



**STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
Office of Budget & Management Analysis
Bureau of Fiscal Services
Building 9, Room 234
W.A. Harriman Campus
Albany, NY 12227**

Patricia Mitchell, Chief Financial Officer
Eric Mostert, Assistant Director, Budget & Accounting Services
Catherine Golden, Assistant Director, Procurement Services

November 23, 2009

Dear Bidder,

The New York State (NYS) Department of Taxation and Finance (DTF) is soliciting proposals from qualified entities to represent the Department in the collection of outstanding New York State Tax Liabilities in cases where the tax debtor and/or tax debtor's source of income or assets are thought to be located outside the State of New York. Qualifications and mandatory requirements are outlined in the Request for Proposals (RFP) 09-31 for this procurement.

The RFP 09-31 will be posted on Monday, November 23 after 2:00 p.m. on the Department's web site at: <http://www.nystax.gov/procurement>. If you are unable to obtain a copy of the RFP from our website, please e-mail bfsc_contracts@tax.state.ny.us or call (518) 457-0954 to request a copy.

Vendors should be advised of new legislation for Procurement Lobbying on ALL Procurement Contracts effective January 1, 2006. Details of guidelines, regulations, forms and the designated contact(s) are provided on the Department's web site at: <http://www.nystax.gov/procurement>. Additional information can be found at the New York State Office of General Services website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Interested bidders must meet the minimum qualifications described in Section III, Qualifying Requirements. All questions regarding this RFP must be submitted via (1) e-mail (preferred) to bfsc_contracts@tax.state.ny.us; (2) fax to (518) 435-8413; or (3) mail to the above address. Please reference the relevant page and section of the RFP as well as the RFP number, 09-31.

All proposals must be received no later than February 5, 2010, 2:00 p.m. EST.

Sincerely,

A handwritten signature in black ink that reads 'Catherine Golden'.

Catherine Golden
Assistant Director, Procurement

STATE OF NEW YORK

DEPARTMENT OF TAXATION & FINANCE



REQUEST FOR PROPOSAL

09-31

Out of State
Collection Services for Delinquent
Tax Debt

All Inquiries to:

New York State Department of Taxation and Finance
Procurement Services Unit
Catherine Golden, Assistant Director
W.A. Harriman State Campus
Building 9, Room 234
Albany, NY 12227

Designated Contacts:

Catherine Golden
Dorothy Lechmanski
Karen Brino
Telephone: (518) 457-0954
e-mail: bfs_contracts@tax.state.ny.us

New York State Department of Taxation and Finance
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Out of State Collection Services for Delinquent Tax Debt

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Schedule of Events

Issuance of RFP	11/23/09
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Deadline for filing the "Offerer Affirmation and Understanding of, and Compliance with, Procurement Lobbying Guidelines" (Appendix B-7, see also Section III C6)	12/07/09 2 p.m. EST
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Deadline for Submission of Questions	12/07/09 2 p.m. EST
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Department Response to Bidder Questions	12/14/09
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Deadline for Submission of Follow-up Questions	12/21/09 2 p.m. EST
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Department Response to Bidder Follow-up Questions	01/05/10
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Deadline for Filing the "Notification of Intent to Bid" (Appendix B-1)	01/12/10
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Proposals Due	2/05/10 2 p.m. EST
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Notification of Intent to Award	4/05/10
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Deadline for Contract Signature	5/05/10
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Network Connectivity Test Begins	5/30/10
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Development Phase Begins	6/10/10
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Start Date for Active Collections	No later than six months after the start date of the Development Phase unless extended at the sole discretion of the Department
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Preface

A. Proposal Questions/Inquiries:

Prospective Bidders will have two opportunities to submit written questions and requests for clarification regarding this Request for Proposal (RFP). All questions regarding this RFP must be submitted via e-mail (preferred), fax or mail and be received by the dates and times specified in the Schedule of Events. Questions must reference the relevant page and section of the RFP and must be directed to one of the designated contacts identified below:

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

Fax: (518) 435-8413

Written Correspondence:

New York State Department of Taxation and Finance
Attn: Catherine Golden, Assistant Director
Procurement Services Unit
WA Harriman State Campus
Building 9, Rm 234
Albany, NY 12227

Prospective Bidders should note that all clarifications and exceptions, including those relating to the terms and conditions of the RFP, are to be resolved prior to the submission of a bid. Bidders entering into a contract with the State are expected to comply with **all** the terms and conditions contained herein.

All inquiries concerning this solicitation must be addressed to one of the following designated contacts:

Catherine Golden	(518) 457-0954	bfs_contracts@tax.state.ny.us
Karen Brino	(518) 485-6091	bfs_contracts@tax.state.ny.us
Dorothy Lechmanski	(518) 457-0954	bfs_contracts@tax.state.ny.us

Contacting individuals other than the designated contacts listed above may result in the disqualification of the Bidder's proposal – please refer to the Procurement Lobbying Law and the Department's guidelines, posted on the Department's procurement website at:

<http://www.nystax.gov/procurement>, and additional requirements in Section VII, Administrative Requirements.

B. Procurement Lobbying – Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines

New York State Finance Law 139-j(6)(b) requires that the Department of Taxation and Finance (DTF or Department) seek written affirmation from all Offerers as to the Offerer’s understanding of and agreement to comply with the DTF procedures relating to permissible contacts during a Government Procurement. Information related to the Procurement Lobbying Law and DTF Guidelines can be found on the Department’s Procurement website at: <http://www.nystax.gov/procurement>.

Offerers are required to sign and submit Attachment 2: Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines by the date and time specified in the Schedule of Events. This attachment may be submitted in conjunction with Bidder questions.

C. Proposal Amendments/Announcements

All amendments, clarifications and any announcements related to this bid will be posted on the Department’s Procurement website at: <http://www.nystax.gov/procurement>.

It is the responsibility of the Bidder to check the website for any amendments, clarifications or updates. All applicable amendment information must be incorporated into the Bidder’s proposal. Failure to include this information in your proposal may result in the Bidder’s proposal being deemed non-responsive.

D. Response to Bidder Questions and Requests for Clarification

The Department will provide a written response to all substantive questions and requests for clarification. Responses to Bidder questions and requests for clarification will be posted, with the Department’s responses on the DTF Procurement website at: <http://www.nystax.gov/procurement>.

E. Notification of Intent to Bid

If your firm is submitting a proposal in response to the RFP, a “Notification of Intent to Bid,” Attachment 3, should be completed and submitted by the date specified in the Schedule of Events. Contact information provided on this form may be used to notify Bidders of Request for Proposal changes.

F. Submission of Proposals

The Bidder must submit their proposals as instructed in Section IX, Proposal Submission.

RFP KEY POINTS

- 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 name, address, phone numbers and e-mail address of the designated contacts.** These are the only individuals that you are allowed to communicate with regarding this RFP.
- 3. All amendments, clarifications, Bidder questions with the Department responses and any announcements relating 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 periods.** Submit your questions to the Procurement Office by the dates and times listed in the Schedule of Events. Responses and copies of the questions will be posted on the Department's Procurement web site at: <http://www.nystax.gov/procurement>.
- 5. File an "Intent to Bid" form by the date listed in the Schedule of Events.**
- 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 response.
- 7. Review the RFP document and your proposal.** Make sure all requirements are addressed and all copies are identical and complete.
- 8. Package your proposal as required in this RFP.** Make sure your proposal conforms to the packaging requirements. Proposals not packaged accordingly may be deemed non-responsive.
- 9. Submit your proposal on time.** Proposals received after the date and time in the Schedule of Events will not be considered for award and may be returned, unopened, to the sender.

RFP Glossary

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 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.

Liability - Total amount due inclusive of penalties and interest.

Litigated Case – After the Contractor files a warrant against a tax debtor pursuant to the Uniform Enforcement of Foreign Judgments Act, if the tax debtor commences a legal proceeding to challenge the warrant or the underlying New York State tax obligation, and the Contractor filed a pleading(s) in response to the challenge, the case is deemed to be a litigated case.

Multi-State – for purposes of this RFP, Multi-State means the Bidder has debt collection experience in more than one state.

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.

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Out of State Collection Services for Delinquent Tax Debt

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.

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 File – 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.

Subcontractor – any individual or other legal entity including, but not limited to, sole proprietor, partnership, limited liability company, firm, or corporation who is engaged by the Contractor or another subcontractor to perform a portion of the Contractor’s obligation under a contract.

Tax Debtor - A person or business with outstanding tax liabilities owed the Department.

Tax Warrant - Obtained as the result of an administrative process by the Department. Under New York Tax Law Article 22 Section 692(e), a warrant has the same force and effect as a judgment.

Uniform Enforcement of Foreign Judgments Act (UEFJA) – Each state’s procedure, based upon Federal 1964 Uniform Enforcement of Foreign Judgments Act, for the filing of a foreign state judgment in the state where the tax debtor is located.

I. Introduction

A. Purpose

The New York State Department of Taxation and Finance is soliciting proposals from qualified entities to represent the Department in the collection of outstanding New York State Tax Liabilities in cases where the tax debtor and/or tax debtor's source of income or assets are thought to be located outside the State of New York.

The successful Bidder will employ its own attorneys, or will subcontract with qualified attorneys, who will represent the Department in all aspects of out of state collections including litigation. Bidders and/or their attorney affiliates should have expertise in collection law and post-judgment enforcement proceedings. The successful Bidder and/or their attorney affiliates must have expertise filing foreign judgments pursuant to the Uniform Enforcement of Foreign Judgments Act ("UEFJA") and defending due process and/or other challenges brought by affected tax debtors.

B. Program Overview

The Collections and Civil Enforcement Division (CCED) operates as the Department's internal collection agency for the collection of all outstanding tax liabilities owed to the State of New York. The Department proposes to assign cases to the successful Bidder which have a valid New York State tax warrant filed and upon which CCED has already attempted collection.

The Department is requesting bids for its RFP for out of state collection services for delinquent New York State tax debt. In each case referred to the successful bidder, the Department believes that the person or business ("tax debtor") who owes New York State taxes resides in a foreign state or has assets located in a foreign state. In almost all of the cases that will be referred pursuant to this RFP, the Department and/or an independent collection agency has already attempted to collect the outstanding taxes owed by the tax debtors via "soft" collection techniques including phone calls and letter writing. Although the Contractor may continue to attempt to collect the outstanding tax debt by utilizing soft collection techniques, the Department anticipates that in most instances the Contractor will need to determine whether a tax debtor owns assets in a foreign state, and if so, will file the warrant in the foreign state pursuant to the Uniform Enforcement of Foreign Judgments Act ("UEFJA") or some other methodology in order to have a reasonable likelihood of success collecting the unpaid tax debt. In some instances it may be necessary for the Contractor to resort to post judgment enforcement techniques including the service of a subpoena requiring the tax debtor to attend a deposition, and/or answer written questions and produce books and records pertaining to his/her finances.

Although a New York State tax warrant is the equivalent of a final judgment under New York Tax law, it is issued administratively by the Department and not by a New York court. In addition, although each tax debtor received notice from the Department and was provided with an opportunity to challenge a proposed tax assessment before it became a final judgment, most tax debtors failed to do so. Based upon prior experience, the Department expects some tax debtors to challenge any effort made by the Contractor to file the New York warrant in the state where the tax debtor now resides pursuant to the UEFJA. Such tax debtors will likely initiate litigation alleging due process violations and/or other challenges to the Contractor's attempt to file the New York warrant and enforce it against assets owned by the tax debtor. In addition, some judges may need to be educated about the Department's administrative process for issuing warrants and/or may be reluctant to afford full faith and credit to the New York warrant.

C. Implementation

The services solicited herein must be operational no later than six months after the start date of the development phase as later defined in Section I. E. Contract Phases. Upon award of a contract, a comprehensive implementation plan must be provided to DTF which demonstrates the ability to:

- Work within a project schedule, achieve milestones and provide deliverables in a timely manner;
- Provide sufficient staffing for development, implementation and on-going support throughout the entire duration of the contract;
- Establish and maintain an effective working relationship with DTF staff; and
- Resolve problems that may affect the delivery of the services.

D. Contract Term

The Department will award one contract for an initial period of three years commencing upon approval of the New York State Attorney General and the Office of the State Comptroller. The contract may be renewed by mutual agreement of all parties for up to two additional one-year terms. The successful Bidder must sign a contract within thirty (30) days after the Notification of Intent to Award. If the successful Bidder fails to do so, the Department reserves the right to begin negotiations with the second highest rated Bidder.

E. Contract Phases

The contract will have three distinctive phases:

- **Development Phase** - This phase will begin upon approval of the contract by the New York State Attorney General and Office of the State Comptroller. 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 thirty (30) days.

