



Request for Proposal

SU 061517

Private Study Instruction for the Conservatory of Music

Responses Due:
June 19 2017 – 1:00 PM

Version 032817

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SUMMARY INFORMATION FORM

THIS PAGE MUST BE SIGNED AND RETURNED WITH BIDDER'S RESPONSE

RFP #: SU 061517	RFP Title: Private Study Instruction for the Conservatory of Music	RFP Release Date: 05/25/2017 Electronic copies of this RFP are available at: https://www.purchase.edu/offices/purchasing/procurement-opportunities/
Key Events		
Questions/Requests for clarification due	June 6 2017	
Response to questions/requests for clarifications issued	June 8 2017	
Pre-Bid Conference - <i>optional</i>	June 1 2017 at 10:30 AM	
Proposal Due Date and Time	June 19 2017 at 1:00 PM	
Demonstration / Interview	June 20 – 27, 2017	
Anticipated Notification of Award	July 5 2017	
Anticipated Contract Start Date	TBD	
Anticipated Term Length of Contract: One (1) Year contract with Option to renew for Four (4) additional 1 Year terms.		
<i>SUNY reserves the right, in its sole discretion, to modify the above schedule. Bidders will be notified via email of any changes in a timely manner</i>		
Contact Information		
Primary Contact: Nikolaus D Lentner Director of Purchasing & Accts Payable SUNY - Purchase College 735 Anderson Hill Road Purchase New York 10577 Email: L@Purchase.edu PH: 914-251-6070	Secondary Contact: James Mwaura Assoc Dir Purchasing & Accts Payable SUNY - Purchase College 735 Anderson Hill Road Purchase New York 10577 Email: James.Mwaura@Purchase.edu PH: 914-251-6070	RFP Specifications Contact: Edward Rosensteel Manager of Finance And Administration SUNY- Purchase College 735 Anderson Hill Road Purchase New York 10577 Email: Edward.Rosensteel@Purchase.edu PH: 914-251-4458
Restricted Period		
In accordance with the requirements of New York State Finance Law Sections 139j and 139k ("Lobbying Law"), the restricted period for this procurement is now in effect. Therefore, all communications regarding this procurement must be handled through the State University of New York's designated contacts only.		
Bidder Information		
Legal Business Name of Company Bidding:		Bidder's Federal Tax Identification Number:
D/B/A – Doing Business As (if applicable):		NYS Vendor ID Number (See Exhibit B, Section 16):
Street Address:	City/State:	Zip Code:
If applicable, place an "x" in the appropriate box: <i>(check all that apply)</i> ☐ Small Business (if checked, provide # of employees ____) ☐ Minority Owned Business (NYS Certified) ☐ Disabled Veteran Owned Business ☐ Women Owned Business (NYS Certified)		
If you are not bidding, place an "x" in the box and return this page only. ☐ We are unable to bid at this time because:		
Bidders Signature:		Title:
Printed Name:		Date:

THIS PAGE MUST BE SIGNED AND RETURNED WITH BIDDER'S RESPONSE

By signing this form, bidder acknowledges (a) that the RFP instructions are understood; (b) that the bidder is committed to servicing SUNY's needs in the required time period; and (c) that all information required by this RFP has been included in bidder's proposal.

Section 1: OVERVIEW

SUNY -Purchase College (hereafter “The College”) Conservatory of Music (hereafter COM) is seeking proposals from qualified independent contractors to provide the services of private study instruction.

About the Conservatory of Music (COM)

The Conservatory of Music undergraduate and graduate programs offer a distinctive, comprehensive education that prepares students for the challenges and rewards of a career in music.

Our proximity to New York City makes it possible for students to study with many of the most respected names in music today. Through private lessons and small-group study, our faculty guide and mentor students in their career choice. The Conservatory of Music limits its enrollment, including undergraduate and graduate candidates, to only 400 students to ensure students receive personal attention and opportunities to perform and hear their music right from the start.

Classical: The instrumental performance program is built upon substantial performance opportunities, including solo, chamber, and orchestral performance. The areas of concentration are strings, harp, piano, brass, percussion, woodwinds, and classical guitar. In the voice/opera performance program, our award-winning opera program stages two full productions each year. In the classical composition program, works by student composers are performed and recorded regularly, enabling individuals and groups to create significant portfolios of original repertoire.

Jazz: In the jazz studies program, students perform in small and large ensembles while solidifying their education with intensive theory and history courses. Our expansive, real-world approach prepares graduates for the competitive and stimulating life of the professional jazz musician.

Music and Technology: The studio composition program engages talented and ambitious independent writers and artists in the craft of musical composition and its contemporary technologies and methods. The studio production program provides focused, creative training in the recording arts for developing engineers and producers across a broad spectrum of musical and multimedia genres.

About SUNY - Purchase College

Purchase College, part of the State University of New York (SUNY) network of 64 universities and colleges, was founded in 1967 by Governor Nelson Rockefeller. His aspiration for Purchase was to create a dynamic campus that combined conservatory training in the visual and performing arts with programs in the liberal arts and sciences, in order to inspire an appreciation for both intellectual and artistic talents in all students. Today, Purchase College–SUNY is a community of students, faculty, and friends where open-minded engagement with the creative process leads to a lifetime of intellectual growth and professional opportunity.

The State University of New York (“SUNY”) is the largest comprehensive university system in the United States, educating more than 467,000 students in more than 7,500 degree and certificate programs on 64

campuses with nearly 3 million alumni around the globe. SUNY is committed to reduce administrative costs, maximize efficiencies and move resources toward academics and student services.

Section 2: PROJECT SPECIFICATIONS/ SCOPE OF WORK

A. Scope of Services

The Conservatory of Music (hereafter COM) is seeking proposals from qualified independent contractors to provide the services of private study instruction in nine (9) separate areas of instruction. We are requesting proposals for each service category.

Instruction and coaching shall be provided personally by the independent contractor in one-on-one lessons with assigned students.

Instruction and coaching shall be provided during 13 separate lessons of (1) one hour in duration scheduled weekly during the first thirteen weeks of the academic semester. The dates for the 2017-2018 academic semesters are:

- a. Fall 2017 semester: Mon., Aug. 28–Fri., Dec. 15, 2017
- b. Wed., Jan. 24–Tues., May 15, 2018

For some lessons in Music and Technology, 1-3 students may be assigned in a group lesson of 1.5 hr duration for 13 lessons.

The contractor and student are responsible for scheduling a mutually agreeable day and time for each lesson, and rescheduling any changes.

Lessons with students must take place on the Campus of Purchase College, in rooms assigned by Purchase College Staff.

Should a student withdraw from a course of study for any reason, the independent contractor will be paid for services rendered up to the point of withdrawal, not for the entire contracted term.

