/2019
Lag	Inst 15 Lag	10/10 - 10/23	11/7/2019	10/24/2019	10/25/2019	11/1/2019
Curr	Inst 16 Curr	10/24 - 11/6	11/7/2019	10/24/2019	10/25/2019	11/1/2019
Extra Lag	Inst 14 Extra Lag	10/3 - 10/16	11/7/2019	10/24/2019	10/25/2019	11/1/2019
Lag	Admin 15 Lag	10/17 - 10/30	11/13/2019	10/31/2019	11/1/2019	11/8/2019
Curr	Admin 16 Curr	10/31 - 11/13	11/13/2019	10/31/2019	11/1/2019	11/8/2019
Extra Lag	Admin 15 Extra Lag	10/10 - 10/23	11/13/2019	10/31/2019	11/1/2019	11/8/2019
Lag	Inst 16 Lag	10/24 - 11/6	11/21/2019	11/7/2019	11/8/2019	11/15/2019
Curr	Inst 17 Curr	11/7 - 11/20	11/21/2019	11/7/2019	11/8/2019	11/15/2019
Extra Lag	Inst 15 Extra Lag	10/17 - 10/30	11/21/2019	11/7/2019	11/8/2019	11/15/2019
Lag	Admin 16 Lag	10/31 - 11/13	11/27/2019	11/14/2019	11/15/2019	11/22/2019
Curr	Admin 17 Curr	11/14 - 11/27	11/27/2019	11/14/2019	11/15/2019	11/22/2019
Extra Lag	Admin 16 Extra Lag	10/24 - 11/6	11/27/2019	11/14/2019	11/15/2019	11/22/2019
Lag	Inst 17 Lag	11/7 - 11/20	12/5/2019	11/21/2019	11/22/2019	11/29/2019
Curr	Inst 18 Curr	11/21 - 12/4	12/5/2019	11/21/2019	11/22/2019	11/29/2019
Extra Lag	Inst 16 Extra Lag	10/31 - 11/13	12/5/2019	11/21/2019	11/22/2019	11/29/2019
Lag	Admin 17 Lag	11/14 - 11/27	12/11/2019	11/28/2019	11/29/2019	12/6/2019
Curr	Admin 18 Curr	11/28 - 12/11	12/11/2019	11/28/2019	11/29/2019	12/6/2019
Extra Lag	Admin 17 Extra Lag	11/7 - 11/20	12/11/2019	11/28/2019	11/29/2019	12/6/2019
Lag	Inst 18 Lag	11/21 - 12/4	12/19/2019	12/5/2019	12/6/2019	12/13/2019
Curr	Inst 19 Curr	12/5 - 12/18	12/19/2019	12/5/2019	12/6/2019	12/13/2019
Extra Lag	Inst 17 Extra Lag	11/14 - 11/27	12/19/2019	12/5/2019	12/6/2019	12/13/2019
Lag	Admin 18 Lag	11/28 - 12/11	12/24/2019	12/12/2019	12/13/2019	12/20/2019
Curr	Admin 19 Curr	12/12 - 12/25	12/24/2019	12/12/2019	12/13/2019	12/20/2019
Extra Lag	Admin 18 Extra Lag	11/21 - 12/4	12/24/2019	12/12/2019	12/13/2019	12/20/2019
Lag	Inst 19 Lag	12/5 - 12/18	1/2/2020	12/19/2019	12/20/2019	12/27/2019
Curr	Inst 20 Curr	12/19 - 1/1	1/2/2020	12/19/2019	12/20/2019	12/27/2019
Extra Lag	Inst 18 Extra Lag	11/28 - 12/11	1/2/2020	12/19/2019	12/20/2019	12/27/2019
Lag	Admin 19 Lag	12/12 - 12/25	1/8/2020	12/26/2019	12/27/2019	1/3/2020
Curr	Admin 20 Curr	12/26 - 1/8	1/8/2020	12/26/2019	12/27/2019	1/3/2020
Extra Lag	Admin 19 Extra Lag	12/5 - 12/18	1/8/2020	12/26/2019	12/27/2019	1/3/2020
Lag	Inst 20 Lag	12/19 - 1/1	1/16/2020	1/2/2020	1/3/2020	1/10/2020
Curr	Inst 21 Curr	1/2 - 1/15	1/16/2020	1/2/2020	1/3/2020	1/10/2020
Extra Lag	Inst 19 Extra Lag	12/12 - 12/25	1/16/2020	1/2/2020	1/3/2020	1/10/2020