II. Inventory Background

A. 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 remains outstanding, a case is created and referred to the Collections and Civil Enforcement Division (CCED).

CCED begins its collection efforts 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.

CCED 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)
- Seizing of property

B. Unresolved Case Pool

While CCED is very effective in resolving the Department's collections cases, not all cases are resolved. Unresolved cases are removed from active CCED 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.

These 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.

C. Volume

There are approximately 47,000 unresolved out of state cases with an estimated value of \$778 million available for placement. The inventory is broken down as follows:

28,600 Personal Income Tax cases with an estimated value of \$405 million.

18,400 Business Tax cases with an estimated value of \$373 million.

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

D. Case Characteristics

All out of state cases eligible for placement with a Contractor as a result of this procurement **will** contain the following characteristics:

- Tax debtor will be located outside of New York State;
- Tax debtors will be located in the United States; and
- At least one assessment within the case will be warranted.

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

- Assessments within a case may be actual, estimated or a combination of both;
- Tax debtor assets may be located outside of New York State; and
- Cases may have been previously assigned to a collection agency.

Exhibit 1 identifies a breakdown of the available assessments within the potential case pool, indicating the age and value of the assessments they represent, and the age and value of those assessments within each particular value strata. In addition, this Exhibit also provides more detailed information on:

- The top ten states by dollar value;
- The top ten states by number of assessments;
- The top five states by number of taxpayer assessments by assessment type;
- The top five states by dollar value;
- The top five states by history of out-sourced assignment; and
- The top five states by number and tax type of assessment assigned.

III. Qualifying Requirements

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 A through F will be evaluated in Phase I of the evaluation process as outlined in Section X. It is acceptable for a Bidder to subcontract in the performance of services identified in this RFP. The Bidder is required to assume responsibility for those services as prime Contractor.

A. Insurance

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

B. Debt Collection Experience

1. The Bidder or its subcontractors must have five years of experience **collecting debts on behalf of clients** since November 1, 2004;

AND

The bidder or its subcontractors must have 5 years of experience taking judgments obtained by a creditor in one state and filing them in a foreign state pursuant to the Uniform Enforcement of Foreign Judgments Act or some other methodology, defending legal challenges brought by judgment debtors, and enforcing domesticated judgments against assets owned by judgment debtors (hereinafter referred to as "**litigation services**") since November 1, 2004.

Furthermore, the Department recognizes that new entities may form for the purpose of submitting a bid and that the new entity (which shall be considered "the bidder") may consist of existing entities. In such case, at least one such existing entity or its subcontractors must have five years experience **collecting debts on behalf of clients** since November 1, 2004 AND at least one such existing entity or its subcontractors must have five years experience performing **litigation services** since November 1, 2004.

A bidder without the above experience in either **collecting debts on behalf of clients** or **litigation services** shall not be qualified to bid. If a bidder intends to utilize sub-contracted law firms in foreign states, each law firm must have five years of **litigation services** experience.

2. The Bidder and any subcontractors must collectively have multi-state collection experience, including taking judgments obtained in one state and filing them in a foreign state pursuant to the Uniform Enforcement of Foreign Judgments Act ("UEFJA") or some other

methodology and success in defending due process and/or other challenges brought by affected judgment debtors.

3. The Bidder must have experience with a portfolio of collection cases from one client with a minimum volume of 10,000 judgment debtors annually.

C. 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 V. B. 1. Data file exchange processes that are specifically unacceptable are: magnetic tapes, unencrypted internet email, paper, CD, floppy Disc, removable drives, and analog or digital dial up, Value Added Network's (VAN) or DSL connections.

D. Financial Stability

The Bidder must be a financially stable entity, such that it may initiate and perform its obligations through the duration of the contract.

The DTF 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 DTF 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 entity's officers and management team, its organizational structure and the financial operating relationship between the business units and divisions.

As a condition of the resulting contract, the Contractor must continue to evidence financial stability. The on-going financial stability of the Contractor may be evaluated based upon criteria similar to that used in the evaluation process. If the Department elects to evaluate the financial stability, annual financial statements prepared by an accountant in accordance with Generally Accepted Accounting Principles (GAAP) will be required to be submitted for review to the Department within 90 days of the fiscal year end. Any material change in ownership of the Contractor, or material financial change of the Contractor, will require a reevaluation of the contract in its entirety by the Department.

E. Attestation

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

IV. General Contract Requirements

This section outlines and defines the Department's general contract requirements and the conditions under which this contract must be conducted.

A. Professional Standards

The Bidder must ensure that all attorneys directly employed or subcontracted to perform services as a result of this RFP are licensed and in good standing in the states in which they are practicing.

B. Compliance with Laws

The Bidder, and its subcontractors, 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.

C. Compliance with New York State Tax Law

Contractors and subcontractors must be in compliance with the New York State Tax Law.

D. 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.

E. 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 Fair 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.

F. 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 Contractor 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.

G. Secure Area

Contractors and their subcontractors 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; and
- A means to handle controlled destruction of all Department materials in accordance with provisions outlined in the Article VII of the Preliminary Contract (**Exhibit D**).

H. 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.

I. 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.

J. Training

The Contractor will provide training for all staff on the Contractor's system, fair 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; the Contractor will be responsible for the dissemination of such information.

The Contractor will be responsible for the training of any new staff, including subcontractors and/or law firms hired by the Contractor to perform services under this contract after its initial implementation.

K. Restrictions on Use of Data

Contractors are prohibited from using any information obtained as a result of this contract 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 IV. V. Disengagement Phase. After Contract expiration, Contractor is prohibited from using or maintaining in its possession any information obtained as a result of this contract.

L. 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. Catherine Golden, 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

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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.

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- 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.
- 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. A joint loss payable endorsement shall be attached naming the Department as a payee to any loss arising out of this contract.

Waiver of Subrogation. Contractor shall cause to be included in each of its policies 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 (**Exhibit D**).

PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS:

ACORD FORMS are **NOT** acceptable proof of Workers' Compensation coverage.

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, Contractors shall:

- a. Be legally exempt from obtaining workers' compensation coverage; or

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- b. Obtain such coverage from insurance carriers; or
- c. Be a Board-approved self retained employer or participate in an authorized self-insurance plan.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Department of Taxation and Finance** at the time of bid award:

- a. **Form CE-200**, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); or
- b. Certificate of Workers' Compensation Insurance:
 - i. **Form C-105.2 (9/07)** if coverage is provided by the Contractor's insurance carrier, **Contractor must request its carrier** to send this form to the New York State Department of Taxation and Finance; or
 - ii. **Form U-26.3** if coverage is provided by the State Insurance Fund, Contractor must request that the State Insurance Fund send this form to the New York State Department of Taxation and Finance; or
 - iii. *Certificate of Workers' Compensation Self-Insurance - Form SI-12*, available from the New York State Workers' Compensation Board's Self-Insurance Office; or
 - iv. *Certificate of Participation in Workers' Compensation Group Self-Insurance Form GSI-105.2*, available from the Contractor's Group Self-Insurance Administrator.

PROOF of COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, Contractors shall:

- a. Be legally exempt from obtaining disability benefits coverage; or
- b. Obtain such coverage from insurance carriers; or
- c. Be a Board-approved self retained employer.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Department of Taxation and Finance** at the time of bid submission or shortly after the opening of bids:

- a. **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or*

Disability Benefits Insurance Coverage is Not Required which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); or

- b. **Form DB-120.1, Certificate of Disability Benefits Insurance.** Contractor must request its business insurance carrier to send this form to the New York State Department of Taxation and Finance; or
- c. **Form DB-155, Certificate of Disability Benefits Self-Insurance.** The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

All forms must name the Department of Taxation and Finance– WA Harriman State Office Campus, Bldg 9, Rm. 234, Albany, NY 12227, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

M. Inventory Placement

The Department intends to make an initial placement of cases from the unresolved case pool at the beginning of the Active Collection Phase at the Department's sole discretion. It is the Department's intention to replenish resolved or returned cases on a monthly basis. The Contractor will be responsible for identifying and returning cases deemed non-productive in order to receive new cases. Each litigated case is factually unique. Before recalling a litigated case, the Department will coordinate with Contractor to ensure a smooth transition.

The Department reserves the right to modify case placement at its sole discretion.

N. Inventory Retention

As stated in Section M., Inventory Placement, the Contractor will be responsible for identifying non-productive cases to return to the Department in order to receive new cases.

Under no circumstances may any non-litigated case remain with the Contractor after contract expiration or termination. Each litigated case is factually unique. Before recalling a litigated case, the Department will coordinate with Contractor to ensure a smooth transition.

O. 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. Each litigated case is factually unique. Before recalling a litigated case, the Department will

coordinate with Contractor to ensure a smooth transition. 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, and provides Contractor with documentary evidence to support assertion, 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 an assessment issued by the Department, and/or a process employed by the Contractor to collect the unpaid tax obligation, the Contractor must communicate the nature of the debtor's dispute to the Department. The Department will evaluate the factual and/or legal basis of the tax debtor's dispute and depending on its findings shall advise the Contractor to either cease or resume its collection activity against the tax debtor. During this process, the collection case may be put on hold or may be recalled by the Department.

- **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.

P. 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); and
- 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. In such instance where the payment is received by the Contractor, it must be redirected to the Department on a daily basis, without deducting any Contractor fees, in the manner prescribed by the Department.

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

The Contractor may process electronic funds withdrawal (direct debit) transactions, in conjunction with the taxpayer, online, through the Department's web site.

Q. 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. In such instance where the tax return is received by the Contractor, with or without payment, it must be redirected to the Department on a daily basis in the manner prescribed by the Department.

R. 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.

S. Reports

The Contractor must make available 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

T. 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.

U. 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, Termination of the Preliminary Contract (**Exhibit D**). The Department may also choose any alternative method of sanctioning the Contractor for

poor performance as referenced in Article IX, Performance Standards and Remedies of the Preliminary Contract (**Exhibit D**), Performance Standards and Remedies.

V. 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 information systems and the return of all cases to the Department.
- Transfer of all Department data from the Contractor's information systems to the Department.
- Removal of all Department data from the Contractor's information systems including both on-site and off-site backup copies. Department information stored on any electronic storage media or computer system must be physically destroyed, securely overwritten, or otherwise sanitized to prevent unauthorized disclosure of Department data.
- Transfer of Department data not stored on the Contractor's information systems to the Department.
- Controlled destruction of Department data not specified for transfer to the Department. Controlled destruction must be in accordance with Article VII, Secrecy Provisions of the Preliminary Contract (**Exhibit D**).
- Prohibition, after Contract expiration, of a Contractor using or maintaining in its possession any Department information obtained as a result of the work performed under the Contract.
- Forwarding of tax debtor communications to the Department 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.

W. Case Resolution

The Contractor must attempt to resolve all cases via full payment, IPA or, when applicable, administrative resolution. The Contractor may only pursue filing foreign judgments and post-judgment proceedings in cases where the tax debtor, and/or the tax debtor's source of income or assets are thought to be located outside of New York State. The Contractor may not institute civil legal collection action including, but not limited to levies, garnishments, and seizures, on any tax debtor and/or tax debtor's source of income or assets located in New York State.

The Contractor will, if it locates a New York asset (i.e., a situs in New York) or an asset which may reasonably be claimed to be a New York asset, notify the Department of said asset for the State to collect upon. Contractor will cease any efforts whatsoever to execute upon that asset.

In the event the Contractor identifies a tax debtor who has returned to New York State, the Contractor will cease any efforts whatsoever to collect from that taxpayer.

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

X. 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 (see Section VI. Financial Proposal). 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 XIA of the New York State Finance Law and as outlined in Article VI, Fees and Payment of the Preliminary Contract (**Exhibit D**). Payment will be remitted to the Contractor in a manner prescribed by the Department.

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, Dispute Resolution of the Preliminary Contract (**Exhibit D**).

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 for non-litigated cases.

If at the time of contract expiration there remain cases in an active litigation status and/or ongoing judgment enforcement activity, the Department reserves the right to extend the duration of the contract through the final installment period in order to effectuate collection in said cases and to provide subsequent payment to the Contractor for collection services rendered.

Y. 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 recall the affected cases. Each litigated case is factually unique. Before recalling a litigated case, the Department will coordinate with Contractor to insure a smooth transition.

Z. 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 five (5) business days, 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, Performance Standards and Remedies of the Preliminary Contract (**Exhibit D**).

AA. Right to Survey

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

BB. 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.

CC. 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.

DD. 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.

EE. 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.

FF. 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.

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- 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.

V. Technical Requirements

Section V outlines specific debt collection services and system requirements which the Bidder must address in response to this proposal.

