

STATE OF NEW YORK



DEPARTMENT OF TAXATION & FINANCE



REQUEST FOR PROPOSAL

COLLECTION SERVICES

August 29, 2005

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Schedule of Events

Date	Event	Description/Section Reference
08/29/05	RFP Issued	
09/9/05 2:00 PM EST	Deadline for Submission of Written Questions	Refer to Page ii for instructions.
09/16/05	Issuance of Department Response to Bidder Questions	Responses to questions will be issued on the Department's website. See Page ii for information.
09/23/05	Deadline to file Notification of Intent to Bid Form	Submit Attachment 2, Notification of Intent to Bid.
10/07/05 2:00 PM EST	Final date for Receipt of Bidder Proposals	All bids must be received by 2:00 p.m. EST. Only hard copy bids will be accepted in response to this bid solicitation See Section 8 for complete instructions.
No earlier than 11/04/05	Notification of Intent to Award Contract	Refer to Section 7.1.12
12/09/05	Anticipated Department Contract Execution	Contract signed and sent to the Offices of the Attorney General and Office of the State Comptroller for approval.

Estimated Timetable for Events Performed During and After Contract Approval

11/28/05	Network Connectivity Testing begins.
01/03/06	Development Phase begins. NOTE: This date is dependent on final contract approval.
No later than 6 months after the start of the Development Phase unless extended at the sole discretion of the Department	Start Date for Active Collection Phase.

THERE IS NO PRE-BID CONFERENCE FOR THIS RFP

Proposal Questions and Intent to Bid

PROPOSAL QUESTIONS AND REQUESTS FOR CLARIFICATIONS

Prospective bidders will have the opportunity to submit written questions and requests for clarifications regarding this Request for Proposal (RFP). All questions regarding this RFP must be submitted via mail, e-mail or fax and received by September 9, 2005, 2:00 P.M. EST. Questions must reference the relevant page and section of the RFP and must be directed to the following individual and office:

Written Correspondence:

New York State Department of Taxation and Finance
Attn: Janice Piccone
Procurement Bureau
W. A. Harriman State Office Building Campus
Building 9, Room 234
Albany, New York 12227
Attention: RFP- 05-107

E-mail: bfs_contracts@tax.state.ny.us

Fax: (518) 435-8413

The Department will respond, in writing, to all substantive questions received by September 9, 2005. Written responses to all substantive questions will be posted on the Department's Procurement website at: <http://www.nystax.gov/procurement> on September 16, 2005.

All amendments, clarifications, bidder questions with Department responses and any announcements related to this bid will be posted to the Department's web site. It is the bidder's responsibility to check the Department's web site periodically for any updates. All applicable amendment information must be incorporated into the bidder's proposal. Failure to include this information in your proposal may result in disqualification or a reduced technical score.

NOTIFICATION OF INTENT TO BID

If your firm is interested in submitting a proposal in response to the RFP, a **"Notification of Intent to Bid", Attachment 2, must be completed and submitted by September 23, 2005.** Contact information provided on this form will be used to notify bidders of Request for Proposal changes.

RFP Key Points

Key Points to Keep in Mind When Responding to this RFP

1. **Read the entire RFP document.** Note key items such as: critical dates, qualifying and mandatory requirements, services required and proposal packaging requirements.
2. **Note the address, phone numbers and e-mail address of the Procurement Office.** This is the only office you are allowed to communicate with regarding the RFP.
3. All amendments, clarifications, bidder questions with Department responses and any announcements related to this bid will be posted to the Department's web site. It is the bidder's responsibility to check the Department's web site periodically for any updates. All applicable amendment information must be incorporated into the bidder's proposal. Failure to include this information in your proposal may result in disqualification or a reduced technical score.
4. **Take advantage of the "question and answer" period.** Submit your questions to the procurement office by the due date listed in the Schedule of Events. Responses and copies of the questions will be posted on the Department's Procurement website at:
<http://www.nystax.gov/procurement>.
5. **File an Intent to Bid Form by the date listed in the Schedule of Events to ensure you receive all pertinent information related to the bid.**
6. **Provide complete answers/descriptions. Bidder proposals must completely address all qualifying and mandatory requirements.** To ensure you are not unnecessarily disqualified from bid evaluation, thoroughly read all proposal requirements and provide complete responses. Use **all** the forms provided to submit your responses.
7. **Review the RFP document and your proposal.** Make sure that all requirements are addressed and all copies are identical and complete.
8. **Package your proposal as required in this RFP.** Make sure that your proposal conforms to the packaging requirements. Proposals not packaged accordingly may be deemed non-responsive.
9. **Submit your proposal on time.** Proposals received late will not be considered for award and may be returned, unopened, to the sender.

Section One – Proposal Background

1.0 Overview

The New York State Department of Taxation and Finance (“Department”) has sole responsibility for the administration of over thirty tax types imposed by New York State Tax Law. Although most entities comply with New York State Tax Law, a small percentage fails to do so. The Department assesses tax liabilities against those who fail to comply. If not resolved, collection of these liabilities is referred to the Tax Compliance Division (“TCD”), the collection unit of the Department.

1.1 Purpose

The Department is soliciting proposals from **qualified entities**, as defined in Section 3.0, to work with TCD to perform collection services as defined in this Request for Proposal (“RFP”). It is the Department’s intention to award up to two contracts as a result of this RFP; however, the Department reserves the right to award only one contract, or no contracts, at its sole discretion. Any contracts awarded are intended to supplement, not supplant, the overall collection efforts of the Department.

1.2 Contract Term

The contract term will be for a three year period with two one-year renewals. The contract and subsequent renewals will be executed upon the approval of the New York State Attorney General (“AG”) and the New York State Office of the State Comptroller (“OSC”).

1.3 Contract Phases

The contract will have three distinct phases.

- **Development Phase** - This phase will begin upon approval of the contract by the AG and OSC. This phase may last no longer than six months unless extended at the Department’s sole discretion. During this phase the contractor will be expected to complete all tasks necessary to commence the Active Collection Phase. This phase will include the analysis of the contractor’s existing processes, design, coding, and testing of any modifications to those processes or the development of new processes.
- **Active Collection Phase** - This phase will commence immediately after the successful completion of the Development Phase and will conclude approximately six months prior to contract expiration or upon notification of contract termination.
- **Disengagement Phase** - This phase will begin at the conclusion of the Active Collection Phase and end at contract expiration or termination. During this phase, active collections may continue on collection cases (hereinafter cases) already placed with the contractor. However, additional case placement may be reduced or eliminated. Should the Department elect to terminate the contract prior to the expiration date, this phase will be reduced to no longer than 30 days.

Section Two – Inventory Background

2.0 Background

When a tax liability is not fully paid in a timely fashion, the Department may issue an assessment for the outstanding liability. The appropriate billing document(s) are sent to the tax debtor. The tax debtor has a statutorily required amount of time in which to respond to the bill(s). If the liability is still outstanding, a case is created and referred to TCD.

2.1 TCD Operations

TCD begins its collection effort by offering the tax debtor an opportunity to voluntarily resolve his or her outstanding case by sending one or more collection letters seeking payment. If not resolved, the case may be assigned for progressive collection work. This assignment is dependent on a variety of case characteristics and predetermined assignment rules. The assignment will be made to one of three units: Call Center Services, Field Services or Special Collection Services. In some situations, a case may be reassigned among these three units as the case profile changes or as predefined assignment rules dictate.

2.2 Collection Enforcement

Regardless of the unit to which a case is assigned, TCD pursues collection through various means including, but not limited to:

- Contacting tax debtors via mail, phone and in person
- Negotiating installment payment agreements (IPA)
- Issuing tax warrants
- Serving levies on banks or other third parties
- Issuing income executions (wage garnishment)
- Seizure of property

2.3 Unresolved Case Pool

While TCD is very effective in resolving the cases assigned, not all cases are resolved. Unresolved cases are removed from active TCD inventories so that new inventory may be assigned. It is from this unresolved pool of inventory that the Department selects cases for referral to collection agencies.

The Department intends to draw from the pool of unresolved cases for placement with a contractor. The cases may contain assessments for any of the over thirty tax types administered by the Department. The majority will be Personal Income Tax and the three primary business tax types, Sales, Withholding, and Corporation. It is not uncommon for a case to contain assessments for multiple tax types.

2.4 Categories

Cases are categorized as follows:

- Category 1 - Low value - All cases with a total dollar value between \$15 and \$500.
- Category 2 - System defined - Cases systematically deemed unresolved after being worked by Call Center Services.
- Category 3 - Skip cases - Cases where tax debtor whereabouts are unknown.
- Category 4 - All others - All other cases not meeting the conditions of the other three categories.

Each category has had varying degrees of collection effort expended by TCD. Please refer to Section 2.6 for additional details regarding the make-up of each category.

2.5 Volume

There are approximately 425,000 cases with an estimated value of \$747 million available for placement. This inventory is broken down as follows:

- Category 1 – 321,000 cases valued at \$50 million
- Category 2 - 27,000 cases valued at \$70 million
- Category 3 - 35,000 cases valued at \$224 million
- Category 4 - 42,000 cases valued at \$403 million

Note: These values are estimated and may be understated, as penalty and interest continue to accrue on unpaid balances. Further note that there may have been an error, or failure to produce information by the tax debtor resulting in an overstatement of the amount due.

2.6 TCD Collection Effort

Each category has had varying degrees of collection effort expended by TCD.

- Category 1 cases have received the least collection effort. A large portion (approximately 79%) of this category may never have been assigned to any of the three units (Call Center, Field or Special Collection Services) of TCD. These cases may have been deemed unresolved based on predetermined case characteristics once the tax debtor failed to resolve his or her outstanding liability as a result of initial billing(s). A smaller portion (approximately 21%) of this category consists of cases that were assigned to one or more of the three units of TCD, but remain unresolved.
- Category 2 cases have been worked exclusively by the TCD Call Center and have been deemed unresolved based on predetermined case characteristics.

- Category 3 and 4 cases have received the most intensive collection efforts. Depending upon predetermined case characteristics, they may have been worked by more than one of the three TCD units, likely beginning in the Call Center. Others may have been assigned directly to Field Services or the Special Collections area.

2.7 Case Characteristics

All cases eligible for placement with a contractor **will** contain the following characteristics:

- Tax debtors will be located within the United States.
- Assessments are warranted or within statute to warrant.
- With the exception of the Category 1 cases, all cases will have been deemed unresolved for one year or more.

In addition, cases eligible for placement **may** possess one or more of the following characteristics:

- Tax debtors may, or may not, be located within New York State.
- Assessments within a case may be actual, estimated or a combination of both..
- Assessments within a case may be warranted.
- Cases may have been previously assigned to a collection agency.
- Cases may have joint or associated assessments. See **Exhibits 1 and 6**. These assessments will be linked to different cases. These cases may be assigned to the same contractor, to a different contractor, or to no contractor at all.

Further, the available inventory **may** be profiled as follows:

- 87% of the cases have a New York State address.
- 57% of the cases are individual tax debtors.
- 32% of the cases are fully warranted.
- 24% of the cases were previously assigned to a collection agency.
- 85% of the cases do not contain estimated assessments.

Section Three – Qualifying Requirements

3.0 Qualified Entities Defined

Only qualified entities may submit a proposal in response to this RFP. A qualified entity is defined as one that meets **all of the following qualifying requirements**. Entities not meeting these qualifying requirements should not submit a proposal. Qualifications 3.1.1 through 3.1.6 will be evaluated in Phase I of the evaluation process as outlined in Section 9.2.1.

3.1 Qualifying Requirements

At the time of proposal submission, an entity must meet all of the qualifying requirements outlined in 3.1.1 through 3.1.6. Failure to meet these requirements will result in the bidder's disqualification.

3.1.1 Insurance

At the time of proposal submission, the bidder's company and all staff must be insured against financial losses resulting from bidder's employees' actions.

Response Requirement

On **Attachment A**, the bidder must provide its current insurance information and must attach a copy of its current certificate of insurance including a description of each type of coverage and the amount of coverage.

3.1.2 Professional Affiliation

The bidder must be a current member in good standing in ACA International.

Response Requirement

The bidder must provide a copy of its current ACA 2005-2006 certificate of membership with **Attachment B**.

3.1.3 Automated Outbound Phone Contacts

The bidder must have in use, an automated means of initiating outbound phone contacts (a systematic outbound dialer), as part of its collection operation.

Response Requirement

On **Attachment C**, the bidder must provide the manufacturer's name, model and specific version of the product utilized for automated outbound contacts and the date installed. In addition, the bidder must provide the name, address, phone number, fax number and email address of a contact person at one of the following:

- The product's manufacturer
- The bidder's current service provider

3.1.4 Electronic Data File Exchange

The bidder must have the capacity to engage in electronic data file exchange with the Department, and must use an electronic data exchange protocol acceptable to the Department as described in Section 5.2.1. Data file exchange processes that are specifically unacceptable are: magnetic tapes, email, paper, CD, floppy Disc, removable drives, and analog or digital dial up, Value Added Network's (VAN) or DSL connections.

Response Requirement

Please see Section 5.2.1: Communications Environment for the Response Requirement for this qualification.

3.1.5 Operational Experience

During the period July 1, 1999 through the bid submission date, the bidder must have had:

1. one debt collections contract which (a) has been in active debt collection for a minimum period of one year and (b) has had an average annual placement of 45,000 accounts or more over the life of the contract;

AND

2. another debt collection contract (a) with a federal, state or local government entity (b) which has been in active debt collection for a minimum period of one year.

OR

As an alternative to 1 and 2 above, during the period July 1, 1999 through the bid submission date, the bidder must have had a contract with a federal, state or local government entity for debt collection which (a) has been in active collection for a minimum period of one year and (b) has had an average annual placement of 45,000 accounts or more over the life of the contract.

NOTE: A contract entered into with a federal, state or local entity that was privatized *after* contract commencement (e.g., Sallie Mae) will meet the federal, state or local government entity criteria for the purposes of this RFP.

Response Requirement

Complete **Attachment D** for each applicable contract. This information will be used to confirm the qualifying experience through contact with the qualifying client(s).

3.1.6 Attestation

The bidder must attest it has read, understands and agrees to abide by all the terms and conditions outlined in **Section Four: General Contract Requirements** of this RFP.

Response Requirement

The bidder must submit a signed attestation statement as provided in **Attachment 3**.

Section Four – General Contract Requirements

4.0 Contract Requirements Defined

This section outlines and defines the Department's general contract requirements and the conditions under which this contract must be conducted. These requirements must be affirmed to on the **Attestation Form, Attachment 3**.

4.1 Compliance with Laws

The bidder must be in compliance with all applicable Federal, State and local laws, ordinances and regulations at the time of its proposal submission and, upon becoming a contractor, may not violate any Federal, State or local laws, ordinances or regulations established by the United States, State of New York or any other state or locality in which collection is attempted throughout the contract period.

4.2 Compliance with New York State Tax Law

Contractors must be in compliance with the New York State tax law.

4.3 Performance of Work

Performance of all work under this contract must be within the boundaries of the United States. Contractors are required by Federal law to verify that all their employees and subcontractors in their employ are legally entitled to work in the United States. Accordingly, this Department reserves the right to request legally mandated contractor- held documentation attesting to the same for each employee and subcontractor assigned work under any contract awarded. In accordance with such laws, the Department does not discriminate against individuals on the basis of national origin or citizenship.

4.4 Professional Conduct

The contractor must provide the collection services required in this contract in a manner that will further the Department's goal of providing professional service to all its customers. The contractor may not use any threats, intimidation or harassment in the collection process. The contractor must operate within industry guidelines and standards regarding debt collection practices including full compliance with the Federal Debt Collection Practices Act under 15 USC § 1692 et seq, NYS Tax Law Article 41, Taxpayer Bill of Rights and the NYS General Business Law Article 29-H.

4.5 Conflict of Interest

A potential conflict of interest may exist if the contractor, or any of its employees, consultants or business associates, has other business or a personal relationship with any assigned tax debtor or representative. Contractors must be aware that a potential conflict of interest may be identified at any point in the collection process. The contractors will be responsible for establishing procedures to identify potential conflicts of interest. Once identified, the contractor must immediately cease all collection activity involving the identified tax debtor. The contractor must immediately notify the Department in writing and disclose the nature of the potential conflict of interest in the manner prescribed by the Department. The Department will have sole discretion in evaluating the nature of the identified conflict of interest and in making the final decision regarding its resolution.

4.6 Secure Area

Contractors must maintain a secure area for conducting all work relative to this contract. A secure area is defined as one that provides the following:

- No access to the general public
- No access by contractor employees who are not directly involved with this contract
- Separate storage of all Department materials
- A means to handle controlled destruction of all Department materials in accordance with provisions outlined in the Article VII of the Preliminary Contract (**Appendix E**).

4.7 Professional Affiliation and Licensure

Contractors must maintain their current status as a member in good standing in ACA International throughout the contract period. Contractors are responsible for all necessary licensure requirements in the jurisdictions of the placed cases.

4.8 Toll-Free Numbers

Contractors must maintain two separate nationwide toll-free telephone numbers for use by the Department and tax debtors respectively. One of these toll-free lines must be available exclusively for tax debtor use. The other toll-free line must be available for the Department use and does not need to be exclusive.

4.9 Site Visits

Beginning with the Network Connectivity testing and throughout the contract, contractor staff may be required to travel to any Department facility deemed necessary. The duration of the visit(s) will be determined by the Department and may require several separate trips. All costs associated with these visits are the sole responsibility of the contractor.

Additionally, Department staff may require a site visit(s) to the contractor's facilities. All cost associated with these visits are the sole responsibility of the Department.

4.10 Training

The contractor will provide training for all staff on the contractor's system, federal debt collection practices and general debt collection practices.

All contractor staff assigned to perform services upon the initial implementation of the contract will receive appropriate training from Department personnel on New York State tax law, procedures and policies at a time and place to be determined by the Department. Each party has sole responsibility for the travel costs associated for its staff.

The Department will provide follow-up training material to reflect changes in law and Department policy; contractors will be responsible for the dissemination of such information.

Contractors will be responsible for the training of any new staff assigned to this contract after its initial implementation.

4.11 Restrictions on Use of Data

Contractors are prohibited from using any information for any purpose other than the performance of the Department's contract. At contract expiration or termination, all information pertaining to this contract must be handled in the manner prescribed by the Department as set forth in the Section 4.22: Disengagement Phase.

4.12 Insurance

Prior to the commencement of the work to be performed by the contractor hereunder, the contractor shall file with The People of the State of New York, the Department of Taxation and Finance (hereinafter referred to as the "Department"), Certificates of Insurance evidencing compliance with all requirements contained in the contract. Such Certificates shall be of form and substance acceptable to the Department.

Acceptance and approval by the Department does not and shall not be construed to relieve contractor of any obligations, responsibilities or liabilities under the contract.

All insurance required by the contract shall be obtained at the sole cost and expense of the contractor; shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to the Department; shall be primary and non-contributing to any insurance or self insurance maintained by the Department; shall be endorsed to provide written notice be given to the Department at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to the New York State Department of Taxation and Finance, W. A. Harriman State Office Building Campus, Procurement Bureau, Building 9 Room 234, Albany, New York, 12227, Attention: Ms. Janice Piccone, Assistant Director, and shall name The People of the State of New York, its officers, agents, and employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

Not less than thirty (30) days prior to the expiration date, the contractor shall supply the Department updated replacement Certificates of Insurance, and amendatory endorsements.

The contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the Department. Such approval shall not be unreasonably withheld.

The contractor shall require that any subcontractors hired carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The contractor shall cause all insurance to be in full force and effect as of the commencement date of the contract and to remain in full force and effect throughout the term of the contract and as further required by the contract. The contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the contractor shall supply the Department updated replacement Certificates of Insurance, and amendatory endorsements.

The contractor, throughout the term of the contract, or as otherwise required by the contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a) Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
- b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.
- c) The contractor shall maintain, or if subcontracting professional services shall certify that Subcontractor maintain errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss.
 1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by the contract.
 2. If coverage is written on a claims-made policy, the contractor warrants that any applicable retroactive date precedes the effective date of the contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time work under the contract is completed.
- d) Employee dishonesty coverage on money, securities or property other than money and securities including property in the contractors care, custody or control in an amount of \$2,000,000 per occurrence. The coverage shall include all employees including contract and temporary, whether identified or not, acting alone or in collusion with others.

Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the Department, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if contractor waives or has waived before the casualty, the right of recovery against the Department or (ii) any other form of permission for the release of the Department.

The insurance requirement will be monitored by the Department during the term of the contract and the contractor may be required to periodically adjust the amount of the insurance level. The Department must be provided written notice at least (30) days prior to the cancellation, non-

renewal, or material alteration in coverage. Refer to Article III of the Preliminary Contract (**Appendix E**).

4.13 Inventory Placement

The Department intends to place cases with the contractor in a ratio of 500 cases per each fully trained front line collector assigned. The initial placement will be phased in at the beginning of the Active Collection Phase at the Department's sole discretion. Contractors will be required to furnish inventory information which will be utilized for subsequent placements. The Department will prescribe the method of calculating the ratio and the interval of placement. It is the Department's intention to place cases with the contractor on a monthly basis. The Department intends to treat valid, current Installment Payment Agreements, which meet Department standards, as closed inventory for the purposes of case assignment.

Using this assignment ratio, the Department will randomly place cases from the unresolved case pool. All placements will consist of a blend from the four categories outlined in Section 2.4: Categories and will be consistent with the ratio of cases in each category.

As noted in Section 2.7: Case Characteristics, some cases eligible for placement under this contract have been previously assigned to a collection agency. It is the Department's intention to give these cases lower priority for initial placement under this contract. Additionally, lower assignment priority will be given to cases returned under this contract for reassignment to a second contractor. There is a possibility contractors may receive new assessments for taxpayers who have fully paid previous assessments.

The Department does not guarantee each contractor will receive a similar inventory with respect to case count, dollar value, or any other case attribute. Further, the Department reserves the right to assign cases, modify the assignment ratio, and modify inventory descriptions at its sole discretion

4.14 Inventory Retention

Cases will be placed with the contractor for a maximum period of 180 days unless a valid and current Installment Payment Agreement (IPA) is in place. At the end of the 180 day period, cases will be recalled unless an extension of time is approved by the Department. Extensions will be considered on a case-by-case basis. The Department has sole discretion on approval of an extension and the decision of the Department is final.

The Department reserves the right to recall any case at any time, based on law, policy, procedure or for any reason the Department deems necessary.

Under no circumstance may any case, including those being resolved by a valid, current IPA, remain with the contractor after contract expiration or termination.

4.15 Administrative Resolution

The Department will place cases with the contractor that, for a variety of reasons, may contain assessments requiring resolution by means other than payment, including, but not limited to, those set out below. Additionally, based on information received from the tax debtor, the Department may resolve assessments contained in cases placed with the contractor which requires the assessment to be adjusted or cancelled. In the event that all assessments contained within a case are resolved via administrative resolution, the case will be recalled. Administrative resolution may include, but is not limited to, the following:

- **Estimated assessments**

The resolution of these assessments will require the contractor to either:

- Direct the tax debtor to remit a tax return to the Department, or
- Communicate information to the Department relating to the tax debtor which may result in the cancellation or adjustment of an assessment.

- **Bankruptcy, Receivership and Assignment for Benefit of Creditors**

If tax debtors indicate they are currently in bankruptcy, receivership or assignment for benefit of creditors, the contractor must immediately cease all collection activity and forward any pertinent documentation to the Department in the manner prescribed by the Department. The Department will review the material submitted and advise the contractor if collection may resume. Otherwise the case will be recalled.

- **Deceased Tax Debtors**

If it is learned that a tax debtor is deceased, the contractor must immediately cease all collection activity and forward any pertinent documentation to the Department in the manner prescribed by the Department. The case will be recalled.

- **Tax Debtor Disputes**

If a tax debtor disputes any assessment, the contractor must immediately cease all collection activity and relay the tax debtor's information to the Department in the manner prescribed by the Department. The Department will evaluate the tax debtor's dispute and advise the contractor when, or if, to resume collection. One or more of the tax debtor's assessments may be placed on hold or the case may be recalled.

- **Tax Debtors in Active Military Status**

If it is learned that a tax debtor is currently in active military status in a combat zone or qualified hazardous duty area, the contractor must immediately cease all collection activity and forward any pertinent documentation to the Department in the manner prescribed by the Department. The Department will review the material submitted and advise the contractor if collection may resume. Otherwise the case will be recalled.

- **Incarcerated Tax Debtors**

If it is learned that a tax debtor is incarcerated the contractor must immediately cease all collection activity and forward any pertinent documentation to the Department in the manner prescribed by the Department. The Department will review the material submitted and advise the contractor if collection may resume. Otherwise the case will be recalled.

4.16 Payments Remitted by Tax Debtors

The contractor must instruct tax debtors to remit payments directly to the Department using only acceptable payment options as identified by the Department. Acceptable payment options are defined as:

- **Payment by check, money order or other similar negotiable instrument**
- **Payment by Electronic Funds Withdrawal (ACH Debit)**
- **Payment by credit card**

Under no circumstance should the contractor instruct a tax debtor to remit payment, using any payment option, directly to the contractor. Any payments received by the contractor must be redirected to the Department on a daily basis in the manner prescribed by the Department.

Additional payment options may be developed during the term of the contract.

The Department is contemplating allowing the bidder to process credit card and electronic funds withdrawal (direct debit) transactions, in conjunction with the taxpayer, online, through the Department's web site.

4.17 Tax Returns Remitted by Tax Debtors

The contractor must instruct tax debtors to remit tax returns, with or without payment, directly to the Department. Under no circumstance should the contractor instruct a tax debtor to submit a tax return, with or without payment, directly to the contractor. Any tax return received by the contractor, with or without payment, must be redirected to the Department on a daily basis in the manner prescribed by the Department.

4.18 Contractor Reliance on Department

The contractor must handle all routine issues involving tax debtor liability and provide an accurate accounting to the tax debtor based on information supplied by the Department and/or obtained from the tax debtor. However, tax debtors may raise issues beyond the routine. In these situations the contractor must immediately cease collection activity and must consult with the Department.

4.19 Reports

The contractor must prepare and submit a variety of reports to the Department in a format and frequency prescribed by the Department. The reports will include, but not be limited to, such items as:

- inventory
- collection actions taken
- complaints
- staffing
- exception reports
- fiscal year end summaries

4.20 Development Phase Review

At the conclusion of the Development Phase, the Department will conduct a review of the contractor's ability to perform the collection services required in this contract. The contractor must cooperate fully with the Department in conducting this review and must supply documentation requested to conduct the review. The Department will require the contractor to demonstrate that it has successfully transmitted, received, processed, and posted Department test data. The Department will determine, in its sole discretion, whether the contractor's processes and system will enable it to perform the collection services required by this request for proposal and as set forth in the bidder's proposal and the resultant contract. As part of this review, the Department may require an on site visit. In the event the Department is not satisfied that the contractor can adequately perform as per the terms of the contract, the contract will be immediately terminated. The taking of any such action shall not give rise to any cause of action against the Department for any kind of damages, loss of profits, expenses, or other remuneration of any kind.

4.21 Annual Performance Review

The Department will conduct an annual review of the contractor's performance to determine if the contractor is adequately performing the collection services required in the contract. The contractor must cooperate fully with the Department in conducting this review and must supply documentation as requested by the Department on which to conduct the review. As part of this review, the Department may require an on site visit. Should the Department not be satisfied that the contractor is adequately performing as per the terms of the contract, the contract may be terminated in accordance with Article XII of the Preliminary Contract (**Appendix E**). The Department may also choose any alternative method of sanctioning the contractor for poor performance as referenced in Article IX of the Preliminary Contract (**Appendix E**), Performance Standards and Remedies.

4.22 Disengagement Phase

The Contractor shall work with the Department to develop a detailed disengagement plan within one year of the start date for active collection. The Department will prescribe the disengagement process to be followed during the Disengagement Phase of the contract. This will include, but will not be limited to, such items as:

- Inactivation of all active Department accounts on the contractor's production system and the return of all cases to the Department.
- Transfer of all Department data from the contractor's system to the Department.
- Removal of all Department data from the contractor's system including both on-site and off-site backup copies. Storage devices such as hard disk drives and other magnetic media such as tapes, diskettes, or CDs/DVDs must be physically destroyed or securely overwritten to prevent unauthorized disclosure of Department data.
- Transfer of Department data not stored on the contractor's system to the Department.
- Controlled destruction of Department data not specified for transfer to the Department. Controlled destruction must be in accordance with Article VII of the Preliminary Contract (**Appendix E**).
- Forwarding of tax debtor communications to the Department that are received after contract expiration or termination.

The contractor must provide a letter signed by two officials authorized to bind the contractor at the conclusion of the Disengagement Phase. This letter must affirm the contractor has complied with all terms and conditions prescribed by the Department.

4.23 Case Resolution

The contractor must attempt to resolve all cases via full payment, IPA or, when applicable, administrative resolution. The contractor may not institute civil legal collection action including, but not limited to levies, garnishments, and seizures, on any Department case. The contractor may only enter into an IPA under the standards and conditions prescribed by the Department and must provide detailed information concerning any case being resolved by IPA in the manner prescribed by the Department.

In addition, the contractor must be aware there may be ongoing Department efforts to resolve cases placed with the contractor.