B. Technical Specifications

Service Categories/Areas of instruction:

COM seeks independent contractors with expertise in any of the following nine (9) categories:

- 1) Classical Study, Voice
- 2) Jazz Study, Voice
- 3) Jazz Study, Piano
- 4) Jazz Study, Trumpet
- 5) Jazz Study, Trombone
- 6) Jazz Study, Guitar
- 7) Music and Technology- Studio Composition: Technical and creative aspects of composition and engineering for commercial and popular music.
- 8) Music and Technology - Studio Production: Technical and creative aspects of production and engineering.
- 9) Music and Technology: Live sound production and engineering.

C. Method of Award

An Award will be made to the responsive and responsible bid proposers submitting the proposal that earns the highest overall/composite point total for each category, based on the **Proposal Evaluation and Selection** criteria outlined in this RFP and also representing the best value to the College.

Each area of instruction will be evaluated and awarded separately. The nine (9) areas of instruction that will be evaluated and awarded are:

- 1) Classical Study, Voice
- 2) Jazz Study, Voice
- 3) Jazz Study, Piano
- 4) Jazz Study, Trumpet
- 5) Jazz Study, Trombone
- 6) Jazz Study, Guitar
- 7) Music and Technology- Studio Composition
- 8) Music and Technology - Studio Production:
- 9) Music and Technology: Live sound production and engineering.

Proposals will be evaluated on the basis of “best value” by an evaluation committee comprised of SUNY representatives, and shall be conducted in the following steps:

1. Administrative Review

Each bid received by the due date and time will be screened for completeness of submission in accordance with Section 4, Bid Submission Requirements.

2. Review of Bidder Qualifications

Each bid remaining after the Administrative Review will be advanced to the evaluation committee for determination of whether Bidder has met the requirements of Section 3, Bidder Qualifications.

3. Technical Evaluation

Each bid remaining after review of Bidder Qualifications will advance for review and independent evaluation and scoring by the technical review evaluation committee.

4. Financial Evaluation

The Financial Proposals of each bid remaining after the Technical Evaluation will be independently evaluated and scored by the designated contract officer.

5. Demonstration/ Interview

Bidders receiving the three (3) highest combined Technical and Financial scores may be invited to make a presentation to discuss their proposal. If such presentations are to be held, SUNY will notify the Bidders and schedule the time and location. The presentation will provide an opportunity for these bidders to clarify or elaborate on their proposals, but shall in no way change their original proposals. The presentation/demonstration/interview will be evaluated and scored by the Evaluation Committee. All costs associated with the Bidder’s attendance will be borne by the Bidder.

6. Proposal Evaluation and Selection

- 1) Proposals will be evaluated by a committee of four (4) COM employees to include:
 - a. Director of the COM
 - b. Program Coordinator of the COM
 - c. Faculty Coordinator of the Board of Study for which the contractor will provide service.
 - d. 4th committee member
- 2) Each service category (area of instruction) will be scored using the following criteria:
Technical Response – 50 %

- a. Mastery and expertise in area of instruction.
 - b. Experience teaching college aged students
 - c. Demonstrated success in student professional placement.
- Interview/Demonstration – 20%
- a. An interview by the evaluation committee.

3.) Cost Proposal – 30%

Proposals will be evaluated on the basis of “best value” by an evaluation committee comprised of SUNY representatives, utilizing an evaluation methodology that considers the following factors:

Technical Proposal		Points	%
	Technical Response		50
	Demonstration/Interview		20
Total Technical Proposal			70%
Cost Proposal			30%
Total			100%

The Bidder earning the highest final composite score (technical, financial and presentation/demonstration/interview) will be selected to contract with SUNY and will be notified by SUNY. Tentative award of the contract shall consist of written notice of the contract award by SUNY to the successful bidder, who shall thereupon be obligated to execute a formal contract.

Section 3: BIDDER QUALIFICATIONS

A. Minimum Bidder Qualifications

Proposers must submit separate proposals for each service category (area of instruction) that they wish to propose. Respondents must include the following information in their proposals:

- 1) Resume that highlights contractors' qualifications to provide services
- 2) A sequential syllabus that demonstrates how contractor plans to deliver instruction
- 3) A list of 3 references that can attest to the quality of work
- 4) A list of students in professional placement.
- 5) Cost per student for delivering 13 sessions of one contact hour.
- 6) For Music and Technology must also include cost per student of delivering 13 sessions of 1.5 contact hour.

B. Bidder References

All Bidders must complete and submit Attachment 2: **Bidder Qualifications Submission Form**. Provide a minimum of three (3) references from other universities, colleges or similar-sized organizations. The references should demonstrate the bidder's ability with projects similar in scope, size and nature of this RFP.

Section 4: BID SUBMISSION

A. Bid Submission

1. A Bidder's proposal shall address the Bidder's ability and methodology for providing SUNY- Purchase College with the requested services. To be deemed "responsive" to this RFP, a Bidder must meet all mandatory requirements and qualifications and its written proposal must address all points and questions appearing in this RFP.
2. Prepare a clearly readable proposal that includes all required information.
3. Indicate any deviations from the technical specifications and if necessary, attach separate documents and/or explanation.
4. Proposals should be submitted in sealed packages clearly labeled on the exterior with the RFP number and title. Proposals not labeled as instructed risk being opened prior to the bid opening date, which may result in the proposal being rejected. All bids and accompanying documentation shall become the property of SUNY and shall not be returned.
5. No telephone, facsimile, emailed or otherwise electronically submitted proposals will be accepted.
6. The proposal must be fully and properly executed by an authorized person, and the authorized person's signature must notarized. By signing, you certify (i) your express authority to sign on behalf of yourself, your company, or other entity; (ii) your full knowledge and acceptance of this RFP, Exhibit A (State University of New York Standard Contract Clauses), Exhibit A-1 (State University of New York Affirmative Action Clauses), State Finance Law §139-j and §139-k (Procurement Lobbying Certification); and (iii) that all information provided is complete, true and accurate. By signing you further affirm that you understand and agree to comply with the procedures on permissible contacts relating to this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b). These procedures may be accessed at: Procurement Lobbying:
<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>
7. Submit six (6) hard copies of your proposal to the address provided below. Proposals must be received in the office identified below by the due date and time provided on the Summary Information Form on Page 1 of this RFP. Bidders mailing their proposals must allow sufficient time to ensure receipt by the due date and time. Bidders are cautioned that even when using a trackable mailing/courier/messenger service, proposals must be received by the due date and time. While proposals may be signed for by personnel at SUNY prior to the due date and time, this does not guarantee that the identified office will receive the proposal by the due date and time.
 - a. **Late Bids:** For purposes of Bid openings, a Bid must be received at **SUNY- Purchase College 735 Anderson Hill Road, Purchase NY 10577 - Purchasing & Accounts Payable Office, on or before June 15 2017 at 1:00 PM.** A Late Bid is one that is not received at the location, date and time specified in this RFP. Any Bid received at the specified location after the time specified in this RFP will be considered a Late Bid. A Late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of this RFP are received, or; (ii) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award; (iii) and acceptance of the Late Bid is in the best interest of SUNY. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of SUNY shall not excuse Late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse Late Bid submissions.