All requirements are considered critical to successful contract implementation and are therefore mandatory. The Department will not issue a bid award to any Bidder who does not successfully demonstrate the capacity to meet these requirements. The Bidder's response will be evaluated on whether it meets all of these requirements; therefore, Bidders **must** provide the Department with **all** the information requested to establish they meet the minimums identified in these requirements. Bidder responses which meet those requirements will gain **evaluation points** in the scoring process to the extent the response exceeds what is required.

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

A. Debt Collection Services Requirements

1. Case Management System

The Bidder must be able to provide the Department with 24/7 secure internet access to a case management system(s) that will capture, update and report status information on all cases assigned by the Department to the Bidder on a daily basis. Such access will be available during both the collection and litigation services stages of the contract. Any costs associated with providing such access to the Department will be borne by the Bidder. The Bidder must also provide Department staff with training on how to access, navigate and interpret the Bidder's case management system regarding any activity on a case referred by the Department to the Bidder. The Bidder should provide a description or narrative of the system(s) proposed in regards to security, access, functionality and navigation. The Department reserves the right to audit or scan the case management system to validate its compliance with generally accepted security best practices. The audit or scan would occur on a mutually agreed upon schedule.

2. Collection Plan

The Bidder must have an understanding of the needs of the Department and identify those needs in a comprehensive collection plan. The collection plan **must** include an overview and time line that describes the collection methodology that will be used by the Bidder to collect the unpaid tax debt and **must** address the following issues:

- a. A detailed description of all collection techniques that will be employed by the Bidder, in an attempt to collect the unpaid New York State tax debt including:
 - i. How referred cases will be prioritized

- ii. The timing of all attempts made to contact the tax debtor, including both phone and mail attempts.
 - iii. The criteria and the rationale the Bidder will use to determine which New York warrants will be filed in states where the tax debtors are located pursuant to the Uniform Enforcement of Foreign Judgments Act (“UEFJA”), or some other methodology.
 - iv. The Bidder’s litigation strategy if a debtor commences a proceeding challenging the filing of a New York tax warrant against a tax debtor in the state where the tax debtor is located or if the tax debtor commences a proceeding challenging the underlying New York State tax debt itself.
 - v. The judgment enforcement steps that will be taken to attempt to collect the unpaid tax debt.
 - vi. The criteria the Bidder will use to identify which referred cases are non-productive.
- b. The process with which the Bidder will obtain tax debtor data including address, phone number, income/financial sources, and personal/real property assets owned by the tax debtor including a description of locator services and other databases that the Bidder shall utilize to obtain such data.
 - c. The approach to the assignment of management, supervisory, and attorney staff to this contract including the number of staff members assigned exclusively to this contract and the number of cases assigned to each staff member.
 - d. In addition to providing the Department with access to a secure on-line case management system which will provide status information on all cases assigned by the Department to the Contractor on a daily basis, the Bidder must also describe the timing and manner in which the Contractor will communicate with the Department on issues that may arise during the course of its collection efforts including:
 - i. Settlement offers made by a tax debtor
 - ii. The Bankruptcy filing of a tax debtor
 - iii. A dispute made by a tax debtor, including, but not limited to, a dispute regarding the amount the Department claims to be due and owing from the tax debtor.

B. 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.

1. Communications Environment

Electronic Data File Exchange

As indicated in Section III. C., 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, unencrypted internet e-mail, 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 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 requires the use of the SSH2, 1024-bit (minimum), RSA algorithms in the key generation. Additionally, the Department has approved and prefers encryption of data files using PGP "Pretty Good Privacy" or the open source equivalent GPG "gnu Privacy Guard" with encryption key exchange. Testing is required to ensure that the encryption software and version of software used by the vendor is compatible with Department software. 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 7.0.
- **Tax Employee Access** - The Department strongly prefers that any access provided for Department employees to 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 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.

2. System Functionality

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 IV. S.
- Record all contacts with tax debtors.
- Record all events that affect collection activity (bankruptcy, death of tax debtor, other).

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**.
- 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 and 3**, 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 file weekly of newly assigned cases and updated information for previously assigned cases. See **Exhibit 2** for file layout.

Contractor to Department Files

- 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 3** 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 3** for file layout.

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

3. Technical Staff

Sufficient staff must be assigned to complete the Development Phase in within six months as well as provide adequate support during the 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:

The Department reserves the right to request additional staff, as well as staff substitutions for work related cause.

4. Security and Confidentiality

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 VIII. D. 7 and VIII. D. 8 of this request for proposal. In addition, the Contractor must have policies, procedures, controls, and software in place which, at a minimum, ensures 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.

C. Bidder Experience and Reference Requirements

1. Debt Collection Experience

The Bidder must have prior experience in debt collection and must have had a minimum of one contract with an average annual placement of 10,000 cases, or more, over the life of the contract.

Bidders who meet these criteria, have met minimum requirements for Bidder experience.

It is desirable that the Bidder have prior experience in the collection of debt similar in nature, size, scope and complexity as set forth in this RFP. The Department is particularly interested in and will evaluate the Bidder's prior experience with:

- a. Tax debt collection for Federal and/or State entities. Special weight will be given to collection for:
 - i. Personal Income, Corporation, Sales and/or Withholding taxes;

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- ii. Tax debt collection for contracts with an average annual placement of 10,000 cases or more;
- iii. Total inventory value placed;
- iv. Total money collected in all 50 states;
- v. Total liens/judgments transferred in all 50 states;
- vi. Total money collected in all 50 states as a result of the total liens/judgments transferred; and
- vii. For each of the following states: New Jersey, Florida, Pennsylvania, California, Connecticut, North Carolina, Georgia, Virginia, Texas and Massachusetts;
 - o Total money collected;
 - o Total Liens/judgments transferred;
 - o Total money collected post judgment.
- b. Non-tax debt collection for Federal and State government entities. Special weight will be given for contracts with an average annual placement of 10,000 cases or more.
- c. The Department will also evaluate, but will give less weight to, other debt collection contracts.
- d. The Bidder must indicate if the collection strategy proposed to be utilized by the Bidder in Section V. A. 2 was successfully employed by the Contractor in the past and, if so, provide evidence in support including:
 - i. Public and/or private sector collection cases in which the Contractor successfully defeated a judgment debtor's challenge to the filing of a foreign judgment in the state where the judgment debtor resides and/or a judgment debtors challenge to the debt itself.
 - ii. Data describing types of judgment debt collected (public vs. private sector) and collection outcomes on an individual client by client basis.

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

Note: The qualifying contract(s), identified in response to Section III. B., must be included in response to this section.

The Bidder must have satisfactory references for these contracts for technical scoring.

2. References

The Department will contact client references provided to ensure the Bidder can undertake and complete a project of the scope, size and complexity as set forth in this RFP. Reference contacts provided for Debt Collection must be familiar with the debt collection services provided by the Bidder. Reference contacts provided for IT Systems must be familiar with the client's computer application system and the process for exchanging data.

The Bidder shall be solely responsible for providing contact names and phone numbers for five client references who are readily available to be contacted by the Department and capable of responding to performance questions. If DTF is unable to contact or obtain information from any reference, the Bidder will be provided **one** opportunity, with a deadline, to assist in obtaining cooperation from those clients who have not responded.

VI. Financial Proposal

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, including any court filing and/or related fees that may arise during the performance of services outlined in this RFP. **No other add on costs will be allowed.**

The fixed rate percentage fee shall not be increased during the first two years of any contract resulting from this RFP. Thereafter, 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.

If at the time of contract expiration there remain cases in an active litigation status and/or ongoing judgment enforcement activity, the Department reserves the right to extend the duration of the contract through the final installment period in order to effectuate collection in said cases and to provide subsequent payment to the Contractor for collection services rendered. Rate increases for this extension period shall be so limited.

VII. Administrative Requirements

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

A. Administrative Proposal Conditions

With the submission of a response to this Request for Proposal, the Bidder agrees to the proposal conditions outlined in Section VII. A.

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.

2. Solicitation

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

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.

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.

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.

6. Ethics Compliance

All Bidders/Contractors and their employees must comply with the requirements of §§ 73 and 74 of the Public Officers Law, 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. 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.

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.

9. Bid Opening

Bids will not be opened publicly. The Department reserves the right at any time to postpone or cancel a scheduled bid opening.

10. 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.

11. Bid Evaluation and Selection

See **Section X: 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.

12. Contract Negotiations and Authorized Negotiators

During contract negotiations, the Department must 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.

13. Bidder Notification of Intent to Award

The successful Bidder will be advised of selection by the Department through the issuance of a "Notification of Intent to Award" letter. Bidders who have not been

selected by the Department in response to this RFP shall be notified of such non-selection.

14. 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.

15. Debriefing Sessions

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.

16. Bid Protest Policy

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

17. 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.
- k. If the Department must terminate the contract for non-performance or is unable to maintain the support required, the Department reserves the right, with the approval of the Office of the State Comptroller, to award a contract to the next highest ranked Bidder of the original bid submission within the first 12 months of the award.

B. Administrative Contract Conditions

With the submission of a response to this Request for Proposal, the Bidder agrees to the contract conditions outlined in Section VII. B unless the bidder proposes extraneous terms (see section VII. B. 17)

1. Appendix A

Appendix A – Standard Clauses for New York State Contracts will be incorporated, in its entirety, into any Contract resulting from this RFP.

2. Payments

All payments will be made in accordance with Article XI-A of the New York State Finance Law.

3. Public Announcements

Public announcements or news releases relating to this RFP or the resulting Contract 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.

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 five 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 five 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.

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.
- a) 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 cannot 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.

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

New York State Department of Taxation and Finance
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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. Permission to Investigate

In the event that the Department determines it necessary to investigate evidence relative to a possible or actual 1) crime, or 2) breach of confidentiality or security (e.g., loss of return documents, or loss of remittances), Contractor and its subcontractors shall cooperate fully with the Department to the extent permitted by law to investigate and identify the responsible individuals. Contractor and its subcontractors shall, to the extent permitted by law, make their employees and all relevant records, including personnel records and employee photographs, available to Department investigators upon request by the Department's Office of Deputy Inspector General. The Department may interview Contractor's employees and/or agents in connection with an investigation during normal business hours.

8. Cover Letter

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

9. 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.

10. 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.

11. 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.

12. 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).

13. Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DTF and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by DTF and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, are identified in the Preface section of the Request for Proposal. DTF employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and in the event of two findings within a four-year period, the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Information related to the Procurement Lobbying Law and DTF guidelines can be found on the Department’s Procurement website at: <http://www.nystax.gov/procurement>.

Contacting individuals other than the designated contacts listed in the Preface Section of this document during the restricted period may result in the disqualification of the Bidder’s proposal - please refer to the Procurement Lobbying Law and the Department guidelines posted on the Department’s procurement website at:

<http://www.nystax.gov/procurement>.

a. Offerer Disclosure of Prior Non-Responsibility Determinations

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

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

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

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

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

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

The Department reserves the right to terminate any Contract awarded as a result of this RFP in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete.

14. Secrecy Provisions (DTF-202)

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

15. 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, Secrecy Provisions of the Preliminary Contract, **Exhibit D**.

16. Sales and Compensating Use Tax Documentation

Pursuant to Tax Law Section 5-a, Bidders will be required to complete and sign, under penalty of perjury, the **Contractor Certification Form ST-220, Exhibit A**. Bidders must also submit a copy of the Certificate of Authority, if available, for itself, any affiliates, and any 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.

17. 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 Bidder 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**, General Terms and Conditions **of Exhibit D**: Preliminary Contract for additional information.).

18. Proposed Extraneous Terms

Proposals must conform to the terms and conditions set forth in this RFP and the Preliminary Contract, **Exhibit D**. Any objections to terms and conditions set forth in this section of the RFP (**Section VII**) and the Preliminary Contract, **Exhibit D**, 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.

19. Request for Exemption from Disclosure

As outlined in Section VII. A. 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.

20. Requirements Imposed Pursuant to Laws 2006, Chapter 10.

1. The procurement record for each new consulting services contract received by the Office of the State Comptroller for approval on or after July 17, 2006, must include a properly completed copy of Form A, *State Consultant Services – Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term*, attached hereto as **Exhibit B**. This form, which is a one-time report of planned employment data for the entire term of a consulting services contract on a prospective basis, must include the following information, by “employment category,” for all employees who will be providing services under the contract, whether employed by the Contractor or a subcontractor:
 - i. the number of employees employed to provide consulting services under the contract,
 - ii. the number of hours worked by such employees under the contract, and
 - iii. the total compensation paid by the State to such employees under the contract.

The Consultant may be requested to assist in the completion of Form A.