4.24 Contractor Fees Paid

On a monthly basis, the Department will reconcile all payments received from tax debtors by all acceptable payment options. This reconciliation will apply to assessments contained within the cases placed with the contractor. This reconciliation will also apply to returns associated with assessments. This reconciled figure will be net of all adjustments and payments subsequently dishonored.

The Department will apply the contractor's rate to this monthly total to calculate the total fee due the contractor. This calculation will be sent to the contractor for review. If the contractor agrees to the calculation, the contractor must then submit an invoice to the Department in a manner prescribed by the Department to request payment. The Department will pay the contractor in accordance with Article 11A of the New York State Finance Law and as outlined in Article VI of the Preliminary Contract (**Appendix E**). Payment will be remitted to the contractor in a manner prescribed by the Department.

Under no circumstance will the contractor receive a fee for any payment received:

- Outside the contractor placement beginning and end dates.
- For credits resulting from administrative resolution.
- To the extent the payment is decreased by any offset.
- After contract expiration or termination.

In the event the contractor disagrees with this calculation, the contractor must immediately notify the Department in writing and substantiate its position. If, after considering the contractor's position, agreement on the fee due cannot be reached, the parties must utilize the dispute resolution process noted in Article X of the Preliminary Contract (**Appendix E**).

4.25 Department Programs

In the event the Department should conduct any limited programs (e.g. Amnesty) to allow tax debtors to remit payment at a reduced amount in exchange for full resolution of their liability during the contract period, the Department reserves the right to either recall the affected cases or terminate the contract. Alternatively, the Department may seek to renegotiate the contract, including the current prevailing rate. Any renegotiation of the contract must be effectuated through a signed written amendment to the contract and requires the approval of the AG and OSC.

4.26 Complaints

The contractor must document all complaints received by the contractor, any subcontractor, or the Department concerning any actions it has taken with respect to its work on Department cases.

Complaints received directly by the contractor or any subcontractor must be reported to the Department within forty-eight (48) hours of receipt.

Upon receipt of a complaint from a tax debtor or the Department, the contractor must:

- immediately cease contacting the tax debtor involved; and
- within forty-eight (48) hours, supply the Department with a written account of the situation, including any remedial action to be taken with respect to the case and/or the contractor employee(s) involved.

The Department will review the complaint and the contractor's response and instruct the contractor how to proceed. Should the Department find that the complaint has merit, the Department may pursue the remedies outlined in Article IX of the Preliminary Contract (**Appendix E**).

4.27 Right to Survey

The Department reserves the right to survey tax debtors to ensure compliance with the terms of the contract.

4.28 Right to Review

The Department and any other New York State governmental entity reserve the right to audit the contractor's activities at any time throughout the contract period in addition to the Development Phase Review and the Annual Performance Review.

4.29 Documents and Phone Scripts

The contractor must obtain the Department's pre-approval of all documents and phone scripts prior to use in collection efforts on cases placed under this contract. The Department reserves the right to change the contractor's collection practices for the Department's collection work if it is determined that collection practices utilized by the contractor are not consistent with Department policies and procedures.

4.30 Department Service Observation

The contractor must provide the Department a means by which to remotely service observe, in real time, live calls conducted by contractor staff with tax debtors. This ability must be provided to the Department at its facility.

4.31 Department Access to the Contractor's Collection System

The contractor must provide the Department remote access to the contractor's collection system, in real time, for active, recalled and returned cases.

4.32 Audit Trail, Internal Controls, and Ability to Audit

The Department and other control agencies within New York State government are required to conduct periodic audits to evaluate the effectiveness of contractual services. All contractors must agree to provide access to information necessary to support an audit(s) of the collection process and any system(s) utilized in the collection process. The contractor is required to retain a level of information that will allow for verification of contractual provisions including, but not limited to:

- How a case was worked (history of collection actions taken).
- Audit trails, access reports, and other information which can be used to evaluate the contractor's compliance with security and confidentiality requirements.
- Accurate and comprehensive records, both information systems and other records, pertaining to receipt and accountability for tax debtor payments, tax returns, and other information or documents received from or about the tax debtor.
- Audit logs or journals to ensure that contractor data and systems are accessed in accordance with the Security and Confidentiality requirements set forth in the RFP.

Section Five – Specific Operational and System Requirements for Technical Evaluation

5.0 Bidder Proposals

Section Five outlines specific operational and system requirements which the bidder must address in response to this proposal.

Certain requirements are considered critical to successful contract implementation and the Department will not issue a bid award to any bidder who does not successfully demonstrate the capacity to meet that requirement. These critical requirements are indicated as mandatory (M) in this section. The bidder's response will be evaluated on whether it meets critical requirements; therefore, bidders **must** provide the Department with **all** the information requested to establish they meet the minimums identified in the mandatory requirements. Bidder responses which meet those minimums will gain evaluation points in the scoring process to the extent the response exceeds what is required.

Evaluation points will also be given for satisfactory responses for those sections where experience requirements are indicated as desirable (D).

PLEASE NOTE: Failure to adequately respond to a mandatory requirement may result in bidder disqualification. Incomplete responses will result in reduced technical evaluation points.

5.1 Operational Requirements

5.1.1 Contractor Staff (M)

The Contractor must assign staff to work the Department contract, as follows, for initial inventory assignment:

a) **100 % dedicated staff (Full Time Equivalent (FTE))**

- A minimum of ten to a maximum of twenty front line collectors must be assigned. At least one front line collector must be Spanish speaking.
- A minimum of one front line supervisor to every ten front line collectors must be assigned at all times. (i.e., 11-20 front line collectors require a minimum of two front line supervisors).
- A minimum of one second line supervisor must be assigned at all times.

b) Third Line Supervisory Requirements

- The contractor must assign a minimum of one third line supervisor who is responsible for overseeing the day-to-day operations for the Department's contract. While this person is not required to be 100% dedicated to the Department's contract, he or she must have direct supervisory responsibility for the second line supervisor(s) assigned to the Department's contract.

NOTE:

- For the purposes of this RFP, an FTE is defined as forty (40) staff hours per week.
- Deviations from these requirements will not be allowed for initial placement or be considered for evaluation. Later changes to the staffing mix, staffing numbers or ratio may be accomplished to accommodate possible changes in inventory placement or for future benefit to the Department. Staff numbers proposed must be assigned for the entire term of the contract unless otherwise approved by the Department. Such changes shall be accomplished pursuant to Article II of the preliminary contract, Appendix E.
- The Department reserves the right to request staff substitutions for work related cause.
- If the bidder proposes existing staff, the bidder must propose staff it intends to assign to the Department's project if awarded a contract. Staff substitutions must be with personnel having similar experience and must have the approval of the Department.

Response Requirement

The bidder will be evaluated on the extent it meets and exceeds the minimum staffing requirements up to the maximum requirement. The bidder will also be evaluated and scored on the experience of existing staff assigned to this contract or the hiring requirements for new staff and on other staff the bidder proposes to assign to this contract (e.g., staffing for contract compliance, quality assurance, independent internal auditors, and independent internal service observers).

On **Attachment E**, the bidder must provide the following information related to all staff it will assign to, and maintain working on, the Department's contract. The bidder's response must be inclusive of the minimum staffing requirement and must not exceed the maximum requirement.

- The number of fully trained, front line collectors to be assigned. (Full Time Equivalents: **Minimum of 10; Maximum of 20**)
- The number of fully trained, Spanish-speaking front line collectors to be assigned. (Full time Equivalents: **Minimum of 1**)
- The number of front line supervisors to be assigned. (Full Time Equivalents: **Minimum of 1** for every **10** FTE front line collectors; **Minimum of 2** for **11** or more FTE front line collectors)
- The number of second line supervisors to be assigned. (Full time equivalents: **Minimum of 1**)
- The number of third line supervisors to be assigned. **A minimum of one third line supervisor is required; however, the third line supervisor is not required to be assigned 100% to the Department's contract.**

The bidder must also provide the following information about the staff identified in 5.1.1 above:

- Using **Attachment F**, provide the requested information for all staff other than front line collectors. If staff has not yet been hired, provide the minimum qualifications sought for these positions, including minimum experience requirements. Additionally, the bidder should provide the title and a job description for any other personnel, excluding high level executives and clerical staff, that the bidder will assign to or have directly involved with the Department's contract.

5.1.2 Collection Effort (M)

Section 2.4 provides a description of the inventory available for placement with the contractors. At a minimum, the bidder must demonstrate a progressive system to:

- attempt to contact tax debtors by phone within sixty (60) days of case assignment;
- attempt to contact tax debtors by mail within sixty (60) days of case assignment; and

- utilize third party sources in an automated manner to skip trace tax debtors. Specifically, the contractor must utilize products that provide, at a minimum, access to credit bureau reports, bankruptcy records, deceased records and updated address and phone information for the tax debtors.

Response Requirement

The bidder will be evaluated on the extent it meets and exceeds the minimum requirements.

On **Attachment G**, the bidder must describe the methods used to meet the minimum collection effort requirements for all case categories outlined in Section 2.4.

When describing the **minimum** collection effort for **all cases**, the bidder must include, but is not limited to, details related to the following activities.

- Tax debtor contact. Please indicate the means and frequency, within sixty (60) days and up to the point of contact with the tax debtor, by which the bidder will attempt to contact the tax debtor by mail and phone (automated or manual), etc.
- Skip tracing. Please describe the methodology used for automated skip tracing

The Department will also evaluate and award points for collection effort above the minimum requirements. When describing additional collection effort, the bidder should include, but is not limited to, details related to the following activities:

- Case scoring/prioritizing other than dollar value
- Employee case ownership
- Automated phone attempts
- Case follow-up procedures after initial contact
- Additional skip tracing efforts

5.1.3 Training (D)

The bidder should have an existing training program that familiarizes its staff with the operating system, collection laws and procedures, etc. The Department will evaluate and award points on the bidder's existing training program.

Response Requirement

On **Attachment H**, complete information to describe the current training program each front line collector is required to attend including the time invested to be considered "fully trained". Please include the training environment, topics covered, the duration of classroom training, and the total time period of the training program.

5.1.4 Customer Service (D)

The Department strives to provide best in class customer service to all of its customers. As a contractor for the Department, the same commitment to providing excellent customer service is required. The Department will evaluate and award points on the bidder's current customer service policies.

Response Requirement

On Attachment I, the bidder should provide the following customer service information:

- The hours of operation and days of the week the bidder will utilize for this contract.
- The bidder's policy and procedure for handling inbound phone calls. This should include the response time, in terms of hours, and the nature and method of reply to messages.
- The bidder's policy and procedure for handling inbound correspondence. This should include the response time, in terms of days, and the nature and method of reply to correspondence.

5.1.5 Contractor's Service Observation Program (D)

The Department has set forth a requirement related to its ability to service observe contractor staff in Section 4.30, as part of the Section 4: General Contract Requirements, which the contractor must agree to in the performance of this contract. Additionally, the Department will evaluate and award points for the degree to which a bidder proposes to conduct **its** own service observation of **its** staff's dealings with tax debtors.

Response Requirement

On **Attachment J**, the bidder should indicate if it intends to employ a service observation program for the Department's contract. If so, the bidder should provide the following information about the service observation program to be utilized:

- The percentage of staff to be observed each month.
- Whether the calls observed will be live, recorded or a combination of both. If recorded, bidders should indicate what percentage of **all** (inbound and outbound) calls will be recorded and if this recording includes screen captures.

5.1.6 Contract Administration/Facilities (D)

It is the Department's desire to utilize only one contractor facility and one contract administrator. Contractors are required to obtain prior written approval from the Department to perform work from more than one facility and/or designate more than one contract administrator.

Response Requirement

On **Attachment K**, the bidder must state if it intends to seek permission to use multiple facilities and/or designate multiple contract administrators.

5.2 IT System Requirements

The bidder's response to the following requirements will be used to evaluate the bidder's ability to develop or modify its system to implement this project and the ability to dedicate experienced staff services.

5.2.1 Communications Environment (M)

Electronic Data File Exchange

As indicated in Section 3.1.4, the Department requires electronic data file exchange, to and from the Department. The Department would prefer this exchange via the Internet. Data file exchange processes that are specifically unacceptable are: magnetic tapes, email, paper, CD, floppy Disc, removable drives, and analog or digital dial up, Value Added Network's (VAN) or DSL connections.

The Department has approved using the secure file transfer protocol (SFTP) provided by OpenSSH and Vshell as our Client and Server secure FTP connection software, respectively. The contractor will be responsible to implement compatible software with these products. The Department has approved the use of Public/Private Key authentication for the SFTP protocol, and as such, requires the use of the SSH2, 1024 byte, RSA algorithms in the key generation. This connection will need to meet all Department and industry standard Security measures, including using the standard TCP Port 22.

Additional Communication Requirements

In addition to having the capacity to engage in electronic data file exchange, the bidder must have the following:

- **Internet Browser Software** - The contractor must have acceptable internet browser software to enable the contractor's staff to access the Department's website. The current Department minimum requirement is Microsoft Internet Explorer 5.5.
- **Tax Employee Access** - Also, the Department strongly prefers that any access provided for Tax Department employees to access the contractor's system, in the performance of their duties, be done online, via the Internet. The bidder's system must be compatible with MS Proxy using standard HTTP or HTTPS on TCP ports 80 or 443. The bidder should specify a method or methods to allow Tax Department employees to access the contractor's system in the performance of their duties, subject to the Department's ultimate approval. The method(s) will be evaluated and scored.

Technology Upgrades

The contractor must agree to make technological changes in order to meet upgrades to industry supported standards. For example, Microsoft Internet Explorer web browser upgrades must be supported.

Response Requirement

The bidder's proposed electronic data exchange process will be evaluated to determine whether the bidder has the capacity to meet this requirement and to the extent the proposal exceeds the mandatory requirements.

On **Attachment L** the bidder must provide:

- A detailed narrative describing the bidder's proposed method of electronic data file exchange.
- A narrative that demonstrates the bidder has acceptable internet browser software.
- The bidder's data communication security measures.
- The bidder's proposed method to provide access to its system.
- The bidder must indicate they agree to make technological changes to meet upgrades to industry supported standards.

5.2.2 System Functionality (M)

The bidder must be able to develop, enhance or modify its system to meet the requirements of this proposal. The information that follows identifies files, functions, and specifications which must be supported to fulfill the requirements of this RFP. The Department is seeking a solution which is based upon highly automated processes.

a) Functions

The contractor's system must perform the following functions:

- Process files received from the Department. This process must include storing the data on the contractor's system as a new case or as an update to a previously assigned case.
- Create and transmit files to the Department as described in (b) below.
- Provide exception processing and reporting when files from the Department are processed, including where:
 - Tax debtors identified as an update on the Assignment/Update file from the Department are not active on the contractor system.
 - Active tax debtors on the contractor's system are not on Department Assignment/Update files.
 - Records on Department files cannot be processed and posted to the contractor system.
- Provide and support management reports identified in Section 4.19.
- Record all contacts with tax debtors.
- Record all events that affect collection activity (bankruptcy, death of tax debtor, other).
- Record tax debtor address and phone number updates.

The contractor's collection system must be able to store and process tax debtor information as follows:

- The contractor must use the ten character case identification number supplied by the Department as a key into their system. See **Exhibit 2** for description.
- Cases may be composed of multiple assessments. The contractor must link all assessments for a tax debtor to the case identification number supplied by the Department.

- The contractor must store tax debtor data at an assessment level basis to ensure balances can be updated at this level, collection activity can be placed on hold on an individual assessment basis, and that the contractor's system supports an audit trail of collection activity sufficient for reporting and auditing.
- The contractor must store a joint indicator at the assessment level and link one assessment to two tax debtors. The contractor must be able to work and return joint tax debtor cases independently of each other. See **Exhibit 2** and **Exhibit 6**.
- The contractor must store an associated tax debtor indicator at the assessment level. See **Exhibit 2**.
- The contractor must store a Power of Attorney indicator for a tax debtor. See **Exhibit 2**.
- The contractor must store the check digit provided for Taxpayer ID, Assessment ID and Collection Case ID for inclusion on all tax debtor correspondence. See **Exhibit 2**.

b) **Files**

The Department will establish a schedule for the electronic transmission of various files between the Department and the contractor. The contractor must adhere to this schedule of file transfers. Files must be processed timely and in the sequence prescribed by the Department.

The following are the files that will be exchanged between the Department and the Contractor. The file layouts, attached as **Exhibits 2, 3, 4 and 5**, are representative of the data the Contractor will be required to process. The file layouts will be finalized during the Development Phase.

Department to Contractor File

- Assignment/Update File – Department will create and transmit a weekly file of newly assigned cases and updated information for previously assigned cases. See **Exhibit 2** for file layout.

Contractor to Department Files

- Address Update File – Contractor must create and transmit files of new tax debtor address and telephone information to the Department using the file format provided. See **Exhibit 5** for file layout.
- Case Contact File – Contractor must create and transmit files of taxpayer case contacts using the file format provided. See **Exhibit 3** for file layout.

- Return File – Contractor must create and transmit a return file of completed cases, and/or cases that the Department has recalled via the Assignment/Update File, using the file format provided. See **Exhibit 4** for file layout.
- Recall File – On an as required basis, but no more frequently than once a day, the contractor must create and transmit a return file of recalled cases using the file format provided. See **Exhibit 4** for file layout.

Contractor must store a minimum of ten (10) generations of scheduled files and twenty (20) generations of requested files.

Response Requirement

The bidder's response will be evaluated to determine if the mandatory requirements have been met and will be scored to the extent it exceeds the mandatory requirement.

The response must provide Department personnel with a clear understanding of how the proposed system will support the collection process and requirements set forth in this RFP.

With Attachment M, the bidder must provide: (1) a complete narrative description of its proposed system and (2) system flowcharts. At a minimum, the narrative description must include:

- The process for receiving files sent from the Department (see Exhibit 2), including edits and validations performed, storage of the data on the contractor's system, exception processing (identification, reporting, resolution), storage of new tax debtor records, and update of previously stored tax debtor records.
- The process for creating files sent to the Department (See Exhibits 3, 4, and 5).
- The process that will store the records needed to support the case history requirement and required management reporting.
- A Data Model Diagram that shows how the tax debtor records will be stored in the bidder's system, including all keys and relationships.
- A development timeline that shows projected dates for each phase and milestones for the project.

The bidder must also indicate which processes of the proposed system are: 1) existing; 2) modifications of existing processes and 3) new processes.

Please note, generic system information, white papers and/or promotional material are not sufficient to meet the requirements of this proposal. The bidder must indicate its approach to each of the areas listed above.

5.2.3 System Staff (M)

Sufficient staff must be assigned to complete the Development Phase in a timely manner as well as provide adequate support during the Active Collection Phase. The contractor must assign staff to work the Department contract as follows:

Development Phase

Sufficient IT development staff must be assigned to meet all deadlines to complete an IT system to implement the contract to the satisfaction of the Department. The following staff must be assigned during the development phase, as required, to ensure development timeframes are met:

- Project Manager
- Analyst
- Programming Staff
- Test Staff (must not be the same as programming staff)
- Data Communications Staff

Active Collection Phase

Sufficient IT staff must be assigned to communicate and coordinate resolution of any issues that may occur, correct any problems, and implement any changes within two (2) business days unless otherwise agreed to in writing.

Note:

- If the bidder proposes existing staff, the bidder must propose staff it intends to assign to the Department's project if awarded a contract. Staff substitutions must be with personnel having similar education and/or experience and must have the approval of the Department.
- The Department reserves the right to request additional staff, as well as staff substitutions for work related cause.

Response Requirement

To meet minimum requirements, on Part I of Attachment N the bidder must agree it will assign the requisite staff necessary to meet all deadlines to modify and complete an IT system to implement the contract to the Department's satisfaction and to successfully maintain the IT system during the life of the contract.

Additionally, the Department will evaluate and score:

- the bidder's proposed staffing plan for the development phase.
- the experience and the education of staff to be assigned; and

- the continuity of staff assignments from the Development to Active collection phase.

On Part II of Attachment N, the bidder must provide a staffing plan for the development phase. Minimally, this plan should address the staff titles to be assigned, the percent of time each position will be allocated for the type of work (modifications to system) required, and the proposed duration of the assignment throughout the development phase.

On Part III of Attachment N, the bidder must provide the following information related to the staff it will assign to, and maintain working on, the Department's contract:

- For each staff person(s) to be assigned during the Development Phase, identify the staff person's education and/or experience. If not yet hired, provide the minimum qualifications sought for these position(s) including minimum education and experience requirements.
- Indicate if the person assigned for each position in the Development phase will also be assigned to the Active Collection phase.

5.2.4 Security and Confidentiality (M)

A contractor must be able to assure the security, confidentiality, and integrity of the Department's data in accordance with federal and state tax law provisions, as well as generally accepted information security policies, procedures, and standards. The contractor will be required to sign confidentiality agreements as set out in Sections 7.3.9 and 7.3.10 of this request for proposal. In addition, the contractor must have policies, procedures, controls, and software in place which, at a minimum, ensure both physical security and data security.

The Department's mandatory requirements for security, confidentiality and integrity include all of the following:

- Documented information security policies that address the security, confidentiality, integrity, and availability of the contractor's information systems.
- Documented procedures and physical security controls which limit access to the Data Center, or an area where computer hardware is located, to only those employees with job functions that require access (computer operations staff, quality control, systems programmers, etc.).
- Documented procedures and logical data access controls which restrict access to information stored within the computer system to only those employees who require access to such information to perform job related functions.
- Network security controls that ensure the contractor's information systems are protected from unauthorized access from outside the contractor's network.

The Department shall have the right to send its officers and employees into the facilities of the contractor for inspection of the facilities and operations utilized in the performance of any work under the contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with any security requirement stated in the contract.

Response Requirement

On Attachment O:

1. The bidder must describe how it will assure the security and confidentiality of the Department's data. The bidder's response will be evaluated to determine if the above mandatory requirements have been met.
2. The Department will also evaluate and award points for systems and programs the bidder has in place to ensure security and confidentiality which go beyond the mandatory requirements.

The bidder should submit its existing security programs, policies and procedures which will be evaluated and scored to the extent they demonstrate:

- Programs, policies and procedures used to provide discretionary access control to systems and data. This information should address both physical security and electronic data security.
- Defined roles and responsibilities of all of those using the contractor's information systems.
- Separate computing environments for test, quality assurance, and production systems.
- Policies, procedures and controls for backup and recovery of data.
- Off-site storage and disaster recovery operations.
- A process and procedure which conforms to federal and state tax law requirements for controlled destruction of system output or other documents containing tax debtor identifying data (name, address, identification numbers, etc.).
- Protection against unauthorized access or disclosure 1) by employees, consultants, and others located at its facilities and 2) from external sources, such as dial-in or via Internet access.
- Processes to monitor the bidder's compliance with its information security policies, such as internal audit controls and/or independent audit programs.

- Network security controls or programs, such as virus protection, intrusion detection systems, and firewall rules that protect the bidder's information systems from unauthorized access.
- Description of the bidder's system to record, maintain, and report on collection case activity (audit trails) as attested to in Section 4.32.

Also, the bidder must submit a copy of any audits, internal or external, performed within the past three years that cover the requirements set forth in this section. Summary audit results or redacted audits are acceptable, as necessary, to address confidentiality concerns. Summaries should include information relating to the adequacy of the bidder's security measures including any deficiencies found.

5.2.5 Contractor Change Control Process (D)

Generally accepted data processing procedures and practices recommend that all system changes be implemented using methodology that assures the reliability, availability, and integrity of the information system. The bidder should have an established change control process in place.

The bidder will be scored on its existing change control process.

Response Requirement

With **Attachment P**, the bidder should provide, at a minimum, the following:

- A flowchart that identifies the various steps of the change control process and indicates the staff responsible for each step.
- A description of the process to review, evaluate and approve system changes; and
- A description of the testing processes.

5.3 Bidder Experience and Reference Requirements

5.3.1 Bidder Experience (M)

The bidder must have prior experience in debt collection for federal, state or local government entities and must have engaged in a minimum of one contract with an average annual placement of 45,000 cases, or more, over the life of the contract (Section 3.1.5). Additionally, the bidder must be able to develop or modify its system to meet the specifications of this RFP (Section 5.2.2). Bidders who meet these criteria have met minimum requirements for bidder experience.

It is desirable that the bidder also have prior experience in the collection of debt similar in nature, size, scope and complexity, as set forth in this RFP.

Response Requirement

On Part I of Attachment Q, the bidder should provide information for seven (7) contracts the bidder has been engaged in, since July, 1999, for: (a) federal, state or local government entities, and (b) for either government entities or private entities where the average annual placement is 45,000 accounts or more. Such contracts must have been in active collection for a minimum of one year as of the date of bid submission for this RFP. **The qualifying contract(s), identified in response to Section 3.1.5, must be included in the response to this section.**

If the bidder is unable to provide seven (7) contracts which meet the above criteria, the bidder should provide as many contracts as possible.

The Department is particularly interested in and will evaluate the bidder's prior experience with:

1. tax debt collection for federal and/or state entities. Special weight will be given to collection for Personal Income, Corporation, Sales and/or Withholding taxes as well as tax debt collection for contracts with an average annual placement of 45,000 accounts or more;
2. non-tax debt collection for federal and state government entities. Again, special weight will be given for contracts with an average annual placement of 45,000 accounts or more.

The Department will also evaluate, but will give less weight to, other contracts that meet (a) and (b) above, including a bidder's prior experience with debt collections for local government entities.

The bidder should select contracts that best meet the criteria to be evaluated.

Note:

The qualifying contract(s), identified in response to Section 3.1.5, must be included in response to this section.

References for contracts listed in response to this requirement are requested in Sections 5.3.2 and 5.3.3. The bidder must have satisfactory references for these contracts for technical scoring.

5.3.2 Client Operation References (M)

The Department will contact client references to ensure the bidder can undertake and complete a project of the scale and scope as set forth in this RFP. The references submitted must be for all contracts provided in response to Section 5.3.1.

The bidder shall be solely responsible for providing contact names and phone numbers for client reference who are readily available to be contacted by the Department and capable of responding to performance questions.

Response Requirement

The Department will contact all client references to evaluate the bidder's past performance related to debt collection.

On Part II of Attachment Q, the bidder must provide client references for each contract submitted in response to Section 5.3.1. Reference contacts must be familiar with the debt collection services provided by the bidder.

5.3.3 Client System References (M)

The Department will contact client references to ensure the bidder can undertake and complete a project of the scope, size and complexity as set forth in this RFP. The references submitted must be for the contracts provided in response to Section 5.3.1.

The bidder shall be solely responsible for providing contact names and phone numbers for client reference who are readily available to be contacted by the Department and capable of responding to performance questions.

Response Requirement

The Department will contact all client references to evaluate the bidder's past performance related to the development or modification of a debt collection system.

On Part III of **Attachment Q**, the bidder must provide client references for each contract submitted in response to Section 5.3.1. Reference contacts may be the same as those provided in Section 5.3.2; however, the contact submitted for this section must be an individual familiar with the client's computer application system and the process for exchanging data.

Section Six – Financial Response

6.0 Financial Rate Proposal Requirement

Bidders must use **Attachment 14, Financial Rate Response Form**, in response to this requirement. The bidder must provide the fixed rate they will charge as a percentage of the money collected from collection cases received. The fixed rate must be inclusive of all costs in the performance of services outlined in this RFP.

The fixed rate percentage fee shall not be increased during the first two years of any contract resulting from this RFP. Any proposed increase of the fee must be requested by the Contractor in writing sixty (60) days in advance of the anniversary date of the Contract. Such increase shall be subject to negotiation between the Department and the Contractor. Notwithstanding the foregoing, rate increases for subsequent years shall be limited to the percentage change in the Consumer Price Index for All Urban Customers as reported by the U.S. Department of Labor, Bureau of Statistics for the CPI-U for the preceding twelve (12) month period.

If the renewal option is exercised, rate increases for each of the two subsequent renewal periods shall be so limited.

Please see Sections 4.24 and 7.2.2 for additional payment information.

Section Seven – Administrative Requirements

7.0 Administrative Proposal Conditions

This section outlines the administrative conditions concerning the Request for Proposal, the bidder's response and conditions related to any awarded contract.

7.1 Administrative Proposal Conditions

With the submission of a response to this Request for Proposal, the bidder agrees to the proposal conditions outlined in Section 7.1.

7.1.1 Issuing Agency

This RFP is issued by the New York State Department of Taxation and Finance, which is responsible for all criteria stated herein and for evaluation of all proposals submitted.

7.1.2 Solicitation

This RFP is a solicitation to bid, not an offer of a contract.

7.1.3 Liability

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

7.1.4 Proposal Ownership

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

7.1.5 Proposal Security

Each bidder's proposal will be held in strict confidence by the Department staff and will not be disclosed except to the Office of the Attorney General and the Office of the State Comptroller as may be necessary to obtain the approvals of those agencies for the final contract and except as required by law.

Public inspection of the bids is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The bids are presumptively available for public inspection. If this would be unacceptable to bidders, they should apply to the Department for trade secret protection for their bid.

In applying for trade secret protection, it would be unacceptable to indiscriminately categorize the entire proposal as such. The bidder should point out those sections of the proposal that are trade secrets and explain the reasons therefore. The bidder may wish to review with its legal counsel Restatement of Torts, Section 757, comment b., and the cases under the Federal Freedom of Information Act, 5 USC Section 552, as well as the Freedom of Information Act. The Department will review applications and grant trade secret protection, if appropriate.