Determinations relative to bid timeliness shall be at the sole discretion of the SUNY Chancellor or her designee.

8. Bidders unable or unwilling to submit a proposal are asked to complete the Summary Information Form on Page 1 of this RFP and check the box indicating that no bid is being submitted.
9. All prices and conditions must be included in the original proposal. Prices and conditions not included in the original proposal will be rejected.
10. The submission of a proposal constitutes a nonrevocable, binding offer to perform and provide said services. Such binding offer shall be firm and not revocable for a period of sixty (60) days from bid opening. After sixty (60) days, the proposal may remain in effect, subject to withdrawal communicated in writing signed by the Bidder. If this RFP is for the sale of goods pursuant to §2-205 of New York State Uniform Commercial Code, the proposal shall be firm, binding and not revocable for a period of ninety (90) days.
11. Bidder is responsible for all costs that it incurs, direct or indirect, related to the preparation and submission of a proposal in response to this RFP.
12. Each copy of the proposal must be accompanied by the following documents:

- 1 Summary Information Form (page 1 of this RFP)
- 2 Notary Acknowledgement Form (follows the last page of this RFP)

The following documents must be submitted within 10 days upon request by the College:

- 1 Attachment 2: Bidder Qualifications Submission Form
- 2 Attachment 3: Procurement Lobbying Act Certification
- 3 Attachment 4: Non-Collusive Bidding Certification
- 4 Attachment 5: Diversity Practices Questionnaire as set forth in Section 6(11)(A).
- 5 Attachment 6: Service Level Agreement
- 5 Attachment 7: NYS Business Subcontractor Identification Form
- 6 Minority and Women-Owned Business documentation as set forth in Section 6(11)(B).
- 7 Equal Employment Opportunity documentation as set forth in Section 6(11)(C).

B. Bidder Questions

If a Question and Answer period is provided for this solicitation, the schedule will be shown on the Summary Information Form, "Key Events," provided on the first page of this RFP. All questions must be submitted in writing, citing the particular RFP page, section, and paragraph numbers where applicable. Questions must be **EMAILED** to arrive no later than 5:00 pm Eastern time on the date indicated and should be directed to the Designated Contacts shown on the Summary Information Form. Questions received after the closing date for inquiries will not be answered. Only written answers are official. All Questions and Answers will be issued as addenda to this RFP and will be provided in writing to all potential Bidders.

C. Pre-Bid Proposal Meeting

If a mandatory or optional Pre-Bid Conference is held for this solicitation, the date, time, and whether the conference is mandatory or optional is reported on the Summary Information Form, "Key Events," provided on Page 1 of this RFP.

D. Site Visit

If a site visit is required for this solicitation, the date and time is reported on the Summary Information Form, "Key Events," provided on Page 1 of this RFP.

E. Bid Opening

Bidders may attend the bid opening, at which a SUNY representative will publicly announce the names of Bidders who have submitted proposals. To ensure adequate space for attendees, Bidders must notify the designated contact(s) identified on the Summary Information Form (Page 1 of this RFP) of their desire to attend the bid opening.

F. Minor Irregularities

Bids that contain minor irregularities, such as those submitted without a proper Bid Security, or in the wrong form, or executed improperly, shall be considered informal. Informal proposals may be considered in selecting a low bidder where the public interest will be promoted thereby.

G. Extraneous Terms

Bids must conform to the terms set forth in this RFP. Extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid. Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Chancellor or her designee expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

Section 5: GENERAL INFORMATION

A. Electronic RFP

Electronic copies of this RFP and related forms are available at
<https://www.purchase.edu/offices/purchasing/procurement-opportunities/>

B. SUNY'S Reserved Rights

SUNY reserves the right to:

1. Reject any and all proposals received in response to this RFP.
2. Reject any or all portions of any proposal, to negotiate terms and conditions consistent with this RFP and to make an award for any or all remaining portions.
3. Withdraw the RFP at any time, at SUNY's sole discretion.
4. Make an award in whole or in part.
5. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP.
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a Bidder's qualifications, experience ability or financial standing, and any material or information submitted by the Bidder in response to SUNY's request for clarifying information, in the course of evaluation and/or selection under the RFP.
7. Prior to the bid opening, amend the RFP specifications to correct errors of oversights, or to supply additional information, as it becomes available.
8. Request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
9. Request references and contact any or all references.
10. Adjust or correct cost or cost figures with the concurrence of the Bidder if mathematical or typographical errors exist.
11. Advise the Successful Bidder of an objectionable employee(s) and/or subcontractor(s).
12. Waive requirements or amend this RFP upon notification to all Bidders. Mandatory requirements may be eliminated if unmet by all Bidders.
13. Negotiate with Bidders responding to this RFP within the requirements necessary to serve the best interests of SUNY.
14. Begin contract negotiations with another Bidder in order to serve the best interests of SUNY should contract negotiations with the Successful Bidder be unsuccessful within a time frame acceptable to SUNY.
15. Request clarifications from Bidders for purposes of assuring a full understanding of responsiveness, and permit revisions from all potential awardees prior to award.
16. Award no contract.

C. Contract Award

Receipt of this RFP does not indicate that SUNY Purchase College has predetermined Bidder's qualifications to receive a contract award. A contract award, if made, shall be based on evaluation of the bid in accordance with the criteria set forth in this RFP. The successful Bidder will be notified by SUNY Purchase College by telephone and confirmed by letter.

D. Post Award Procedures

1. Debriefing

Bidders who responded to this RFP will be given written notice as to whether their bid was successful or unsuccessful. Upon being notified of their unsuccessful bid, Bidders may request a debriefing in writing within 15 calendar days of such notice. The 15 day period starts once unsuccessful Bidders are notified. Upon a Bidder's request for a debriefing:

- a. The University will schedule the debriefing within a reasonable time of such request.
- b. The debriefing will be conducted in person with the Bidder, unless the University and the Bidder mutually agree to use another method such as by telephone, video conference or another type of electronic communication.
- c. Bidders' written request must state whether the Bidder will be attending with counsel, to allow the University to arrange for University counsel attendance if so determined.
- d. The debriefings will cover, but not limited to the following:
 - (i) The reason why the bid was unsuccessful.
 - (ii) The quantitative and qualitative analysis that was used by the campus to assess the relative merits of the bid, proposal or offer.
 - (iii) How the selection criteria was applied to the unsuccessful bid.
 - (iv) If the request for debriefing is made prior to contract award, the debriefing shall be limited to review of that Bidder's bid.
 - (v) If the debriefing is held after the final award (which means OSC approval, if applicable) it, may cover the reason for the selection of the winning proposal.
 - (vi) To the extent practicable, general advice and guidance on the ways the Bidder can improve future proposal submission or be more responsive.