2. In addition, for each year a consulting services contract is in effect, contracting agencies must require Contractors to report annually regarding the above described employment information, including work performed by subcontractors. The Contractor must properly complete a copy of Form B, *State Consultant Services - Contractor’s Annual Employment Report*, attached hereto as **Exhibit C**, and provide it to the contracting agency, i.e., the New York State

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Department of Taxation and Finance; the Office of the State Comptroller (OSC) and the Department of Civil Service (CS). Form B captures historical information, detailing actual employment information for the most recently concluded State fiscal year (April 1-Mar 31). Form B will be due no later than May 15 of each year.

Form B shall be provided to OSC and CS as set forth in OSC Bulletin G266; the Bulletin may be found online at <http://nysosc.osc.state.ny.us/agencies/gbull/g-226.htm>. Form B shall be provided to Tax as follows:

By mail: New York State Department of Taxation and Finance
Procurement Services Unit
W.A. Harriman State Office Building Campus
Building 9, Room 234
Albany, New York 12227

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

Fax: (518) 435-8413

(c) For purposes of this section, the following terms have the specified meanings:

(i) “employment category” means the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the employees providing services under the contract; and

(Note: The O*Net database, is available through the US Department of Labor’s Employment and Training Administration, at <http://online.onetcenter.org> to find a list of occupations.)

(ii) “consulting services contract” includes any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services.

VIII. Proposal Response Requirements

A. Qualifying Requirements

1. Insurance

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.

2. Debt Collection Experience

The Bidder will be evaluated in the extent it meets the qualifying requirements. Complete **Attachment B** with the applicable information to substantiate such experience.

3. Electronic Data File Exchange

Response to this requirement is in conjunction with the response to the requirement for Sections III. C. and V. B. 1. The Bidder must complete **Attachment G** with the applicable information.

4. Financial Stability

Using **Attachment C**, the Bidder must submit the following:

a. Financial Data

The Bidder must submit proof of financial stability required for its particular organizational structures as set forth in the requirements listed in paragraphs i through viii 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.

- i. 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

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three years, unaudited/internal annual financial statements for the subsidiary for the last three years and the spreadsheet(s) used for consolidation.

In addition to i (a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required for both the parent and subsidiary.

- ii. 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 Dunn and Bradstreet Comprehensive Report (dated within 21 days of the date the bid was submitted) for both the parent and Bidder, and a statement explaining why annual, audited/reviewed statements are not available.

In addition to ii (a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/ internal) are required for both the parent and subsidiary.

- iii. 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. Plus, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required.

- iv. If a 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 iii above OR (b) provide annual, unaudited/internal company financial statements for the last three years, a Dunn and Bradstreet Comprehensive Report (dated within 21 days of the date the bid was submitted) and a statement explaining why annual audited/reviewed statements are not available.

In addition to iv (a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required.

- v. The Bidder must provide the name and phone number of a contact at its primary bank in order for a bank reference to be obtained as part of the financial stability evaluation.
- vi. The Bidder must provide 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.

- vii. The Bidder must indicate whether or not it guarantees the debt of any other entity.
- viii. 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 Bidder, or if the Bidder guarantees the debt of the parent company.

b. Organizational Data

At a minimum, the Bidder must provide:

- 1 organizational charts, including a listing and detailed description of:
 - the Bidder's primary business units and divisions;
 - key executives;
 - any and all subsidiaries; and
 - any and all minority interests, joint ventures, or other type of business affiliations.
- 2 brief biographies of its key officers and management.

5. Attestation

The Bidder must submit a signed attestation statement as provided in **Attachment D**.

B. Technical Response Requirements

1. Debt Collection Response Requirements

a. Case Management System

Using **Attachment E**, the Bidder must provide, in narrative form, information relating to the Case Management System proposed.

b. Collection Plan

The Bidder must complete **Attachment F** with information in support of the following:

- i. A detailed description of all collection techniques that will be employed by the Bidder in an attempt to collect the unpaid New York State tax debt including:
 - How referred cases will be prioritized
 - The timing of all attempts made to contact the tax debtor, including both phone and mail attempts.
 - The criteria and the rationale the Bidder will use to determine which New York warrants will be filed in states where the tax debtors are located pursuant to the Uniform Enforcement of Foreign Judgments Act (“UEFJA”), or some other methodology.
 - The Bidder’s litigation strategy if a debtor commences a proceeding challenging the filing of a New York tax warrant against a tax debtor in the state where the tax debtor is located or if the tax debtor commences a proceeding challenging the underlying New York State tax debt itself.
 - The judgment enforcement steps that will be taken to attempt to collect the unpaid tax debt.
 - The criteria the Bidder will use to identify which referred cases are non-productive.
- ii. The process with which the Bidder will obtain tax debtor data including address, phone number, income/financial sources, and personal/real property assets owned by the tax debtor including a description of locator services and other databases that the Bidder shall utilize to obtain such data.
- iii. The approach to the assignment of management, supervisory, and attorney staff to be assigned to this contract including the number of staff members assigned exclusively to this contract and the number of cases assigned to each staff member.
- iv. In addition to providing the Department with access to a secure on-line case management system which will provide status information on all cases assigned by the Department to the Contractor on a daily basis, the Bidder must also describe the timing and manner in which the Contractor

will communicate with the Department on issues that may arise during the course of its collection efforts including:

- Settlement offers made by a tax debtor
- The Bankruptcy filing of a tax debtor
- A dispute made by a tax debtor, including, but not limited to, a dispute regarding the Department claims to be due and owing from the tax debtor.

2. System Response Requirements

The Bidders response to the System Requirements will be used to evaluate their ability to develop or modify its system to implement this project and to provide adequate technical support throughout the life of the contract.

a. Electronic Data File Exchange

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 requirements.

On **Attachment G** 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.

b. System Functionality

The Bidder's response will be evaluated to determine if the requirements have been met and will be scored based upon the responses provided.

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 H**, 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 2 and 3).
- 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.

c. Technical Staff

To meet minimum requirements, on **Attachment I** the Bidder must agree it will assign the requisite staff necessary to meet all deadlines to develop, 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.

d. Security and Confidentiality

On **Attachment J**:

1. The Bidder must describe how it will assure the security and confidentiality of the Department's data.

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- 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 Bidder's response will be evaluated to determine if the above 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.

- Policies and programs used for encryption of data in transit and data at rest.
- 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.).
- A process and procedure which conforms to generally accepted best practices to sanitize or dispose of obsolete electronic information on all forms of electronic media to be used in the proposed system.
- 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.
- Procedures for data breach notification and data breach incident response.
- 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 IV. FF.

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.

3. Experience and Reference Response Requirements

a. Debt Collection Experience

The Bidder must complete **Attachment K** with information for five contracts to support the following requirements:

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The Bidder must have prior experience in debt collection and must have had a minimum of one contract with an average annual placement of 10,000 cases, or more, over the life of the contract.

Bidders who meet these criteria, have met minimum requirements for Bidder experience.

It is desirable that the Bidder have prior experience in the collection of debt similar in nature, size, scope and complexity as set forth in this RFP. Please provide information on five contracts to be used to evaluate Bidder experience.

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:
 - a. Personal Income, Corporation, Sales and/or Withholding taxes;
 - b. Tax debt collection for contracts with an average annual placement of 10,000 cases or more;
 - c. Total inventory value placed;
 - d. Total money collected in all 50 states;
 - e. Total liens/judgments transferred in all 50 states;
 - f. Total money collected in all 50 states as a result of the total liens/judgments transferred; and
 - g. For each of the following states: New Jersey, Florida, Pennsylvania, California, Connecticut, North Carolina, Georgia, Virginia, Texas and Massachusetts.
 - o Total money collected;
 - o Total Liens/judgments transferred; and
 - o Total money collected post judgment.
2. Non-tax debt collection for Federal and state government entities. Special weight will be given for contracts with an average annual placement of 10,000 cases or more.

3. The Department will also evaluate, but will give less weight to, other debt collection contracts.

The Bidder must indicate if the collection strategy proposed to be utilized by the Bidder in Section V. A. 2 was successfully employed by the Contractor in the past and, if so, provide evidence in support including:

- Public and/or private sector collection cases in which the Contractor successfully defeated a judgment debtor's challenge to the filing of a foreign judgment in the state where the judgment debtor resides and/or a judgment debtors challenge to the debt itself.
- Data describing types of judgment debt collected (public vs. private sector) and collection outcomes on an individual client by client basis.

b. Debt Collection References

The Department will contact all client references to evaluate the Bidder's past performance related to debt collection. The Bidder should provide reference information for five contracts and/or clients that best represents the Bidder's ability to undertake a project of the scope, size and complexity as set forth in Section VIII. B. 3. a. If DTF is unable to contact or obtain information from any reference; the Bidder will be provided **one** opportunity, with a deadline, to assist in obtaining cooperation from those clients who have not responded.

On **Part I of Attachment L**, the Bidder must provide client references for each contract submitted in response to Section V. C. 1. Reference **contacts must be familiar with the debt collection services provided by the Bidder.**

On **Part II of Attachment L**, the Bidder must provide client references for each contract submitted in response to Section V. C. 2. Reference contacts may be the same as those provided in Section III. B. and/or Section V. C. 1; 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.**

The Department will contact all client references to evaluate the Bidder's past performance related to the development or modification their system to meet client requirements.

The Bidder may provide up to two (2) Alternate References to be used in the event the Department is unable to contact a primary reference. Bidder's wishing to submit alternate references should complete **Attachment M.**

C. Financial Response Requirements

The Bidder must complete **Attachment 13** Financial Rate Response Form. This proposal must be submitted in a separate sealed envelope, not included in the Technical or Administrative Proposal. Failure to comply with the mandatory format may result in disqualification.

D. Administrative Response Requirements

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

1. Cover Letter

The cover letter must be signed by an official authorized to bind the Bidder to proposal provisions.

The cover letter must include the following:

- The complete name and address of the bidding entity;
- The Federal or Taxpayer Identification Number of the entity;
- An affirmation that the proposal is binding for the required period indicated in Section VII. A. 8.

2. Vendor Responsibility Questionnaire

Bidders must complete a Vendor Responsibility Questionnaire. Bidders are invited to file the required Vendor Responsibility Questionnaire online via the OSC New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at www.osc.state.ny.us/vendrep or may contact one of the Department's designated contacts.

Bidders that have filed a Vendor Responsibility Questionnaire online that has been certified/updated within the last six months or Bidders opting to file online must complete **Attachment 4, Vendor Responsibility Form**. If a Vendor Responsibility Questionnaire has been filed online and has not been certified within the last six months, the Bidder must either update/recertify the online questionnaire or submit a new paper Vendor Responsibility Questionnaire.

Bidders filing paper questionnaires must submit a copy of the completed questionnaire with

its bid proposal.

Upon notification of award, the Contractor will be required to update/recertify the online questionnaire.

3. MacBride Fair Employment Principles Form

Each Bidder must complete and submit the Non-Discrimination in Employment in Northern Ireland: **MacBride Fair Employment Principles Form, Attachment 5.**

4. Designation of Prime Contact

Each Bidder must complete and submit the **Designation of Prime Contact Form, Attachment 6.**

5. Non-Collusive Bidding Practices Certification

The Bidder is responsible for reading, signing and submitting **Attachment 7, the Non-Collusive Bidding Certification.**

6. Procurement Lobbying

Bidders must complete **Attachment 8, Offerer Disclosure of Prior Non-Responsibility Determination** and **Attachment 9, Offerer's Certification of Compliance with State Finance Law 139-k(5).**

7. Secrecy Provision Agreement (DTF-202)

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

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

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

9. Sales and Compensating Use Tax Documentation

Exhibit A provides Contractor Certification Forms and instructions for completing the forms. ST-220-TD must be filed with and returned directly to the DTF address provided on the form. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF. Completion of the

form at the time of bid submission is not required; however, Form ST-220-TD must be filed and returned to DTF upon notification of Contract award.

Form ST-220-CA must be provided to the DTF Office of Budget and Management Analysis upon notification of contract award certifying that the Contractor filed ST-220-TD. Proposed Contractors should complete and return the certification forms within two business days of request.

Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at 1-800-698-2931 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>.

10. Prime Contractor/Subcontractors

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 12**.

11. Proposed Extraneous Terms

The Bidder must attach any objections to the terms and conditions outlined in Section VII. B. or the Preliminary Contract, **Exhibit D**.

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 in Section VII. Failure to object to any terms set forth in **Section VII. B.** of this RFP and the **Preliminary Contract, Exhibit D:** shall be deemed to constitute acceptance thereof by the Bidder.

12. Request for Exemption from Disclosure

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.