The public officers' code of ethics (section 74 of the Public Officers Law) sets the standard that no officer or employee of a State agency shall disclose confidential information that he acquires during the course of his official duties. These standards control the confidentiality of a bidder's proposal unless the Department grants a petition for records access in accordance with the Freedom of Information Law.

Bidders should be advised that the confidentiality of their proposals is founded upon statute, as described above. A nondisclosure agreement, whether prescribed by the Department or the bidder, would not alter the rights and responsibilities of either party under the Freedom of Information Law. Bidders should not propose a nondisclosure agreement for Department employees, for that would be legally ineffective to alter any legal responsibility under the Freedom of Information Law or the code of ethics.

The provisions of the Freedom of Information Law will also govern the confidentiality of any and all products or services supplied by the successful bidder.

7.1.6 Ethics Compliance

All bidders/contractors and their employees must comply with the requirements of § 73 and 74 of the Public Officers Law, (See **Appendix D: Public Officers Law § 73 & § 74**) and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. In signing the bid, bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

7.1.7 Timely Submission

The bidders are solely responsible for timely delivery of their proposal to the location set forth by the stated bid due date/time and are solely responsible for delays in receipt, including but not limited to those due to third-party carriers.

7.1.8 Proposal Effective Period

The bidder's proposal must be firm and binding for a period of at least 180 days following the bid proposal due date.

7.1.9 Bidder Proposal Clarification

The Department reserves the right to require a bidder to provide clarification and validation of its proposal, to the satisfaction of the Department, through any means the Department deems necessary. Failure of a bidder to cooperate with the Department's effort to clarify a proposal may result in the proposal being labeled as non-responsive and be given no further consideration.

Additionally, the Department reserves the right to use information submitted by the bidder in response to the Department's request for clarifying information in the course of evaluation and selection under this RFP.

7.1.10 Bid Evaluation and Selection

See **Section 9: Proposal Evaluation**, regarding bid selection and evaluation methodology. To the extent permitted by law, bidder proposals shall not be disclosed, except for purposes of evaluation and approval, prior to approval of the resulting contract by the Office of the Comptroller. Submitted proposals may be reviewed and evaluated by any personnel or agents of the Department, other than one associated with a competing bidder.

7.1.11 Contract Negotiations and Authorized Negotiators

During contract negotiations, the Department requires to have direct access to bidder personnel who have full authority to make commitments on behalf of the bidder. Bidders must include, as part of their proposal, any restrictions under which their primary negotiators will operate.

7.1.12 Bidder Notification of Intent to Award

The Commissioner of Taxation and Finance, or his designee, will select the successful contractor(s) based on recommendations submitted by an evaluation teams. The successful bidder(s) will be advised of selection by the Department through the issuance of a "Notification of Award Letter". Bidders whose bids have been rejected by the Department in response to this RFP shall be notified of such rejection.

7.1.13 Proposal Review and Contract Approval

Any contract resulting from this RFP will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller. The Department reserves the right to independently enter the Active Collection Phase with each contractor, upon execution and successful completion of the Development Phase.

7.1.14 Debriefing Sessions

Unsuccessful bidders will be notified in writing and may request the opportunity for a debriefing session. Such sessions will be limited to discussions of evaluation results as they apply to the bidder receiving the debriefing.

7.1.15 Bid Protest Policy

The Department's procedures for handling protests of bid awards are set forth in **Appendix C: NYS DTF Bid Protest Policy**.

7.1.16 Reserved Rights

The Department of Taxation and Finance reserves the right to exercise the following:

- a) Change any of the scheduled dates stated herein.
- b) Amend RFP specifications after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all bidders.
- c) Withdraw the RFP, at its sole discretion.
- d) Eliminate a mandatory requirement when all bidders cannot meet such requirement.
- e) Evaluate, accept and/or reject any and all proposals, in whole or in part, and to waive technicalities, irregularities, and omissions if, in the Department's considered judgment, the best interests of the Department will be served. In the event compliant bids are not received, the Department reserves the right to consider late or non-conforming bids as offers.
- f) Require the bidder to demonstrate, to the satisfaction of the Department, any information presented as a part of their proposal.
- g) Use proposal information obtained through site visits, management interviews and the Department'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 Department's request for clarifying information in the course of evaluation and selection under this RFP.
- h) Determine a tie breaking mechanism for award of the contract to serve the best interests of the Department.
- i) Negotiate with the successful bidder(s) within the scope of the RFP to serve the best interests of the State.

- j) Conduct contract negotiations with the next ranked responsible bidder should the Department be unsuccessful in negotiating an agreement with the selected bidder(s) or for failure to successfully complete the Development Phase upon approval of the initial contract.

7.2 Administrative Contract Conditions

With the submission of a response to this Request for Proposal, the bidder agrees to the contract conditions outlined in Section 7.2.

7.2.1 Contract Funding

Availability of funds to pay these collection services is limited each State fiscal year by a Special Revenue Fund appropriation. The appropriation for the Tax Arrearage Account for Fiscal Year 2005-06 is \$4 million.

An appropriation is a statutory authorization against which expenditures may be made during a specific State fiscal year and from which disbursements may be made, for the purposes designated, up to the stated amount of the appropriation. Appropriations are authorizations to spend. An appropriation thus represents maximum spending authority unless a lower maximum has been set by a disbursement ceiling.

7.2.2 Payments

All payments will be made in accordance with Section 11-a of the New York State Finance Law.

7.2.3 Public Announcements

Public announcements or news releases relating to this RFP or the resulting agreement shall not be made by any bidder or its agent without the prior approval of the Department. Such approval shall not be considered until an executed contract is in place.

7.2.4 Minority and Women-Owned Business

a. Participation Levels

The Contractor agrees to make good faith efforts to promote and assist the participation of certified minority-business enterprises (MBE) as subcontractors and suppliers on this agreement for the provision of services and materials in the amount of zero percent of the total dollar value of this agreement, and women-owned business enterprises (WBE) as subcontractors and suppliers on this agreement for provision of services and materials in the amount of zero percent of the total dollar value of this agreement.

Any percentages established in a State Contract are subject to the requirements of Article 15-A of the Executive Law and the regulations published pursuant to thereto (which from time to time may be amended); and

The parties agree as a condition of the State Contract to be bound by the provisions of Section 316 of Article 15-A of the Executive Law.

See attached **Appendix B** for a description of the requirements of Article 15-A.

Please address your ability to obtain participation levels in response to this RFP. A directory of minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, New York 12245
Phone: (518) 292-5250 Fax: (518) 473-0665

b. Guidelines for Utilization

M/WBE participation in various types of subcontracts, supply, leasing and other activities may be considered by the Contractor.

c. Reports

The Contractor is required to complete and submit a M/WBE Schedule of Utilization listing participation of any certified M/WBEs on this contract if goals other than zero percent are established.

Any modification in M/WBE utilization should be forwarded on a revised M/WBE Schedule of Utilization. For purposes of this section, modification means those changes which reduce or increase the dollar amount to be actually performed by a M/WBE, a change in the type of work to be performed, or the addition of other M/WBEs.

7.2.5 Equal Opportunity Standard Language:

- a) Contractors and subcontractors shall undertake or continue existing programs of affirmative action 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, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates or other forms of compensation.

- b) Prior to the award of a State contract, the Contractor shall submit an Equal Employment Opportunity (“EEO”) Policy Statement within the time frame established by the Department.
- c) The Contractor’s EEO Policy Statement shall contain, but not necessarily be limited to; and the Contractor, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
- 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 programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
 - 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.
 - At the request of the Department, 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.
- d) Except for construction contracts, prior to an award of a State contract, the Contractor shall submit to the Department a staffing plan of the anticipated work force to be utilized on the State contract or, where required, information on the Contractor’s total work force, including apprentices, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the Department.
- e) After execution of a State contract, the Contractor shall submit to the Department a work force utilization report (to be updated quarterly during the life of the contract), of the work force actually utilized on the State contract, broken down by specified ethnic background, gender, and Federal Occupational Categories or alternatively submit, where the work force on the contract can not be separated out from the Contractor’s work force, semi-annual information on the total workforce.
- f) If the Contractor does not submit an EEO Policy Statement and a Staffing Plan of anticipated workforce prior to award, the bid will be rejected unless reasonable

justification for such failure is provided in writing or a commitment is made to provide said documents by a date specified by the Department.

7.2.6 Omnibus Procurement Act of 1992

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl Street
Albany, New York 12245
Phone: (518) 292-5250 Fax: (518) 486-6416

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal, 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 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;
- d. The contractor acknowledges notice that New York 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.

7.3 Administrative Proposal Requirements

Bidders must provide the following administrative information in their bid proposal.

7.3.1 Cover Letter:

A transmittal letter must be signed by an official authorized to bind the bidder to its provisions.

Response Requirement

The transmittal letter submitted must include:

- the complete name and address of the bidder;
- the name, address, phone number and e-mail address of the bidder's Contract Administrator;
- an affirmation that the proposal is binding for a period of at least 180 days following the bid proposal submission; and
- any restrictions under which the bidder's primary negotiators will operate during contract negotiations.

7.3.2 Attestation Form

Each bidder must acknowledge and attest it has read and agrees to the General Contract Requirements as outlined in Section 4 of this RFP.

Response Requirement

Each bidder must submit, as part of the proposal, an **Attestation Form, Attachment 3**, to acknowledge it has read and agree to the General Contract Requirements as outlined in Section 4 of this RFP.

7.3.3 Vendor Responsibility Questionnaire

Article XI §163(4)(d) of the State Finance Law states that "service contracts shall be awarded on the basis of best value to a responsive and responsible offerer."

Upon identification of the bidder(s) with the highest score, the bidder(s) Responsibility Questionnaire will be analyzed to ensure that the bidder(s) is responsible.

In the event that a bidder is found to be not responsible, the bidder may be disqualified.

Response Requirement

Each bidder must complete and submit the **Responsibility Questionnaire, Attachment 4**.

7.3.4 Financial Stability

The Department will not enter into a contract with any bidder who cannot demonstrate itself to be a financially stable entity capable of initiating and performing its obligations throughout the duration of the contract. The Department will conduct an evaluation of the bidder's financial stability which will include, but not be limited to, a review of the bidder's equity position, liquidity, profitability trends and future prospect for financial growth. The financial stability evaluation will also include a review of the Company's key officers and management team, its organizational structure and the financial and operating relationship between business units and divisions.

Response Requirement

With Attachment 5, bidders must submit the proof of financial stability required for their particular organizational structure as set forth in the requirements listed in paragraphs one through four below. Audited/reviewed financial statements, required where indicated below, must have been prepared by a CPA in accordance with GAAP. All required information must be provided for any predecessor company within the last three years and any other subsidiary, affiliate, and/or related company requested by the Department. Any additional information requested must be submitted.

1. **If the bidder is a subsidiary of a parent company that is publicly held**, the bidder must comply with the preceding requirements by either (a) submitting **separate**, audited/reviewed, annual financial statements for the parent and subsidiary for the last three years OR (b) by submitting audited/reviewed, annual financial statements for the parent for the last three years, unaudited/internal annual financial statements for the subsidiary for the last three years and the spreadsheet(s) used for consolidation.

In either case, the most recent audited, reviewed, or unaudited/internal interim financial statement is also required for both the parent and subsidiary.

2. **If the bidder is a subsidiary of a parent company that is privately held**, the bidder must either (a) comply with the requirement outlined in paragraph one OR (b) submit **separate** annual, unaudited/internal company financial statements for both the parent and subsidiary for the last three years, a separate Dun and Bradstreet Comprehensive Report (dated within 21 days of bid submittal) for both the parent and bidder, and a statement explaining why annual, audited/reviewed statements are not available.

In either case, the most recent audited, reviewed, or unaudited/internal interim financial statement is also required for both the parent and subsidiary.

3. **If the bidder is a publicly held company and is not a subsidiary of a parent company**, it must provide audited or reviewed annual financial statements for the last three years. The most recent audited, reviewed, or unaudited/internal interim financial statement is also required.

4. **If the bidder is a privately held company and is not a subsidiary of a parent company**, it must either (a) fulfill the requirements set forth in paragraph three above or (b) provide annual, unaudited/internal company financial statements for the last three years, a Dun and Bradstreet Comprehensive Report (dated within 21 days of bid submittal) and a statement explaining why annual audited/reviewed statements are not available.

The most recent audited, reviewed, or unaudited/internal interim financial statement is also required.

With Attachment 5, the bidder must provide its primary bank reference including the name and phone number of the relationship manager.

With Attachment 5, the bidder must submit documentation attesting to any significant line(s) of credit that are available to the bidder. This documentation must include information identifying the source of such lines and detailing the maximum credit amount(s) available to the bidder, outstanding balance(s), and current amount(s) available.

Additionally, if the bidder is a subsidiary of a parent company, the bidder must explain in detail the inter-company financial relationship between the parent company and the bidder. The bidder must indicate if the parent company guarantees the debt of the subsidiary.

With Attachment 5, the bidder must provide organizational charts including a listing and detailed description of:

- a) The bidder's primary business units and divisions;
- b) Key executives;
- c) Any and all subsidiaries; and
- d) Any and all minority interests, joint ventures or other type of business affiliations.

With Attachment 5, the bidder must provide brief biographies on its key officers and management.

7.3.5 MacBride Fair Employment Principles Form

Required as part of the proposal submission in accordance with Chapter 807 of the Laws of 1992 and in accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either have business operations in Northern Ireland and, if yes, shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such Principles.

Response Requirement

Each bidder must complete and submit the Non-Discrimination in Employment in Northern Ireland: **MacBride Fair Employment Principles Form, Attachment 6.**

7.3.6 Designation of Prime Contact

This designation will last for the entire evaluation process and contract negotiations, and the bidder must certify that this individual is authorized to respond on behalf of the bidder. Any change in this designation must be submitted in writing to the Department and include a revised form.

Response Requirement

Each bidder must complete and submit the **Designation of Prime Contact** form, **Attachment 7.**

7.3.7 Non-Collusive Bidding Practices Certification

A bid shall not be considered for award nor shall any award be made where the conditions of the Non-Collusive Bidding Certification have not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where the above conditions have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determine that such disclosure was not made for the purpose of restricting competition (Section 139-d of the State Finance Law).

Response Requirement

The bidder is responsible for reading, signing and submitting **Attachment 8**, the **Non-Collusive Bidding Certification**.

7.3.8 Executive Order 127 Documents

To enhance public confidence in the State's procurement process, Governor Pataki issued in 2003 Executive Order Number 127, *Providing for Additional State Procurement Disclosure*, increasing the disclosure requirements regarding persons and organizations contacting State government about procurement and real estate transactions, and making that information available to the public.

The bidder must submit the required EO 127 forms

Additional information concerning EO 127 can be found at:
<http://www.ogs.state.ny.us/aboutogs/regulations/defaultprocurement.html>

Response Requirement

The bidder is responsible for the completion and submission of the following forms in accordance with **Executive Order 127 (EO 127)**, **Attachment 9**:

- Contractor Disclosure of Contacts Form
- Contractor Disclosure of Prior Non-Responsibility Determinations
- Contractor Certification of Compliance with Executive Order 127

7.3.9 Secrecy Provision Agreement (DTF-202)

Bidders are required to adhere to secrecy provisions as outlined in Article VII, of the Preliminary Contract, **Appendix E**.

Response Requirement

The bidder is responsible for the completion and submission of **Attachment 10**.

7.3.10 Acknowledgement of Confidentiality of IRS Tax Return Information and Internal Revenue Code Selected Confidentiality Provisions Pertaining to Contractors

Bidders are required to adhere to secrecy provisions as outlined in Article VII, of the Preliminary Contract, **Appendix E**.

Response Requirement

The bidder is responsible for the completion and submission of **Attachment 11**.

7.3.11 Sales and Compensating Use Tax Documentation

Pursuant to Tax Law Section 5-a, bidders will be required to complete and sign, under penalty or perjury, the **Contractor Certification Form ST-220, Attachment 12**. Bidders must also submit a copy of the Certificate of Authority, if available, for itself, any affiliates, any subcontractors and any affiliates of subcontractors required to register to collect state sales and compensating use tax. If Certificates of Authority are unavailable, the contractor, affiliate, subcontractor or affiliate of subcontractor must represent that it is registered and that it has confirmed such status with the Department.

Response Requirement

The bidder is responsible for the completion and submission of **Attachment 12** and the submission of a Certificate of Authority or Representations of Registration.

7.3.12 Prime Contractor/Subcontractors

The successful bidder shall act as the Prime Contractor under the contract, and shall be held solely responsible for contract performance by the bidder, its partners, officers, employees, subcontractors and agents. The bidder shall be responsible for payment of all subcontractors and suppliers, including all third-party service providers contracted by or through the bidder in performance of the contract.

Where services are supplied by or through the bidder under the contract, it is mandatory for the bidder to assume full integration responsibility for delivery, installation, maintenance, performance and support services for such items. The bidder shall also be responsible for payment of any license fees, rents or other monies due third parties for services or materials provided under the contract.

The contractor must assume responsibility as prime contractor for this engagement. Proposed subcontractors must be identified at the **time** of bid submission and are subject to the prior approval of the State (see Article XIV of Appendix E: Preliminary Contract for additional information.).

Response Requirement

The Department requires a list of subcontractors who will be utilized for the performance of services under any resultant contract as well as a description of the services to be subcontracted. This information must be provided on **Attachment 13**.

7.3.13 Proposed Extraneous Terms

Proposals must conform to the terms and conditions set forth in this RFP and the Preliminary Contract, **Appendix E**. Any objections to terms and conditions set forth in this section of the RFP (**Section 7**) and the Preliminary Contract, **Appendix E**, must be provided to the Department in the bidder's Administrative Proposal. Material deviations to the terms and conditions set forth in this RFP (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection.

Response Requirement

The bidder must attach any objections to the terms and conditions outlined in this section or the Preliminary Contract, **Appendix E**.

Only those extraneous terms that meet all the following requirements will be considered as having been submitted as part of the proposal:

- each proposed extraneous term (addition, counter-offer, deviation or modification) must be specifically enumerated in writing which is not part of a pre-printed form;
- the writing must identify the particular term to which the bidder objects or proposes to modify by inclusion of the extraneous term; and
- the bidder shall enumerate the proposed addition, counter-offer, modification or deviation from the bid proposal, and the reasons therefore.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents), whether or not deemed "material", which are attached or referenced with submissions and which do not meet the above requirements will not be considered part of the bid or resulting contract, but rather will be deemed to have been included for informational or promotional purposes only.

Acceptance and/or processing of the bid proposal shall not constitute such written acceptance of Extraneous Term(s) or a waiver of the Department's rights set forth above. Failure to object to any terms set forth in **Section 7** of this RFP and the **Preliminary Contract, Appendix E**: shall be deemed to constitute acceptance thereof by the bidder.

7.3.14 Request for Exemption from Disclosure

As outlined in Section 7.1.5, public inspection of bid proposals is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The bids are presumptively available for public inspection. If this would be unacceptable to bidders, they should apply to the Department for trade secret protection of their bid.

In applying for trade secret protection, it would be unacceptable to indiscriminately categorize the entire proposal as such.

Response Requirement

To obtain trade secret protections, the bidder must submit with its response a letter specifically identifying the page number, line or other appropriate designation of the information that is a trade secret and explain in detail why such information is a trade secret and would be exempt from disclosure.

Section Eight - Proposal Submission

8.0 Bidder Response

The bidder must submit a proposal which clearly and concisely provides **all** the information required by the Department on which to base its evaluation. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and to completeness and clarity of content.

Proposals that do not comply with these instructions, or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed as non-responsive.

For your convenience, we have provided **Attachment 1, Bidder's Checklist**, to assist you in meeting proposal requirements.

The Department does not require, nor desire, any excessive promotional material which does not specifically address the response requirements of this RFP.

8.1 Organization of Proposal

To facilitate the evaluation process, the bidder must organize its proposal into two distinct volumes as follows:

- Volume 1 Qualifying, Technical and Administrative Requirement Response Forms
- Volume 2 Financial Rate Proposal Response (Attachment 14)

8.1.1 Volume One Format

Volume 1 should contain a Table of Contents with page numbers and each section should be tabbed as follows:

Tab 1 Qualifying Requirements (Section Three)

- 3.1.1 Insurance: Attachment A
- 3.1.2 Professional Affiliation: Attachment B
- 3.1.3 Automated Outbound Phone Contacts: Attachment C
- 3.1.5 Operational Experience: Attachment D

Tab 2 Operational Proposal Requirements (Section 5.1)

- 5.1.1 Contractor Staff: Attachments E & F
- 5.1.2 Collection Effort: Attachment G
- 5.1.3 Training Program: Attachment H
- 5.1.4 Customer Service: Attachment I
- 5.1.5 Contractor Service Observation: Attachment J
- 5.1.6 Contract Administration/Facilities: Attachment K

Tab 3 System Proposal Requirements (Section 5.2)

- 5.2.1 Communications Environment: Attachment L
- 5.2.2 System Functionality: Attachment M
- 5.2.3 System Contractor Staff: Attachment N
- 5.2.4 Security and Confidentiality: Attachment O
- 5.2.5 Change Control Process: Attachment P

Tab 4 Bidder Experience and Reference Requirements (Section 5.3)

- 5.3.1 Bidder Experience: Attachment Q
- 5.3.2 Client Operational References: Attachment Q
- 5.3.3 Client System References: Attachment Q

Tab 5 Administrative Requirements (Section Seven)

- 7.3.1 Cover Letter
- 7.3.2 Attestation Form: Attachment 3
- 7.3.3 Vendor Responsibility Questionnaire: Attachment 4
- 7.3.4 Financial Stability: Attachment 5
- 7.3.5 MacBride Fair Employment Principles Form: Attachment 6
- 7.3.6 Designation of Prime Contact: Attachment 7
- 7.3.7 Non-Collusive Bidding Practices Certification: Attachment 8
- 7.3.8 Executive Order 127 Documents: Attachment 9
- 7.3.9 Secrecy Provision Agreement (DTF-202): Attachment 10
- 7.3.10 Acknowledgement of Confidentiality of IRS Tax Return Information and Internal Revenue Code Selected Confidentiality Provisions Pertaining to Contractors: Attachment 11
- 7.3.11 Sales and Compensating Use Tax Documentation: Attachment 12 and Certificate of Authority or Representations of Registration
- 7.3.12 Subcontractor List: Attachment 13
- 7.3.13 Proposed Extraneous Terms
- 7.3.14 Request for Exemption from Disclosure

8.1.2 Volume Two (Financial Rate Response)

This volume must contain the Financial Rate Proposal (**Section Six**), **Attachment 14**

8.2 Proposal Submission

The bidder must submit seven copies of Volume 1 and Volume 2. All volumes must be bound separately and clearly identified. To facilitate requests for information under the Freedom of Information Law, an electronic copy on CD, DVD or disc should also be submitted.

Proposals must be received no later than **October 7, 2005, 2:00 p.m. EST**. Under no circumstance will the Department consider any proposal received after the time and date specified. No individual exceptions or extensions of the time and date will be allowed for any reason.

To facilitate the evaluation process, the proposals must be packaged and submitted as outlined in this Section. Faxed or electronically transmitted proposals will not be accepted. The proposals must be enclosed in sealed containers with the following visibly inscribed on the outside of all containers:

Ms. Janice Piccone, Assistant Director
New York State Department of Taxation & Finance
Procurement Bureau
W.A. Harriman Campus
Building #9, Room 234
Albany, NY 12227

All proposals must have a label on the outside of the package or shipping container outlining the following information:

“BID ENCLOSED”
RFP # 05-107
Proposal to Provide Collection Services
Bid Submission date and time

In the event that a package is not labeled properly as described in this section, the Department reserves the right to inspect the contents of the package(s) to determine the contents. The bidder shall have no claim against the Department arising from such inspection and such inspection shall not affect the validity of the procurement. Notwithstanding, the Department’s right to inspect contents of the package(s), the bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

Section Nine - Proposal Evaluation

9.0 Department Evaluation Philosophy

Pursuant to Article XI of the New York State Finance Law, the basis for this contract award is **best value**. A best value offer optimizes quality, cost and efficiency among responsive and responsible bidders and is consistent with the best interests of the State of New York.

The Department evaluates proposals for goods and services in an objective, comprehensive manner designed to benefit both the State and participating bidders. Throughout this process the Department identifies contractors who will best meet our needs and will be cost effective. The Department further intends that all proposals will be evaluated uniformly and consistently, ensuring bidders an equal opportunity to be considered.

9.1 Proposal Clarification

The Department reserves the right to require a bidder to provide clarification and validation of its proposal through any means the Department deems necessary. Failure of a bidder to cooperate with the Department's effort to clarify a proposal may result in the proposal being labeled as non-responsive and given no further consideration.

9.2 Evaluation Process

There will be three stages to the evaluation process. Proposals which pass Stage One will be further evaluated in Stage Two. At the conclusion of Stage Two, all proposals will be ranked by the score achieved. The two highest ranked proposals will be further evaluated in Stage Three. The Technical Evaluation will proceed concurrently and separately from the Financial Evaluation.

9.2.1 Stage One Evaluation

All timely submitted proposals will be evaluated in Stage One. Proposals will be evaluated in the following three areas.

- **Proposal Screening (pass/fail)**

Each proposal will be screened for completeness and conformance with Department requirements for proposal submission as specified in this RFP. Proposals which do not meet the requirements may result in the proposal being labeled as non-responsive and may not be given further consideration.

- **Qualifying Requirements (pass/fail)**

All proposals which pass the proposal screening will be evaluated to determine if the bidder meets all of the qualifying requirements specified in Section 3. Bidders who do not

meet all qualifying requirements will have their proposal labeled as non-responsive and will not be given further consideration.

- **Administrative Requirements (pass/fail)**

All proposals which pass the proposal screening will be evaluated to determine if the bidder meets all of the administrative requirements specified in Section 7. Bidders who do not meet all administrative requirements may have their proposal labeled as non-responsive and may not be given further consideration.

All proposals which pass this stage will be further evaluated in Stage Two.

9.2.2 Stage Two Evaluation

In this stage proposals will be scored based on the overall value of the bidder's proposal. Technical scoring will be done in three areas:

- **Operational Requirements**
- **System Requirements**
- **Bidder Experience/References**

The Financial scoring will proceed concurrently and separately from the Technical scoring.

The Technical and Financial score will be combined. Proposals will then be ranked according to the aggregate scores achieved.

9.2.3 Stage Three Evaluation

Upon completion of Stage Two, the Technical and Financial score will be combined. The two highest ranked proposals in Stage Two will be further evaluated in Stage Three.

Should one or both of the highest ranked proposals not pass Stage Three, the Department will evaluate the next highest ranked proposal(s) and will repeat this process until two qualifying bidders have successfully passed Stage Three evaluation or until no qualifying bidders remain. Stage Three Evaluation will consist of the following three areas:

- **Vendor Responsibility**

Attachment 4 will be analyzed to ensure that the bidder is responsible.

- **Site Visit**

The Department will visit the bidder's facilities to evaluate the bidder's ability to perform the services required in this RFP as stated in its proposal.

- **Financial Stability**

The Department will evaluate the financial stability of the bidder to determine if the bidder appears to possess the financial stability necessary to perform under this contract for the entire contract period.

9.3 Evaluation Weighting

Each of the three stages of the evaluation process will be assigned the following weight.

9.3.1 Stage One

The three areas being evaluated in this stage are pass/fail.

- Proposal Screening - **Pass/Fail**
- Qualifying Requirements - **Pass/Fail**
- Administrative Requirements – **Pass/Fail**

9.3.2 Stage Two

The areas being evaluated in this stage are weighted as follows:

- Operational Requirements – **25%**
- System Requirements - **30%**
- Experience and References – **15%**
- Financial Response - **30%**

9.3.3 Stage Three

The three areas being evaluated in this stage are pass/fail.

- Vendor Responsibility - **Pass/Fail**
- Site Visits - **Pass/Fail**
- Financial Stability - **Pass/Fail**

SECTION 10
RFP GLOSSARY/ SYSTEMS INFORMATION
EXHIBITS 1 THROUGH 6

Exhibit 1
RFP Glossary (Page 1 of 2)

The following terms are used throughout this RFP:

Actual Liabilities - Actual liabilities involve situations where the balance due is fixed and final based upon a filed return or a statement of audit.

Assessment - A liability owed by a tax debtor(s) for a specific period(s) for a particular tax type.

Bidder - An entity submitting a bid in response to this RFP.

Case - All assessments eligible for collection from one tax debtor are identified by a unique ten (10) character identification number supplied by the Department. An example is provided in Exhibit 2.

Collection Effort - All effort expended in an attempt to resolve a tax debt. Department efforts are further defined in Publication 125 which can be found at:
http://www.tax.state.ny.us/pdf/publications/general/Pub125_1002.pdf

Collection services - Solicitation of payments and/or tax returns from tax debtors, skip tracing tax debtors, and providing updated information concerning tax debtors to the Department as required in this RFP.

Contractor – A bidder to whom a contract is awarded to as a result of this RFP.

Estimated Liabilities - Arise when a required return has not been filed.