2. Contract Award Protest Procedures

Bidders wishing to protest a contract award may do so in accordance with the University's procedures, available at: http://www.suny.edu/sunypp/documents.cfm?doc_id=699.

Section 6: GENERAL TERMS AND CONDITIONS

1. Free and Open Competition

SUNY encourages free and open competition. Whenever possible, terms, specifications, and conditions are designed to accomplish this objective, consistent with the necessity to satisfy SUNY's needs.

2. Notification of Errors, Inquiries and Interpretation

Bidder is responsible to bring to SUNY's attention any deviations in the technical specifications and to make recommendations for any additional requirements deemed necessary as standard, or for work indicated in the

specifications contained in this RFP. If SUNY in its discretion finds the deviations to be significant so as to require a change in the necessary specifications for the work, SUNY will notify all Bidders in writing of the change in specifications. No deviations from the technical specifications provided herein shall be made without written approval of SUNY.

3. No Claims or Rights

By submitting a proposal, Bidder agrees that it will not make any claims for, or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any misinformation or lack of information.

4. Conflict of Interest

Bidder may be requested to provide evidence that the award of a contract will not result in (i) a conflict of interest with regard to other work performed by Bidder; or (ii) a potential conflict of interest among Bidder's staff.

5. Acceptance of RFP Content

The terms and conditions included in this RFP as well as the applicable portions of Bidder's proposal shall become contractual obligations if a contract is awarded. **BIDDER'S FAILURE TO ACCEPT THESE TERMS AND CONDITIONS AND OBLIGATIONS SHALL RESULT IN REJECTION OF BIDDER'S PROPOSAL.**

6. Services Outside Scope of the Contract Awarded

SUNY shall not be responsible for any services provided by the successful Bidder that are outside the scope of the contract awarded. SUNY shall not be responsible for any additional costs other than the costs for the services outlined herein, or for any work performed that has not been properly authorized in writing by SUNY.

7. Standard Contract Clauses

Any contract awarded resulting from this RFP shall include Exhibit A (State University of New York Standard Contract Clauses) and, for contracts in excess of \$25,000, Exhibit A-1 (State University of New York Affirmative Action Clauses). The provisions of Exhibit A and Exhibit A-1 shall take precedence over any provision in this RFP or any provisions in the contract awarded. Exhibits A and A-1 are attached to this RFP.

8. Binding Effect

The contract awarded shall be binding upon its execution by both parties and, if required by New York State law, upon the written approvals of the Attorney General and the Office of the State Comptroller.

9. Confidentiality/Freedom of Information Law

All proposals submitted for SUNY's consideration will be held in confidence and will become the property of SUNY. However, the resulting contract is subject to the New York State Freedom of Information Law (FOIL), contained in Article 6 of the New York State Public Officer's Law. Therefore, if a Bidder believes that any information in its proposal constitutes a trade secret, should be treated as confidential and should not be disclosed upon a request pursuant to FOIL, Bidder shall submit with its proposal a separate letter addressed to: *Elizabeth Robertson, Purchase College Records Access Officer, 735 Anderson Hill Road Purchase NY 10577* specifically (i) identifying the page number(s), line(s) or other appropriate designation(s) containing such information; (ii) explaining in detail why such information is a trade secret or confidential; and (iii) formally request that such information be held as confidential. Bidder's failure to submit such a letter with its proposal will constitute a waiver by the Bidder of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Bidder may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire proposal be kept confidential is not advisable, because a proposal cannot reasonably consist exclusively of proprietary information.

10. Data Privacy and Security

A. Data Privacy

- (i) Contractor will use any information it creates, receives, maintains or transmits on behalf of SUNY ("SUNY Data") only for the purpose of fulfilling its duties under this Contract and will not share such data with or disclose it to any third party without the prior written consent of the SUNY, except as required by the Contract or as otherwise required by law.
- (ii) SUNY Data will not be stored outside the United States without prior written consent from SUNY.
- (iii) Contractor will provide access to SUNY Data only to its employees and subcontractors who need to access the data to fulfill its obligations under the Contract.
- (iv) Contractor will ensure that employees who perform work under the Contract have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Contract.
- (v) FERPA: If Contractor will have access to the SUNY's Education Records as defined under the Family Educational Rights and Privacy Act (FERPA), Contractor acknowledges that for the purposes of the Contract it will be designated as a "school official" with "legitimate educational interests" in the SUNY Education records, as those terms have been defined under FERPA and its implementing regulations, and the Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use the Education Records only for the purpose of fulfilling its duties under the Contract for SUNY's and its end user's benefit, and will not share such data with or disclose it to any third party except as provided for in the Contract, required by law, or authorized in writing by the SUNY.
- (vi) Contractor will receive, maintain, process or otherwise will have access to confidential information on employees of the State University of New York. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314), and to the extent the Contractor is a covered entity or applicable service provider under these regulations with respect to student or customer data, the Contractor will implement and maintain a written Information Security Program ("Program") in order to protect such confidential customer information. Customer information is defined as "any record containing nonpublic personal information as defined in 16 CFR §313(n)" (the FTC's Privacy Rule) "about a customer of a financial institution, whether in paper, electronic, or other form" (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

B. Data Security

- (i) Contractor agrees at all times to maintain network security which at a minimum, includes: network firewall provisioning, intrusion detection, and regular (three or more annually) third party vulnerability assessments, and provide a copy of the annual Attestation of Compliance (AOC) document, if requested. Further, Contractor agrees to maintain network security that conforms to generally recognized "Industry Standards" and best practices that Contractor applies to its own network. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the Center for Internet Security (see <http://www.cisecurity.org>) or Payment Card Industry/Data Security Standards (PCI/DSS) see <http://www.pcisecuritystandards.org>. Contractor will maintain a data security plan ("Data Security Plan"), which will comply with Payment Card Industry Data Security Standards ("PCI DSS") requirements (as discussed in more detail below) and all applicable legal and regulatory requirements for data protection. In addition, the Data Security Plan will protect against any anticipated threats or hazards to the security or integrity of information stored on its servers and unauthorized access to or use of such information that could result in harm or inconvenience to the person who is the subject of such information. Contractor will review, at least annually, its Data Security

Plan and update and revise it as needed. A copy of Contractors' Data Security Plan will be made available to SUNY upon request.

- (ii) Contractor shall maintain mandatory procedures and protocols outlined in its "Information Security Incident Response Policy" to be undertaken in the event of an identified or suspected breach of credit card information or current or former student information that is not Directory Information. A copy of Contractor's Information Security Incident Response Policy will be made available to SUNY upon request. In the event a breach is suspected, Contractor will: (i) immediately contain the possible exposure while not compromising any data on its system; (ii) contact all members of its Corporate Security Committee; (iii) initiate a local analysis within 24 hours of the suspected breach to determine the type of information that has been potentially compromised, the individuals and SUNY institutions at risk, the incident timeframe at risk and the suspected cause of the incident; and (iv) if a breach is identified, immediately contact affected parties with details of the breach.