IX. Proposal Submission

The Bidder must provide a response that clearly and precisely provides all required information. Emphasis should be placed on conformance with the RFP instructions, responsiveness to the RFP requirements and clarity of the intent.

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

A. Proposal Content and Organization

To facilitate the evaluation process, the Bidder must organize the proposal into three distinct volumes as follows:

Volume 1: Qualifying and Technical Requirements;

Volume 2: Administrative Requirements; and

Volume 3: Financial Proposal

1. Volume 1 Format

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

- a. Tab 1 – Qualifying Requirements (Sections III & VIII. A.)
- b. Tab 2 – Debt Collection Services Response Requirements (Sections V. A. & VIII. B. 1.)
- c. Tab 3 – IT System Response Requirements (Sections V. B. & VIII. B. 2)
- d. Tab 4 – Bidder Experience and Reference Response Requirements (Sections V. C. and VIII. B. 3.)

2. Volume 2 Format

Administrative Response Requirements (Section VII. & VIII. D.)

3. Volume 3 Format

This volume must contain the Financial Proposal (Section VI. & VIII. C.)

B. Submission of Proposals

The Bidder must submit one original and six copies of Volume 1, Volume 2 and Volume 3. All volumes must be bound separately, be clearly identified and should include page numbers.

To facilitate request for information under the Freedom of Information Law, Contractors are requested to provide a copy of their complete proposal in a non-pdf format (e.g. MS Word, Excel, etc) to allow for redaction of trade secret/proprietary information.

Proposals must be received by the date and time specified in the Schedule of Events.

To facilitate the evaluation process, the proposal must be packaged and submitted as outlined in this section. Faxed or electronically transmitted proposals will **not** be accepted.

Bidder proposals must be enclosed in sealed containers with the following visibly inscribed on the outside of all containers:

New York State Department of Taxation and Finance
Attn: Catherine Golden, Assistant Director
Procurement Services Unit
WA Harriman State Campus
Building 9, rm 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 09-31
Out of State Collection Services for Delinquent Tax Debt
Bid Submission date and time

Please Note: Mail deliveries requiring a signature of receipt should be addressed to the Department’s Campus address, however, the delivery service must be instructed to deliver bid documents to the following address:

90 Cohoes Avenue
Green Island, NY 12183

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Only under circumstances identified in Section VII. A. 17, will the Department consider any proposal received after the time and date specified in the Schedule of Events. In the event 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 the 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.

X. Proposal Evaluation

Pursuant to Article XI of the State Finance Law, the basis for contract award under this RFP will be “best value”; optimizing quality, cost and efficiency among responsive and responsible Bidders.

A. 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 Department efforts to clarify or validate proposal information may result in the proposal being labeled as non-responsive and given no further consideration.

B. Evaluation Process Overview

There will be four phases to the evaluation process. Proposals which pass Phase One of the evaluation will be further evaluated in Phase Two of the evaluation process.

1. Phase One Evaluation

All timely submitted proposals will be evaluated in Phase One. Proposals will be evaluated in the following areas:

a. 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 be labeled as non-responsive and may not be given further consideration.

b. Qualifying Requirements (pass/fail)

All proposals that pass Proposal Screening will be evaluated to determine the Bidder meets all qualifying requirements specified in Section III: Qualifying Requirements. If *all* qualifying requirements are not met, the Bidder’s proposal will be labeled non-responsive and will not be given further consideration.

All proposals that pass this stage of the evaluation process will be further evaluated in Phase Two. Bidders not meeting the above requirements will be deemed non-responsive and will not be further evaluated.

2. Phase Two Evaluation

Bidders who pass Phase One of the evaluation will be further evaluated as follows:

a. Technical Evaluation (47 points)

i. Case Management System

Bidder information provided on Attachment E will be evaluated for the extent it exceeds the requirements as specified in Section V. A. 1.

ii. Collection Plan

The Bidders Collection Plan provided with Attachment F will be evaluated for the extent to which they meet and exceed the requirements as specified in Section V. A. 2 Collection Plan.

iii. IT Systems Requirements

The Bidders proposal will be evaluated to determine the Bidders ability to provide the systems functionality identified in the RFP. Proposals will be evaluated utilizing Attachments G, H, I and J for the extent they meet and exceed the requirements as specified in Section V. B.

b. Financial Evaluation (20 points)

Financial proposals will be scored on Bidder's response to the Financial Requirements.

Proposals will be ranked based on the highest combined scores received in the Technical and Financial evaluation. DTF will establish a short list of Bidders that will proceed to the Phase Three of the evaluation. The five (5) proposals that have the highest combined score will proceed to the Phase Three evaluation. All Bidders receiving a score equal to the lowest ranked short list bid will proceed Phase Three of the evaluation.

3. Phase Three – (18 points)

The Phase Three evaluation will consist of:

- Bidder experience
- Evaluation of Bidder references

The Bidder is solely responsible for providing references that are readily available to be

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contacted by DTF and will respond to reference questions. If DTF is unable to contact any reference, the Bidder will be provided **one** opportunity, with a deadline, to assist in obtaining cooperation from those clients who have not responded.

At the completion of Phase Three, the reference and experience scores will be added to Score from Phase Two. The highest ranked Bidder will proceed to Phase Four of the evaluation. In the event of a tie for the highest rank, all Bidders at the highest score will proceed to Phase Four

4. Phase Four – (15) Points

Management Presentation/Interview

The Bidder will be notified of the date, time and place of the interview. The interview should further document the Bidders ability to provide the required services. The Bidder, as well as any key personnel, should be present and participate in the interview. Any further information with regard to the topics of the interview will be provided to the interviewed Bidder prior to the interview.

The interview will take place at the NYS Department of Taxation and Finance, located at W. A. Harriman Campus, Albany, NY 12227. The Bidder will be responsible for all costs associated with the presentation/interview.

C Final Ranking/Contract Award

Upon completion of Phase Four, the Technical and Financial points are combined. The contract will be awarded to the Bidder whose proposal obtains the highest aggregate score.

The table below summarizes the evaluation point distribution.

Evaluation Component	Points
Technical Evaluation	80 points
Financial Evaluation	20 points
TOTAL	100 points

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In the event that Bidders receive the same final score for a service group, the Department will use the following scores, in the order listed, to determine final ranking:

- The Bidder's Financial score.
- The Bidder's Collection Plan.
- The Bidder's Experience score.
- The Bidder's prior experience with the Department.
- Determination by the Commissioner.

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Exhibit 1 – Case Characteristics

Age and Value of Out of State Assessments for Complete Cases (As of 11/16/2009)

Value Strata		Age Strata										Total
		0 to 1 year	1 to 2 years	2 to 3 years	3 to 4 years	4 to 5 years	5 to 6 years	6 to 7 years	7 to 8 years	8 to 9 years	9 to 10 years	
\$0.01 to \$99.99	Number of Assessments	3,356	3,601	2,708	2,528	2,221	2,235	1,963	1,617	1,288	1,579	23,096
	Total Amount	\$173,416	\$191,252	\$146,081	\$137,230	\$122,308	\$122,331	\$108,387	\$87,309	\$69,720	\$85,724	\$1,243,758
\$100 to \$499.99	Number of Assessments	1,946	1,928	2,512	2,514	2,345	2,256	2,540	2,402	1,567	2,351	22,361
	Total Amount	\$458,765	\$459,694	\$628,291	\$634,070	\$603,325	\$581,563	\$663,049	\$647,021	\$416,623	\$644,702	\$5,737,103
\$500 to \$999.99	Number of Assessments	596	613	810	955	1,031	1,253	1,507	1,281	1,068	1,708	10,822
	Total Amount	\$415,125	\$419,593	\$556,694	\$658,058	\$718,729	\$881,599	\$1,097,463	\$936,125	\$776,236	\$1,245,364	\$7,704,986
\$1,000 to \$4,999.99	Number of Assessments	574	1,013	1,599	2,188	2,568	2,357	3,215	2,789	2,803	3,772	22,878
	Total Amount	\$1,171,348	\$2,122,438	\$3,379,525	\$4,883,023	\$5,629,492	\$5,384,334	\$7,230,572	\$6,600,288	\$6,605,258	\$8,876,272	\$51,882,550
\$5,000 to \$9,999.99	Number of Assessments	86	184	328	373	445	504	630	622	524	815	4,511
	Total Amount	\$593,595	\$1,279,626	\$2,348,315	\$2,572,133	\$3,157,414	\$3,579,172	\$4,481,286	\$4,446,805	\$3,709,235	\$5,818,344	\$31,985,925
\$10,000 to \$19,999.99	Number of Assessments	97	114	178	219	212	295	376	460	424	539	2,914
	Total Amount	\$1,465,382	\$1,597,435	\$2,447,961	\$3,079,890	\$2,991,447	\$4,082,693	\$5,128,156	\$6,394,443	\$5,940,661	\$7,509,125	\$40,637,193

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Value Strata		Age Strata										Total
		0 to 1 year	1 to 2 years	2 to 3 years	3 to 4 years	4 to 5 years	5 to 6 years	6 to 7 years	7 to 8 years	8 to 9 years	9 to 10 years	
\$20,000 to \$49,999.99	Number of Assessments	88	123	113	169	188	239	323	311	345	400	2,299
	Total Amount	\$2,820,861	\$4,092,599	\$3,475,095	\$5,403,147	\$5,980,390	\$7,429,604	\$10,185,745	\$9,520,505	\$10,923,836	\$12,267,574	\$72,099,356
\$50,000 to \$99,999.99	Number of Assessments	21	40	40	75	100	89	118	122	133	136	874
	Total Amount	\$1,493,915	\$2,812,617	\$2,656,365	\$5,279,116	\$6,898,455	\$6,066,841	\$8,440,318	\$8,648,529	\$9,200,344	\$9,403,596	\$60,900,096
> \$100,000	Number of Assessments	32	73	60	68	99	79	104	142	171	160	988
	Total Amount	\$12,130,979	\$52,675,694	\$22,185,167	\$37,682,023	\$51,660,419	\$31,740,506	\$28,305,384	\$56,263,034	\$95,000,479	\$118,206,591	\$505,850,276
Total	Number of Assessments	6,796	7,689	8,348	9,089	9,209	9,307	10,776	9,746	8,323	11,460	90,743
	Total Amount	\$20,723,386	\$65,650,948	\$37,823,494	\$60,328,690	\$77,761,979	\$59,868,643	\$65,640,360	\$93,544,059	\$132,642,392	\$164,057,292	\$778,041,243

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Case Data by State

Top Ten states by dollar value

Out of State Taxpayers as of 11/16/2009	Number of Taxpayers	Total Dollar Amount
NJ	11,227	\$275,661,2785
FL	7,546	, \$172,840,199
PA	3,977	\$48.654.929
CA	3,295	\$44,944,039
CT	2,788	\$36,496,074
MA	1,564	\$24,823,761
GA	2,310	\$18,161,731
NC	2,382	\$16,071,740
TX	1,592	\$15,006,067
MD	1,111	\$14,716,476

Top Ten states by number of assessments

Out of State Taxpayers as of 11/16/2009	Number of Taxpayers	Total Dollar Amount
NJ	11,227	\$275,661,2785
FL	7,546	, \$172,840,199
PA	3,977	\$48.654.929
CA	3,295	\$44,944,039
CT	2,788	\$36,496,074
NC	2,382	\$16,071,740
GA	2,310	\$18,161,731
VA	1,666	\$10,517,378
TX	1,592	\$15,006,067
MA	1,564	\$24,823,761

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The following reports offer more detail for our top 5 states at the taxpayer level:

A. Number of Taxpayer assessments by assessment type:

Out of state Complete Taxpayers as of 11/16/09	Number of Taxpayers	Total Amount	
NJ	Actuals	8,927	\$44,917,661
	Audit Only	581	\$43,368,147
	Dels	83	\$3,548,733
	Mixed	1,636	\$183,826,734
FL	Actuals	6,148	\$68,461,333
	Audit Only	492	\$35,963,140
	Dels	43	\$3,206,142
	Mixed	863	\$65,209,584
PA	Actuals	3,306	\$21,053,115
	Audit Only	207	\$6,913,131
	Dels	8	\$24,388
	Mixed	456	\$20,664,295
CA	Actuals	2,701	\$10,848,969
	Audit Only	171	\$8,662,858
	Dels	35	\$182,639
	Mixed	388	\$25,249,573
CT	Actuals	2,246	\$10,906,555
	Audit Only	154	\$8,519,951
	Dels	26	\$180,954
	Mixed	362	\$16,888,613

* Actual Only = Where assessments included within the case were determined by the tax debtor on the filed return.

** Audit Only = Where assessments included within the case were determined by the Department of Taxation & Finance after a field or desk audit.