Identification Number - The tax debtor is identified by a unique ten (10) character number that the Department uses to identify a taxable entity. An example is provided in Exhibit 2.

IPA - Qualified monthly installment payment agreement that addresses the entire tax liability.

Joint Taxpayer - One of two taxpayers who is responsible for the same personal income tax assessment. The other being the Primary Taxpayer. Each is equally and fully responsible for tax, penalty and interest due.

Liability - Total amount due inclusive of penalties and interest.

Exhibit 1
RFP Glossary (Page 2 of 2)

Offset - Overpayment of a State or Federal tax or other imposition mandated by State or Federal Tax Law or any payment due a tax debtor from the State of New York which has been applied to an open assessment.

Primary Taxpayer - One of two taxpayers who is responsible for the same personal income tax assessment. The other being the Joint Taxpayer. Each is equally and fully responsible for tax, penalty and interest due.

Recall – A process by which the Department requires that the contractor immediately cease collection actions and send the case back to the Department. A maximum of one recall file can be sent per day.

Responsible Person Assessment (Associated Tax Debtor) (RPA) - Individual personally assessed for monies a business owes the Department. There may be multiple individuals similarly assessed. Each individual assessed is assigned a unique assessment number.

Return – A weekly scheduled process that the contractor will use to send cases back to the Department after contractor collection efforts have been exhausted, the Department has advised the Contractor the case is complete, or the assignment period is completed.

Tax debtor - An entity with outstanding tax liabilities owed the Department.

Tax warrant - Obtained as the result of an administrative process by the Department. It has the same force and effect as a money judgment under Article 52 of NYS Civil Practice Law and Rules.

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Exhibit 2

Assignment/Update File (Page 1 of 5)

This file layout is representative of the data the contractor will be required to process; the file layout will be finalized during the development phase.

Field Name	Field Description	Field Size	Comments
Record Type 0 HEADER RECORD			
Record Type 0	Record Containing File Header Information	X(2)	Value 00
File description	Identifies Contractor	X(60)	Value is: NYS- DTF TO (CONTRACTOR)
Filler		X	Value space
File run date	Identifies date file was created.	X(8)	CCYYMMDD
Filler		X	Value space
Type of file	Identifies file as a production file or a test file.	X(10)	Values are: "PRODUCTION" or "TEST FILE"
Record Type 1 TAX DEBTOR RECORD			
Record Type 1	Record containing taxpayer information	X(2)	Value 01.
Taxpayer Identification Number	The set of alphanumeric characters by which the Department identifies a particular taxpayer or taxable entity	X(12)	Examples: "P123456789 ", "B123456789 ", "B123456789SS"
TP ID Check Digit	Calculated check digit	9	
Tax Debtor Legal Name	The legal name of the taxpayer or taxable entity (personal or business).	X(40)	
Tax Debtor DBA Name	The name the taxpayer is doing business under DBA = doing business as	X(60)	
Physical Address Line 1	Identifies the taxpayer's or taxable entity's physical location	X(30)	
Physical Address Line 2	Identifies the taxpayer's or taxable entity's street address	X(30)	
City	Identifies the city location of the taxpayer or taxable entity	X(18)	
State	Identifies the state location of the taxpayer or taxable entity	X(02)	Tables values provided when contract awarded
Zip Code	The set of alphanumeric characters which denotes the zip code location of the taxpayer or taxable entity.	X(10)	
Nixie Indicator	An indicator to identify if taxpayer mail has been returned to the Department.	X	Values are N or Y

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**Exhibit 2
Assignment/Update File (Page 2 of 5)**

Field Name	Field Description	Field Size	Comments
Phone Number	Identifies the taxpayer's or taxable entity's home/business telephone number	X(10)	
Mailing Address Line 1	Identifies the taxpayer's or taxable entity's mailing address, P.O. Box, in care of, bldg. #, etc. When this information is not present, line 1 will identify the taxpayer's address/business.	X(30)	
Mailing Address Line 2	Identifies the taxpayer's or taxable entity's street mailing address when address line 1 information is present. If only street address information exists, line 2 will be blank.	X(30)	
City	Identifies the city location of the taxpayer or taxable entity	X(18)	
State	Identifies the state location of the taxpayer or taxable entity	X(02)	Tables values provided when contract awarded
Zip Code	The set of alphanumeric characters which denotes the zip code location of the taxpayer or taxable entity.	X(10)	
Nixie Indicator	An indicator to identify if taxpayer mail has been returned to the Department.	X	Values are N or Y
Phone Number	Identifies the taxpayer's or taxable entity's home/business telephone number	X(10)	
Power of Attorney	An indicator to identify that the taxpayer may have a POA. Contact the Department.	X	Values are N or Y
Collection Case ID	A unique identifier used by the Department to associate all assessments eligible for collection for a taxpayer or taxable entity. To be included in Contractor to Department case contact files and Contractor to Department returned/recalled case files. First position is 'E' followed by nine numerics.	X(10)	
Collection Case Check Digit	Calculated check digit	9	
Old Taxpayer Id Number	Provided one time only on the assignment/update file when a taxpayer id number has been changed	X(12)	
Category	An indicator to identify collection case category	9	Values are 1 = Low value (<\$500) 2 = System defined as unresolved 3 = Skip tracing cases 4 = All others
New or Update Indicator	An indicator to identify a new case assignment or an update to a previous assignment	X	Values are N = New case assignment: U = Update

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Exhibit 2
Assignment/Update File (Page 3 of 5)

Field Name	Field Description	Field Size	Comments
Recall Indicator	An indicator to identify that DTF is recalling a case	X	Values are R or space
Secondary Placement Indicator	An indicator to identify a case that had been previously assigned to another vendor	X	Values are Y or space
Record Type 2			
ASSESSMENT RECORD	1 (one) or more per Tax Debtor Record		
Record Type 2	Record containing assessment information	X(2)	Value 02.
Taxpayer Identification Number	The set of alphanumeric characters by which the Department identifies a particular taxpayer or taxable entity	X(12)	
TP ID Check Digit	Calculated check digit	9	
Assessment Number	A unique identifier assigned to a liability. First position is 'L' followed by nine numerics. If the assessment is jointly held with another taxpayer, the Joint/RPA indicator will be set to "J".	X(10)	
Assessment Check Digit	Calculated check digit	9	
Joint/RPA Indicator	An indicator to identify if the assessment is jointly held with another taxpayer or is a responsible person assessment	X	Values are
Assessment Period Begin Date	The beginning date of the assessed tax liability period	9(8)	CCYYMMDD
Assessment Period End Date	The ending date of the assessed tax liability period	9(8)	CCYYMMDD
Tax Type	The tax type of the assessed liability	X(02)	Table values provided when contract awarded
Assessment Type	The type of liability that the assessment was based on.	X(02)	Table values provided when contract awarded
Assessment Reason	The reason why the liability was assessed	X(03)	Table values provided when contract awarded
Assessment Date	The Notice and Demand Date	9(8)	CCYYMMDD
Original Tax	The amount of tax due on an assessment at the time of its creation	9(9)V99	
Current Tax	The current amount of tax due	9(9)V99	
Penalty	The amount of penalty due on the assessment	9(9)V99	

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**Exhibit 2
Assignment/Update File (Page 4 of 5)**

Field Name	Field Description	Field Size	Comments
Interest	The amount of interest due on the assessment	9(9)V99	
Payments/Credits	The total amount of payments, refunds, adjustments applied to the assessment	9(9)V99	
Balance Due	The amount of tax, penalty and interest due on the assessment	9(9)V99	
Projected Date	The date the Balance Due has been projected to	9(8)	CCYYMMDD
Warrant Docket Date	The date the warrant was docketed	9(8)	CCYYMMDD
Warrant County	The county the warrant was filed	X(12)	
Status	Identifies the status of an assessment	X	Values are Space = open N = new assessment H = hold collection R = recalled C = closed S = restart collection
Record Type 3	Intentionally omitted		
Record Type 4			
Employer Record	0 (zero) or more per Tax Debtor Record		
Record Type 4	Record containing employer information	X(2)	Value 04.
Taxpayer Identification Number	The set of alphanumeric characters by which the Department identifies a particular taxpayer or taxable entity	X(12)	
TP ID Check Digit	Calculated check digit	9	
Employer Name	The name of the taxpayer or taxable entity's employer	X(40)	
Address Line 1	Identifies the employer's mailing address, P.O. Box, in care of, bldg.#, etc. When this information is not present, line 1 will identify the employer's address/business	X(30)	
Address Line 2	Identifies the employer's street address when address line 1 information is present. If only street address information exists, line 2 will be blank.	X(30)	
City	Identifies the city location of the taxpayer or taxable entity's employer	X(18)	
State	Identifies the state location of the taxpayer or taxable entity's employer	X(2)	Tables values provided when contract awarded
Zip Code	The set of alphanumeric characters which denotes the zip code location of the taxpayer or taxable entity's employer	X(10)	
Phone Number	Identifies the telephone number of the taxpayer's employer	X(10)	

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Exhibit 2
Assignment/Update File (Page 5 of 5)

Field Name	Field Description	Field Size	Comments
Extension	Identifies the employer's extension number. May be blank.	X(4)	
Source Year	The year the taxpayer or taxable entity's employer was identified	9(4)	CCYY
Record Type 9			
TRAILER RECORD			
Record Type 9	Record containing file trailer information	X(2)	Value 99
Filler		X	Value space
Total Records	Total record count excluding header and trailer	9(9)	
Filler		X	Value space
Total Record Type 1	Total Count of type 1 records	9(9)	
Filler		X	Value space
Total Record Type 2	Total Count of type 2 records	9(9)	
Filler		X	Value space
Total Record Type 3	Total Count of type 3 records	9(9)	Value zeroes
Filler		X	Value space
Total Record Type 4	Total Count of type 4 records	9(9)	

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Exhibit 3
Case Contact (Page 1 of 2)

This file layout is representative of the data the contractor will be required to process; the file layout will be finalized during the development phase.

Field Name	Field Description	Field Size	Comments
HEADER RECORD			
Record Type	Record containing file header information	X(3)	Value '1HD'
File run date	Identifies date file was created	9(8)	CCYYMMDD
File run time	Identifies time file was created	9(6)	HHMMSS
Contractor identifier	Identifies Contractor	X(25)	Value is CONTRACTOR NAME
Filler		X(658)	Value spaces
CASE CONTACT RECORD			
Record Type	Record containing case contact information	X (3)	Value '2CC'
Collection Case ID	A unique identifier used by the Department to associate all assessments eligible for collection for a taxpayer or taxable entity. To be included in Contractor to Department case contact files and Contractor to Department returned/recalled case files. First position is 'E' followed by nine numerics	X(10)	
Taxpayer Identification Number	The set of alphanumeric characters by which the Department identifies a particular taxpayer or taxable entity	X(12)	
Contact Type	Identifies contact type	X(1)	Value 'G' for informational
Contact Date	Date Contractor made contact with taxpayer or performed activity	X(10)	CCYY/MM/DD
Contact Initiator		X(1)	Value 'D' for DTF
Contact Name	Name of person or entity contacted	X(40)	
Contact Title	Title of person or entity contacted	X(20)	i.e. "Taxpayer", "Accountant", "Bank", etc.
Address Line 1		X(30)	Optional
Address Line 2		X(30)	Optional
City		X(18)	Optional
State		X(2)	Optional
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Exhibit 3
Case Contact (Page 2 of 2)

Field Name	Field Description	Field Size	Comments
Zip code		X(9)	Optional
Country Code		X(2)	Optional
Phone number		9(10)	Optional
Phone extension		9(4)	Optional
Contact result code	Identifies a contact result code	X(4)	Value 'E422'
Variable type 1	Indicates a date follows	X	Value 'D'
Variable 1	Contact Date	X(15)	Value CCYY/MM/DD
Variable type 2	Indicates a variable follows	X	Value 'V'
Variable 2	Terms	X(15)	NNN Months or NNN Weeks
Variable type 3	Indicates a money field follows	X	Value 'M'
Variable 3	Payment terms	X(15)	9(12)V99, right justified,
Variable type 1	Indicates a blank field follows	X	Value 'B'
Variable 4	Blank	X(15)	Value spaces
Comments		X(400)	
Filler		X(30)	Value spaces
TRAILER RECORD			
Record Type	Record containing file trailer information	X(3)	Value '3TL'
Total Records	Total record count excluding header and trailer	9(9)	
Filler		X(688)	Value spaces

New York State Department of Taxation and Finance
Request for Proposal (RFP) 05-107
Collection Services

Exhibit 4
Return/Recall File (Page 1 of 2)

This file layout is representative of the data the contractor will be required to process; the file layout will be finalized during the development phase.

Field Name	Field Description	Field Size	Comments
Record Type 0			
HEADER RECORD			
Record Type 0	Record containing file header information	X(2)	Value 00
File description	Identifies type of run	X(60)	Value is RETURNED CASES - NYS-DTF FROM (CONTRACTOR NAME) OR RECALLED CASES - NYS-DTF FROM (CONTRACTOR NAME)
File run date	Identifies date file was created	9(8)	CCYYMMDD
Record Type 1			
TAX DEBTOR RECORD			
Record Type 1	Record containing taxpayer information	X (2)	Value 01.
Taxpayer Identification Number	The set of alpha numeric characters by which the Tax Department identifies a particular taxpayer or taxable entity	X(12)	
Tax Debtor Legal Name	The legal name of the taxpayer or taxable entity (personal or business)	X(40)	
Tax Debtor DBA Name	The name the taxpayer is doing business under DBA = doing business as	X(60)	
Collection Case ID	An identifier for DTF use only. To be included in Agency to DTF case contact update files and Agency to DTF return/recall case files	X(10)	
Return Reason Code	Reason case is being returned	X(3)	Values are: "CLD" = Closed "REC" = Recalled by Department "RET" = Returned by Contractor
Record Type 9			
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Exhibit 4
Return/Recall File (Page 2 of 2)

Field Name	Field Description	Field Size	Comments
TRAILER RECORD			
Record Type 9	Record containing file trailer information	X(2)	Value 99
Filler		X	Value space
Total Records	Total record count excluding header and trailer	9(9)	
Filler		X	Value space
Total Record Type 1	Total Count of type 1 records	9(9)	

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Collection Services

Exhibit 5

Address Update File (Page 1 of 2)

This file layout is representative of the data the contractor will be required to process; the file layout will be finalized during the development phase.

Field Name	Field Description	Field Size	Comments
<i>Record Type 0</i> HEADER RECORD			
RECORD TYPE	Record containing file header information.	X(2)	Value 00
CREATE-DATE	Identifies date file was created.	X(8)	CCYYMMDD
FILE-TYPE	RUN Identification	X(23)	Contractor Name and/or identifier (One per Contractor)
FILLER		X(284)	Value spaces
<i>Record Type 1</i> DETAIL RECORD			
RECORD-TYPE	01' Indicates detail record	X(2)	Value 01
BUS-INDV-IND	Business or Individual Taxpayer	X(1)	Business='B' , Individual = 'P'
EXT-TP-ID	External Taxpayer Id	X(11)	SSN or EIN from DTF
EXT-TP-ID-SUFFIX	External Taxpayer Id Suffix	X(2)	As supplied by DTF
LEGAL-NAME	Legal Name	X(40)	Legal Name
DBA-NAME	DBA Name	X(60)	Doing Business As
PHYSICAL ADDRESS SECTION			
PHYS-ADDRESS-1	Address 1	X(30)	
PHYS-ADDRESS-2	Address 2	X(30)	
PHYS-CITY	City Name	X(18)	
PHYS-STATE	State Code	X(2)	Standard State abbreviation
COUNTRY-CODE	Country Code	X(2)	Standard Country abbreviation
ZIP-CODE			

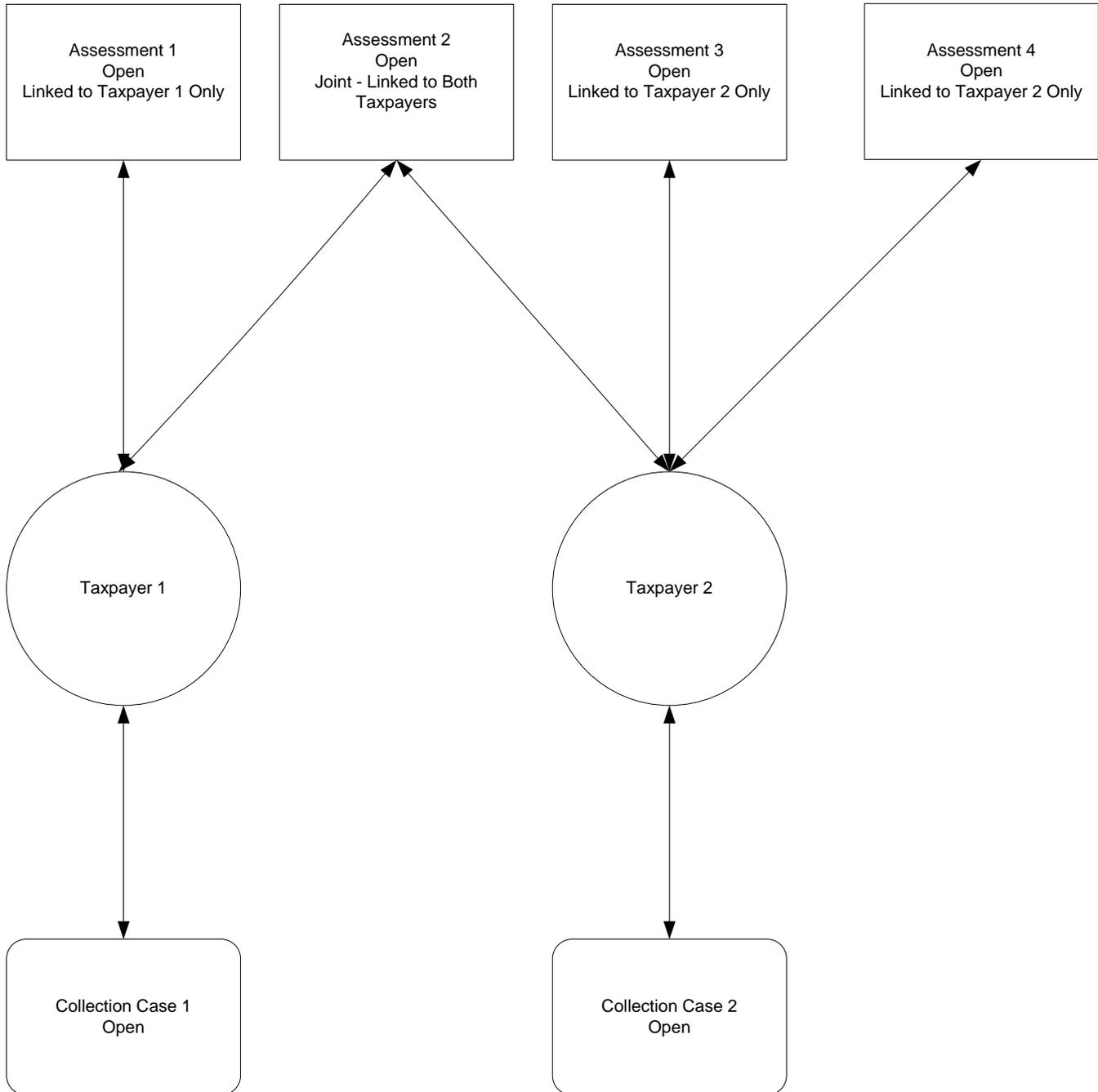
New York State Department of Taxation and Finance
Request for Proposal (RFP) 05-107
Collection Services

Exhibit 5
Address Update File (Page 2 of 2)

Field Name	Field Description	Field Size	Comments
ZIP-CODE-5	5 DIGIT ZIP CODE	X(5)	
ZIP-CODE-4	4 DIGIT ZIP CODE Extension	X(4)	
FILLER		X(1)	Value space
PHONE-NMBR.			
AREACODE-NMBR	Area Code	X(3)	3-digit code
EXCHNG-PHONE-NMBR	Exchange	X(3)	3-digit code
DGT4-PHONE-NMBR	Phone Number	X(4)	4-digit code
MAILING ADDRESS SECTION			
MAIL-ADDRESS-1	Mail Address Line 1	X(30)	
MAIL-ADDRESS-2	Mail Address Line 2	X(30)	
MAIL-CITY	Mail City	X(18)	
MAIL-STATE	Mail Address State	X(2)	Standard State abbreviation
MAIL-COUNTRY-CODE	Mail Country Code	X(2)	Standard Country abbreviation
MAIL-ZIP-CODE.			
MAIL-ZIP-5	5 Digit ZIP CODE	X(5)	
MAIL-ZIP-4	4 Digit ZIP CODE Extension	X(4)	
FILLER1		X(1)	Value space
ADDRESS-CHANGE-DATE	Date of address change	X(8)	CCYYMMDD
<i>Record Type 99</i> TRAILER RECORD			
RECORD-TYPE	Indicated trailer record	X(2)	VALUE 99
RECORD-COUNT	Total of records including hdr & trailer	9(8)	
FILLER	SPACE	X(307)	Value spaces

EXHIBIT 6
JOINT TAXPAYER BUBBLE DRAWING

Joint Taxpayers with Multiple Assessments



SECTION 11

OPERATIONAL, SYSTEM, AND BIDDER EXPERIENCE AND
REFERENCE FORMS

ATTACHMENTS A THROUGH Q

Attachment A
Insurance Response Form (Section 3.1.1)

This form is for the insurance requirement as requested in **Section 3.1.1**.

Insurance Information

The bidder must provide the following information regarding their insurance coverage:

Insurance Company Name: _____

Contact Name: _____

Address: _____

Phone Number: _____

The bidder must also attach a certificate of insurance demonstrating that the bidder's company and all staff are insured against financial losses resulting from bidder's employees' actions or other documentation to support this requirement. This certificate should include:

- A description of each type of coverage; and
- The amount of coverage for each type listed.

Attachment B
Professional Affiliation Response Form (Section 3.1.2)

This form is for the professional affiliation requirement as requested in **Section 3.1.2**.

Professional Affiliation Information

The bidder must be a current member in good standing in ACA International.

The bidder must provide a copy of their current ACA 2005-2006 certificate of membership.

Attachment C
Automated Outbound Phone Contacts Response Form (Section 3.1.3)

Complete this form for the automated means of initiating outbound phone contacts in use requirement as requested in **Section 3.1.3**.

Automated Outbound Phone Contacts Information

Manufacturer's Name: _____

Model: _____

Specific version: _____

Installation date: _____

Current Service Provider or Manufacturer's Name: _____

Address: _____

Contact Name: _____

Phone Number: _____ **Fax Number:** _____

e-mail address: _____

Attachment D
Operational Experience Response Form (Section 3.1.5)

Complete this form for **up to two** contracts for debt collection services as requested in **Section 3.1.5**. The contract(s) must have been during the period of July 1, 1999 through the bid submission date. Bidders must submit **the number of forms and information required** by **either** Alternative 1 **or** Alternative 2.

Alternative 1 – complete a form for each contract

- One debt collection contract which (a) has been in active debt collection for a minimum period of one year and (b) has had an average annual placement of 45,000 accounts or more over the life of the contract;
- and**
- Another debt collection contract (a) with a federal, state or local government entity (b) which has been in active debt collection for a minimum of one year.

- OR -

Alternative 2 – complete one form for contract

- The bidder must have had a contract with a federal, state or local government entity for debt collection which (a) has been in active collection for a minimum period of one year and (b) has had an average annual placement of 45,000 accounts or more over the life of the contract

Client Information

Client Business Name: _____

Client Address: _____

Client Contact Name: _____

Client Phone Number: _____ Client Fax Number: _____

Client e-mail address: _____

Contract Start Date (including month and year): _____

Active Debt Collection Start Date (including month and year): _____

Anticipated or Actual Contract End Date (including month and year): _____

Type of Debt Collection Contract: Federal State Local Other

Was there an average annual placement of 45,000 accounts over the life of the contract?

YES NO

Attachment E
Operational Contractor Staff Response Form (Section 5.1.1)
Part I – Staff Information

Complete this form for the contractor staff requirement as requested in **Section 5.1.1**. The bidder must provide the following information related to the staff it will assign to, and maintain working on, the Department's contract.

The bidder's response should be inclusive of the minimum staffing requirement and must not exceed the maximum requirement.

For the purposes of this RFP, Full Time Equivalent (FTE) is defined as forty (40) staff hours per week.

Contractor Staff Information

Number of fully trained, front line collectors to be assigned: _____

100% Dedicated - Full Time Equivalents

Minimum of 10 – Not to Exceed 20

Number of fully trained, Spanish speaking front line collectors to be assigned: _____

100% Dedicated - Full Time Equivalents

Minimum of 1

Number of front line supervisors to be assigned: _____

100% Dedicated - Full Time Equivalents

Minimum of 1 for every 10 front line collectors

Minimum of 2 for every 11 or more front line collectors

Number of second line supervisors to be assigned: _____

100% Dedicated - Full Time Equivalents

Minimum of 1

Number of third line supervisors to be assigned: _____

Minimum of 1 – a minimum of one third line supervisor is required; however, the third line supervisor is not required to be assigned 100% to the Department's contract.

Attachment F
Operational Contractor Staff Response Form (Section 5.1.1)
Part II - Personnel Expertise Summary (Page 1 of 2)

Complete this form for the contractor staff requirements as requested in **Section 5.1.1**.

PERSONNEL EXPERTISE SUMMARY

IF STAFF IS NOT YET HIRED, PROVIDE THE MINIMUM QUALIFICATIONS SOUGHT FOR EACH POSITION, INCLUDING EXPERIENCE, ON THE LINE BELOW EACH POSITION TABLE .

FRONT LINE SUPERVISOR(S)					
NAME(S)	SPANISH SPEAKING YES/NO	DEBT COLLECTION	COLLECTION SUPERVISION	GOVERNMENT DEBT COLLECTION SUPERVISION	STATE TAX DEBT COLLECTION SUPERVISION

Minimum Qualifications - Front Line Supervisor Position: _____

SECOND LINE SUPERVISOR(S)					
NAME(S)	SPANISH SPEAKING YES/NO	DEBT COLLECTION	COLLECTION SUPERVISION	GOVERNMENT DEBT COLLECTION SUPERVISION	STATE TAX DEBT COLLECTION SUPERVISION

Minimum Qualifications – Second Line Supervisor Position: _____

Attach additional sheets if necessary

Attachment F
Operational Contractor Staff Response Form (Section 5.1.1)
Part II - Personnel Expertise Summary (Page 2 of 2)

Complete this form for the contractor staff requirements as requested in **Section 5.1.1**.

PERSONNEL EXPERTISE SUMMARY

IF STAFF IS NOT YET HIRED, PROVIDE THE MINIMUM QUALIFICATIONS SOUGHT FOR EACH POSITION, INCLUDING EXPERIENCE, ON THE LINE BELOW EACH POSITION TABLE .

THIRD LINE SUPERVISOR (S)				
NAME(S)	SPANISH SPEAKING YES/NO	COLLECTION SUPERVISION	GOVERNMENT DEBT COLLECTION SUPERVISION	STATE TAX DEBT COLLECTION SUPERVISION

Minimum Qualifications – Third Line Supervisor Position: _____

OTHER STAFF RESOURCES:

TITLE	JOB DESCRIPTION

Attach additional sheets if necessary

Attachment G
Collection Effort (Section 5.1.2) - Page 2 of 3

Additional Collection Effort Information

See Section 2.4 for category definitions

1. Please describe any methods and elements of scoring/prioritizing cases other than dollar value:

Applicable categories: *(check all that apply)*

- CATEGORY 1 CATEGORY 2 CATEGORY 3 CATEGORY 4

2. Employee case ownership: YES NO

Applicable categories: *(check all that apply)*

- CATEGORY 1 CATEGORY 2 CATEGORY 3 CATEGORY 4

3. Indicate if any automated phone attempts: YES NO

Applicable categories: *(check all that apply)*

- CATEGORY 1 CATEGORY 2 CATEGORY 3 CATEGORY 4

Attachment G
Collection Effort (Section 5.1.2) - Page 3 of 3

Additional Collection Effort Information (continued)

See Section 2.4 for category definitions

4. Please describe case follow-up (after initial contact) procedures used, including manual and automated:

5. Please describe any skip tracing efforts above the minimum described in Section 5.1.2 in terms of automated and manual efforts:

Attach additional sheets if necessary

Attachment H
Operational Contractor Staff Response Form (Section 5.1.3)
Training Program Response Form

Complete this form on your existing training program, for front line collectors, as requested in **Section 5.1.3**.

Training Program Information

Description of the training program: _____

1. Does your training program include training on the Federal Debt Collection Practices Act? YES NO

2. Do you provide training on your computer system? YES NO

3. Is your training program client contract specific? YES NO

4. Is your training conducted in a classroom setting? YES NO

If Question 4 is yes, what is the duration (number of days) of the classroom training? _____

5. What is the estimated amount of time (duration) invested to train front-line personnel for this debt collections contract? _____

Attachment I
Customer Service Response Form (Section 5.1.4)

Complete this form for the customer service requirement as requested in **Section 5.1.4**.