C. New York Information Breach and Notification Requirements

Contractor hereby acknowledges and agrees to use commercially reasonable efforts to maintain the security of private information (as defined in the New York State Information Security Breach and Notification Act, as amended "ISBNA" (General Business Law § 889-aa; State Technology Law § 208) that it creates, receives, maintains or transmits on behalf of SUNY and to prevent unauthorized use and/or disclosure of that private information; and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic private information that it creates, receives, maintains or transmits on behalf of SUNY ("SUNY Data"). Contractor hereby acknowledges and agrees to fully disclose to SUNY pursuant to the ISBNA, and any other applicable law any breach of the security of a system where Contractor creates, receives, maintains or transmits private information on behalf of SUNY following discovery or notification of the breach in the system as to any resident of New York State whose private information was, or is reasonably believed to have been acquired by a person without valid authorization ("Security Incidents"). The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the system. Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors. In the event of a Security Incident involving SUNY Data pursuant to the ISBNA, SUNY has an obligation to notify every individual whose private information has been or may have been compromised. In such an instance, the Contractor agrees that SUNY will determine the manner in which such notification will be provided to the individuals involved pursuant to the ISBNA and agrees to indemnify SUNY against any cost of providing any such legally required notice. Upon termination or expiration of the Contract, the Contractor will follow SUNY's instructions relating to any SUNY Data remaining in Contractor's possession. Upon authorization from SUNY, the Contractor will use data and document disposal practices that are reasonable and appropriate to prevent unauthorized access to or use of SUNY Data and will render the information so that it cannot be read or reconstructed.

D. Service Levels (Applicable to Cloud Based, Remotely Hosted or Technology as A Service Contracts)

SUNY understands that the Services will not be uninterrupted or error free. Contractor will use commercially reasonable efforts to ensure availability of the Services in accordance with the provisions of the Service Level Agreement, Attachment 6.

E. Disaster Recovery

Contractor shall maintain disaster recovery services at the dedicated facility that is able to handle SUNY data center and business continuity needs under the Contractor in the event disaster recovery is needed. Throughout the term of the Contract, Contractor shall maintain contracts or arrangements that are substantially equivalent or an improvement to those currently in effect. Contractor shall test disaster recovery capabilities, at least once every calendar year and provide SUNY with a copy of its disaster recovery plan upon request.

F. Data Portability

Contractor agrees to do whatever is reasonable and necessary to facilitate the orderly and professional transfer of the Services and SUNY Data upon the expiration or termination of the Contract to SUNY or a SUNY Institution, or do whatever subsequent vendor SUNY may select to provide similar services on SUNY's behalf.

11. Diversity Contracting Requirements

A. Diversity Practices

SUNY seeks to engage contractors that have a demonstrated history of hiring, training, developing, promoting and retaining minority group members and women. Under NYS Executive Law Article 15-A, 5 NYCRR Part 141.1(o) diversity practices are the efforts of contractors to include New York State certified MWBEs in their business practices. Diversity practices may include part, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. SUNY will assess the diversity practices of prospective bidders to encourage contractors to engage in meaningful, capacity-building collaborations with MWBEs through evaluation of the Diversity Practices Questionnaire in Attachment 5. All prospective bidders are required to complete the attached Diversity Practices Questionnaire. This questionnaire elicits information about each prospective bidder in order to verify that its work environment demonstrates a strong commitment to diversity. By responding to the RFP and completing this questionnaire, each prospective bidder acknowledges that:

- (i) The Bidder has an equal employment opportunity policy statement (which shall be submitted to SUNY with each Bidder's Proposal using the Form identified in subsection (iv) below).
 - a. Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Bidder will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, military status, sexual orientation, age, disability, genetic disposition or carrier status, domestic violence victim status, 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 will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force during its legal engagement with SUNY. It shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
 - b. The Bidder will state in all solicitations or advertisements for employees that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, religion, national origin, military status, sexual orientation, age, disability, genetic disposition or carrier status, domestic violence victim status, or marital status.
 - c. The Bidder will submit the applicable Workforce Employment Utilization Report utilizing MWBE Form 7557-112a, 7557-112b or 7557-112c, as applicable, describing the anticipated work force to be utilized on the engagement with SUNY or, where required, information on the Bidder's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by SUNY. This form elicits information about each responding Bidder in order to verify that its work environment demonstrates a strong commitment to diversity.
- (ii) By submission of a bid or proposal in response to this solicitation and completing this questionnaire, the Bidder agrees with all of the terms and conditions of SUNY Exhibit A-1 including Clause 12 - Equal Employment Opportunities for Minorities and Women and acknowledges that:

- a. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.
- (iii) Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (iv) Bidder must submit with their bid or proposal their Bidder's Equal Employment Opportunity Policy Statement (which conforms to the provisions of Exhibit A-1) utilizing MWBE Form 104. Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: http://www.suny.edu/sunypdp/documents.cfm?doc_id=611. Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.
- (v) Diversity, Equity and Inclusion: If this solicitation is for the services of an executive search firm, the SUNY Board of Trustees adopted a policy to establish diversity, equity and inclusiveness throughout the SUNY system. Diversity is broadly defined under that policy to include race, ethnicity, religion, sexual orientation, gender, gender identity and expression, age, socioeconomic status, status as a veteran, status as an individual with a disability, students undergoing transition (such as transfer, stop-out, international student acclimation), and first generation students. In furtherance of this policy, all executive search firms are required to provide the following:
 - a. information about the diversity of your Firm's staff; and
 - b. the Firm's success rate in placing diverse candidates.

B. Minority and Women-owned Business Enterprises (MWBE)

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

For purposes of this solicitation, SUNY hereby establishes an overall goal of ___% for MWBE participation, ___% for Minority-Owned Business Enterprises ("MBE") participation and ___% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). For additional information please refer to the MWBE requirements outlined in MWBE Prospective Bidder's Notice (Form 7557-121).

For guidance on how SUNY will determine a Contractor's good faith efforts to utilize certified MWBEs, refer to 5 NYCRR §142.8.

Please note the response forms identified in Form 7557-121 (SUNY MWBE Forms 7557-104, 7557-107 & 7557-108) must be submitted with all Bids. Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: http://www.suny.edu/sunypdp/documents.cfm?doc_id=61.

Bidders must submit an MWBE Utilization Plan on Form 7557-107 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to SUNY. SUNY will review the submitted MWBE Utilization Plan and advise the Bidder of SUNY acceptance or issue a notice of deficiency within 20 days of receipt.