Vendor Submission Schedule 2019-20

	FISCAL YEAR 2019-20			Vendor Transmits Data to OSC by 6:00PM	Reject Report Transmitted to Vendor	Reports/Files Available to Vendor
PP Type	Payroll Period	Effective Dates	Check Date	Thursday	Friday/Monday NBEN902	Friday/Monday NBEN530 & NPAY518
Lag	Admin 20 Lag	12/26 - 1/8	1/22/2020	1/9/2020	1/10/2020	1/17/2020
Curr	Admin 21 Curr	1/9 - 1/22	1/22/2020	1/9/2020	1/10/2020	1/17/2020
Extra Lag	Admin 20 Extra Lag	12/19 - 1/1	1/22/2020	1/9/2020	1/10/2020	1/17/2020
Lag	Inst 21 Lag	1/2 - 1/15	1/30/2020	1/16/2020	1/17/2020	1/24/2020
Curr	Inst 22 Curr	1/16 - 1/29	1/30/2020	1/16/2020	1/17/2020	1/24/2020
Extra Lag	Inst 20 Extra Lag	12/26 - 1/8	1/30/2020	1/16/2020	1/17/2020	1/24/2020
Lag	Admin 21 Lag	1/9 - 1/22	2/5/2020	1/23/2020	1/24/2020	1/31/2020
Curr	Admin 22 Curr	1/23 - 2/5	2/5/2020	1/23/2020	1/24/2020	1/31/2020
Extra Lag	Admin 21 Extra Lag	1/2 - 1/15	2/5/2020	1/23/2020	1/24/2020	1/31/2020
Lag	Inst 22 Lag	1/16 - 1/29	2/13/2020	1/30/2020	1/31/2020	2/7/2020
Curr	Inst 23 Curr	1/30 - 2/12	2/13/2020	1/30/2020	1/31/2020	2/7/2020
Extra Lag	Inst 21 Extra Lag	1/9 - 1/22	2/13/2020	1/30/2020	1/31/2020	2/7/2020
Lag	Admin 22 Lag	1/23 - 2/5	2/19/2020	2/6/2020	2/7/2020	2/14/2020
Curr	Admin 23 Curr	2/6 - 2/19	2/19/2020	2/6/2020	2/7/2020	2/14/2020
Extra Lag	Admin 22 Extra Lag	1/16 - 1/29	2/19/2020	2/6/2020	2/7/2020	2/14/2020
Lag	Inst 23 Lag	1/30 - 2/12	2/27/2020	2/13/2020	2/14/2020	2/21/2020
Curr	Inst 24 Curr	2/13 - 2/26	2/27/2020	2/13/2020	2/14/2020	2/21/2020
Extra Lag	Inst 22 Extra Lag	1/23 - 2/5	2/27/2020	2/13/2020	2/14/2020	2/21/2020
Lag	Admin 23 Lag	2/6 - 2/19	3/4/2020	2/20/2020	2/21/2020	2/28/2020
Curr	Admin 24 Curr	2/20 - 3/4	3/4/2020	2/20/2020	2/21/2020	2/28/2020
Extra Lag	Admin 23 Extra Lag	1/30 - 2/12	3/4/2020	2/20/2020	2/21/2020	2/28/2020
Lag	Inst 24 Lag	2/13 - 2/26	3/12/2020	2/27/2020	2/28/2020	3/6/2020
Curr	Inst 25 Curr	2/27 - 3/11	3/12/2020	2/27/2020	2/28/2020	3/6/2020
Extra Lag	Inst 23 Extra Lag	2/6 - 2/19	3/12/2020	2/27/2020	2/28/2020	3/6/2020
Lag	Admin 24 Lag	2/20 - 3/4	3/18/2020	3/5/2020	3/6/2020	3/13/2020
Curr	Admin 25 Curr	3/5 - 3/18	3/18/2020	3/5/2020	3/6/2020	3/13/2020
Extra Lag	Admin 24 Extra Lag	2/13 - 2/26	3/18/2020	3/5/2020	3/6/2020	3/13/2020
Lag	Inst 25 Lag	2/27 - 3/11	3/26/2020	3/12/2020	3/13/2020	3/20/2020
Curr	Inst 26 Curr	3/12 - 3/25	3/26/2020	3/12/2020	3/13/2020	3/20/2020
Extra Lag	Inst 24 Extra Lag	2/20 - 3/4	3/26/2020	3/12/2020	3/13/2020	3/20/2020
Lag	Admin 25 Lag	3/5 - 3/18	4/1/2020	3/19/2020	3/20/2020	3/27/2020
Curr	Admin 26 Curr	3/19 - 4/1	4/1/2020	3/19/2020	3/20/2020	3/27/2020
Extra Lag	Admin 25 Extra Lag	2/27 - 3/11	4/1/2020	3/19/2020	3/20/2020	3/27/2020
Lag	Inst 26 Lag	3/12 - 3/25	4/9/2020	3/26/2020	3/27/2020	4/3/2020
Curr	Inst 1 Curr	3/26 - 4/8	4/9/2020	3/26/2020	3/27/2020	4/3/2020
Extra Lag	Inst 25 Extra Lag	3/5 - 3/18	4/9/2020	3/26/2020	3/27/2020	4/3/2020
Lag	Admin 26 Lag	3/19 - 4/1	4/15/2020	4/2/2020	4/3/2020	4/10/2020
Curr	Admin 1 Curr	4/2 - 4/15	4/15/2020	4/2/2020	4/3/2020	4/10/2020
Extra Lag	Admin 26 Extra Lag	3/12 - 3/25	4/15/2020	4/2/2020	4/3/2020	4/10/2020