1. Days of the week that will be utilized for this contract:

2. Daily hours of operation that will be utilized for this contract:

3. Provide your policy and procedure for handling inbound phone calls. To score additional points, this must include response time, in terms of hours, and the nature and method of reply to messages:

4. Provide your policy and procedure for handling inbound correspondence. To score additional points, this must include response time, in terms of days, and the nature and method of reply to correspondence:

Attachment J
Contractor's Service Observation Program Response Form (Section 5.1.5)

Complete this form for the contractor's service observation program requirement as requested in **Section 5.1.5**. The Department will evaluate the degree to which a bidder proposes to conduct its own service observation of its staff's dealings with tax debtors.

Is there a plan to implement a service observation program for the Department's contract?

YES

NO

If the response to the above question is yes, please answer the following questions:

a. Indicate the percent of staff, dedicated to the Department's contract,

which will be service observed each month:

_____ %

b. Indicate how calls will be observed. Please check all that apply.

Live

Recorded

Screen Capture

If the calls are recorded, indicate what percentage of **all** calls,

both inbound and outbound, will be recorded.

_____ %

Attachment K
Contract Administration/Facilities Response Form (Section 5.1.6)

Complete this form for the Contract Administration/Facilities requirement as requested in **Section 5.1.6**. Bidders will be evaluated on the number of facilities utilized and the number of contract administrators.

Contract Administration/Facilities Information

Do you plan to request multiple contract administrators? YES NO

Do you plan to request multiple facilities? YES NO

Attachment L
Communications Environments Response Form - Section 5.2.1

Complete this form for the electronic data file exchange requirement as requested in **Section 5.2.1**. All files being exchanged between the Contractor and the Department, that are identified in Section 5.2.2, must use an electronic data exchange protocol acceptable to the Department, as described in Section 5.2.1. Data file exchange processes that are specifically unacceptable are; magnetic tapes, email, paper, CD, floppy Disc, removable drives, and analog or digital dial up, Value Added Network's (VAN) or DSL connections.

1. The bidder agrees it will make technological changes to meet upgrades to industry supported standards:

Yes No

2. The bidder must provide, at a minimum:

- A detailed narrative describing the bidder's proposed method of electronic data file exchange.
- A narrative that demonstrates the bidder has acceptable internet browser software.
- The bidder's data communication security measures.
- The bidder's proposed method to provide access to its system.

Attach additional sheets if necessary.

Attachment M
System Functionality Response Form (Section 5.2.2)

This form is for the system functionality requirement as requested in **Section 5.2.2**.

The bidder's response must provide Department personnel with a clear understanding of how the proposed system will support the collection process and requirements set forth in this RFP.

The bidder must provide: (1) a complete narrative description of its proposed system and (2) system flowcharts. At a minimum, this narrative description must include:

- The process for receiving files sent from the Department (see Exhibit 2), including edits and validations performed, storage of the data on the contractor's system, exception processing (identification, reporting, resolution), storage of new tax debtor records, and update of previously stored tax debtor records.
- The process for creating files sent to the Department (See Exhibits 3, 4, and 5).
- The process that will store the records needed to support the case history requirement and required management reporting.
- A Data Model Diagram that shows how the tax debtor records will be stored in the bidder's system, including all keys and relationships.
- A development timeline that shows projected dates for each phase and milestones for the project.

The bidder must also indicate which processes of the proposed system are: 1) existing; 2) modifications of existing processes and 3) new processes.

Attach additional sheets as needed.

Attachment N
Systems Contractor Staff Response Form (Section 5.2.3)
Staff Assignment – General Page 1 of 5

Complete this form for the contractor staff requirement as requested in **Section 5.2.3**.

PART I – BIDDER AFFIRMATION

The bidder agrees it will assign the requisite staff necessary to meet all deadlines to modify and complete an IT system to implement the contract to the Department's satisfaction and to successfully maintain the IT system during the life of the contract:

YES

NO

PART II – BIDDER'S STAFFING PLAN

The bidder must provide a staffing plan for the development phase. Minimally, this plan should address the staff titles to be assigned, the percent of time each position will be allocated for the type of work (modifications to system) required, and the proposed duration of the assignment throughout the development phase.

Attachment N
Systems Contractor Staff Response Form (Section 5.2.3)
Part III - Staff Assignment - Project Manager **Page 2 of 5**

Complete this form for the contractor staff requirement as requested in Section 5.2.3. The bidder must provide the following information related to the staff it will assign to, and maintain working on, the Department's contract for the entire contract term.

Complete Part A if proposing existing personnel -if staff is not yet hired, go to Part B

PART A – Education/Experience of Existing Staff to be Assigned

1. Name _____
 - a. Assigned to Development Phase? YES NO
 - b. Assigned to Active Collection Phase? YES NO

2. Experience/Education of staff person to be assigned
 - a. Project Management experience? YES NO
If yes, provide number of years: _____
 - b. College degree? YES NO
If yes, provide Degree awarded: _____

PART B – Minimum Hiring Requirements

If staff has not been hired for this position, please provide minimum qualifications sought for these positions, including minimum education and experience requirements.

Attach additional sheets if necessary.

Attachment N
Systems Contractor Staff Response Form (Section 5.2.3)
Part III (cont.) - Staff Assignment - Analyst Page 3 of 5

Complete this form for the contractor staff requirement as requested in Section 5.2.3. The bidder must provide the following information related to the staff it will assign to, and maintain working on, the Department's contract for the entire contract term.

Complete Part A if proposing existing personnel -if staff is not yet hired, go to Part B

PART A – Education/Experience of Existing Staff to be Assigned

1. Name _____

- a. Assigned to Development Phase? YES NO
- b. Assigned to Active Collection Phase? YES NO

2. Experience/Education of staff person to be assigned

- a. Analysis experience ? YES NO

If yes, provide number of years: _____

- b. College degree? YES NO

If yes, provide Degree awarded: _____

PART B – Minimum Hiring Requirements

If staff has not been hired for this position, please provide minimum qualifications sought for these positions, including minimum education and experience requirements.

Attach additional sheets if necessary.

Attachment N
Systems Contractor Staff Response Form (Section 5.2.3)
Part III (cont.) - Staff Assignment - Programmer(s) Page 4 of 5

Complete this form for the contractor staff requirement as requested in Section 5.2.3.
The bidder must provide the following information related to the staff it will assign to, and maintain working on, the Department's contract for the entire contract term.

Complete Part A if proposing existing personnel -if staff is not yet hired, go to Part B

PART A –Experience of Existing Staff to be Assigned

1. Name _____
 - a. Assigned to Development Phase? YES NO
 - b. Assigned to Active Collection Phase? YES NO

2. Experience/Education of staff person to be assigned
 - a. Provide the number of years of programming experience _____
 - b. Does the individual have programming experience on a platform compatible to the bidder's? YES NO
If yes, provide the number of years _____
 - c. College degree? YES NO
If yes, provide Degree awarded: _____

PART B – Minimum Hiring Requirements

If staff has not been hired for this position, please provide minimum qualifications sought for these positions, including minimum education and experience requirements.

Attach additional sheets if necessary.

Attachment N
Systems Contractor Staff Response Form (Section 5.2.3)
Part III (cont.) -Staff Assignment – Test Staff **Page 5 of 5**

Complete this form for the contractor staff requirement as requested in Section 5.2.3.
The bidder must provide the following information related to the staff it will assign to, and maintain working on, the Department's contract for the entire contract term.

Complete Part A if proposing existing personnel -if staff is not yet hired, go to Part B

PART A –Experience of Existing Staff to be Assigned

1. Name _____
 - a. Assigned to Development Phase? YES NO
 - b. Assigned to Active Collection Phase? YES NO

2. Experience of staff person to be assigned
 - a. Does the individual have experience using the bidder's system? YES NO

If yes, provide the number of years _____
 - b. Does the individual have experience testing application systems? YES NO

If yes, provide the number of years _____

PART B – Minimum Hiring Requirements

If staff has not been hired for this position, please provide minimum qualifications sought for these positions, including minimum education and experience requirements.

Attach additional sheets if necessary.

Attachment O
Security and Confidentiality Form (Section 5.2.4)

Use this form as a guideline to address the security and confidentiality requirements as requested in **Section 5.2.4**.

:

1. The bidder must describe how it will assure the security and confidentiality of the Department's data. The bidder's response will be evaluated to determine if the above mandatory requirements, outlined in Section 5.2.4 of the RFP, have been met.
2. The Department will also evaluate and award points to the bidder for systems and programs the bidder has in place to ensure the security and confidentiality which exceed the mandatory requirements. A description of these systems or programs should include, but not be limited to, the following:
 - a) Programs, policies and procedures used to provide discretionary access control to systems and data. This information must address both physical security and electronic data security.
 - b) Defined roles and responsibilities of all of those using the contractor's information systems.
 - c) Separate computing environments for test, quality assurance, and production systems.
 - d) Policies, procedures and controls for backup and recovery of data.
 - e) Off-site storage and disaster recovery operations.
 - f) A process and procedure which conforms to federal and state tax law requirements for controlled destruction of system output or other documents containing tax debtor identifying data (name, address, identification numbers, etc.).
 - g) Protection against unauthorized access or disclosure 1) by employees, consultants, and others located at your facilities and 2) from external sources, such as dial-in or via Internet access.
 - h) Processes to monitor the bidder's compliance with its information security policies, such as internal audit controls and/or independent audit programs.
 - i) Network security controls or programs, such as virus protection, intrusion detection systems, and firewall rules that protect the bidder's information systems from unauthorized access.
 - j) Description of the bidder's system to record, maintain, and report on collection case activity (audit trails) as attested to in section 4.32.
3. Also, the bidder must submit a copy of any audits, internal or external, performed within the past three years that cover the requirements set forth in this section. Summary audit results or redacted audits are acceptable, as necessary, to address confidentiality concerns. Summaries should include information relating to the adequacy of the bidder's security measures including any deficiencies found.

Attachment P
Change Control Process Response Form (Section 5.2.5)

Complete this form for contractor change control process requirement as requested in **Section 5.2.5**.

Contractor Change Control Process Information

For additional scoring, the bidder must provide, at a minimum, the following:

- A flowchart that identifies the various steps of the change control process and indicates the staff responsible for each step.
- A description of the process used to review, evaluate and approve system changes.
- A description of the testing processes.

Attach additional sheets as needed.

Attachment Q (Page 1 of 2)
Bidder Experience and Reference Form

Complete one (1) form for each contract/reference provided in response to the requirements outlined in Section 5.3 of the Request for Proposal.

NOTE:

- Bidders should provide information for seven (7) contracts that meet the requirements outlined in Section 5.3.1. If the bidder is unable to provide seven (7) contracts, it should provide as many contracts as possible.
- The qualifying contract(s) identified in response to Section 3.1.5 must be included in response to this Section.

Section 5.3.1 Part I - Bidder Experience

1. **Client Name:** _____
Client Address : _____

2. **Contract Information:**

a) Contract Dates (Month/Year)

Begin Date _____ End Date _____

b) Date Contract began Active Collection (Month/Year): _____

3. **Type of Entity:** Federal State Local Other

4. **Average Annual Case Placement:** _____

5. **Debt Collection Experience**

a) For Tax Clients - Please indicate type of tax collected - check all that apply

Personal Income Tax Corporation Tax Sales Tax Withholding Tax

Other, please specify _____

- OR -

b) For Non-Tax Clients – Please describe type of debt collected:

Attachment Q (Page 2 of 2)
Bidder Experience and Reference Form

Section 5.3.2 – Part II - Operational References

Please provide client reference information - Operational reference contacts must be familiar with debt collection processing activities.

Operations Reference Name _____

Phone Number _____

Fax Number _____

Email Address _____

Section 5.3.3 – Part III - Systems References

Please provide client reference information - Systems references contacts must be familiar with the client's computer application system and the process for exchanging data.

Systems Reference Name _____

Phone Number _____

Fax Number _____

Email Address _____

SECTION 12

ADMINISTRATIVE AND FINANCIAL RATE RESPONSE FORMS

ATTACHMENTS 1 THROUGH 14

Attachment 1 - Bidder's Checklist

Volume 1

Qualifying Requirements

- Attachment A - Insurance
- Attachment B - Professional Affiliation
- Attachment C - Automated Outbound Phone Contacts
- Attachment D - Operational Experience

Operational Proposal Requirements

- Attachment E - Contractor Staff Part 1
- Attachment F - Contractor Staff Part 2
- Attachment G - Collection Effort
- Attachment H - Training Program
- Attachment I - Customer Service
- Attachment J - Contractor's Service Observation Program
- Attachment K - Contract Administration/Facilities

System Proposal Requirements

- Attachment L - Communications Environment
- Attachment M - System Functionality
- Attachment N - Systems Contractor Staff
- Attachment O - Security and Confidentiality
- Attachment P - Change Control Process

Bidder Experience and Reference Requirements

- Attachment Q - Bidder Experience
- Attachment Q - Operational References
- Attachment Q - System References

Administrative Requirements

- Cover Letter
- Attachment 3 - Attestation
- Attachment 4 - Vendor Responsibility Questionnaire
- Attachment 5 - Financial Stability
- Attachment 6 - MacBride Fair Employment Principles Form
- Attachment 7 - Designation of Prime Contact
- Attachment 8 - Non-Collusive Bidding Certification
- Attachment 9 - Executive Order 127
 - Contractor Disclosure of Contacts Form
 - Contractor Disclosure of Prior Non-Responsibility Determinations
 - Contractor Certification of Compliance with Executive Order 127
- Attachment 10 - (DTF-202) Agreement to Adhere to Secrecy Provisions
- Attachment 11 - Acknowledgment of Confidentiality of Internal Revenue Service Tax Return Information
- Attachment 12 - Sales and Compensating Use Tax Documentation
 - Contractor Certification Form ST-220
 - Certificate of Authority or Representations of Registration
- Attachment 13 - Subcontractor List
- Proposed Extraneous Terms
- Request for Exemption from Disclosure

Volume 2 - Financial Proposal

- Attachment 14 - Financial Rate Response

Attachment 2

NOTIFICATION OF INTENT TO BID

Please indicate your interest in submitting a proposal for this acquisition by completing and returning this form to the Department by the date indicated on the Schedule of Events for this Request for Proposal.

Firm Name: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Telephone Number: _____ Fax: _____

E-Mail Address: _____

Address: _____

Date: _____

Please check the appropriate line:

- We are interested in submitting a proposal.
- We are a certified minority or women owned business.
- We are not interested in submitting a proposal for this service.

Reason: _____

Attachment 3

Bidder's Attestation

The bidder's signature below indicates the bidder has read and agrees to the General Contract Requirements as outlined and defined in Section 4 of the NYS Department of Taxation and Finance Request for Proposal for Collection Services.

Firm Name: _____

Authorized Representative: _____

Representative's Signature: _____

Date: _____

Attachment 4 (Page 1 of 5)

Vendor Responsibility Questionnaire

A contracting agency is required to conduct a review of a prospective contractor to provide reasonable assurances that the vendor is responsible. This questionnaire is designed to provide information to assist a contracting agency in assessing a vendor's responsibility prior to entering into a contract with the vendor. Vendor responsibility is determined by a review of each bidder or proposer's authorization to do business in New York, business integrity, financial and organizational capacity, and performance history.

Prospective contractors must answer every question contained in this questionnaire. Each "Yes" response requires additional information. The vendor must attach a written response that adequately details each affirmative response. The completed questionnaire and attached responses will become part of the procurement record.

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

New York State Department of Taxation and Finance
Request for Proposal (RFP) 05-107
Collection Services

Attachment 4 (Page 2 of 5)
Vendor Responsibility Questionnaire

EIN:

1. VENDOR IS: <input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> SUB-CONTRACTOR			
2. VENDOR'S LEGAL BUSINESS NAME		3. IDENTIFICATION NUMBERS a) FEIN# b) DUNS #	
4. D/B/A— Doing Business As (if applicable) & COUNTY FILED:		5. WEBSITE ADDRESS (if applicable)	
6. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE		7. TELEPHONE NUMBER	8. FAX NUMBER
9. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE IN NEW YORK STATE, if different from above		10. TELEPHONE NUMBER	11. FAX NUMBER
12. PRIMARY PLACE OF BUSINESS IN NEW YORK STATE IS: <input type="checkbox"/> Owned <input type="checkbox"/> Rented If rented, please provide landlord's name, address, and telephone number below:		13. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE Name: Title: Telephone Number: Fax Number: e-mail:	
14. VENDOR'S BUSINESS ENTITY IS (please check appropriate box and provide additional information).			
a) <input type="checkbox"/> Business Corporation	Date of Incorporation	State of Incorporation*	
B <input type="checkbox"/> Sole Proprietor	Date Established		
c) <input type="checkbox"/> General Partnership	Date Established		
d) <input type="checkbox"/> Not-for-Profit Corporation	Date of Incorporation	State of Incorporation* Charities registration number	
e) <input type="checkbox"/> Limited Liability Company (LLC)	Date Established		
f) <input type="checkbox"/> Limited Liability Partnership	Date Established		
g) <input type="checkbox"/> Other — Specify:	Date Established	Jurisdiction Filed (if applicable)	
* If not incorporated in New York State, please provide a copy of authorization to do business in New York.			
15. PRIMARY BUSINESS ACTIVITY - (Please identify the primary business categories, products or services provided by your business)			
16. NAME OF WORKERS' COMPENSATION INSURANCE CARRIER:			
17. LIST ALL OF THE VENDOR'S PRINCIPAL OWNERS AND THE THREE OFFICERS WHO DIRECT THE DAILY OPERATIONS OF THE VENDOR (Attach additional pages if necessary):			
a) NAME (print)	TITLE	b) NAME (print)	TITLE
c) NAME (print)	TITLE	d) NAME (print)	TITLE

**New York State Department of Taxation and Finance
Request for Proposal (RFP) 05-107
Collection Services**

**Attachment 4 (Page 3 of 5)
Vendor Responsibility Questionnaire**

EIN:

A DETAILED EXPLANATION IS REQUIRED FOR EACH QUESTION ANSWERED WITH A “YES,” AND MUST BE PROVIDED AS AN ATTACHMENT TO THE COMPLETED QUESTIONNAIRE. YOU MUST PROVIDE ADEQUATE DETAILS OR DOCUMENTS TO AID THE CONTRACTING AGENCY IN MAKING A DETERMINATION OF VENDOR RESPONSIBILITY. PLEASE NUMBER EACH RESPONSE TO MATCH THE QUESTION NUMBER.		
<p>18. Is the vendor certified in New York State as a (check please):</p> <p style="margin-left: 20px;"> <input type="checkbox"/> Minority Business Enterprise (MBE) <input type="checkbox"/> Women’s Business Enterprise (WBE) <input type="checkbox"/> Disadvantaged Business Enterprise (DBE)? </p> <p><i>Please provide a copy of any of the above certifications that apply.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>19. Does the vendor use, or has it used in the past ten (10) years, any other Business Name, FEIN, or D/B/A other than those listed in items 2-4 above?</p> <p><i>List all other business name(s), Federal Employer Identification Number(s) or any D/B/A names and the dates that these names or numbers were/are in use. Explain the relationship to the vendor.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>20. Are there any individuals now serving in a managerial or consulting capacity to the vendor, including principal owners and officers, who now serve or in the past three (3) years have served as:</p> <p style="margin-left: 20px;">a) An elected or appointed public official or officer?</p> <p><i>List each individual’s name, business title, the name of the organization and position elected or appointed to, and dates of service.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p style="margin-left: 40px;">b) A full or part-time employee in a New York State agency or as a consultant, in their individual capacity, to any New York State agency?</p> <p><i>List each individual’s name, business title or consulting capacity and the New York State agency name, and employment position with applicable service dates.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p style="margin-left: 40px;">c) If yes to item #20b, did this individual perform services related to the solicitation, negotiation, operation and/or administration of public contracts for the contracting agency?</p> <p><i>List each individual’s name, business title or consulting capacity and the New York State agency name, and consulting/advisory position with applicable service dates. List each contract name and assigned NYS number.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p style="margin-left: 40px;">d) An officer of any political party organization in New York State, whether paid or unpaid?</p> <p><i>List each individual’s name, business title or consulting capacity and the official political party position held with applicable service dates.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>21. Within the past five (5) years, has the vendor, any individuals serving in managerial or consulting capacity, principal owners, officers, major stockholder(s) (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate¹ or any person involved in the bidding or contracting process:</p> <p style="margin-left: 20px;">a)</p> <ol style="list-style-type: none"> 1. been suspended, debarred or terminated by a local, state or federal authority in connection with a contract or contracting process; 2. been disqualified for cause as a bidder on any permit, license, concession franchise or lease; 3. entered into an agreement to a voluntary exclusion from bidding/contracting; 4. had a bid rejected on a New York State contract for failure to comply with the MacBride Fair Employment Principles; 5. had a low bid rejected on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract; 6. had status as a Women’s Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise denied, de-certified, revoked or forfeited; 7. been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal government contract; 8. been denied an award of a local, state or federal government contract, had a contract suspended or had a contract terminated for non-responsibility; or 9. had a local, state or federal government contract suspended or terminated for cause prior to the completion of the term of the contract? 	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p style="margin-left: 20px;">b) been indicted, convicted, received a judgment against them or a grant of immunity for any business-related conduct constituting a crime under local, state or federal law including but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Attachment 4 (Page 4 of 5)
Vendor Responsibility Questionnaire

EIN:

<p>c) been issued a citation, notice, violation order, or are pending an administrative hearing, or proceeding or determination for violations of:</p> <ol style="list-style-type: none"> 1. federal, state or local health laws, rules or regulations, including but not limited to Occupational Safety & Health Administration (OSHA) or New York State labor law; 2. state or federal environmental laws; 3. unemployment insurance or workers' compensation coverage or claim requirements; 4. Employee Retirement Income Security Act (ERISA); 5. federal, state or local human rights laws; 6. civil rights laws; 7. federal or state security laws; 8. federal Immigration and Naturalization Services (INS) and Alienage laws; 9. state or federal anti-trust laws; or 10. charity or consumer laws? <p><i>For any of the above, detail the situation(s), the date(s), the name(s), title(s), address(es,) of any individuals involved and, if applicable, any contracting agency, specific details related to the situation(s) and any corrective action(s) taken by the vendor.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>22. In the past three (3) years, has the vendor or its affiliates¹ had any claims, judgments, injunctions, liens, fines or penalties secured by any governmental agency? <i>Indicate if this is applicable to the submitting vendor or affiliate. State whether the situation(s) was a claim, judgment, injunction, lien or other with an explanation. Provide the name(s) and address(es) of the agency, the amount of the original obligation and outstanding balance. If any of these items are open, unsatisfied, indicate the status of each item as "open" or "unsatisfied".</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>23. Has the vendor (for profit and not-for profit corporations) or its affiliates¹, in the past three (3) years, had any governmental audits that revealed material weaknesses in its system of internal controls, compliance with contractual agreements and/or laws and regulations or any material disallowances? <i>Indicate if this is applicable to the submitting vendor or affiliate. Detail the type of material weakness found or the situation(s) that gave rise to the disallowance, any corrective action taken by the vendor and the name of the auditing agency.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>24. Is the vendor exempt from income taxes under the Internal Revenue Code? <i>Indicate the reason for the exemption and provide a copy of any supporting information.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>25. During the past three (3) years, has the vendor failed to:</p> <ol style="list-style-type: none"> a) file returns or pay any applicable federal, state or city taxes? <i>Identify the taxing jurisdiction, type of tax, liability year(s), and tax liability amount the vendor failed to file/pay and the current status of the liability.</i> b) file returns or pay New York State unemployment insurance? <i>Indicate the years the vendor failed to file/pay the insurance and the current status of tile liability.</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>26. Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates¹ within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates regardless of the date of filing? <i>Indicate if this is applicable to the submitting vendor, or affiliate. If it is an affiliate, include the affiliate's name and FEIN. Provide the court name, address and docket number. Indicate if the proceedings have been initiated, remain pending or have been closed. If closed, provide the date closed.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>27. Is the vendor currently insolvent, or does vendor currently have reason to believe that an involuntary bankruptcy proceeding may be brought against it? <i>Provide financial information to support the vendor's current position, for example, Current Ratio, Debt Ratio, Age of Accounts Payable, Cash Flow and any documents that will provide the agency with an understanding of the vendor's situation.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>28. Has the vendor been a contractor or subcontractor on any contract with any New York State agency in the past five (5) years? <i>List the agency name, address, and contract effective dates. Also provide state contract identification number, if known.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>29. In the past five (5) years, has the vendor or any affiliates¹:</p> <ol style="list-style-type: none"> a) defaulted or been terminated on, or had its surety called upon to complete, any contract (public or private) awarded; b) received an overall unsatisfactory performance assessment from any government agency on any contract; or c) had any liens or claims over \$25,000 filed against the firm which remain undischarged or were unsatisfied for more than 90 days? <p><i>Indicate if this is applicable to the submitting vendor or affiliate. Detail the situation(s) that gave rise to the negative action, any corrective action taken by the vendor and the name of the contracting agency.</i></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

Attachment 5 (page 1 of 2)

Financial Stability Response Form

This form is for the Financial Stability requirement as requested in **Section 7.3.4**.

With Attachment 5, bidders must submit the proof of financial stability required for their particular organizational structure as set forth in the requirements listed in paragraphs one through four below. Audited/reviewed financial statements, required where indicated below, must have been prepared by a CPA in accordance with GAAP. All required information must be provided for any predecessor company within the last three years and any other subsidiary, affiliate, and/or related company requested by the Department. Any additional information requested must be submitted.

1. **If the bidder is a subsidiary of a parent company that is publicly held**, the bidder must comply with the preceding requirements by either (a) submitting **separate**, audited/reviewed, annual financial statements for the parent and subsidiary for the last three years OR (b) by submitting audited/reviewed, annual financial statements for the parent for the last three years, unaudited annual financial statements for the subsidiary for the last three years and the spreadsheet(s) used for consolidation.

In either case, the most recent audited, reviewed, or internal interim financial statement is also required for both the parent and subsidiary.

2. **If the bidder is a subsidiary of a parent company that is privately held**, the bidder must either (a) comply with the requirement outlined in paragraph one OR (b) submit **separate** annual, unaudited/internal company financial statements for both the parent and subsidiary for the last three years, a separate Dun and Bradstreet Comprehensive Report (dated within 21 days of bid submittal) for both the parent and bidder, and a statement explaining why annual, audited/reviewed statements are not available.

In either case, the most recent audited, reviewed, or internal interim financial statement is also required for both the parent and subsidiary.

3. **If the bidder is a publicly held company and is not a subsidiary of a parent company**, it must provide audited or reviewed annual financial statements for the last three years. The most recent audited, reviewed, or internal interim financial statement is also required.
4. **If the bidder is a privately held company and is not a subsidiary of a parent company**, it must either (a) fulfill the requirements set forth in paragraph three above or (b) provide annual, unaudited/internal company financial statements for the last three years, a Dun and Bradstreet Comprehensive Report (dated within 21 days of bid submittal) and a statement explaining why annual audited/reviewed statements are not available.

The most recent audited, reviewed, or internal interim financial statement is also required.

Attachment 5 (page 2 of 2)

Financial Stability Response Form

Bidder's must also provide:

- Its primary bank reference including the name and phone number of the relationship manager;
- Documentation attesting to any significant line(s) of credit that are available to the bidder. This Documentation must include information identifying the source of such lines and detailing the maximum credit amount(s) available to the bidder, outstanding balance(s), and current amount(s) available.

Additionally, if the bidder is a subsidiary of a parent company, the bidder must explain in detail the inter-company financial relationship between the parent company and the bidder. The bidder must indicate if the parent company guarantees the debt of the subsidiary.

- Organizational charts including a listing and detailed description of:
 - a) The bidder's primary business units and divisions;
 - b) Key executives;
 - c) Any and all subsidiaries; and
 - d) Any and all minority interests, joint ventures or other type of business affiliations.
- Brief biographies on its key officers and management.

Attach additional sheets as required.

Attachment 6

MACBRIDE FAIR EMPLOYMENT PRINCIPLES FORM

Ms. Janice Piccone
Assistant Director, Procurement Bureau
New York State Department of Taxation and Finance
W. A. Harriman State Office Building Campus
Building 9, Room 234
Albany, New York 12227

Bidder Name:

“NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
MacBRIDE FAIR EMPLOYMENT PRINCIPLES”

In accordance with Chapter 807 of the Laws of 1992, the bidder, by submission of this bid, certifies that it, and any individual or legal entity in which the bidder holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:

(answer Yes to one of the following as applicable),

1. Have no business operations in Northern Ireland: _____ Yes

or

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

_____ Yes

Attachment 7

DESIGNATION OF PRIME CONTACT

The bidder designates the following individual as the prime contact for this proposal and acknowledges that this individual is authorized to respond on behalf of the bidder. This designation will last for the entire evaluation process and contract negotiations. Any request for change in the designated contact must be submitted in writing to the issuing officer designation on the cover of this RFP and must be accompanied by an updated form.

Firm Name: _____

Address: _____

Prime Contact Name: _____ Title: _____

e-mail Address: _____

Telephone Number: _____ Fax: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attachment 8

Non Collusive Bidding Certification

In accordance with Section 139-d of the State Finance Law:

- (a) By submission of this bid, bidder and each person signing on behalf of any bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
1. The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
 2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
 3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- (b) A bid shall not be considered for award nor shall any award be made where (a), (1), (2), and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a), (1), (2), and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid was made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder has published price lists, rates, or tariffs covering items or services being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning stated above.