*** Dels = Delinquency assessments included within case

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B. Top five states by dollar value:

OOS Complete Taxpayers as of 11/16/2009		Number of Taxpayers	Total Amount
NJ	\$0.01 to \$99.99	2,394	\$130,901
	\$100 to \$499.99	3,020	\$745,056
	\$500 to \$999.99	1,250	\$871,070
	\$1,000 to \$4,999.99	2,674	\$6,396,737
	\$5,000 to \$9,999.99	682	\$4,868,621
	\$10,000 to \$19,999.99	407	\$5,614,727
	\$20,000 to \$49,999.99	314	\$9,827,354
	\$50,000 to \$99,999.99	209	\$14,490,727
	> \$100,000	277	\$232,716,082
FL	\$0.01 to \$99.99	1,154	\$64,766
	\$100 to \$499.99	1,971	\$528,012
	\$500 to \$999.99	969	\$692,211
	\$1,000 to \$4,999.99	2,158	\$5,043,959
	\$5,000 to \$9,999.99	475	\$3,321,149
	\$10,000 to \$19,999.99	292	\$4,058,740
	\$20,000 to \$49,999.99	211	\$6,765,998
	\$50,000 to \$99,999.99	123	\$8,597,421
	> \$100,000	193	\$143,767,943
PA	\$0.01 to \$99.99	896	\$48,951
	\$100 to \$499.99	1,157	\$285,073
	\$500 to \$999.99	462	\$324,413
	\$1,000 to \$4,999.99	937	\$2,206,137
	\$5,000 to \$9,999.99	229	\$1,603,128
	\$10,000 to \$19,999.99	120	\$1,637,144
	\$20,000 to \$49,999.99	71	\$2,301,881
	\$50,000 to \$99,999.99	44	\$3,207,739
	> \$100,000	61	\$37,040,463
CA	\$0.01 to \$99.99	720	\$38,742
	\$100 to \$499.99	849	\$217,927
	\$500 to \$999.99	392	\$278,036
	\$1,000 to \$4,999.99	814	\$1,991,271
	\$5,000 to \$9,999.99	215	\$1,524,347
	\$10,000 to \$19,999.99	135	\$1,817,501
	\$20,000 to \$49,999.99	81	\$2,551,930
	\$50,000 to \$99,999.99	38	\$2,675,559
	> \$100,000	51	\$33,848,726
CT	\$0.01 to \$99.99	668	\$37,175
	\$100 to \$499.99	718	\$175,924
	\$500 to \$999.99	289	\$206,540
	\$1,000 to \$4,999.99	675	\$1,624,750
	\$5,000 to \$9,999.99	160	\$1,106,214
	\$10,000 to \$19,999.99	93	\$1,295,931
	\$20,000 to \$49,999.99	80	\$2,421,940
	\$50,000 to \$99,999.99	43	\$3,025,002
	> \$100,000	62	\$26,602,598

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C. Top five states by history of out-sourced assignment:

OOS Complete Taxpayers as of 11/16/2009		Number of Taxpayers	Total Amount
NJ	No Prior Vendor Asgn	3,504	\$205,616,151
	Prior Vendor Asgn	7,723	\$70,045,124
FL	No Prior Vendor Asgn	1,761	\$95,281,445
	Prior Vendor Asgn	5,785	\$77,558,754
PA	No Prior Vendor Asgn	1,123	\$24,693,746
	Prior Vendor Asgn	2,854	\$23,961,183
CA	No Prior Vendor Asgn	928	\$27,454,793
	Prior Vendor Asgn	2,367	\$17,489,246
CT	No Prior Vendor Asgn	836	\$23,250,859
	Prior Vendor Asgn	1,952	\$13,245,215

D. Top five states by warrant status:

Out of state Complete Taxpayers as of 11/16/09		Number of Taxpayers	Total Amount
NJ	Fully Warranted	6,523	\$199,871,312
	Partially Warranted	1,108	\$64,591,749
	Unwarranted	3,596	\$11,198,214
FL	Fully Warranted	5,456	\$144,227,562
	Partially Warranted	500	\$24,894,748
	Unwarranted	1,590	\$3,717,889
PA	Fully Warranted	2,392	\$40,360,531
	Partially Warranted	273	\$7,268,956
	Unwarranted	1,312	\$1,025,442
CA	Fully Warranted	2,078	\$28,476,601
	Partially Warranted	231	\$15,584,848
	Unwarranted	986	\$882,590
CT	Fully Warranted	1,600	\$28,679,945
	Partially Warranted	237	\$5,810,953
	Unwarranted	951	\$2,005,626

E. Top five states by assessment type (business tax or personal income tax)

Out of state Complete Taxpayers as of 11/16/09		Number of Taxpayers	Total Amount
NJ	Business	5,237	\$155,071,605
	Personal	5,990	\$120,589,670
FL	Business	2,141	\$41,060,957
	Personal	5,405	\$131,779,242
PA	Business	1,486	\$33,912,781
	Personal	2,491	\$14,742,148
CA	Business	1,617	\$33,822,502
	Personal	1,678	\$11,121,537
CT	Business	1,218	\$17,355,595
	Personal	1,570	\$19,140,479

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The following report provides detail for our top 5 states at the assessment level:

F. Number and type of assessment assigned for the top five states.

OOS Complete Taxpayers as of 11/16/2009		Number of Assessments
NJ	Self Assessed	19,133
	Audit	1,325
	Dels	3,445
FL	Self Assessed	10,656
	Audit	1,013
	Dels	1,624
CA	Self Assessed	4,522
	Audit	339
	Dels	828
PA	Self Assessed	5,487
	Audit	374
	Dels	958
CT	Self Assessed	4,300
	Audit	319
	Dels	765

* Self Assessed = Tax Debtor calculated balance due.

** Audit = DTF calculated balance due as a result of field or desk audit.

*** Dels= Delinquency assessment for failure to file

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Exhibit 2 – Assignment/Update File

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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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 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
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		
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Field Name	Field Description	Field Size	Comments
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	
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)	
			November 2009

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Field Name	Field Description	Field Size	Comments
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)	
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
			November 2009

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Field Name	Field Description	Field Size	Comments
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 – Return/Recall File

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 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

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Field Name	Field Description	Field Size	Comments
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)	
			November 2009

New York State Department of Taxation and Finance
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Exhibit A – Contractor Certification Forms



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(6/06)

For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need Help? on back).

Contractor name				<i>For covered agency use only Contract number or description</i>
Contractor's principal place of business	City	State	ZIP code	
Contractor's mailing address (if different than above)				<i>Estimated contract value over the full term of contract (but not including renewals)</i>
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number	Covered agency name			\$
Covered agency address				
				<i>Covered agency telephone number</i>

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 I further certify that:

(Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)
and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ___ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

New York State Department of Taxation and Finance
Request for Proposal (RFP) 09-31
Out of State Collection Services for Delinquent Tax Debt



New York State Department of Taxation and Finance

Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-TD

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name				
Contractor's principal place of business		City	State	ZIP code
Contractor's mailing address (if different than above)				
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		Contractor's telephone number ()
Covered agency name	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address			Covered agency telephone number	

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they 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, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at www.nystax.gov. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

- Internet access:** www.nystax.gov
(for information, forms, and publications)
- Fax-on-demand forms:** 1 800 748-3676
- Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.
- To order forms and publications: 1 800 462-8100
- Sales Tax Information Center:** 1 800 698-2909
- From areas outside the U.S. and outside Canada: (518) 485-6800
- Hearing and speech impaired** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
- Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

New York State Department of Taxation and Finance
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Page 2 of 4 ST-220-TD (6/06)

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) *(title)*
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Make only one entry in each section below.

Section 1 — 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 sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A 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 sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 — Affiliate registration status

- 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 sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and 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 sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 — Subcontractor registration status

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors 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 sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor 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 sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

New York State Department of Taxation and Finance
Request for Proposal (RFP) 09-31
Out of State Collection Services for Delinquent Tax Debt

Exhibit B – State Consulting Services–Contractor’s Planned Employment–Form A

OSC Use Only: Reporting Code: Category Code: Date Contract Approved:
--

FORM A

State Consultant Services - Contractor's Planned Employment From Contract Start Date Through The End Of The Contract Term
--

State Agency Name:	Agency Code:
Contractor Name:	Contract Number:
Contract Start Date: / /	Contract End Date: / /

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report: Title: Phone #: _____	
--	--

Preparer's Signature:
Date Prepared: / /

(Use additional pages, if necessary)

New York State Department of Taxation and Finance
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Out of State Collection Services for Delinquent Tax Debt

Exhibit C – Contactor’s Annual Employment Report – Form B

FORM B

OSC Use Only:
Reporting Code:
Category Code:

State Consultant Services
Contractor’s Annual Employment Report
Report Period: April 1, to March 31,

Contracting State Agency Name: _____ Agency Code: _____
Contract Number: _____
Contract Term: / / to / /
Contractor Name: _____
Contractor Address: _____
Description of Services Being Provided: _____

Scope of Contract (Choose one that best fits):
Analysis Evaluation Research Training
Data Processing Computer Programming Other IT consulting
Engineering Architect Services Surveying Environmental Services
Health Services Mental Health Services
Accounting Auditing Paralegal Legal Other Consulting

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report: _____
Preparer's Signature: _____
Title: _____ Phone #: _____
Date Prepared: / /

Use additional pages if necessary)

Page of

Exhibit D – Preliminary Contract

THIS AGREEMENT made this XX day of XXX 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 XXX., with principal place of business located at XXXX (hereinafter referred to as the “Contractor”).

WHEREAS, the Department issued Request for Proposal (RFP) 09-31 on November 23, 2009, for Out of State Collection Services for Delinquent Tax Debt; and

WHEREAS, the Contractor timely submitted a bid proposal to provide the services set forth in RFP 09-31; and

WHEREAS, pursuant to **Section X** 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 Out of State Collection Services for Delinquent Tax Debt 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 C4006XX, 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 are 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

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tax debtors, and providing updated information concerning tax debtors to the Department as required in this Contract.

Contractor means *[successful Bidder's name to be inserted here]*.

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.

Licensed Documentation means the documentation prepared for or related to Licensed Software.

Licensed Software means commercially available and licensed software used in support of Program objectives and provided by Contractor.

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 09-31 including Volume 1 (Qualifying, Technical and Administrative Requirement Response Forms) and Volume 2 (Financial Rate Response), both dated January 19, 2010, and any written clarifications thereto made by Contractor. The Proposal is attached hereto as Appendix 1.

Recall means a process by which the Department requires that the Contractor immediately cease collection actions and send the case back to the Department.

Return File 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 November 23, 2009 (RFP 09-31) including all appendices and exhibits contained therein, and any written clarifications or amendments thereto made by DTF. The RFP is attached as Appendix 2.

Subcontractor means any individual or other legal entity including, but not limited to, sole proprietor, partnership, limited liability company, firm or corporation who is engaged by the Contractor or another subcontractor to perform a portion of the Contractor's obligation under a contract.

Tax Liability means the total amount due inclusive of penalties and interest.

Article II. Entirety of Agreement

This Contract C4006XX 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";

Attachment 10 – Secrecy Provision Agreement (DTF-202);

Attachment 11 – Acknowledgement of Confidentiality of Internal Revenue Service Tax Return;

Appendix B – Participation by Minority Group Members and Women with Respect to State Contracts;

Base Contract;

Contractor Proposal Clarifications;

Contractor Proposal, excluding clarifications;

Amendments and Clarifications to the RFP, including Questions and Answers;

Department's RFP, excluding Appendix A, Attachments XX and Attachment XX.

Article III. Contractor Responsibilities

The Contractor hereby agrees to provide all services as set forth herein and in RFP 09-31 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 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

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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 09-31, Section IV. FF.

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 IV. CC. of RFP 09-31.

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 09-31 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, without deducting any Contractor fees, 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 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 V. W of RFP 09-31. 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 IV. L. of RFP 09-31, 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.

Additional responsibilities to be determined during Contract negotiations.

Article IV. Department Responsibilities

The Department will place cases with the Contractor for collection consistent with RFP 09-31 Sections II, IV. M, and IV. N.

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 IV. J of RFP 09-31.

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). The initial term of the Contract shall commence upon approval of OSC.

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 or five percent (5%) whichever is smaller.

If the renewal option is exercised, rate increases for each of the two subsequent renewal periods shall also 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 or five percent (5%), whichever is smaller.

The Department reserves the right to review any and all proposed installment plans and settlements at the time vendor provides notice of intention not to renew, or six months prior to scheduled contract expiration.

If at the time of contract expiration there remain cases in an active litigation status and/or ongoing judgment enforcement activity, the Department reserves the right to extend the duration of the contract through the final installment period in order to effectuate collection in said cases and to provide subsequent payment to the Contractor for collection services rendered.