If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to SUNY [address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by SUNY to be inadequate, SUNY shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form 7557-114. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

SUNY may disqualify a Bidder as being non-responsive under the following circumstances:

- a. If a Bidder fails to submit a MWBE Utilization Plan;
- b. b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c. c) If a Bidder fails to submit a request for waiver; or
- d. d) If SUNY determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to SUNY, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report on Form 7557-113 to SUNY address, phone and fax information], by the 5th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

C. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of SUNY Exhibit A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form 7557-108) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to SUNY, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at:

http://www.suny.edu/sunypdp/documents.cfm?doc_id=611.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

D. Service-Disabled Veteran-Owned Businesses (SDVOB)

SUNY is committed to the State's policy of encouraging the development of service-disabled veteran-owned businesses (SDVOB). The Service-Disabled Veteran-Owned Business Act (the "Act") became effective on May 12, 2014, and SUNY has implemented the State's comprehensive plan and operational guidelines to promote SDVOBs and to assist them in obtaining opportunities to participate in the procurement of goods and services by the State. SUNY will employ applicable measures and procedures provided by the Director of the Division of Service-Disabled Veterans' Business Development in the Office of General Services (the "Division"), to ensure that SDVOBs are afforded the opportunity for meaningful participation in the performance of SUNY's contracts and to assist in achieving the Act's statewide goal for participation on state contracts by SDVOBs. The awarded contract shall provide that any contractor who willfully and intentionally fails to comply with the SDVOB participation requirements shall be liable to SUNY for damages, calculated based on costs for administration of SUNY's SDVOB program.

For additional information please refer to the SDVOB requirements outlined in SDVOB Prospective Bidder's Notice (Forms 7564-121A, 7564-121B and 7564-121C). A SDVOB Utilization Plan must be submitted with all bids, utilizing Form 7564-107. All Forms are available at: http://www.suny.edu/sunypp/documents.cfm?doc_id=816.

Bidders are encouraged to apply to the Division for certification as a Service-Disabled Veteran-Owned Business, and to provide such documentation necessary to establish their status as such in accordance with the rules of the Director of the Division. For purposes of this solicitation, SUNY hereby establishes an overall goal of 6% for SDVOB participation.

12. Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in SUNY contracts and strongly contribute to the economies of New York and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders/Proposers/Contractors for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All bidders must complete and return Attachment 7.

13. Office of Federal Contract Compliance Programs

This Contractor and Subcontractor shall abide by the requirements of 41 C.F.R. §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

14. Governing Law

This RFP, Bidders' proposals and any resulting contract shall be governed, construed and enforced in accordance with the laws of the State of New York, excluding New York's choice of law principles in a New York court of competent jurisdiction. Bidder/Contractor agrees to submit itself to such court's jurisdiction.

15. 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 and a directory of minority and women-owned business enterprises is available from:

NYS Empire State Development
Division for Small Business
625 Broadway, Albany, NY 12207
Phone: 1-800-782-8369
Email: nylovessmbiz@esd.ny.gov

Website: <https://esd.ny.gov/doing-business-ny/small-business-hub>

16. Determination of Vendor Responsibility

New York State procurement law requires that state agencies award contracts only to responsible contractors. Additionally, the New York State Comptroller must be satisfied that a proposed contractor is responsible before approving a contract award under Section 112 of the State Finance Law. Section 163 of the New York State Finance Law ("SFL") requires that contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible bidder." Section 163 (9)(f) of the SFL requires that prior to making a contract award, each contracting agency shall make a determination of responsibility of the proposed contractor.

In accordance with these procurement laws, SUNY will conduct an affirmative review of vendor responsibility for all organizations or firms with which it conducts business. In doing so, bidders are required to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the VendRep System, see the VendRep System Instructions on the Office of State Comptroller (OSC) website, available at: www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For 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 may obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact SUNY System Administration for a copy of the paper form.

In addition:

- a. *General Responsibility.* The Contractor shall at all times during the contract awarded term remain responsible. The Contractor agrees, if requested by the SUNY Chancellor or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- b. *Suspension of Work for Non-Responsibility.* The SUNY Chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under the contract awarded, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the SUNY Chancellor or his or her designee issues a written notice authorizing a resumption of performance of the contract awarded.
- c. *Termination for Non-Responsibility.* Upon written notice to the Contractor and a reasonable opportunity to be heard with appropriate SUNY officials or staff, the contract awarded may be terminated by the SUNY Chancellor or his or her designee at the Contractor's expense, where the Contractor is determined by the SUNY Chancellor or his or her designee to be non-responsible. In such event, the SUNY Chancellor or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

17. Requirements of New York State's Recycling Program

In accordance with the provisions of Section 165(3) of the State Finance Law and Executive Order No. 142, SUNY is required to purchase recycled products, if available, made with recycled content in accordance with rules and

regulations established by the State Department of Environmental Conservation in development of that agency's Recycling Emblems Program. If the cost of a recycled product does not exceed by 10% the cost of a product made without recycled content (or by 15% if over 50% of the recycled materials are generated from the New York State waste stream), the recycled product must be purchased.

18. State Consultant Services Reporting

State Finance Law Sections 8 and 163 require that Contractors annually report certain employment information to the contracting agency, the Department of Civil Service and Office of the State Comptroller. State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

19. Electronic Payment Authorization

Contractor shall provide complete and accurate billing invoices to SUNY in order to receive payment for its services. Billing invoices submitted to SUNY must contain all information and supporting documentation required by SUNY and the Office of State Comptroller (OSC). Payment for invoices submitted by Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Vice Chancellor for Business and Finance of the State University of New York or designee, in her/his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York state procedures and practices. Contractor shall comply with the OSC procedures to authorize payments. Authorization forms are available at the OSC website at www.osc.state.ny.us/epay, by email at epunit@osc.state.ny.us or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the OSC's electronic payment procedures, except where the Vice Chancellor or designee has expressly authorized payment by paper check as set forth above.

20. Timeliness of Payment and Interest

Interest for late payment shall be governed by Section 179g of New York State Finance Law.

21. Exhibits

The following documents will be incorporated into, and made part of, the contract awarded:

- a. Exhibit A, State University of New York Standard Contract Clauses
- b. Exhibit A-1, State University of New York Affirmative Action Clauses (for contracts valued at greater than \$25,000)
- c. The Agreement
- d. Exhibit B, this RFP
- e. Exhibit C, the Successful Bidder's proposal and Statement of Work
- f. Exhibit D, the Successful Bidder's Cost Proposal

In the event of any inconsistency in or conflict among the document elements described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth above.

22. Independent Contractor

The Successful Bidder (Contractor) and its agents or employees or any entity or person acting on behalf of the Contractor engaged in the performance of work shall at all times be deemed to be performing as independent contractors. The Contractor hereby covenants and agrees to act in accordance with that status. The Contractor and its agents or employees or any entity or person acting on behalf of the Contractor shall neither hold themselves out as, nor claim to be, officers or employees of SUNY and shall make no claim for, nor be entitled to,

Workers' Compensation coverage, medical and unemployment benefits, social security, or retirement membership benefits from SUNY.