The bidder certifies adherence to all conditions in the Bidding Practices subsection of this RFP.

Bidder's Name: _____

Bidder's Address: _____

Authorized Signature: _____

Name: _____

Title: _____

Attachment 9 (page 1 of 6)

Executive Order 127

Form 1 - Contractor Disclosure of Contacts

Instructions:

New York State Executive Order Number 127 (EO 127) provides for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions.

In general, a procurement contract is defined as a contract, agreement or subsequent amendment involving an annualized expenditure in excess of \$15,000.00, but does not include those contracts that by law must be awarded to the lowest responsible bidder or based on the lowest price.

In the first instance, Section II, paragraph 1 of EO 127 obligates a covered agency or authority to obtain identifying information on every person or organization retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process. The covered agency or authority is also obligated to collect information on whether such person or organization has a financial interest in the procurement.

Thereafter, Section II, paragraph 2 of EO 127 continues to obligate a covered agency or authority to obtain such identifying information on every person or organization subsequently retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process. A covered agency or authority shall ensure that a contractor informs such agency or authority of persons or organizations subsequently retained, employed or designated by or on behalf of the contractor before the agency or authority is contacted.

Attachment 9 (page 2 of 6)

Executive Order 127

Contractor Disclosure of Contacts Form (cont.)

This form shall be completed and submitted with your bid/proposal or offer in accordance with Executive Order Number 127 (EO 127). Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the bid, proposal or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid/proposal or offer.

Name of Contractor:

Address: _____

Name and Title of Person Submitting this Form:

Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127? **(Please circle)**:

Initial filing

Updated filing

The following person or organization was retained, employed or designated by or on behalf of the Contractor to attempt to influence the procurement process:

Name: _____

Address: _____

Telephone Number: _____

Place of Principal Employment: _____

Occupation: _____

Does the above named person or organization have a financial interest in the procurement?
(Please circle) Yes No

Attachment 9 (page 3 of 6)

Executive Order 127

Form 2 - Contractor Disclosure of Prior Non-Responsibility Determinations

Instructions:

New York State Executive Order Number 127 (EO 127) obligates a covered agency or authority to make a determination of responsibility of the proposed awardee for a procurement contract. EO 127 mandates consideration of whether a contractor has intentionally provided false or incomplete information under such Order within the last five years, and whether a contractor has failed to timely disclose accurate and complete information or otherwise cooperate in the implementation of the Order. For more information on responsibility determinations, please see the New York State Procurement Bulletin entitled "*Best Practices - Determining Vendor Responsibility*" issued by the New York State Procurement Council, May 1999, for more information on responsibility determinations. See <http://www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf>.

In accordance with section II, paragraph 6 of EO 127, a covered agency or authority is precluded from awarding a procurement contract to a contractor with a finding of non-responsibility under the Order unless it makes a finding, on the record, that such contract is in the best interests of the State, notwithstanding the prior finding of non-responsibility. Such agency or authority must prepare a statement describing the basis of such determination and include it in its procurement record.

Attachment 9 (page 4 of 6)

Contractor Disclosure of Prior Non-Responsibility Determinations

Name of Contractor: _____

Address: _____

Name and Title of Person Submitting this Form: _____

Has any covered agency or authority made a finding of non-responsibility regarding the Contractor in the last five years? **(Please circle):**

No

Yes

If yes, was the basis for the finding of the Contractor's non-responsibility due to the intentional provision of false or incomplete information required by Executive Order Number 127? (Please circle):

No

Yes

If yes, please provide details regarding the finding of non-responsibility below.

Covered Agency or Authority: _____

Year of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

Has any covered agency or authority terminated a procurement contract with the Contractor due to the intentional provision of false or incomplete information required by Executive Order Number 127? **(Please circle):**

No

Yes

Attachment 9 (page 5 of 6)

Executive Order 127

Form 3 - Contractor Certification of Compliance with Executive Order 127

Instructions:

New York State Executive Order Number 127 (EO 127), section II, paragraph 7 requires that every procurement contract subject to its provisions contain a certification that all information provided to the soliciting agency or authority regarding EO 127 is complete, true and accurate. There are several ways the certification can be obtained. One way is through the addition of the certification language to the miscellaneous clauses portion of the contract. A second way is through an addition to an appendix that sets forth agency-specific clauses. A third way is by adding a contractor certification to the existing signature page of the contract. For the purposes of this model language, a contractor certification has been added to the recommended signature page set forth in Bulletin Number G-111 (revised May 20, 2003) from the Office of the State Comptroller. For ease of use, the contractor certification language is indicated in italics within that Bulletin. Regardless of the means selected by the covered agency or authority, the language is fundamentally the same.

The form contains language suggestions for inclusion in either a miscellaneous section of a proposal or of the contract or within an appendix setting forth agency-specific terms and conditions (depending on whether the organization incorporates the terms of its solicitation into the contract).

Attachment 9 (page 6 of 6)

Contractor Certification of Compliance with Executive Order 127

Language suggestion for inclusion in either a miscellaneous section of the proposal, a miscellaneous section of the contract or within the appendix setting forth agency-specific terms and conditions:

Contractor certifies that all information provided to the Agency with respect to Executive Order Number 127 is complete, true and accurate.

Contract Number _____

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

By: _____ Date: _____

Name: _____

Title: _____

Contractor Certification:

I certify that all information provided to the Agency with respect to Executive Order Number 127 is complete, true and accurate.

By: _____ Date: _____

Name: _____

Title: _____

Contractor: _____

Address: _____

Attorney General's Signature

Approved:
Alan G. Hevesi
Comptroller

By: _____ By: _____

Date: _____ Date: _____

Attachment 10

DTF-202 (3/00)

**New York State Department of Taxation and Finance
Agreement to Adhere to the Secrecy Provisions of the Tax Law
and the Internal Revenue Code**

The New York State Tax Law and the Department of Taxation and Finance impose secrecy restrictions on:

- all officers, employees, and agents of the Department of Taxation and Finance;
- any person engaged or retained by this department on an independent contract basis;
- any depository, its officers and employees, to which a return may be delivered;
- any person who is permitted to inspect any report or return;
- contractors and workmen hired by the department to work on its equipment, buildings, or premises, or to process returns or other papers; and
- visitors to the department's buildings or premises.

Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for anyone to divulge or make known in any manner the contents or any particulars set forth or disclosed in any report or return required under the Tax Law. Computer files and their contents are covered by the same standards and secrecy provisions of the Tax Law and Internal Revenue Code that apply to physical documents.

Any unlawful disclosure of information is punishable by a fine not exceeding \$10,000, imprisonment not exceeding one year, or both. State officers and employees making unlawful disclosures are subject to dismissal from public office for a period of five years.

Unauthorized disclosure of automated tax systems information developed by the department is strictly prohibited. Examples of confidential systems information include: functional, technical, and detailed systems design; systems architecture; automated analysis techniques; systems analysis and development methodology; audit selection methodologies; and proprietary vendor products such as software packages.

The Internal Revenue Code contains secrecy provisions which apply to federal tax reports and returns. Pursuant to sections 6103 and 7213 of the Internal Revenue Code, penalties similar to those in the New York State law are imposed on any person making an unauthorized disclosure of federal tax information. In addition, section 7213A of the Internal Revenue Code was enacted to prohibit the unauthorized inspection of returns or return information (also known as "browsing"). The unauthorized inspection of returns or return information by state employees is punishable by a fine not exceeding \$1000 for each access, or by imprisonment of not more than one (1) year, or both, together with the cost of prosecution.

I certify that I have read the above document and that I have been advised of the statutory and Department of Taxation and Finance secrecy requirements; I certify that I will adhere thereto, even after my relationship with the department is terminated.

Organization: _____

Signature _____ Date _____

Name: _____ Social security number: _____

Address Street: _____

City: _____ State _____ ZIP code _____

Attachment 11 (page 1 of 4)

CONTRACTOR NAME: _____

CONTRACT #: _____

**ACKNOWLEDGMENT OF CONFIDENTIALITY OF INTERNAL
REVENUE SERVICE TAX RETURN INFORMATION**

I _____, hereby acknowledge that I have read the quoted provisions of sections 6103, 7213, 7213A and 7431 of the Internal Revenue Code (IRC) which are attached to this acknowledgment and I understand that IRC section 6103 imposes strict confidentiality requirements on current and former officers and employees of the Contractor who have or have had access to Federal tax returns or return information. I understand that sections 7213, 7213A and 7431 of the IRC impose civil and criminal penalties for unauthorized inspection or disclosure of any tax return or return information. I further understand that:

1. All Federal tax returns and return information disclosed to the Contractor are confidential pursuant to IRC section 6103(a), and may not be disclosed by any current or former officer or employee of The Contractor except as authorized by the IRC;
2. All tax returns or return information disclosed to the Contractor may be used only for permissible purposes as outlined in IRC section 6103(n);
3. Willful unauthorized inspection or disclosure of tax returns or return information by a current or former officer or employee of the Contractor is prohibited under the terms of IRC sections 7213(a)(1) and 7213(A)(a)(1). Willful unauthorized disclosure of a tax return or return information is punishable as a felony by a fine in any amount not exceeding \$5,000, imprisonment of not more than five years, or both, together with the costs of prosecution. Willful unauthorized inspection of a tax return or return information is punishable by a fine of up to \$1,000 and/or imprisonment of up to one year, together with the costs of prosecution;
4. Under the terms of IRC section 7431(a)(2), a taxpayer may bring a civil lawsuit to recover damages from an officer or employee of the Contractor who has disclosed, knowingly or by reason of negligence, such taxpayer's tax return or return information in violation of any provision of IRC section 6103; and
5. The civil and criminal penalty provisions apply even if the unauthorized disclosures were made after employment has ceased with the Contractor

Additionally, I acknowledge and understand that violation of these requirements of confidentiality could result in disciplinary action, including termination of employment.

SIGNED: _____ **DATE:** _____

Attachment 11 (page 2 of 4)
INTERNAL REVENUE CODE
SELECTED CONFIDENTIALITY PROVISIONS
PERTAINING TO CONTRACTORS

Internal Revenue Code (IRC) Section 6103 imposes strict confidentiality requirements on contractors and their employees who have access to Federal tax returns or return information.

Section 6103, CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION, provides *in part*:

- (a) GENERAL RULE - Returns and return information shall be confidential, and except as authorized by this title –
- (1) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (n), shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.
 - (2) CERTAIN OTHER PERSONS – Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in section 7513(a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.

IRC Sections 7213, 7213A, and 7431 impose criminal and civil penalties for unauthorized disclosure or inspection of any tax return or return information.

Section 7213, UNAUTHORIZED DISCLOSURE OF INFORMATION, provides *in part*:

- (a) RETURNS AND RETURN INFORMATION -
- (1) FEDERAL EMPLOYEES AND OTHER PERSONS. - It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution...
 - (2) STATE AND OTHER EMPLOYEES - It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103 (b)) acquired by him or another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii), (l)(6), (7), (8), (9), (10), (12), (15), or (16) or (m)(2), (4), (5), (6), or (7) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

Attachment 11 (page 3 of 4)

Section 7213(A), UNAUTHORIZED INSPECTION OF RETURNS AND RETURN INFORMATION, provides *in part*:

(a) PROHIBITIONS -

(1) FEDERAL EMPLOYEES AND OTHER PERSONS - It shall be unlawful for

(B) any person described in section 6103(n) or an officer or employee of any such person, willfully to inspect, except as authorized in this title, any return or return information.

(b) PENALTY -

(1) IN GENERAL - Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

Section 7431, CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION OR DISCLOSURE OF RETURNS AND RETURN INFORMATION, provides *in part*:

(a) IN GENERAL -

(2) INSPECTION OR DISCLOSURE BY A PERSON WHO IS NOT AN EMPLOYEE OF THE UNITED STATES - If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

(b) EXCEPTIONS - No liability shall arise under this section with respect to any inspection or disclosure -

(1) which results from a good faith, but erroneous, interpretation of section 6103, or

(2) which is requested by the taxpayer.

Attachment 11 (page 4 of 4)

- (c) DAMAGES - In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of -
- (1) the greater of -
- (A) \$1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or
- (B) the sum of -
- (i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus
- (ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus
- (2) the costs of the action.
- (d) PERIOD FOR BRINGING ACTION - Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.
- (e) NOTIFICATION OF UNLAWFUL INSPECTION AND DISCLOSURE - If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of -
- (1) paragraph (1) or (2) of section 7213(a),
- (2) section 7213(A), or
- (3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,
- the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.
- (f) DEFINITIONS - For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section 6103(b).

New York State Department of Taxation and Finance

Contractor Certification

(Pursuant to Section 5-a of the Tax Law)

ST-220

(1/05)



For more information, see Publication 222, *Question and Answers Concerning Section 5-a*.

Contractor name		For office use only	
Contractor's principal place of business		Contract number	
City	State	ZIP code	
Mailing address (if different than above)		Estimated contract value	
Contractor's federal employer Identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number ()		\$	
Contracting state agency			

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and that:

Part I. Contract services that are not services for purposes of Tax Law section 5-a

(Mark an X in the box if this statement is applicable. If you mark this box, you do not have to complete Parts II - V.)

- The requirements of Tax Law section 5-a do not apply because the subject matter of the contract concerns the performance of services which are not *services* within the meaning of Tax Law section 5-a.

(If you did not mark the box next to the statement in Part I, mark an X next to the applicable statement in Parts II through V.)

Part II. Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law.
- As of the date of this certification, the contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Part III. Affiliate registration status

- As of the date of this certification, the contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and each affiliate exceeding the \$300,000 sales threshold during such periods is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address, and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- To the best of the contractor's knowledge, the contractor has one or more affiliates and, as of the date of this certification, each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Part IV. Subcontractor registration status

- As of the date of this certification, the contractor does not have any subcontractors.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that it is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each subcontractor exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Part V. Subcontractor affiliate registration status

- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it does not have any affiliates.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has any affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has one or more affiliates having made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that each such affiliate is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has no affiliate having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(signature)

(title)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
 : SS.:
COUNTY OF _____ }

On the day ____ of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

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

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

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

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

Notary Public

Registration No.

Instructions

General information

On August 20, 2004, New York State enacted section 5-a of the Tax Law requiring persons awarded contracts valued at more than \$15,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person makes, or has made, aggregate sales delivered within New York State of more than \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. A contractor must use Form ST-220, *Contractor Certification*, to make this certification before the contract may be approved by the Office of the State Comptroller (OSC), or other contract approver if OSC is not required to approve the contract.

This statute applies to contracts resulting from solicitations to purchase issued by governmental entities on or after January 1, 2005. In the case of contracts resulting from issuance of an invitation for bid (IFB) or a request for proposal (RFP), the statute would apply if the IFB or RFP was first issued on or after January 1, 2005. The statute would not apply if the bid document was first issued before January 1, 2005, even if the bid document was amended, or the resulting contract was awarded, approved, amended, or extended after January 1, 2005.

The statute does not apply to purchases from preferred sources. For additional information, please see Publication 222, *Questions and Answers Concerning Tax Law Section 5-a*.

Definition of terms associated with section 5-a

The following is a partial list. Please see Publication 222 for additional information.

A *contractor* is defined as a person awarded a contract by a covered agency.

The term *person* is defined as any entity in business for either profit or not-for-profit purposes and can refer to an individual, partnership, limited liability company, society, association, joint stock company, or corporation.

A *covered agency* is defined as New York State or any department, board, bureau, commission, division, office, council or agency of New York State; public authorities and public benefit corporations. The State Legislature, the judiciary, Department of Law, Office of State Comptroller, State Education Department, State University of New York and the senior colleges of City University of New York are included in this definition.

An *affiliate* is an entity which, through stock ownership or any other affiliation, directly, indirectly or constructively, controls another entity, is controlled by another entity, or is, along with another entity, under the control of a common parent company.

A *subcontractor* is an entity specifically engaged by a contractor or another subcontractor to provide commodities or perform services necessary to allow a contractor to fulfill a particular contract with a covered agency.

Commodities means, other than with respect to contracts for State printing, material goods, supplies, products, construction items or other standard articles of commerce other than technology which are the subject of any purchase or other exchange.

Tangible personal property means physical personal property, of any nature, that has a material existence and is perceptible to the human senses. Tangible personal property includes, without limitation: (1) raw materials, such as wood, metal, rubber and minerals; (2) manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, computers, clothing, motor vehicles, boats, yachts, appliances, lighting fixtures, building materials; (3) pre-written off-the-shelf software; (4) artistic items such as sketches, paintings, photographs, moving picture films and recordings; (5) animals, trees, shrubs, plants and seeds; (6) bottled water, soda and beer; (7) candy and confections; (8) cigarettes and tobacco products; (9) cosmetics and toiletries; (10) coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange; (11) postage stamps, when purchased for purposes other than mailing; and (12) precious metals in the form of bullion, ingots, wafers and other forms.

Completing Form ST-220

Identification information

Contractor name: Enter the exact legal name of the person or entity who is contracting to provide commodities or services to a covered agency of New York State. This is the name registered with the New York Department of State.

Contractor's principal place of business: Enter a street address, not a PO box number.

Mailing address: Enter the address where contractor receives mail, if different than the principal place of business.

Contracting state agency: Enter the state agency awarding the contract to the contractor.

Certification statement: If the contractor is a corporation, the statement must be completed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the corporation. If the contractor is a partnership, the statement must be completed by a partner or person authorized by the partnership. If the contractor is a limited liability company, the statement must be completed by a member of the LLC and be authorized by the LLC.

Part I – Contract services not pursuant to Tax Law section 5-a

If the services to be performed under the contract are not services within the meaning of Tax Law section 5-a, mark an **X**. You do not have to complete Parts II through V. You must sign and have the certification acknowledged.

For procurement law purposes, *services* means, other than with respect to contracts for State printing, the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For procurement law purposes, technology is a service. The term *services* for procurement law purposes does not apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article eleven-B of the State Finance Law.

The term *taxable services* for New York State and local sales and compensating use tax law purposes includes, but is not limited to: 1) providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed manner in any other

manner; 2) processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale; 3) installing, maintaining, servicing, or repairing tangible personal property that is not held for sale by the purchaser of the service in the regular course of business (for example, servicing automobiles, installing appliances, and repairing radio and television sets); 4) storing tangible personal property that is not being held for sale; 5) renting safe deposit boxes, vaults, and similar storage facilities; 6) maintaining, servicing, or repairing real property both inside and outside buildings (for example, cleaning, painting, gardening, snow plowing, trash removal, and general repairs); 7) providing parking, garaging, or storing services for motor vehicles; 8) interior decorating and designing; 9) protective or detective services; and 10) entertainment or information services provided by means of telephony or telegraphy.

Parts II through V

If the contract is covered under Tax Law section 5-a, you must mark an **X** in one box in each of these parts. You must also sign and have the certification acknowledged, and complete Schedule A.

Schedule A

Column A – Relationship to the contractor

The contractor should enter a **C**. It is not necessary for the contractor to complete columns C through E since this information has been provided on page 1.

If the person listed in column B is an affiliate of the contractor, enter an **A**; if a subcontractor, enter an **S**; if an affiliate of a subcontractor, enter **SA**.

Column B – Name

Enter the exact legal name as registered with the New York Department of State of each corporation or limited liability company. If the person is a partnership or sole proprietor, enter each partner's or the owner's given name. If the person uses a different name or DBA (doing business as), enter that name as well.

Column C – Address

Enter the street address of the person's principal place of business. Do not enter a PO box.

Column D – ID number

If the person listed in column B is an individual, enter the social security number of that person. Otherwise enter the employer identification number (EIN) assigned to the person.

Column E – Sales tax ID number

Enter the sales tax identification number, if different from the federal identification.

Column F – Proof of registration

Enter **CA** and attach a copy of the certificate of authority for the person.

If the certificate of authority is not readily available and if the person is registered with the Department of Taxation and Finance and has confirmed this status with the DTF, enter **RC**.

Return a signed and acknowledged original Form ST-220, and a copy, with the contract to the procuring state agency.

Attachment 13

SUBCONTRACTOR LIST

Complete this form for the Subcontractor requirement as requested in section 7.3.12. The bidder must identify all subcontractors to be utilized for any resultant contract, their Employer Identification Number (EIN) and the services that they will perform.

Subcontractor Name	EIN	Services to be performed

Expand form if necessary.

Attachment 14
FINANCIAL RATE RESPONSE FORM

This form is for the financial proposal requirement as requested in **Section 6.0** of RFP 05-107:

Fixed Percentage of Collections: _____ %

The above percentage fee must incorporate all costs associated with collection activities as described in this RFP.

The percentage fee shall not be increased during the first two years of the initial term of any contract resulting from this RFP. Any proposed increase of the fee for the third year of the contract term must be requested by the Contractor, in writing, sixty (60) days in advance of the anniversary date of the Contract. Such increase shall be subject to negotiation between the Department and the Contractor. Notwithstanding the foregoing, rate increases for the third year shall be limited to the percentage change in the Consumer Price Index for All Urban Customers as reported by the U.S. Department of Labor, Bureau of Statistics for the CPI-U for the preceding twelve (12) month period.

If the renewal option is exercised, rate increases for each of the two subsequent renewal periods shall be so limited.

Firm Name: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Federal ID # _____

Date: _____

SECTION 13
CONTRACTUAL AND ADMINISTRATIVE INFORMATION
APPENDICES A THROUGH E

APPENDIX A (Page 1 of 4)

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

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

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

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

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

New York State Department of Taxation and Finance
Request for Proposal (RFP) 05-107
Collection Services

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8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

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

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

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

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

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

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

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Participation by Minority Group Members and Woman with Respect to State Contracts

In accordance with Article 15-A of the Executive Law, the parties to the attached contract, (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract:

1. Definitions
 - a) “Certified business” shall mean a business verified as a minority- or women-owned business enterprise pursuant to Section 314 of the Executive Law.
 - b) “Director” shall mean the Director of the Division of Minority and Women’s Business Development established by Section 117 of Article 4A of the Economic Development Law.
 - c) “Goal” shall mean a percentage of the value of the contract, which is not set aside or quota, that represents a target toward which the Contractor must aim in expending good faith efforts to ensure the participation of minority group members and women on the contract.
 - d) “Minority group member” shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
 - i) Black persons having origins in any of the Black African racial groups;
 - ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
 - iii) Native American or Alaskan native persons having origins in any of the original peoples of North America;
 - iv) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
 - e) “Minority-owned business enterprise” shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
 - i) at least fifty-one percent owned by one or more minority group members;
 - ii) an enterprise in which such minority ownership is real, substantial and continuing;
 - iii) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
 - iv) an enterprise authorized to do business in this state and independently owned and operated.
 - f) “Subcontract” shall mean an agreement providing for a total expenditure in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contract and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a Contractor’s obligation under a state contract is undertaken or assumed, but shall not include work undertaken for the beneficial use of the Contractor.
 - g) “Women-owned business enterprise” shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
 - i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
 - ii) an enterprise in which the ownership interest of such women is real, substantial and continuing;
 - iii) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
 - iv) an enterprise authorized to do business in this state and independently owned and operated.
2. Directory of Certified Businesses
The Department of Taxation and Finance shall make copies of the Directory of Certified Businesses available for inspection at its Albany Office. The Contractor may purchase a copy from the Division of Minority and Women Business Development at the price of fifty-nine dollars for a printed copy and twenty-three dollars for the Directory on computer diskette.

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3. Equal Employment Opportunities
 - a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
 - b) At the request of Tax and Finance 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 and which is involved in the performance of this contract to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the Contractor's obligation hereunder.
 - c) The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor in the performance of this contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - d) The Contractor will include the provisions of clauses (a), (b) and (c) above in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with this contract.
 - e) The provisions of these equal employment clauses shall not be binding upon Contractors or subcontractors in the performance of work or the provision of services or another activity that are unrelated, separate or distinct from the State contract as expressed by its terms.
 - f) The requirements of these equal employment clauses shall not apply to any employment outside this State or application for employment outside this State or solicitations or advertisements therefore, or any existing programs or affirmative action regarding employment outside this State and the effect of contract provisions required by clauses (a), (b) and (c) above shall be so limited.

4. Minority- and Women-Owned Business Enterprise Utilization Plan; Equal Employment Opportunity Program; Waivers
 - a) If goals have been established by Tax and Finance for this agreement, no later than seven business days after receiving notice that the bidder has submitted the lowest responsible bid, the bidder shall submit to Tax and Finance a Minority- and Women-Owned Business Enterprise (M/WBE) utilization plan on forms to be provided by Tax and Finance. The M/WBE utilization plan shall list those M/WBEs, which will be used by the Contractor to meet the contract's M/WBE goals.
 - b) Tax and Finance will review the M/WBE utilization plan and will issue to the Contractor a written notice of acceptance or deficiency within twenty calendar days of receipt. An M/WBE notice of deficiency shall include (i) the name of any M/WBE which is not acceptable for the purpose of complying with the goal requirements; (ii) elements of the contract scope of the work which Tax and Finance has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the contract by M/WBEs; and (iii) other information which Tax and Finance determines to be relevant to the utilization plan.
 - c) The Contractor shall respond to the notice of deficiency within seven business days of receipt by submitting to Tax and Finance a written statement, which remedies the deficiencies in the original plan. If the written remedy which the Contractor submits is not timely or is found by Tax and Finance to be inadequate, Tax and Finance shall so notify the Contractor within five business days and direct the Contractor to submit a request for a partial or total waiver of goal requirements on forms to be provided by Tax and Finance. The request for waiver must be submitted within five business days of receipt from Tax and Finance of a notice that the Contractor's statement of remedy was untimely or inadequate.

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- d) A Contractor who has made good faith efforts to obtain commitments from M/WBE sub-contractors and suppliers prior to submitting its M/WBE utilization plan may submit a request for waiver at the same time it submits its utilization plan. If a request for waiver is submitted with the utilization plan, and is not accepted by Tax and Finance at that time, the provisions of clauses (b) and (c), regarding the notice of deficiency and written remedy, will apply. In this case, the Contractor may submit a second request for waiver as directed by Tax and Finance.
 - e) If the Contractor does not submit a request for waiver, or if Tax and Finance determines that the good faith efforts of the Contractor have been inadequate to justify the granting of the request for waiver, Tax and Finance may make a determination that the Contractor's failure to remedy deficiencies is non-responsible and disqualify the bid or proposal. Notice of disqualification, along with a denial of a request for waiver, where applicable, shall be delivered to the Contractor no later than twenty calendar days after Tax and Finance receives the request for waiver.
 - f) If Tax and Finance disqualifies the bidder as non-responsible for failure to remedy deficiencies in its M/WBE utilization plan and to document good faith efforts, Tax and Finance may award the contract to the next-lower responsible or otherwise acceptable bidder, whether or not the disqualified bidder pursues any remedies established pursuant to Article 15A of the Executive Law.
 - g) The Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its M/WBE utilization plan, at least to the extent indicated in the plan.
5. Administrative Hearing on Disqualification
- a) If Tax and Finance disqualifies the bid on the grounds that the contract has failed to remedy the deficiencies in its M/WBE utilization plan or to document good faith efforts to remedy such deficiencies and is, therefore, determined to be non-responsible, the Contractor shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by Tax and Finance, to review the determination of disqualification of the bid and determination of non-responsibility. The Contractor shall request such hearing in writing no less than seven business days of receipt of notice of disqualification. The determination of the hearing officer shall not interfere with Tax and Finance disposition of the contract. The hearing shall be conducted pursuant to Article 3 of the State Administrative Procedures Act, as it applies to these circumstances. The rules and regulations of Article 15-A override any inconsistencies with Article 3
 - b) The hearing officer's determination shall be a final administrative determination of Tax and Finance and shall be reviewable by the proceeding brought pursuant to the Civil Practice Law and Rules, provided such proceeding is commenced within thirty days of notice given by Certified Mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Section 313 of the Executive Law.
 - c) Such review shall be commenced in the Supreme Court, Appellate Division, Third Department, and shall be preferred over all other civil causes except election causes, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the Court of Appeals of the State of New York shall be subject to the same preference.
6. Good-Faith Efforts
- In order to show that it has made good-faith efforts to comply with the goal requirements of this contract, if applicable, the Contractor shall submit such documentation as will enable Tax and Finance to make a determination in accordance with the following criteria:
- a) Was a completed, acceptable utilization plan submitted in accordance with applicable requirements to meet goals for participation of certified minority and women-owned business enterprises established in the State contract?
 - b) Were advertisements placed in appropriate general circulation, trade and minority- and women-oriented publications in a timely fashion?
 - c) Were written solicitations made in a timely fashion of certified minority- and women-owned business enterprises listed in the directory of certified businesses?
 - d) Were timely responses to any such advertisements and solicitations provided by certified minority- and women-owned business enterprises?