Attachment 10

NYS-Ride, QTB RFP Cost Proposal - Budget Form

INSTRUCTIONS: Additional instructions for this form can be found in Section 4.4 of the RFP. Use whole dollar amounts, any rounding should be to the nearest whole integer except in the monthly cost per participant. Bidders please note: All costs should be included here. Items not included in this cost proposal cannot be billed separately. For information on how the Cost Proposal will be evaluated please see Sections 5.3, and 5.5.

Bidders are asked to indicate costs for start-up and implementation (excluding all parking and any other IRC Section 132 (f) benefit costs). Start Up and Implementation costs will be paid upon successful implementation of full TPA services.

Bidders should indicate the cost for the Turnover Plan. Bidders should be aware that turnover costs will be paid when turnover services are completed.

Ongoing services should be included in the monthly cost per participant. Costs of normal design upgrades should be factored into the monthly cost per participant as applicable.

1. Monthly Cost per participant	Possible Points	Monthly cost per participant (estimate of 8,999)=Estimated Monthly Admin Fee	Estimated Admin Fees * 38 months
	100	\$0	\$0.00

Component	Possible Points	Total Cost
2. Start-up and Implementation	50	
3. Turnover	25	
Total Estimated Admin Fees		\$0
Estimated Grand total		\$0

Bidders are asked to provide a communications and marketing budget amount below. Bidders should be aware that the actual total cost of marketing should be included in the monthly cost per participant and will not be billed separately. The amount provided will be used for oversight of marketing campaigns and will not be reviewed as part of the cost proposal.

Total Estimated Communications and Marketing Budget	
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NYS-Ride, QTB RFP Cost Proposal - Budget Form

Bidders should complete this separate parking and any other IRC Section 132 (f) benefit cost estimate that will be effective only if GOER implements a parking or any other IRC Section 132 (f) benefit. Bidders are asked to include separate costs for start-up and implementation associated with administering a parking and any other IRC Section 132 (f) benefit for up to an estimated 15,000 State employees. GOER reserves the right to renegotiate the monthly cost per participant for the parking benefit in the event of that enrollment does not meet or exceeds the estimated 15,000 participants. Renegotiations are subject to OSC approval. The parking cost will be rated based on the total estimated parking cost.

Monthly Cost per participant	Multiply monthly cost per participant (estimate of 15,000)=Estimated Monthly Admin Fee	Total Estimated Admin Fees * 38 months
	\$0	\$0.00

Componenet	Possible Points	Total Cost
Start-up and Implementation	N/A	
Total Estimated Admin Fees	N/A	\$0
4.Total Estimated Parking Cost	25	\$0