23. Subcontracting

In the event the Successful Bidder (Contractor) uses partners, subcontracts or subcontractors, the Contractor will remain responsible for compliance with all specifications and performance of all obligations under the contract resulting from this RFP. For the resulting agreement, the successful bidder will be the prime contractor.

Within thirty (30) calendar days after Notice of Award, the Successful Bidder must submit a written statement to SUNY giving the name and address of all proposed subcontractors. The statement must contain a description of the portion of the work and materials which the proposed subcontractors are to perform and must furnish any other information to document that the proposed subcontractors have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the contract.

If SUNY finds that the proposed subcontractors are qualified, it will so notify the Contractor within ten (10) business days following receipt of Contractor's written statement described above. If SUNY determines that a subcontractor is not qualified, it will so notify the Contractor. The Contractor must, within ten (10) business days thereafter, submit a written statement as described above with respect to other proposed subcontractors, unless the Contractor decides to do such work itself and in SUNY's opinion is qualified to do such work.

SUNY's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the contract. The Contractor shall be solely responsible to SUNY for the acts, omissions or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. No provisions of the awarded contract shall create or be construed as creating any contractual relation between SUNY and any subcontractor or sub-subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.

The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work. Contractor shall check requirements of the work and coordinate and adjust as required so that conflicts in time, work space, equipment and supplies do not occur in the work being performed by the Contractor with its own employees and the work being performed by its subcontractors.

No subcontractor shall be permitted to work until it has furnished satisfactory evidence to SUNY of the insurance required by law.

The Successful Bidder (Contractor) shall execute a written agreement with each of its subcontractors and shall require all subcontractors to execute with their sub-subcontractors a written agreement which shall bind each to the terms and provisions of the prime contract awarded, insofar as such terms and provisions are applicable to the work to be performed by such subcontractors. The Contractor shall require all subcontractors and sub-subcontractors to promptly, upon request, file with SUNY a copy of such agreements upon request, from which the price and terms of payment may be deleted.

24. Compliance

Contractor shall comply with all laws, rules, orders, regulations, and requirements of federal, state and municipal governments applicable hereto, including the provisions of Exhibit A, State University of New York Standard Contract Clauses, attached hereto and made a part hereof, and for agreements with a value of \$25,000 or more Exhibit A-1, State University of New York Affirmative Action Clauses, attached hereto and made a part hereof.

25. Indemnification

a. Successful Bidder (Contractor)

The Successful Bidder(Contractor) shall be responsible to and shall fully defend, indemnify, and hold harmless the State of New York and the State University of New York and their respective officers, trustees, directors, agents and employees without limitation, from any and all losses, expenses, damages and liabilities, including reasonable attorneys' fees, arising out of the intentional or negligent acts or omissions of the Contractor, its officers, employees, agents or licensees in any performance under this Agreement including: i) personal injury, damage to real or personal tangible property; ii) negligence, either active or passive; and iii) infringement of any law or of a United States Letter Patent, with respect to Products and Services furnished under this Agreement, or of any copyright, trademark, trade secret or intellectual proprietary rights, provided that SUNY shall give Contractor: (a) prompt written notice of any action, claim, or threat of infringement suit, or other suit, promptness of which, shall be established by SUNY upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (c) assistance in the defense of any such action is at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, SUNY may require the Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as SUNY shall require. New York State reserves the right to join such action, at its sole expense, when it determines there is an issue involving a significant public interest.

b. SUNY

Subject to the availability of lawful appropriations and the New York Court of Claims Act, SUNY will hold the Contractor harmless from and indemnify it for any final judgment of a court of competent jurisdiction only to the extent attributable to the negligence of SUNY or of its officers or employees when acting within the course and scope of their employment.

26. Liability

The Successful Bidder (Contractor) understands and agrees that it is responsible for the performance of the Services in accordance with the terms and conditions of the awarded Contract. SUNY may look solely to the Contractor for remedy, redress, liability or indemnification for any failure to perform, whether caused by Contractor itself or by one or more of its officers, employees, subcontractors, agents, licensees, licensors or affiliates or any person or entity acting on behalf of Contractor in providing the Services. The Contractor shall be fully liable for the actions of its officers, employees, subcontractors, agents, licensees, licensors, or affiliates or any person or entity acting on its behalf in providing the Services and shall fully indemnify and save harmless SUNY and the State of New York from suits, actions, damages and costs of every name and description presented, brought, or recovered against SUNY and the State of New York for, or on account of any liability which may be incurred by reason of the Contractor's performance of this Agreement.

The Contractor will be responsible for the work, direction and compensation of any person or entity it engages as an officer, expert, employee, consultant, agent, independent contractor, or subcontractor. Nothing in the contract awarded or the performance thereof by the Contractor will impose any liability or duty whatsoever on SUNY including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.

27. Insurance

During the term of the awarded contract, the Successful Bidder (Contractor) must obtain and maintain insurance coverage at its own expense as provided in this paragraph, and shall deliver Certificates of Insurance in a form satisfactory to SUNY before commencing any work under this contract. Certificates shall reference the Contract Number. Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Certificates shall be mailed to: SUNY Purchase College Purchasing &Accounts Payable Office 735 Anderson Hill Road Purchase New York 10577.

The policies of insurance set forth below shall be written by companies authorized by the New York Department of Financial Services to issue insurance in the state of New York ("admitted" carriers) with an A.M. Best company rating of "A-" or better. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to [Contract Administrator name and address].

All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to SUNY for any claim arising from the successful bidder's work under the awarded contract, or as a result of the successful bidder's activities. Any other insurance maintained by SUNY shall be excess of and shall not contribute with the successful bidder's insurance, regardless of any "other insurance" clause contained in any SUNY policy of insurance.

At least two weeks prior to the expiration of any policy required by the awarded contract, evidence of renewal or replacement of policies of insurance with terms no less favorable to SUNY than the expiring policies shall be delivered to SUNY in the manner required for service of Notice under the contract.

- a. Workers Compensation and Disability Benefits Coverage for the life of this Agreement for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits Law. Evidence of coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board.
- b. General Liability Insurance with limits no less than **ONE MILLION DOLLARS (\$1,000,000)** per claim and **TWO MILLION DOLLARS (\$ 2,000,000)** in the aggregate. Such policy shall name the State University of New York as an additional insured and shall contain a provision that the State University of New York shall receive at least thirty (30) days written notice prior to material change, cancellation or expiration of such policy.

28. Travel

In the event the Contractor is required to be reimbursed for travel, reimbursement rates shall not exceed the current NYS Schedule of Allowable Reimbursable Travel Expenses, available from the New York State Comptroller at: <https://www.osc.state.ny.us/agencies/travel/travel.htm>.