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- e) Did the Contractor attend pre-bid, pre-award, or other meetings, if any, scheduled by the state agency awarding the state contract, with certified minority- or women-owned business enterprises which the state agency determined were capable of performing the state contract scope of work, for purposes of complying with goal requirements?
- f) What efforts were undertaken by the Contractor to reasonably structure the contract scope of work for purposes of subcontracting with certified minority- and women-owned business enterprises?
- g) How many minority- and women-owned business enterprises in the directory of certified businesses could perform work required by the State contract scope of work in the region as defined in paragraphs (1) and (2) of subdivision (a) of Section 543.2 of this part?
- h) What actions were taken to contact and assess the financial ability of certified minority- and women-owned business enterprises to participate on the State contract, which enterprises are located outside of the region in which the State contract scope of work was or will be performed?
- i) Were relevant plans, specifications or terms and conditions of the state contract, necessary to prepare an informed response to a Contractor solicitation, provided in a timely fashion to certified minority- or women-owned business enterprises?
- j) What subcontract terms and conditions were offered to certified minority- and women-owned business enterprises, and how do those subcontract terms and conditions compare to those offered in the ordinary course of the Contractor's business and to other subcontractors of the Contractor?
- k) Has the Contractor made payments for work performed by certified minority- and women-owned business enterprises in a timely fashion so as to facilitate continued performance by certified minority- or women-owned business enterprises? and,
- l) Has the Contractor offered to make up any inability to comply with the minority- and women-owned business enterprise goals established in a State contract, in other State contracts being performed or to be awarded to the Contractor?

7. Compliance Reports

The Contractor shall submit, and shall require sub-contractors to submit, compliance reports on forms and at intervals to be established by Tax and Finance. Reports not submitted at such times as shall be required by Tax and Finance may be cause for Tax and Finance to delay implementing scheduled payments to the Contractor.

8. Contractor's Failure or Inability to Meet Goal Requirements

- a) If the Contractor, after making good-faith efforts, is unable to comply with a contract's M/WBE goal requirements, where applicable, the Contractor may submit a request for a partial or total waiver on forms to be provided by Tax and Finance. If the documentation required with the request for waiver is complete, Tax and Finance shall evaluate the request and issue a written notice of acceptance or denial within twenty calendar days of receipt.
- b) If Tax and Finance, upon review of the Contractor's M/WBE utilization plan and the Contractor's compliance reports, determines that the Contractor is failing or refusing to comply with the contract's M/WBE requirements, and no waiver has been issued in regards to such non-compliance, Tax and Finance 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 M/WBE goal requirements.

9. Contractor and Agency Complaints; Arbitration

- a) If the Contractor submits a request for waiver of M/WBE goal requirements and Tax and Finance denies the request or fails to respond in any way within twenty days of receiving it, the Contractor may file a complaint with the Director according to the provisions of Section 316 of Article 15-A of the Executive Law. The complaint must be filed within twenty calendar days of Tax and Finance receipt of the request for waiver, if Tax and Finance has not responded in that time, or with twenty calendar days of a notification that the request has been denied by Tax and Finance.
- b) If the Contractor fails to respond to a notice of deficiency, or if Tax and Finance denies a request for waiver of M/WBE goal requirements, Tax and Finance shall file a complaint with the Director pursuant to Section 316 of Article 15-A of the Executive Law.
- c) A complaint should set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
- d) The party filing a complaint, whether the Contractor or Tax and Finance, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by Certified Mail, return receipt requested.

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- e) Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty days of receipt of the complaint, the Director is unable to resolve the complaint to the satisfaction of Tax and Finance and the Contractor, the complaint shall be referred to the American Arbitration Association for resolution pursuant to Section 316 of Article 15-a of the Executive Law.
- f) Upon conclusion of the arbitration proceedings, the arbitrator will submit to the Director his/her award regarding the alleged violation of the contract or the refusal of Tax and Finance to grant a waiver request by the Contractor. The award of the arbitrator with respect to an alleged violation of the contract or the refusal of the State agency to a waiver shall be final and may be vacated or modified only as provided by Article 75 of the Civil Practice Law and Rules.
- g) Upon conclusion of the arbitration proceedings and the rendition of an award, the arbitrator will also recommend to the Director a remedy, including, if appropriate, the imposition of the sanctions, fines or penalties, provided however, that no fines or penalties shall be recommended with respect to the refusal of Tax and Finance to grant a waiver requested by a Contractor. The Director will either (i) adopt the recommendation of the arbitrator; (ii) determine that no sanctions, fines or penalties should be imposed; or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or imposed; or (iv) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or imposed any new sanction, or increase the amount of any recommended fine or penalty
- h) The Director, within ten days of receipt of the arbitrator's award and recommendations, will file a determination of such matter and shall cause a copy of such determination to be served upon the parties by personal service or by Certified Mail, return receipt requested. The determination of the Director as to the imposition of any fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

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Bid Protest Policy

It is the policy of the Department of Taxation and Finance contracting program (hereafter “DTF”) to provide all bidders with an opportunity to administratively resolve complaints or inquiries related to bid solicitations or pending contract awards. DTF encourages bidders to seek resolution of complaints concerning the contract award process through consultation with the program. All such matters will be accorded impartial and timely consideration.

Informal Complaints/Protests

It is strongly recommended that staff encourage, be receptive to and resolve issues, inquiries, questions and complaints on an informal basis, whenever possible. Information provided informally by any interested party should be fully reviewed by Program Team Leaders, the contract administrator of the Contract Management Unit and/or the Assistant Director of the Office of Budget and Management Analysis. In addition, matters that are perceived to contain, or are potentially confidential or trade secret information should be shared with the Director of the Office of Budget and Management Analysis for possible direction. Staff should document the subject matter and results of informal inquiries. As appropriate, DTF responses to the inquirer should indicate the existence of a formal protest policy available to them should the informal process fail to resolve the matter.

In addition to informal inquiries, Bidders may also file formal written protests according to the procedures specified below. Final agency determinations or recommendations for award generally may only be reconsidered in the context of a formal written protest.

Formal Written Protests

Any potential bidder who believes that there are errors or omissions in the procurement process, or that the bidder has been aggrieved in the drafting or issuance of a bid solicitation or pending contract award, may present to a formal complaint to DTF and request administrative relief concerning such action (“formal protest”).

Submission of Bid or Award Protests

Deadline for Submission

- a) Concerning Errors, Omissions or Prejudice in the Bid Specifications or Documents - Formal protests which concern the drafting of bid specifications must be received by DTF at least twenty (20) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than twenty (20) business days from the date of issue, formal protests concerning the specifications must be received by DTF at least seventy-two (72) hours before the time designated for receipt of bids.
- b) Concerning Proposed Contract Award - Formal protests concerning a pending contract award must be received within five (5) business days after the protesting party (“protester”) knows or should have known of the facts which form the basis of the protest, and, where § 112 approval is required, prior to final approval of the recommendation by the State Comptroller.

Transmittal

A formal protest must be submitted in writing to DTF, by ground mail, or, where permitted in the solicitation, facsimile or e-mail transmission. The following statement must be clearly and prominently displayed on the envelope or package or header of electronic or facsimile transmittal: “Bid Protest of DTF Solicitation (Reference Number)”.

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Contents

A formal protest must include:

- (a) a statement of all legal and/or factual grounds for disagreement with a specification or a procurement determination;
- (b) a description of all remedies or relief requested; and
- (c) copies of all applicable supporting documentation.

Protests should be delivered to the Contact named on the RFP Cover

Review and Final Determination

Copies of all protests will be provided to the Director of the Office of Budget and Management Analysis and appropriate program staff.

Protests shall be resolved through written correspondence, however, either the protester or DTF may request a meeting to discuss a formal protest, at which time the participants may present their concerns. Where further formal resolution is required, the Director of the Office of Budget and Management Analysis may designate an alternate (“designee”) to determine and undertake the initial resolution or settlement of any protest.

The Program staff in conjunction with Contract Management Unit staff will conduct a review of the records involved in the protest, consult with the Director of the Office of Budget and Management Analysis, and provide a memorandum to the Director of the Office of Budget and Management Analysis summarizing the results of the review and recommendation. The Director of the Office of Budget and Management Analysis will evaluate the recommendation, the material presented by the protester, and, if necessary, consult with appropriate senior level program staff, Counsel, and the Executive Deputy Commissioner, and prepare a written response to the protest.

A copy of the decision, stating the reason(s) upon which it is based shall be sent to the protester or its agent within thirty (30) business days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest determination should be recorded and included in the Procurement Record, or otherwise forwarded to OSC upon issue. The decision of the Director of the Office of Budget and Management Analysis will be final.

Reservation of Rights and Responsibilities of DTF

DTF reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and DTF.

If DTF determines that there are compelling circumstances, including the need to proceed immediately with contract award in the best interest of the State, then these protest procedures may be suspended and such determination shall be documented in the procurement record.

DTF will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

If a formal bid protest is received by DTF, a final determination on the protest must be made prior to OSC approval of the award under SFL § 112. However, during the pendency of the protest, bid evaluation by DTF and subsequent OSC review of the recommended award may continue to progress at the discretion of the Director of the Office of Budget and Management Analysis.

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If a formal protest is received prior to a determination by DTF on a recommended award, notice of receipt of the protest must be given in the procurement record forwarded to OSC. If a final protest determination has been reached prior to transmittal to OSC, a copy of the final determination should be included in the Procurement Record and forwarded with the recommendation for award.

If a final protest determination is made after the transmittal of a bid package to OSC but prior to OSC approval under SFL § 112, a copy of the final DTF determination shall be forwarded to OSC when issued, along with a letter either: a) confirming the original DTF recommendation for award and supporting the request for final § 112 approval, b) modifying the proposed award recommendation in part and supporting a request for final § 112 approval as modified; or c) withdrawing the original award recommendation.

All records related to formal bidder protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.

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Public Officers Law § 73 & 74

§ 73. Business or professional activities by state officers and employees and party officers

1. As used in this section:

(a) The term "compensation" shall mean any money, thing of value or financial benefit conferred in return for services rendered or to be rendered. With regard to matters undertaken by a firm, corporation or association, compensation shall mean net revenues, as defined in accordance with generally accepted accounting principles as defined by the state ethics commission or legislative ethics committee in relation to persons subject to their respective jurisdictions.

(b) The term "licensing" shall mean any state agency activity, other than before the division of corporations and state records in the department of state, respecting the grant, denial, renewal, revocation, enforcement, suspension, annulment, withdrawal, recall, cancellation or amendment of a license, permit or other form of permission conferring the right or privilege to engage in (i) a profession, trade, or occupation or (ii) any business or activity regulated by a regulatory agency as defined herein, which in the absence of such license, permit or other form of permission would be prohibited.

(c) The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

(d) The term "ministerial matter" shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

(e) The term "regulatory agency" shall mean the banking department, insurance department, state liquor authority, department of agriculture and markets, department of education, department of environmental conservation, department of health, division of housing and community renewal, department of state, other than the division of corporations and state records, department of public service, the industrial board of appeals in the department of labor and the department of law, other than when the attorney general or his agents or employees are performing duties specified in section sixty-three of the executive law.

(f) The term "representative capacity" shall mean the presentation of the interests of a client or other person pursuant to an agreement, express or implied, for compensation for services.

(g) The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor, or the state university of New York or the city university of New York, including all their constituent units except community colleges of the state university of New York and the independent institutions operating statutory or contract colleges on behalf of the state.

(h) The term "statewide elected official" shall mean the governor, lieutenant governor, comptroller or attorney general.

(i) The term "state officer or employee" shall mean:

(i) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis;

(ii) officers and employees of statewide elected officials;

(iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and

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(iv) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

(j) The term "city agency" shall mean a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include the board of education, the board of higher education, school boards, city and community colleges, community boards, the New York city transit authority, the New York city housing authority and the Triborough bridge and tunnel authority, but shall not include any court or corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

(k) The term "political party chairman" shall mean:

(i) the chairman of the state committee of a party elected as provided in section 2-112 of the election law and his or her successor in office;

(ii) the chairman of a county committee elected as provided in section 2-112 of the election law and his or her successor in office from a county having a population of three hundred thousand or more or who receives compensation or expenses, or both, during the calendar year aggregating thirty thousand dollars or more; and

(iii) that person (usually designated by the rules of a county committee as the "county leader" or "chairman of the executive committee") by whatever title designated, who pursuant to the rules of a county committee or in actual practice, possesses or performs any or all of the following duties or roles, provided that such person was elected from a county having a population of three hundred thousand or more or was a person who received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more:

(A) the principal political, executive and administrative officer of the county committee;

(B) the power of general management over the affairs of the county committee;

(C) the power to exercise the powers of the chairman of the county committee as provided for in the rules of the county committee;

(D) the power to preside at all meetings of the county executive committee, if such a committee is created by the rules of the county committee or exists de facto, or any other committee or subcommittee of the county committee vested by such rules with or having de facto the power of general management over the affairs of the county committee at times when the county committee is not in actual session;

(E) the power to call a meeting of the county committee or of any committee or subcommittee vested with the rights, powers, duties or privileges of the county committee pursuant to the rules of the county committee, for the purpose of filling an office at a special election in accordance with section 6-114 of the election law, for the purpose of filling a vacancy in accordance with section 6-116 of such law; or

(F) the power to direct the treasurer of the party to expend funds of the county committee.

The terms "constituted committee" and "political committee", as used in this paragraph (k), shall have the same meanings as those contained in section 14-100 of the election law.

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2. In addition to the prohibitions contained in subdivision seven hereof, no statewide elected official, state officer or employee, member of the legislature or legislative employee shall receive, or enter into any agreement express or implied for, compensation for services to be rendered in relation to any case, proceeding, application, or other matter before any state agency, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit; provided, however, that nothing in this subdivision shall be deemed to prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

3. (a) No statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims.

(b) No state officer or employee who is required to file an annual statement of financial disclosure pursuant to the provisions of section seventy-three-a of this article, and is not otherwise subject to the provisions of this section, shall receive, directly or indirectly, or enter into any agreement express or implied, for any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state agency by which he is employed or affiliated in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims.

4. (a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(b) No political party chairman of a county wholly included in a city with a population of more than one million, or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any city agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised directly or indirectly, by a city agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(c) For purposes of this subdivision, the term "services" shall not include employment as an employee.

5. No statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly or indirectly, solicit, accept or receive any gift having a value of seventy-five dollars or more whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

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6. (a) Every legislative employee not subject to the provisions of section seventy-three-a of this chapter shall, on and after December fifteenth and before the following January fifteenth, in each year, file with the legislative ethics committee established by section eighty of the legislative law a financial disclosure statement of

(1) each financial interest, direct or indirect of himself, his spouse and his unemancipated children under the age of eighteen years in any activity which is subject to the jurisdiction of a regulatory agency or name of the entity in which the interest is had and whether such interest is over or under five thousand dollars in value.

(2) every office and directorship held by him in any corporation, firm or enterprise which is subject to the jurisdiction of a regulatory agency, including the name of such corporation, firm or enterprise.

(3) any other interest or relationship which he determines in his discretion might reasonably be expected to be particularly affected by legislative action or in the public interest should be disclosed.

(b) Copies of such statements shall be open to public inspection.

(c) Any such legislative employee who knowingly and wilfully with intent to deceive makes a false statement or gives information which he knows to be false in any written statement required to be filed pursuant to this subdivision, shall be assessed a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty shall be made by the legislative ethics committee in accordance with the provisions of subdivision twelve of section eighty of the legislative law. For a violation of this subdivision, the committee may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor.

7. (a) No statewide elected official, or state officer or employee, other than in the proper discharge of official state or local governmental duties, or member of the legislature or legislative employee, or political party chairman shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another in relation to any case, proceeding, application or other matter before a state agency where such appearance or rendition of services is in connection with:

(i) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor, from, to or with any such agency;

(ii) any proceeding relating to rate making;

(iii) the adoption or repeal of any rule or regulation having the force and effect of law;

(iv) the obtaining of grants of money or loans;

(v) licensing; or

(vi) any proceeding relating to a franchise provided for in the public service law.

(b) No political party chairman in a county wholly included in a city having a population of one million or more shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another in relation to any case, proceeding, application or other matter before any city agency where such appearance or rendition of services is in connection with:

(i) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor, from, to or with any such agency;

(ii) any proceeding relating to ratemaking;

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(iii) the adoption or repeal of any rule or regulation having the force and effect of law;

(iv) the obtaining of grants of money or loans;

(v) licensing. For purposes of this paragraph, the term "licensing" shall mean any city agency activity respecting the grant, denial, renewal, revocation, enforcement, suspension, annulment, withdrawal, recall, cancellation or amendment of a license, permit or other form of permission conferring the right or privilege to engage in (i) a profession, trade, or occupation or (ii) any business or activity regulated by a regulatory agency of a city agency which in the absence of such license, permit or other form of permission would be prohibited; and

(vi) any proceeding relating to a franchise.

(c) Nothing contained in this subdivision shall prohibit a statewide elected official, or a state officer or employee, unless otherwise prohibited, or a member of the legislature or legislative employee, or political party chairman, from appearing before a state agency in a representative capacity if such appearance in a representative capacity is in connection with a ministerial matter.

(d) Nothing contained in this subdivision shall prohibit a member of the legislature, or a legislative employee on behalf of such member, from participating in or advocating any position in any matter in an official or legislative capacity, including, but not limited to, acting as a public advocate whether or not on behalf of a constituent. Nothing in this paragraph shall be construed to limit the application of the provisions of section seventy-seven of this chapter.

(e) Nothing contained in this subdivision shall prohibit a state officer or employee from appearing before a state agency in a representative capacity on behalf of an employee organization in any matter where such appearance is duly authorized by an employee organization.

(f) Nothing contained in this subdivision shall prohibit a political party chairman from participating in or advocating any matter in an official capacity.

(g) Nothing contained in this subdivision shall prohibit internal research or discussion of a matter, provided, however, that the time is not charged to the client and the person does not share in the net revenues generated or produced by the matter.

(h) Nothing contained in this subdivision shall prohibit a state officer or employee, unless otherwise prohibited, from appearing or rendering services in relation to a case, proceeding, application or transaction before a state agency, other than the agency in which the officer or employee is employed, when such appearance or rendition of services is made while carrying out official duties as an elected or appointed official, or employee of a local government or one of its agencies.

8. (a)(i) No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before such agency.

(ii) No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration.

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(iii) No person who has served as a member of the legislature shall within a period of two years after the termination of such service receive compensation for any services on behalf of any person, firm, corporation or association to promote or oppose, directly or indirectly, the passage of bills or resolutions by either house of the legislature. No legislative employee who is required to file an annual statement of financial disclosure pursuant to the provisions of section seventy-three-a of this chapter shall during the term of office of the legislature in which he or she was so employed, receive compensation at any time during the remainder of such term after leaving the employ of the legislature for any services on behalf of any person, firm, corporation or association to promote or oppose, directly or indirectly, the passage of bills or resolutions by either house of the legislature in relation to any matter with respect to which such person was directly concerned and in which he personally participated during the period of his service or employment. A legislative employee who acted primarily in a supervisory capacity in such matter and who was not personally involved in the development, negotiation or implementation of the matter to an important and material degree, may, with the approval of the legislative ethics committee, receive such compensation and perform such services.

(b)(i) The provisions of subparagraph (i) of paragraph (a) of this subdivision shall not apply to any state officer or employee whose employment was terminated on or after January first, nineteen hundred ninety-five and before April first, nineteen hundred ninety-nine because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the state work force. On or before the date of such termination of employment, the state agency shall provide to the terminated employee a written certification that the employee has been terminated because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the state work force, and that such employee is covered by the provisions of this paragraph. The written certification shall also contain a notice describing the rights and responsibilities of the employee pursuant to the provisions of this section. The certification and notice shall contain the information and shall be in the form set forth below:

CERTIFICATION AND NOTICE

TO: Employee's Name: _____
State agency: _____
Date of Termination: _____

I, (name and title) of (state agency), hereby certify that your termination from State service is because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the State work force. Therefore, you are covered by the provisions of paragraph (b) of subdivision eight of section seventy-three of the Public Officers Law.

You were designated as a policy maker: YES ____ NO ____

(TITLE)

TO THE EMPLOYEE:

This certification affects your right to engage in certain activities after you leave state service.

Ordinarily, employees who leave State service may not, for two years, appear or practice before their former agency or receive compensation for rendering services on a matter before their former agency. However, because of this certification, you may be exempt from this restriction.

If you were not designated as a Policymaker by your agency, you are automatically exempt. You may, upon leaving State service, immediately appear, practice or receive compensation for services rendered before your former agency.

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If you were designated as a Policymaker by your agency, you are eligible to apply for an exemption to the State Ethics Commission at 39 Columbia Street, Albany, New York 12207.

Even if you are or become exempt from the two year bar, the lifetime bar of the revolving door statute will continue to apply to you. You may not appear, practice, communicate or otherwise render services before any State agency in relation to any case, proceeding, application or transaction with respect to which you were directly concerned and in which you personally participated during your State service, or which was under your active consideration.

If you have any questions about the application of the post-employment restrictions to your circumstances, you may contact the State Ethics Commission at (518) 432-8207 or 1-800-87ETHIC (1-800-873-8442).

(ii) The provisions of subparagraph (i) of this paragraph shall not apply to any such officer or employee who at the time of or prior to such termination had served in a policymaking position as determined by the appointing authority, which determination had been filed with the state ethics commission, provided that such officer or employee may so appear or practice or receive such compensation with the prior approval of the state ethics commission. In determining whether to grant such approval the state ethics commission shall consider:

- A. whether the employee's prior job duties involved substantial decision-making authority over policies, rule or contracts;
- B. the nature of the duties to be performed by the employee for the prospective employer;
- C. whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee;
- D. whether the prospective employment may be beneficial to the state or the public; and
- E. the extent of economic hardship to the employee if the application is denied.

(c) The provisions of paragraph (b) of this subdivision shall not apply to employees whose employment has been discontinued as a result of retirement or to employees who, prior to termination, have declined to exercise a right to another position with a state agency unless such position would require the employee to travel more than thirty-five miles in each direction to the new position or accept a reduction in base salary of more than ten per centum.

(d) Nothing contained in this subdivision shall prohibit any state agency from adopting rules concerning practice before it by former officers or employees more restrictive than the requirements of this subdivision.

(e) This subdivision shall not apply to any appearance, practice, communication or rendition of services before any state agency, or either house of the legislature, or to the receipt of compensation for any such services, rendered by a former state officer or employee or former member of the legislature or legislative employee, which is made while carrying out official duties as an elected official or employee of a federal, state or local government or one of its agencies.

(f) Nothing in this subdivision shall be deemed to prevent a former state officer or employee who was employed on a temporary basis to perform routine clerical services, mail services, data entry services or other similar ministerial tasks, from subsequently being employed by a person, firm, corporation or association under contract to a state agency to perform such routine clerical services, mail services, data entry services or other similar ministerial tasks; provided however, this paragraph shall in no event apply to any such state officer or employee who was required to file an annual statement of financial disclosure pursuant to section seventy-three-a of this article.

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(g) Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency when the agency head certifies in writing to the state ethics commission that the services of such former officer or employee are required in connection with the agency's efforts to address the state's year 2000 compliance problem.

(h) Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency when the agency head certifies in writing to the state ethics commission that the services of such former officer or employee are required in connection with the agency's response to a disaster emergency declared by the governor pursuant to section twenty-eight of the executive law.

8-a. The provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section shall not apply to any such former state officer or employee engaged in any of the specific permitted activities defined in this subdivision that are related to any civil action or proceeding in any state or federal court, provided that the attorney general has certified in writing to the state ethics commission, with a copy to such former state officer or employee, that the services are rendered on behalf of the state, a state agency, state officer or employee, or other person or entity represented by the attorney general, and that such former state officer or employee has expertise, knowledge or experience which is unique or outstanding in a field or in a particular matter or which would otherwise be generally unavailable at a comparable cost to the state, a state agency, state officer or employee, or other person or entity represented by the attorney general in such civil action or proceeding. In those instances where a state agency is not represented by the attorney general in a civil action or proceeding in state or federal court, a former state officer or employee may engage in permitted activities provided that the general counsel of the state agency, after consultation with the state ethics commission, provides to the state ethics commission a written certification which meets the requirements of this subdivision. For purposes of this subdivision the term "permitted activities" shall mean generally any activity performed at the request of the attorney general or the attorney general's designee, or in cases where the state agency is not represented by the attorney general, the general counsel of such state agency, including without limitation:

(a) preparing or giving testimony or executing one or more affidavits;

(b) gathering, reviewing or analyzing information, including documentary or oral information concerning facts or opinions, attending depositions or participating in document review or discovery;

(c) performing investigations, examinations, inspections or tests of persons, documents or things;

(d) performing audits, appraisals, compilations or computations, or reporting about them;

(e) identifying information to be sought concerning facts or opinions; or

(f) otherwise assisting in the preparation for, or conduct of, such litigation.

Nothing in this subdivision shall apply to the provision of legal representation by any former state officer or employee.

8-b. Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency if, prior to engaging in such service, the agency head certifies in writing to the state ethics commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the needs of the agency and is otherwise unavailable at a comparable cost. Where approval of the contract is required under section one hundred twelve of the state finance law, the comptroller shall review and consider the reasons for such certification. The state ethics commission must review and approve all certifications made pursuant to this subdivision.

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8-b. Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section, a former state officer or employee who, prior to his or her separation from state service, was employed as a health care professional and, in conjunction with his or her state duties, provided treatment and/or medical services to individuals residing in or served by a state-operated facility is not barred from rendering services to such individuals in their care prior to leaving state service, at the state-operated facility which employed the former state officer or employee.

9. No party officer while serving as such shall be eligible to serve as a judge of any court of record, attorney-general or deputy or assistant attorney-general or solicitor general, district attorney or assistant district attorney. As used in this subdivision, the term "party officer" shall mean a member of a national committee, an officer or member of a state committee or a county chairman of any political party.

10. Nothing contained in this section, the judiciary law, the education law or any other law or disciplinary rule shall be construed or applied to prohibit any firm, association or corporation, in which any present or former statewide elected official, state officer or employee, or political party chairman, member of the legislature or legislative employee is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with a state agency, or a city agency with respect to a political party chairman in a county wholly included in a city with a population of more than one million, otherwise proscribed by this section, the judiciary law, the education law or any other law or disciplinary rule with respect to such official, member of the legislature or officer or employee, or political party chairman, where such statewide elected official, state officer or employee, member of the legislature or legislative employee, or political party chairman does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the state ethics commission or by the legislative ethics committee in relation to persons subject to their respective jurisdictions, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined; nor shall anything contained in this section, the judiciary law, the education law or any other law or disciplinary rule be construed to prohibit any firm, association or corporation in which any present or former statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this chapter is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with, the court of claims, where such statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this chapter does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the state ethics commission or by the legislative ethics committee in relation to persons subject to their respective jurisdictions, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined.

11. Notwithstanding any provision of the judiciary law, the education law or any other law or disciplinary rule to the contrary:

(a) Conduct authorized pursuant to subdivision eight of this section by a person who has served as a member of the legislature or as a legislative employee shall not constitute professional misconduct or grounds for disciplinary action of any kind;

(b) No member of the legislature or former member of the legislature shall be prohibited from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with, any state agency solely by reason of any vote or other action by such member or former member in respect to the confirmation or election of any member, commissioner, director or other person affiliated with such state agency, but nothing in this paragraph shall limit the prohibition contained in subdivision eight of this section;

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(c) The appearance, practice, communication or rendition of services in relation to any matter before, or transaction of business with a state agency, or with the court of claims, or the promotion or opposition to the passage of bills or resolutions by either house of the legislature, by a member, associate, retired member, of counsel or shareholder of a firm, association or corporation, in accordance with subdivision ten of this section, is hereby authorized and shall not constitute professional misconduct or grounds for disciplinary action of any kind solely by reason of the professional relationship between the statewide elected official, state officer or employee, political party chairman, member of the legislature, or legislative employee and any firm, association, corporation or any member, associate, retired member, of counsel, or shareholder thereof, or by reason of the appearance created by any such professional relationship.

12. A statewide elected official, state officer or employee, or a member of the legislature or legislative employee, or political party chairman, who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation which is appearing or rendering services in connection with any case, proceeding, application or other matter listed in paragraph (a) or (b) of subdivision seven of this section shall not orally communicate, with or without compensation, as to the merits of such cause with an officer or an employee of the agency concerned with the matter.

13. For the purposes of this section, a statewide elected official or state officer or employee or member of the legislature or legislative employee or political party chairman who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation shall not be deemed to have made an appearance under the provisions of this section solely by the submission to a state agency or city agency of any printed material or document bearing his or her name, but unsigned by him or her, such as by limited illustrations the name of the firm, association or corporation or the letterhead of any stationery, which pro forma serves only as an indication that he or she is such a member, associate, retired member, of counsel to, or shareholder.

14. In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates the provisions of subdivisions two through five or subdivision seven, eight or twelve of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty hereunder shall be made by the state ethics commission or the legislative ethics committee, as the case may be, with respect to persons subject to their respective jurisdictions. The state ethics commission acting pursuant to subdivision thirteen of section ninety-four of the executive law, or the legislative ethics committee acting pursuant to subdivision twelve of section eighty of the legislative law, as the case may be, may, in lieu of a civil penalty, with respect to a violation of subdivisions two through five or subdivision seven or eight of this section, refer a violation of any such subdivision to the appropriate prosecutor and upon such conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor.

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§ 74. Code of ethics

1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

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i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

j. If any officer or employee of a state agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is subject to the jurisdiction of a regulatory agency, he should file with the secretary of state a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.