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 XI-A 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. If, 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.

Article VII: Secrecy Provisions

A. Required Forms

The Contractor will require each employee and/or subcontractor assigned to this Agreement to sign form **DTF-202 Agreement to Adhere to the Secrecy Provisions 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, all staff members and subcontractors 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.

C. Federal Secrecy Provisions

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by his/her employees and subcontractors 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 the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. 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 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

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.

D. Information Security Breach and Notification Act

Contractor expressly agrees to comply with the provisions of Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws 2005, commonly known as the Information Security Breach and Notification Act (the "ISBNA" or "Act"), and any future amendments thereto. Contractor shall comply with all obligations imposed by the notice provisions of the ISBNA with

respect to any computerized “private information” (as defined in the Act) received, handled, processed, uploaded, or maintained by Contractor on behalf of DTF under this Contract (hereinafter, the “DTF Information”). In the event of a “breach of the security of the system” (as defined by the Act), Contractor shall immediately notify DTF upon discovery or notification of such breach. Such notice to DTF shall be made in one of the following ways: by contacting the Contractor’s DTF liaison for the contract, or by e-mail to Dave_Beals@tax.state.ny.us, or by telephone to (518) 292-7827. Contractor shall immediately commence an investigation, in cooperation with DTF, to determine the scope of the breach and to restore the security of the system. To the extent DTF determines that further notifications are required to be sent out pursuant to the Act, Contractor shall be responsible for providing all notifications to all required recipients including, in accordance with New York State policy, non-New York State residents whose private information is reasonably believed to have been exposed as a result of the breach, and all costs associated with providing such notices shall be borne by the Contractor. It is expressly agreed that Contractor shall be obligated to receive authorization from DTF *prior* to making any notifications to any individuals, the State Office of Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General’s Office or any consumer reporting agencies, of a breach of the security of the system, or concerning making any determination to delay notifications due to law enforcement investigations. Contractor agrees that DTF shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a breach of security of the DTF Information. Nothing contained herein shall be interpreted as reducing or altering Contractor’s obligations under section 899-aa of the General Business Law.

E. Ownership of Data/Data Security

All Data under this contract shall be and remain the property of the Department, and the Contractor must, during the term of the contract (including any extensions and/or disengagement phases) provide the Department with access to any such data maintained by the Contractor.

The Contractor must, in accordance with applicable law and the instructions of the Department, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate data integrity safeguards against the deletion or alteration of such data.

Promptly after the termination or expiration of the Contract, the Contractor shall provide all such data still within its possession or that of its subcontractors to the Department, or sanitize such data, consistent with applicable law and instructions from the Department.

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.

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 IV. U. of RFP 09-31, 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 I. E, IV. K and IV. V. 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 Sections III. D and VIII. A. 4 of RFP 09-31 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 Sections III. D and VIII. A. 4 of RFP 09-31.

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.

Vendor Responsibility

During the contract term, 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

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify, to the Department of Taxation and Finance (DTF), that they are registered to collect New York State and

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local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law also imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use taxes and Contractors must certify to DTF that each affiliate and subcontractor exceeding the \$300,000 sales threshold referenced above is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a Contract awarded to a Contractor meeting the registration requirements but who has not registered in accordance with the law.

Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, there are certain restrictions on communications between a Governmental Entity and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts during the restricted period to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a).

If this Agreement is renewed or amended, Contractor shall be subject to the Procurement Lobbying requirements set forth herein and shall submit such updated Procurement Lobbying forms as are required by the Department.

Contractor Consultant Law

Effective June 19, 2006, Chapter 10 of the Laws of 2006 amended the Civil Service and State Finance Law, relative to maintaining certain information on contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as "contracts entered into by a state agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*". The amendments require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), the Division of the Budget (DOB) and the Department of Civil Service (CS). To meet these new requirements, the firm agrees to assist in the completion of Form A - Contractor's Planned Employment, *Exhibit B*

Equal Employment/Business Participation Opportunities for Minority Group Members and New York State Certified Minority/Women-Owned Businesses

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group

Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered DTF Contracts.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A, including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that the provisions of Appendix A, Clause 12 – Equal Employment Opportunities for Minorities and Women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to work in connection with the State Contract.

Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses

Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as Subcontractors and suppliers on this Contract for the provision of services and materials. To locate New York State Certified M/WBE, the directory of Certified Businesses can be viewed at: http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp.

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

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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.
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 Procurement Lobbying 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. A finding that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law was not timely filed during the term of the Contract or the Certification filed was intentionally false or intentionally incomplete.
9. 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 I.E, IV. K and IV. V 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, 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. 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.

D. 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).

E. Licensed Software and Licensed Documentation

- (1) Contractor grants the Department, at no charge, an irrevocable, nonexclusive license and right to use, copy, display and internally distribute at its own expense the Licensed Software provided by Contractor to perform the Services under the Contract. Contractor shall employ, and shall provide the Department with the information needed to install and use, copy, display, and internally distribute the Licensed Software and Licensed Documentation provided by Contractor for performance of the Services under the Contract.
- (2) Contractor shall, at no additional cost to the Department, be responsible for maintaining the Licensed Software used in providing the Services hereunder, throughout the term of this

Agreement, and for any additional period of time during which Contractor continues to perform services for the Department.

- 3) Contractor agrees to provide the Department with prompt access to all Licensed Software used to perform the Services hereunder, and related Licensed Documentation to the extent of Contractor's intellectual property rights in such software and documentation, upon reasonable notice by the Department, throughout the term of this Agreement.

Article XIV: General Terms and Conditions

Invariable Terms and Conditions

Appendix A

The Contractor has read and agrees to 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.

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.

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.

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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.

Litigation

Federal Bankruptcy cases will not be handled by the Contractor but will, instead, be returned to the Department. If a bankruptcy is commenced after the Contractor has begun work on a case, the Contractor will cease work thereon and promptly notify the Department and return the case.

The Contractor will not, under any circumstances, litigate any matter or engage in any enforcement proceedings in the State of New York.

The Contractor will, if it locates a New York asset (i.e., a situs in New York) or an asset which may reasonably be claimed to be a New York asset, notify the Department of said asset for the State to collect upon. Contractor will cease any efforts whatsoever to execute upon that asset.

In the event the Contractor identifies a tax debtor who has returned to New York State, the Contractor will cease any efforts whatsoever to collect from that taxpayer.

Before Contractor retains outside counsel in any case, it will verify that:

- Counsel is a member in good standing of the appropriate bar; and
- There has not been a determination of wrongdoing against counsel by any relevant disciplinary body.

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

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 permitted or required hereunder shall be in writing and shall be transmitted either:

- a. via certified or registered United States mail, return receipt requested;
- b. by facsimile transmission;
- c. by personal delivery;

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- d. by expedited delivery service; or
- e. by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Notices to the Department from the Contractor:

Ms. Catherine Golden, 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

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

XXXXXXXXXXXXXXXXXXXX

**NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE**

Signature

Signature

New York State Department of Taxation and Finance
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Print Name

Print Name

Title

Title

Date

Date

Attorney General

Office of the State Comptroller

CORPORATION

STATE OF

COUNTY OF

On this _____ day of _____, 2010, before me personally appeared _____,

to me known, who being duly sworn, did depose and state that he/she resides in _____;
that he/she is the _____ of the _____, the Corporation described
in and which executed the foregoing instrument; that he/she knows the seal of said Corporation; that the seal affixed to said instrument is such
corporate seal, that it was so affixed by the order of the Board of Directors of said Corporation, and that he/she signed his/her name thereto by
like order.

_____ NOTARY PUBLIC

Appendix A – 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, licensor, licensee, lessor, lessee or any other party):

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

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

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

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

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

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

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

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

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

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State

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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

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administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

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

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the

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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

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bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under Bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

NYS Department of Economic Development

Division for Small Business

30 South Pearl St -- 7th Floor

Albany, New York 12245

Telephone: 518-292-5220

Fax: 518-292-5884

<http://www.empire.state.ny.us>

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

NYS Department of Economic Development

Division of Minority and Women's Business Development

30 South Pearl St -- 2nd Floor

Albany, New York 12245

Telephone: 518-292-5250

Fax: 518-292-5803

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<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.

June 2006

Appendix B – Participation by Minority Group Members and Women 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

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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.

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.

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- 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 contracts 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.
 - d) A Contractor who has made good faith efforts to obtain commitments from M/WBE subcontractors 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.

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- 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

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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?
- 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 subcontractors 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

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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.

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,

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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.

Appendix C – 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, Procurement 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 Chief Financial Officer 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.

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- 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)."

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 in the RFP.

Review and Final Determination

Copies of all protests will be provided to the Assistant Director, Procurement 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 Assistant Director, Procurement 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 Assistant Director, Procurement of the Office of Budget and Management Analysis, and provide a memorandum to the Chief Financial Officer of the Office of Budget and Management Analysis summarizing the results of the review and recommendation. The Chief Financial Officer 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.

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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 Chief Financial Officer 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 Chief Financial Officer of the Office of Budget and Management Analysis.

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.

Attachment 1 – Bidder’s Checklist

Volume 1

Qualifying Requirements

- Attachment A – Insurance Response Form
- Attachment B – Debt Collection Experience Response Form
- Attachment C – Financial Stability Response Form
- Attachment D – Attestation Response Form

Technical and System Response Requirements

- Attachment E – Case Management System Response Form
- Attachment F – Collection Plan Response Form
- Attachment G – Electronic Data File Exchange Response Form
- Attachment H - System Functionality Response Form
- Attachment I – Technical Staff Response Form
- Attachment J - Security and Confidentiality Response Form
- Attachment K – Collection Experience Response Form
- Attachment L –Reference Response Form
- Attachment M – Alternate Reference Response Form

Volume 2

Administrative Requirements

- Cover Letter
 - Proposed Extraneous Terms
 - Request for Exemption from Disclosure
- Attachment 4 - Vendor Responsibility Questionnaire
- Attachment 5 - MacBride Fair Employment Principles Form
- Attachment 6 - Designation of Prime Contact
- Attachment 7 - Non-Collusive Bidding Certification
- Attachment 8 – Offerer Disclosure of Prior Non-Responsibility Determinations
- Attachment 9 - Contractor Certification of Compliance with State Finance Law 139-k (5)
- Attachment 10 - (DTF-202) Agreement to Adhere to Secrecy Provisions
- Attachment 11 - Acknowledgment of Confidentiality of Internal Revenue Service Tax Return Information
- Attachment 12 - Subcontractor List

Volume 3

Financial Proposal

- Attachment 13 - Financial Rate Response Form

**Attachment 2 – Offerer Understanding of, and Compliance with Procurement
Lobbying Guidelines**

New York State Finance Law 139-j(6)(b) requires the DTF seek written affirmation from all Offerers as to the Offerer’s understanding of and agreement to comply with the DTF procedures relating to permissible contacts during a Government Procurement pursuant to subdivision three of this section.

Procurement Description, Contract or Bid Number:

Offerer Name: _____

Offerer Address: _____

Telephone Number: _____

e-Mail Address: _____

Offerer affirms it has read, understands and agrees to comply with the Guidelines of the New York State Department of Taxation and Finance relative to permissible contacts as required by the State Finance Law 139-j(3) and 139-j(6)(b).

By (*signature*): _____

Name (*please print*): _____

Title (*please print*): _____

Date: _____

Attachment 3 – 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 woman owned business.
- We are not interested in submitting a proposal for this service.

Reason: _____

Attachment 4 – Vendor Responsibility Questionnaire

Bidder's Name: _____

Bidders must complete a Vendor Responsibility Questionnaire in response to this RFP. Bidders are invited to file the required Vendor Responsibility Questionnaire online via the OSC New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at www.osc.state.ny.us/vendrep or may contact one of the Department's designated contacts.

Please check one of the following:

- A Vendor Responsibility Questionnaire has been filed online and has been certified/updated within the last six months.
- A Vendor Responsibility Questionnaire is attached to this bid proposal.

NOTE: If a Vendor Responsibility Questionnaire has been filed online and has not been certified within the last six months, the Bidder must either update/recertify the online questionnaire or submit a new paper Vendor Responsibility Questionnaire. Upon notification of award, the Contractor will be required to update/recertify the online questionnaire.

Attachment 5 – MacBride Fair Employment Principles

BIDDER'S NAME: _____

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with Chapter 807 of the Laws of 1992, New York State, the Contractor, 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):

Have no business operations in Northern Ireland: _____ Yes

or

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 6 – 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 designated on the cover of this RFP and must be accompanied by an updated form.

Firm Name: _____

Address: _____

Prime Contact Name: _____ Title: _____

e-mail address: _____

Phone Number: _____ Fax: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attachment 7 – 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 a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their 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.
 - 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 8 - Offerer Disclosure of Prior Non-Responsibility Determinations

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

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

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

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Offerer Disclosure of Prior Non-Responsibility Determinations

Procurement Description, Contract or Bid Number: _____

Offerer Name: _____

Offerer Address: _____

Telephone Number: _____

e-Mail Address: _____

Name and Title of Person Submitting this Form: _____

1. Has any New York State agency or authority made a finding of non-responsibility regarding the Offerer in the last four years? (Please circle):

No Yes

If yes, please answer the following questions:

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

No Yes

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

No Yes

4. If you responded yes to Questions 1, 2 or 3, please provide details regarding the finding of non-responsibility below:

Government Entity: _____

Date of Finding of Non-responsibility: _____

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Facts Underlying Finding of Non-Responsibility (Add additional pages as necessary)

5. Has any New York State agency or authority terminated a procurement contract with the Offerer due to the intentional provision of false or incomplete information? (Please circle):

No Yes

If you responded yes to the above question, please provide details regarding the termination below:

Government Entity: _____

Date of Finding of Non-Responsibility: _____

Facts Underlying Finding of Non-Responsibility: (Add additional pages as necessary)

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

By: *(Signature)*: _____

Name: *(Please print)* _____

Date: _____

**Attachment 9 – Offerer’s Certification of Compliance with State Finance Law
139-k (5)**

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

Offerer Certification

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

By: *(signature)* _____

Date: _____

Procurement Description, Contract or Bid Number: _____

Name *(Please print)*: _____

Title: _____

Offerer Name: _____

Offerer Address: _____

Telephone Number: _____

e-Mail Address: _____

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Attachment 10 – DTF-202

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

CONTRACTOR NAME: _____

CONTRACT #: _____

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: _____

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.

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 12 – Subcontractor List

Complete this form for the Subcontractor requirement as requested in section VIII. D. 10. The Bidder must identify all subs 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 13 – Financial Response Form

This form is for the financial proposal requirement as requested in **Section VI** of RFP 09-31:

Fixed Percentage of Collections: _____%

The above percentage fee must incorporate all costs associated with collection activities, including any fees associated with litigation effort, 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: _____

Attachment A – Insurance Response Form

This form is for the insurance requirement as specified in **Section III. A. and VIII. A. 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 – Debt Collection Experience

This form is for the Debt Collection Experience requirements as specified in III. B and VIII. A. 2.

1. The Bidder or its subcontractors must have five years of experience **collecting debts on behalf of clients** since November 1, 2004;

AND

The bidder or its subcontractors must have 5 years of experience taking judgments obtained by a creditor in one state and filing them in a foreign state pursuant to the Uniform Enforcement of Foreign Judgments Act or some other methodology, defending legal challenges brought by judgment debtors, and enforcing domesticated judgments against assets owned by judgment debtors (hereinafter referred to as "litigation services") since November 1, 2004.

Furthermore, the Department recognizes that new entities may form for the purpose of submitting a bid and that the new entity (which shall be considered "the bidder") may consist of existing entities. In such case, at least one such existing entity or its subcontractors must have five years experience **collecting debts on behalf of clients** since November 1, 2004 AND at least one such existing entity or its subcontractors must have five years experience performing **litigation services** since November 1, 2004.

A bidder without the above experience in either **collecting debts on behalf of clients** or **litigation services** shall not be qualified to bid. If a bidder intends to utilize sub-contracted law firms in foreign states, each law firm must have five years of **litigation services** experience.

Date Bidder began business of Debt Collection (including month and year): _____

Client Name: _____

Client Address: _____

Client Contact Name: _____

Client Phone Number: _____ Client Fax Number: _____

Client e-mail address: _____

Contract Start date: _____ Contract End date: _____

Work performed by a subcontractor: ___yes ___no

Subcontractor name: _____

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Attach additional sheets as necessary to support the five year requirement or in the case of a new entity that consists of existing entities.

2. The Bidder and any subcontractors must collectively have multi-state collection experience, including taking judgments obtained in one state and filing them in a foreign state pursuant to the uniform Enforcement of Foreign Judgments Act (“UEFJA”) and success in defending due process and/or other challenges brought by affected judgment debtors.

States in which the Bidder and any subcontractor collectively has collection experience:

By signature below, the Bidder attest that they and their subcontractors collectively have:

- the Bidders experience in taking judgments in one state and filing them in another state pursuant to UEFJA; and
- the Bidders success in defending due process or other challenges brought by affected judgment debtors.

Bidder Name: _____

Authorized Representative: _____

Representative’s Signature: _____

Date: _____

-
3. The Bidder must have experience with a portfolio of collection cases from one client with a minimum volume of 10,000 judgment debtors annually.

Provide the following information on the contract that meets this requirement:

Client Name: _____

Client Address: _____

Client Contact Name: _____

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Client Phone Number: _____ Client Fax Number: _____

Client e-mail address: _____

Number of cases placed annually: _____

Attachment C – Financial Stability Response Form

This form is for the Financial Stability requirement as specified in **Sections III. D. and VIII. A. 4.**

With Attachment C, 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.

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Bidders must also provide:

- The Bidder must provide the name and phone number of a contact at its primary bank in order for a bank reference to be obtained as part of the financial stability evaluation;
- 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.
- The Bidder must indicate whether or not it guarantees the debt of any other entity.
- 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 Bidder, or if the Bidder guarantees the debt of the parent company.

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 D – Attestation

This form is for the Attestation requirement as specified in Sections III. E. and VIII. A. 5.

The Bidder's signature below indicates the Bidder has read and agrees to the General Contract Requirements as outlined and defined in Section IV of the NYS Department of Taxation and Finance Request for Proposal 09-31 for Out of State Collection Services for Delinquent Tax Debt.

Firm Name: _____

Authorized Representative: _____

Representative's Signature: _____

Date: _____

Attachment E – Case Management System Response Form

This form is for the Case Management System requirement as specified in Sections V. A. 1 and VIII. B. 1.
a.

Bidder Name: _____

In response to this requirement, attach a description or narrative describing the Bidder's Case Management System. Such narrative should minimally address the following:

- Security protocols
- Access
- Functionality
- Navigation

Attachment F – Collection Plan Response Form

This form is for the Collection Plan requirement as specified in Sections V. A. 2. and VIII. B. 1. b.

The Bidder must attach a narrative which addresses, at a minimum:

An understanding of the needs of the Department and identifies those needs in a comprehensive collection plan. The collection plan **must** include an overview and time line that describes the collection methodology that will be used by the Bidder to collect the unpaid tax debt and **must** address the following issues:

- a. A detailed description of all collection techniques that will be employed by the Bidder in an attempt to collect the unpaid New York State tax debt including:
 - i. How referred cases will be prioritized
 - ii. The timing of all attempts made to contact the tax debtor, including both phone and mail attempts.
 - iii. The criteria and the rationale the Bidder will use to determine which New York warrants will be filed in states where the tax debtors are located pursuant to the Uniform Enforcement of Foreign Judgments Act (“UEFJA”), or some other methodology.
 - iv. The Bidder’s litigation strategy if a debtor commences a proceeding challenging the filing of a New York tax warrant against a tax debtor in the state where the tax debtor is located or if the tax debtor commences a proceeding challenging the underlying New York State tax debt itself.
 - v. The judgment enforcement steps that will be taken to attempt to collect the unpaid tax debt.
 - vi. The criteria the Bidder will use to identify which referred cases are non-productive.
- b. The process with which the Bidder will obtain tax debtor data including address, phone number income/financial sources, and personal/real property assets owned by the tax debtor including a description of locator services and other databases that the Bidder shall utilize to obtain such data.
- c. The approach to the assignment of management, supervisory, and attorney staff to be assigned to this contract including the number of staff members assigned exclusively to this contract and the number of cases assigned to each staff member.
- d. In addition to providing the Department with access to a secure on-line case management system which will provide status information on all cases assigned by the Department to the Contractor on a daily basis, the Bidder must also describe the **timing and manner** in which the Contractor will communicate with the Department on issues that may arise during the course of its collection efforts including:
 - i. Settlement offers made by a tax debtor
 - ii. The Bankruptcy filing of a tax debtor
 - iii. A dispute made by a tax debtor, including, but not limited to, a dispute regarding the Department claims to be due and owing from the tax debtor.

Attachment G – Electronic Data File Exchange

This form is for the electronic data file exchange requirement as requested in **Sections III. C; V. B. 1.; VIII. A. 3. and VIII. B. 2. a.** All files being exchanged between the Contractor and the Department that are identified in Section V. B. 2. b., must use an electronic data exchange protocol acceptable to the Department, as described in Section V. B. 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 H – System Functionality Response Form

This form is for the System Functionality requirement as specified in **Section V. B. 2. and VIII. B. 2. b.**

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 Exhibit 3).
- 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 I – Technical Staff Response Form

This form is for the Contractor Staff requirement as specified in **Section V. B. 3 and VIII. B. 2.c.**

BIDDER AFFIRMATION

Sufficient staff must be assigned to complete the Development Phase in within six months as well as provide adequate support during the 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: The Department reserves the right to request additional staff, as well as staff substitutions for work related cause.

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

Attachment J - Security and Confidentiality Response Form

Use this form as a guideline to address the Security and Confidentiality requirements as requested in **Section V. B. 4. and VIII. B. 2. d.:**

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 requirements, outlined in Section V.B. 4. and VIII. B. 2. d. 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 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) Policies and programs used for the encryption of data in transit and data at rest.
 - g) 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.).
 - h) A process and procedure which conforms to generally accepted best practices to sanitize or dispose of obsolete electronic information on all forms of electronic media to be used in the proposed system.
 - i) 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.
 - j) Procedures for data breach notification and data breach incident response.
 - k) Processes to monitor the Bidder's compliance with its information security policies, such as internal audit controls and/or independent audit programs.
 - l) 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.
 - m) Description of the Bidder's system to record, maintain, and report on collection case activity (audit trails) as attested to in section IV. FF.

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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 section V. B. 4. and VIII. B, 2. d . 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 K – Collection Experience Response Form

This Form is for the Debt Collection Experience in Sections V. C. 1. and VIII. B. 3. a.

Please provide information for five contracts to be used to evaluate the Bidders experience.

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 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 _____

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

6. Total Inventory placed: _____

7. Total money collected in all 50 states : _____

8. Total liens/judgments transferred in all 50 states: _____

9. Total money collected in all 50 states as a result of the total liens/judgments: _____

10. For each of the following states: New Jersey, Florida, Pennsylvania, California, Connecticut, North Carolina, Georgia, Virginia, Texas and Massachusetts;

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- Total money collected: _____
- Total Liens/judgments transferred: _____
- Total money collected post judgment: _____

11. The Bidder must indicate if the collection strategy proposed to be utilized by the Bidder in Section V. A. 2 was successfully employed by the Contractor in the past and, if so, provide evidence in support including:

- a. Public and/or private sector collection cases in which the Contractor successfully defeated a judgment debtor's challenge to the filing of a foreign judgment in the state where the judgment debtor resides and/or a judgment debtors challenge to the debt itself.
- b. Data describing types of judgment debt collected (public vs. private sector) and collection outcomes on an individual client by client basis.

*Attach additional forms as necessary for each contract submitted for Collection Experience.

Attachment L – Reference Response Form

This Form is for the Debt Collection Experience in Sections V. C. 2. and VIII. B. 3. b.

Part I – Debt Collection Services References

Please provide client information to be used for Debt Collection Services references. Contacts must be familiar with debt collection processing activities.

Collections/Litigations Reference Company Name: _____

Contact Name: _____

Phone Number _____

Fax Number _____

Email Address _____

Part II – Systems References

Please provide client information to be used for Systems references. Contacts must be familiar with Bidder's computer application system and the process for exchanging data.

Systems Reference Company Name: _____

Contact Name: _____

Phone Number _____

Fax Number _____

Email Address _____

*Attach additional forms as necessary for each contract submitted for References.

Attachment M – Alternate Reference Response Form

Part I – Debt Collection Alternate Reference

Please provide client information to be used for Debt Collection reference. Contacts must be familiar with debt collection processing activities.

Collections/Litigations Reference Company Name: _____

Contact Name: _____

Phone Number _____

Fax Number _____

Email Address _____

Part II – Systems Alternate Reference

Please provide client information to be used for Systems reference. Contacts must be familiar with Bidder's computer application system and the process for exchanging data.

Systems Reference Company Name: _____

Contact Name: _____

Phone Number _____

Fax Number _____

Email Address _____

*Attach additional forms as necessary for each contract submitted for Alternate References.