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Preliminary Contract

NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE
C400XXX

THIS AGREEMENT made this DD of MONTH, YYYY by and between the New York State Department of Taxation and Finance, located at Building 9, W.A. Harriman State Office Campus, Albany, New York 12227 (hereinafter referred to as the “Department”, “DTF”) and VENDOR NAME, with principal place of business located at VENDOR ADDRESS (hereinafter referred to as the “Contractor”).

WHEREAS, the Department issued Request for Proposal (RFP) 05-107 on DATE , for Collection Services; and

WHEREAS, the Contractor timely submitted a bid proposal to provide the services set forth in RFP 05-107; and

WHEREAS, pursuant to **Section 9** of said RFP, the Contractor was determined to have the highest ranking proposal and has been determined capable of providing the required services, and

WHEREAS, the Contractor is prepared to undertake performance of Collection Services according to the terms of this Agreement, and recognizing that turnover of functions to the Department or at the direction of the Department, to a successor contractor is a fundamental requisite of such undertaking.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein set forth, the parties hereto agree as follows:

Article I. Definitions

The following terms when used herein shall have the specified meanings:

Agreement means this contract C400XXX, which includes all documents identified in **Article II: Entirety of Agreement**.

Assessment means a liability owed by a tax debtor(s) for a specific period(s) for a particular tax type.

Attorney General means the Attorney General of the State of New York, or designee.

Base Contract means that portion of the Agreement preceding the signatures of the parties in execution.

Case means all assessments eligible for collection from one tax debtor identified by a unique ten (10) character identification number supplied by the Department.

Collection Effort means all effort expended in an attempt to resolve a tax debt.

Collection Services means the solicitation of payments and/or tax returns from tax debtors, skip tracing tax debtors, and providing updated information concerning tax debtors to the Department as required in this Contract.

**New York State Department of Taxation and Finance
Request for Proposal (RFP) 05-107
Collection Services**

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Contractor means a bidder to whom a contract is awarded to as a result of RFP 05-107

Department means the New York State Department of Taxation and Finance.

Dispute Resolution means the process set forth in Article X for resolving disputes arising under this Agreement.

IPA means qualified monthly installment payment agreement that addresses the entire tax liability.

Offset means overpayment of a State or Federal tax or other imposition mandated by State or Federal Tax Law or any payment due a tax debtor from the State of New York which has been applied to an open assessment.

OSC means the New York State Office of the State Comptroller.

Proposal means the Proposal submitted by Contractor in response to RFP 05-107, and any written clarifications thereto made by Contractor. The Proposal is attached hereto as XX.

Recall means a process by which the Department requires that the contractor immediately cease collection actions and send the case back to the Department. A maximum of one recall file can be sent per day.

Return means a weekly scheduled process that the contractor will use to send cases back to the Department after contractor collection efforts have been exhausted, the Department has advised the Contractor the case is complete, or the assignment period is completed.

RFP means the Collection Services Request for Proposals issued by the Department on DATE (RFP 05-107) including all appendices and exhibits contained therein, and any written clarifications or amendments thereto made by DTF. The Proposal is attached as XX.

Tax Liability means the total amount due inclusive of penalties and interest.

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Article II. Entirety of Agreement

This Contract C400XXX shall consist of the documents listed below, which are fully incorporated by reference. In the event of a conflict between or among the provisions of the Contract, such conflict shall be resolved by reference to the documents in the order listed with Appendix A having precedence:

Appendix A of the RFP, "Standard Clauses for New York State Contracts";

Appendix B – Participation by Minority Group Members and Women with Respect to State Contracts;

Attachment 6 - MacBride Fair Employment Principles;

Attachment 9 - Executive Order 127 including Contractor Disclosure of Contacts Form; Contractor Disclosure of Prior Non-Responsibility Determinations; and Contractor Certification of Compliance

Attachment 10 – Secrecy Provision Agreement (DTF-202);

Attachment 11 – Acknowledgement of Confidentiality of Internal Revenue Service Tax Return;

Attachment 12 – Sales and Compensating Use Documentation including Contractor Certification Form ST-220 and Certificate of Authority or Representation of Registration Information;

Base Contract; Amendments and clarifications to the RFP and Proposal (including questions and answers);

Contractor Proposal excluding amendments or clarifications to the Proposal;

The Request for Proposal, excluding Appendices A and B and Attachments 6, 9, 10, 11 and 12 and also excluding amendments and clarifications to the RFP and questions and answers.

Article III. Contractor Responsibilities

The Contractor hereby agrees to provide all services as set forth herein and in RFP 05-107 and the Contractor's bid proposal in response to said RFP for all cases placed with the Contractor by the Department.

The Contractor will comply with the Secrecy requirements set forth in Article VII herein.

The Contractor must not disclose the data provided by the Department to any other individual or entity except as expressly provided by law. The data provided, while in the custody of the contractor, must be kept confidential, and the Contractor must take all reasonable and prudent steps to ensure the data is fully protected and secured.

The Contractor must immediately notify the Department in the event of any unauthorized disclosure of tax debtor information.

The Contractor certifies that all information provided with respect to Executive Order Number 127 is complete, true and accurate.

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The Contractor will provide access to information necessary to support periodic audit(s) of the collection process and any system(s) utilized in the collection process including, but not limited to, real time access to the Contractor's collection system and the ability to remotely service observe, in real time, live calls conducted by contractor staff with tax debtors. The Contractor is required to retain a level of information that will verify compliance with the provisions set forth in RFP 05-107, Section 4.3.2

The Contractor will obtain the Department's pre-approval of all documents and phone scripts prior to use in their collection efforts on cases placed under this contract as set forth in Section 4.29 of RFP 05-107.

The Contractor must obtain prior written approval from the Department to perform work from more than one facility and/or to designate more than one contract administrator.

The Contractor must notify the Department in writing in the event that a taxpayer brings an action against the Contractor arising out of performance of this contract and must provide written notice contemporaneously with receipt of any pleading adverse to the Department.

The Department reserves the right at its or the New York State Attorney General's discretion to join or intervene in any matter as required to protect the interests of New York State.

The Contractor shall pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all federal, State, and local, laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract.

Cases will be recalled by the Department and returned by the Contractor under instances set forth in RFP 05-107 and as required thereunder.

The Contractor must instruct tax debtors to remit payments directly to the Department using only acceptable payment options as identified by the Department. Under no circumstances should the Contractor instruct a tax debtor to remit payment, using any payment option, directly to the contractor. Any payments received by the contractor must be redirected to the Department on a daily basis in the manner prescribed by the Department. Acceptable payment options are defined as:

- Payment by check , money order or other similar negotiable instrument
- Payment by Electronic Funds Withdrawal (ACH Debit)
- Payment by Credit Card

Additional payment options may be required during the term of the contract. Contractor acknowledges that the Department is contemplating allowing the bidder to process credit card and electronic funds withdrawal (direct debit) transactions, online, through the Department's web site.

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Contractor shall comply with the Contractor staffing requirements set forth in Section 5.1.1 of RFP 05-107 and Contractor's bid proposal, except as changes after the initial placement are pre-approved by the Department in writing or caused by resignation or other situations beyond the control of the contractor. Deviations from staffing requirements resulting from vacancies caused by resignation or situations beyond the control of the Contractor shall be promptly filled with personnel having similar experience to the initial placement. Otherwise, changes to the staffing mix, ratio and/or number below that proposed by the Contractor must be submitted to the Department in writing and will be considered to address alterations in inventory placement or benefit to the Department. At no time will the Department approve a ratio of less than one fully trained front line collector for each five hundred cases placed unless such change in ratio conveys a clear benefit to the Department as determined at the sole discretion of the Department. Approval of changes to the staffing mix and/or number or ratio shall be effective on the date specified by the Department in its written approval. Such Department approval shall not be unreasonably withheld or delayed.

Contractor shall provide the Department with a detailed disengagement plan for its approval within one year of the start date for active collection pursuant to Section 4.22 of RFP 05-107. If the disengagement plan is not approved by the Department, Contractor shall correct all deficiencies identified by the Department during its review and submit a revised plan within a time agreed upon by the parties.

Contractor shall comply with Section 4.12 of RFP 05-107, entitled Insurance. DTF's acceptance or approval of the Certificates of Insurance required thereunder shall not diminish any of Contractor's obligations, responsibilities or liabilities hereunder.

Article IV. Department Responsibilities

The Department will place cases with the Contractor for collection consistent with RFP 05-107 Sections 2, 4.13 and 4.14.

The Department will compensate the Contractor for said collection services based on the terms set forth herein under Article VI, Fees and Payment.

The Department will provide training to Contractor employees on Department policies and procedures as set forth in Section 4.10 of RFP 05-107.

Article V. Contract Term

The Contract term will be for a three year period with two one year renewals. Renewals shall be accomplished through written amendment with the mutual agreement of the parties. This Contract, and any renewals, requires the approval of the Offices of the New York Attorney General (AG) and the New York State Comptroller (OSC).

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The fee set forth in Article VI shall not be increased during the first two years of the contract term. Any proposed increase of the fee for the third year of the contract term must be requested by the Contractor in writing sixty (60) days in advance of the anniversary date of the Contract. Such increase shall be subject to negotiation between the Department and the Contractor. Notwithstanding the foregoing, rate increases for the third year shall be limited to the percentage change in the Consumer Price Index for All Urban Customers as reported by the U.S. Department of Labor, Bureau of Statistics for the CPI-U for the preceding twelve (12) month period.

If the renewal option is exercised, rate increases for each of the two subsequent renewal periods shall be so limited.

Article VI. Fees and Payment

The Department agrees to pay the Contractor a fixed percentage of XX% of the monies received in the performance of collection services provided hereunder.

On a monthly basis, the Department will reconcile all payments received from tax debtors by all acceptable payment options. This reconciliation will apply to assessments contained within the cases placed with the contractor. This reconciliation will also apply to returns associated with assessments. This reconciled figure will be net of all adjustments and payments subsequently dishonored.

The Department will apply the contractor's rate to this monthly total to calculate the total fee due the contractor. This calculation will be sent to the contractor for review. If the contractor agrees to the calculation, the contractor must then submit an invoice to the Department in a manner prescribed by the Department to request payment. The Department will pay the contractor in accordance with Article 11A of the New York State Finance Law. Payment will be remitted to the contractor in a manner prescribed by the Department.

Under no circumstance will the contractor receive a fee for any payment received:

- Outside the contractor placement beginning and end dates;
- For credits resulting from administrative resolution;
- Decreased by any Offset; or
- After contract expiration or termination.

In the event the Contractor disagrees with this calculation, the contractor must immediately notify the Department in writing and substantiate its position. After considering the Contractor's position an agreement on the fee due cannot be reached, the Contractor must utilize the dispute resolution process set forth in Article X herein.

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Article VII: Secrecy Provisions

A. Required Forms

The Contractor will require each employee assigned to this Agreement to sign form **DTF-202 Agreement to Adhere to the Secrecy Provision of the Tax Law and the Internal Revenue Code** as set forth in **Attachment 10** of the RFP; and form **Acknowledgment of Confidentiality of Internal Revenue Service Tax Return Information and Internal Revenue Code Selected Confidentiality Provisions Pertaining to Contractors** as set forth in **Attachment 11** of the RFP. The Federal Acknowledgment must be signed annually. Both forms will be retained by the Contractor and provided to the Department upon request.

B. New York State Department of Taxation and Finance Secrecy Provisions

The various secrecy provisions of the Tax Law (i.e., Tax Law § 697 (e) and 1825) prohibit independent Contractors from disclosing tax information in any manner and provide for misdemeanor prosecution for violations. The secrecy provisions of the Internal Revenue Code (26 USC § 6103) provide for felony prosecution for unauthorized disclosure of Federal tax information in the possession of the Department.

All other information about the Department's operations not covered by the preceding provisions of law must be kept confidential as if it were so covered. Bidder representatives must comply with the administrative procedures enforcing these rules.

The Contractor and all staff members shall agree not to divulge or use, for their own benefit or the benefit of others, confidential tax administration information; and to subscribe to § 73 and 74 the Public Officers Law (See **Appendix D: Public Officers Law § 73 and 74**).

C. Federal Secrecy Provisions

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by his/her employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Disclosure to anyone other than an officer, or employee of the Contractor will be prohibited.
3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
4. The Contractor certifies that the data processed during the performance of this Agreement will be completely purged from all data storage components of his/her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

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5. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or its designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
6. All computer systems processing, storing, or transmitting of Federal tax information must meet DoD Trusted Computer Security Evaluation Criteria (DoD 5200.28-STD) C2 class. To meet functional and assurance requirements, the operating security features of the system must have the following minimum requirements: a security policy, accountability, assurance, and documentation. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
7. No work involving Federal tax information furnished under this Agreement will be subcontracted without prior written approval of the IRS. The IRS will be notified at least 45 days in advance of any proposed subcontracting of work performed under this Agreement.
8. The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
9. The agency will have the right to void the Agreement if the Contractor fails to provide the safeguards described above.

CRIMINAL/CIVIL SANCTIONS

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC § 7213 and 7431 and set forth at 26 CFR 301.6103 (n).
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as one year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee (United States for federal employees) in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant

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is found liable, or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC sections 7213A and 7431.

3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

INSPECTIONS

1. The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Agreement safeguards.

Article VIII. Reserved Rights

In addition to such other rights as allowed under this Agreement, the Department reserves the following rights:

The Department reserves the right to require changes in the Contractor's collection practices if it is determined that collection practice(s) utilized by the Contractor are contrary to Department policies and procedures.

The Department reserves the right to survey tax debtors to ensure compliance with Department policies and procedures.

The Department shall have the right to send its officers and/or employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be non-compliant with contract safeguards. Such determination shall be made at the sole discretion of the Department.

The Department shall have the right to require the removal of any Contractor staff assigned to this project for work related cause upon written notification to the Contractor. Such notification shall set forth the reasons for the request for removal. In such event, Contractor shall promptly provide a substitution.

The Department reserves the right to request a copy of Federal Form I-9, Employment Eligibility Verification, for each individual assigned to work at the Department under this contract, if the Contractor is so legally obligated to obtain and retain such Form I-9. The social security number of the employee, if listed on Form I-9, shall be redacted from the form.

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Article IX. Performance Standards and Remedies

If it is determined that the Contractor is in violation of any terms or conditions set forth in this contract, including a finding made at the sole discretion of the Department that a complaint has merit as set forth in Section 4.26 of RFP 05-107, the Department reserves the right to take any one or more of the following actions it deems appropriate, at its sole discretion: 1) contract termination, 2) non-renewal of the Contract, 3) removal of the specific Contractor employees from working cases, 4) withholding of \$1,000 per instance from the Contractor's fees set forth in Article VI, 5) suspension, reduction or removal of case referrals from the Department until the matter is resolved. The taking of any such action shall not give rise to any cause of action against the Department for any kind of damages, loss of profits, expenses, or other remuneration of any kind.

In the case of termination or non-renewal of the Contract, the Contractor will comply with the disengagement process prescribed by the Department as set forth in Sections 1.3, 4.11 and 4.22 of the RFP and adhere to the required disengagement plan.

Article X. Dispute Resolution

The first step of dispute resolution will be through conference between the Department and the Contractor. The party initiating the process shall notify the other party in writing and set forth the issues for resolution and provide all necessary documentation. Unresolved disputes will be arbitrated by the Commissioner of Taxation, or his designee, whose decision is final and binding. During this period all work required hereunder shall be performed. If the Contractor pursues any legal or equitable remedy outside the Department, the Contractor will continue to perform work in accordance with the direction of the Department until such proceedings may be concluded and will continue to be paid, less an amount attributable to the disputed work. Disputes that go to litigation must be pursued in a court of competent jurisdiction of the State of New York. New York law will govern the dispute and venue must be laid in Albany County, New York.

Article XI. Continuing Administrative Requirements

Financial Stability

The Contractor must continue to evidence financial stability as a material condition of this contract. Financial stability will be evaluated annually based upon criteria similar to that used in the bidding process to include the reports required for Contractor's particular organizational structure as set forth in Section 7.3.4 of RFP 05-107 and as otherwise required by the Department. In addition to annual financial statements, interim financial statements based on the period ending six-months from the fiscal year end must be submitted for review by the Department within 45 days of the end of the six month financial period. The interim financial statements will be required as set forth in Section 7.3.4 of RFP 05-107.

Contractor shall immediately notify the Department of a significant expansion of the Contractor or a change in ownership. Any significant change in ownership or significant expansion will require a re-evaluation of the contract in its entirety by the Department.

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Vendor Responsibility

Contractor agrees to evidence vendor responsibility substantially similar to, or superior to, its status as of the execution of this Agreement as a material condition of the same. Contractor further agrees to notify DTF promptly of any material change in vendor responsibility or of a change in ownership. Additionally, Contractor acknowledges that a review of vendor responsibility shall be undertaken prior to any renewal hereunder and that the Department reserves the right to undertake such a review annually upon the anniversary date of this Agreement.

Sales and Compensating Use Tax

Contractors shall certify annually on the anniversary date of this agreement and prior to any renewal that the Contractor as well as any affiliates, subcontractors and subcontractors' affiliates making sales delivered within New York State have a valid certificate of authority to collect New York State and local sales and compensating use tax. Contractor shall provide such documentation upon request by the Department.

Executive Order 127

If this Agreement is renewed or amended, Contractor shall be subject to the Executive Order 127 requirements set forth herein and shall submit such updated Executive Order 127 forms as are required by the Department.

Article XII. Termination

Termination for Cause

In addition to the termination rights set forth in this Agreement, the Department reserves the right to terminate the contract immediately upon written notice as follows:

If the Contractor fails to perform its obligations as set forth in Article VII (Secrecy), this Agreement may be cancelled immediately upon written notice. At its sole discretion, the Department may elect not to allow a cure period for such failure.

Otherwise, if the Contractor fails to perform its material obligations under this contract and does not, within ten calendar days after receiving written notice from the Department describing the alleged material failure, either,

1. Cure the material failure; or
2. If the material failure is one that cannot be reasonably cured within 10 calendar days after receiving written notice from the Department then the Department may either terminate this Agreement, in whole or in part, and pursue available remedies, subject to the limitations contained in Article XIII (Indemnification and Limitation of Liability) or extend the time of the cure period.

For purposes of this Article, material failure to perform by the contractor is a failure to perform an obligation that the contractor is bound to perform under this Agreement which is so fundamental to the Agreement that the failure to perform the obligation defeats the purpose of the Agreement. Material failure to perform by Contractor shall include, but not limited to:

1. Failure to meet the obligations and responsibilities imposed on the Contractor by Article III.
2. Breach of a material term or condition of any subcontract by Contractor or the subcontractor, if such breach materially impairs Contractor's performance under this Agreement with the reasonable likelihood that a material failure to perform by the Contractor will occur.
3. Contractor is or becomes insolvent or a party to any bankruptcy or receivership proceeding, or any similar action affecting the affairs or property of Contractor.

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4. Failure of the Contractor to remain a responsible contractor consistent with applicable New York State law, regulations and/or policy.
5. A finding that the certification filed by the Contractor in accordance with Executive Order 127 was intentionally false or intentionally incomplete.
6. A finding that the information filed by the Contractor in accordance with the requirements for Vendor Responsibility is incomplete, untrue or inaccurate.
7. Failure of Contractor to maintain vendor responsibility substantially similar to, or superior to, its status as of the execution of this Agreement.
8. Failure of Contractor to maintain financial stability substantially similar to, or superior to, its status as of the execution of this Agreement.

If it is subsequently determined for any reason that the Contractor was not in material default or that the Contractor's failure to perform or make progress in performance was due to causes beyond the control and without the fault or negligence of the Contractor, the Department shall have the option, at its sole discretion, to either deem the Notice of Termination to have been issued hereunder to as a termination for convenience of the Department or allow the Contractor to resume performance under the Agreement without an increase in cost.

In the event of termination by DTF for default by Contractor pursuant to this Article, Contractor shall be liable for DTF's direct damages resulting from such material breach, subject to the limitations and exclusions contained in Article XIII (Indemnification and Limitation of Liability).

Termination for Convenience

The Department may terminate this contract in whole or in part at any time for convenience upon thirty days written notice to the Contractor without penalty or other early termination charges due.

Procedure for Termination

In the event of termination for cause or convenience, the parties agree to cooperate in a manner to effect an orderly termination of the Contract and to adhere to the disengagement process set forth in Sections 1.3, 4.11 and 4.22 of the RFP and adhere to the required disengagement plan.

Article XIII. Indemnification and Limitation of Liability

A. General

The Contractor hereby warrants and guarantees to fully indemnify and save harmless the Department and its respective officers, employees, and agents or subcontractors without limitation from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any performance under this Agreement including: i) personal injury, damage to real or personal tangible or intangible property, or ii) negligence, either active or passive.

B. Intellectual Property Rights

Contractor shall fully indemnify, defend and save harmless the State, its officers, employees, and agents or subcontractors without limitation from and against any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses), arising out of or related to any claim of, or action for, infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party intellectual property rights in each case to the extent caused by any services provided by Contractor hereunder, provided that the Department shall give the Contractor: (i) prompt written notice of any action,

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claim or threat of infringement suit, or other suit, promptness of which shall be established by the Department upon the furnishing of written notice and verified receipt, (ii) the opportunity to take over, settle or defend such action, claim or suit at the Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the Department may require the Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Department shall require.

If any claim is brought against the Department for the unauthorized use of such product, information, service or thing, the Contractor will indemnify the Department for any expense due to such claim and will cooperate with the Tax Department and the Attorney General in the defense of that claim.

C. Incidental, Consequential, Indirect, Exemplary or Punitive Damages

Except as otherwise set forth in this Agreement, neither the Department nor the Contractor shall be liable for incidental, consequential, indirect, exemplary or punitive damages.

D. Force Majeure

The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fire or floods, or other similar causes beyond the control of the Contractor, or for any of the foregoing which affects subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, Contractor shall notify the Department, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof, or (b) if the delay is not reasonably foreseeable, within five calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing shall constitute the Contractor's sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given to the Department, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Department that the delay will significantly impair the value of the Contract to the Department. In the event of such determination, the Department may immediately terminate the contract with written notice.

E. Breach of Confidentiality

The Contractor shall be liable for breach of the confidentiality provisions of this agreement in an amount not to exceed the amount allowed by applicable Federal or New York State law (including any damages construed as incidental, consequential or indirect damages).

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Article XIV: General Terms and Conditions

Invariable Terms and Conditions

Appendix A

The Contractor will read Appendix A (standard Contract Clauses), which is incorporated as part of the Agreement without revision.

Tax Liabilities:

All outstanding Tax Liabilities, due to the State of New York from the Contractor, or Contractor's partners, employees, agents and subcontractors engaged in providing services under this Agreement, other than tax liabilities being contested by any such party, must be satisfied prior to the execution of this Agreement, or a payment schedule arranged for their speedy satisfaction.

Payment Records:

The Contractor must maintain adequate records as prescribed by the Department to substantiate all claims for payment and must make those records available in New York State for examination and copying.

Governing Law:

The laws of the State of New York shall be the law that shall govern the interpretation or application of any of the terms or conditions of this Agreement.

Required Approval:

This Agreement will not be effective until approval by the Office of the Attorney General and the Office of the State Comptroller.

Amendments to this Agreement will not be effective until approval by the Office of the Attorney General and the Office of the State Comptroller.

Funding:

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.

Accordingly, this Agreement will be performed only as long as the legislature appropriates funds and the Governor allocates such funds to the Department. Failure of New York State to execute a Budget timely may result in the Department being unable to reimburse the Contractor for services provided in the new fiscal year. All work approved and accepted by the Department will subsequently be reimbursed when the Budget has been executed.

Assignment of Rights and Duties:

The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or its right, title or interest therein, or its power to execute such Agreement to any other person, company, firm or corporation in performance of the Agreement, other than the assignment of the right to receive monies due hereunder, without the prior written consent of the Department. Prompt notice must be afforded the Department to effect the change of assignment through the Office of the State Comptroller.

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The Department reserves the right to assign this Agreement to any New York State Agency provided that the assignee agrees in writing to be bound by the terms and conditions of this Agreement. The Department agrees to provide the Contractor, 30 day prior written notice of any such assignment.

The terms and conditions of this Agreement may be extended to any other New York State agency through the use of a formally executed agreement between the Contractor and the state agency subject to review and approval of the Office of the Attorney General, and the Office of the State Comptroller.

Continuity of the Agreement

The terms and conditions of this Agreement shall remain in full force and effect for the term of this Agreement and the Contractor agrees to provide all services for such term, regardless of any reorganizations, consolidations or mergers to which the Contractor is, or may become, a party.

Notwithstanding the foregoing, Appendix A, Article VII (Secrecy) and Article XIII (Indemnification and Limitation of Liability) shall survive the term of this Contract. The insurance requirement set forth in Article III herein shall extend six months beyond termination of this Agreement.

Cooperation with Third Parties

The Contractor shall cooperate with all persons engaged in performing services for the Department, whether or not related to this Agreement, including, without limitation, Department officers and employees and third-party vendors engaged by the Department.

Severability

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such provision, the remainder of this Agreement shall remain in full force and effect, and such term or provision shall be deemed null and void. In addition, if any provision of the Agreement, for any reason, is declared to be unenforceable, the parties shall make a reasonable effort to substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

Conflict of Interest

A potential conflict of interest may exist if the contractor, or any of its employees, consultants or business associates, has other business or a personal relationship with any assigned tax debtor or their representative. Contractors must be aware that a potential conflict of interest may be identified at any point in the collection process. The contractors will be responsible for establishing procedures to identify potential conflicts of interest. Once identified, the contractor must immediately cease all collection activity involving the identified tax debtor. The contractor must immediately notify the Department in writing and disclose the nature of the potential conflict of interest in the manner prescribed by the Department. The Department will have sole discretion in evaluating the nature of the identified conflict of interest and will make the final decision regarding its resolution.

Subcontractors

The State reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labor's list of companies with which New York State cannot do business; or the Department determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided.

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Contractor may subcontract to subcontractors selected by Contractor, for services performed in connection with this Contract, subject to the Department's prior written approval. A subcontractor shall be defined as any firm or person who is not a full time employee of the Contractor, engaged or assigned to perform work under the Contract. All agreements between the Contractor and its subcontractors shall be by bona fide written contract.

Contractor shall include in all subcontracts for the services performed in connection with this Contract, 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:

- That the work performed by the subcontractor must be in accordance with the terms of the Contract including, but not limited to, Appendix A;
- That subcontractor shall comply with the provisions of section 5-a of the Tax Law and all Secrecy provisions;
- That nothing contained in such subcontract shall impair the rights of the Department;
- That nothing contained herein shall create any contractual relation between any subcontractor and the Department;
- That subcontractor shall maintain all records with respect to work performed under the subcontractor in the same manner as required of the Contractor; and
- That the DTF shall have the same authority to audit the records of all subcontractors as it does those of the Contractor.

Contractor shall be fully responsible to the Department for the acts and omissions in the performance of services 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 under the Contract or persons directly employed by the Contractor. Contractor shall not in any way be relieved of any financial, programmatic or service responsibility under the Contract by its agreement with any subcontractor or by the Department's approval of such an agreement with a subcontractor.

Authorized Representatives

Notice of Termination

Where Notice of Termination is to be provided by the Contractor to the Department, the Contractor shall deliver such notice to each of the following individuals:

- Chief Financial Officer
- Director of Procurement Bureau

Where Notice of Termination is to be provided by the Department to the Contractor, the Department shall deliver such notice to each of the following individuals:

To be Provided

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Execution of Contract Documents

Where a Provision of this Agreement calls for execution of a contract document, the individuals authorized to execute documents:

On behalf of the Department are:

- Commissioner
- Executive Deputy Commissioner
- Chief Financial Officer
- Assistant Director, Procurement Bureau

On behalf of the Contractor are:

-To be Provided

Notices

All notices given pursuant to this Agreement shall be given in writing and shall be deemed properly received if given by hand, sent certified mail return receipt requested or by means of an overnight courier service offering next day delivery and addressed as follows:

Notices to the Department from the Contractor:

Ms. Janice Piccone, Assistant Director
New York State Department of Taxation & Finance
Office of Budget and Management Analysis
W.A. Harriman Campus
Building #9, Room 234
Albany, NY 12227

Notices to the Department from the Contractor:

To be Provided

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

VENDOR NAME

**NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE**

XXXXXXXXXXXXXXXXXXXXX
Signature

XXXXXXXXXXXXXXXXXXXXX
Signature

XXXXXXXXXXXXXXXXXXXXX
Print Name

XXXXXXXXXXXXXXXXXXXXX
Print Name

XXXXXXXXXXXXXXXXXXXXX
Title

XXXXXXXXXXXXXXXXXXXXX
Title

XXXXXXXXXXXXXXXXXXXXX
Date

XXXXXXXXXXXXXXXXXXXXX
Date

XXXXXXXXXXXXXXXXXXXXX
Attorney General

XXXXXXXXXXXXXXXXXXXXX
Office of the State Comptroller

CORPORATION

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STATE OF
COUNTY OF

On this _____ day of _____, 2005, before me personally came

_____;
to me known, who being duly sworn, did depose and say that s/he resides in

_____;
that s/he is the _____ of the _____,
the corporation described in and which executed the foregoing instrument; that s/he knew the seal of said
corporation; that the seal affixed to said instrument was such corporate seal, that it was so affixed by the order of the
Board of Directors of said corporation, and that s/he signed his/her name thereto by like order.

NOTARY PUBLIC