29. Termination

The Contract awarded to the Successful Bidder (Contractor) may be terminated by SUNY for any of the following reasons:

- a. *Convenience of SUNY:* The contract may be terminated at any time upon receipt of thirty (30) days prior written notice given by SUNY for whatever reason.
- b. *Event of default:* The contract may be terminated in the event of breach of any of its provisions by the Contractor, or if the Contractor's Services are deemed unsatisfactory in SUNY's sole discretion, due to Contractor's fault or negligence, or that of its officers, employees, subcontractors, agents, licensees, licensors, or affiliates. In such event, SUNY will send a written cure notice in accordance with the Notice provisions of the contract, and Contractor shall have thirty (30) days to correct the deficiencies noted. If the deficiencies are not corrected, SUNY may terminate this contract immediately upon written notice.
- c. *Deficient Certifications:* If the awarded contract has a value greater than \$15,000, SUNY shall have the right to terminate in the event the State Finance Law sections 139-j and 139-k certifications executed by the Contractor are found to be intentionally false or incomplete. If the contract has a value of greater than \$100,000 and Contractor's sales for the immediately preceding four quarters were greater than \$300,000, or if the contract has a value of \$125,000 or greater, SUNY shall have the right to terminate in the event the successful bidder's Department of Taxation and Finance Contractor Certification form, ST 220-CA, statements are found to be false or incomplete.

- d. *Lack of Funds:* If for any reason the State of New York terminates or reduces its appropriations to SUNY, the awarded contract may be terminated or reduced at SUNY's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the SUNY for payment of such costs. In any event, no liability shall be incurred by the State (including SUNY) beyond monies available for the purposes of the awarded contract.
- e. SUNY may terminate the awarded contract, upon written notice, in the event of any of the following: (i) Contractor makes an assignment for the benefit of creditors; (ii) a petition in bankruptcy or any insolvency proceeding is filed by or against Contractor and is not dismissed within thirty (30) days from the date of filing; or (iii) all or substantially all of Contractor's property is levied upon or sold in any judicial proceeding.

30. Procurement Lobbying Act – State Finance Law §§ 139-j and 139-k

Prior to approval of the contract for which this RFP has been issued by SUNY, or if applicable, the Office of the State Comptroller, a Bidder shall not communicate with SUNY other than with the persons identified in this RFP as Designated Contacts or with a person who the Designated Contacts has advised the Bidder in writing is also a Designated Contact. Generally, the New York State Finance Law restricts communications between a bidder or a person acting on behalf of a Bidder, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact.

SUNY has developed guidelines regarding Contacts and procedures for the reporting and investigation of Contacts. SUNY's procurement record must demonstrate compliance with these requirements. SUNY will make a record of all Contacts, and such records of Contact will become part of the procurement record for this RFP. A determination that a Bidder or a person acting on behalf of a Bidder has intentionally made a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k, is likely to result in denial of the award of contract under this RFP. Additional sanctions may apply. A complete copy of SUNY's Procurement Lobbying Policy and Procedure and its accompanying forms is available for review at http://www.suny.edu/sunypp/documents.cfm?doc_id=430

Each Bidder shall submit with its proposal a written affirmation of its understanding of SUNY's procurement lobbying procedures and agreement to comply with such procedures. The requisite form is provided at Attachment 3.

31. Restrictions on the Activities of Current and Former State Officers and Employees

All Bidders and Bidder employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State.

Contractors and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth the New York State Public Officers Law §§ 73 and 74, and the underlying principle of law is to prevent conflicts of interest and encourage ethical behavior. The law may be found on the website of the New York State Joint Commission on Public Ethics at: http://www.jcope.ny.gov/about/laws_regulations.html.

32. Diesel Emissions Reduction Act of 2006

The Successful Bidder (Contractor) certifies and warrants that all heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used by Contractor, its agents or subcontractors under the contract awarded, will comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, which requires the use of Best Available Retrofit Technology (“BART”) and Ultra Low Sulfur Fuel (“ULSD”), unless specifically waived by DEC. Qualification for a waiver under this law will be the responsibility of Contractor. Annually, but no later than March 1st, Contractor shall complete and submit directly to SUNY, via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and Contractors Annual Report forms available at the Department of Environmental Conservation (“DEC”) website: <http://www.dec.ny.gov/chemical/4754.html>, for heavy duty vehicles used in the performance of the contract awarded for the preceding calendar year. The Contractor shall certify to SUNY, and submit with each application for payment, Contractor and Subcontractor Certification forms, which state that the Contractor will comply with the provisions of ECL Section 19.0323.

33. Smoke Free SUNY

The State University of New York campus is smoke free. No smoking is permitted within the buildings or upon the grounds owned or leased by SUNY. The Successful Bidder (Contractor) must communicate this policy to its employees, subcontractors, and any other individuals assigned to enter upon SUNY grounds and premises in connection with the services to be performed in connection with the contract awarded.

**State University of New York
Notary Acknowledgement**

(ACKNOWLEDGEMENT BY INDIVIDUAL)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____ and that he/she executed the foregoing instrument in the firm name of _____ and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____ for the uses and purposes mentioned therein.

Notary Public

(ACKNOWLEDGEMENT BY CORPORATION)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this ____ day of _____, 20____, before me personally came _____, to me known, who being duly sworn, did depose and say that he/she resides in _____; that he/she is the _____ (title) of _____ (firm), 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

THIS PAGE MUST BE SIGNED IN THE ORIGINAL AND MUST ACCOMPANY EACH COPY OF YOUR BID.

Attachment 2: Bidder Qualifications Submission Form

Minimum Bidder Qualifications:

Minimum Qualification Description	Bidder Response
1.	
2.	

References:

References					
	Company Name:	Address:	Contact Name, email address, Phone #	Length of time as your customer	Estimated Total Annual Sales
1.					
2.					
3					
Contract Terminations					
Company Name:	Address:	Contact Name, email address, Phone #	Date of Contract Termination	Reason for Contract Termination	

Attachment 3: Procurement Lobbying Act Certification

State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2006, regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential vendor nor a person acting on behalf of the vendor should contact any individual at State University other than the person designated in this solicitation as State University's Designated Contact, nor attempt to unduly influence award of the contract. State University will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a vendor or a person acting on behalf of the vendor has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

Please complete the following:

1. As defined in State Finance Law §§ 139-j (1)(a), has a governmental agency made a determination of non-responsibility with respect to the Offeror within the previous four years where such a finding was due to a violation of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO ☐ YES ☐ If yes, attach explanation
2. Has a governmental entity terminated or withheld a procurement contract with the Offeror because of violations of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO ☐ YES ☐ If yes, attach explanation.

CERTIFICATION:

By signing below the Bidder affirms and certifies that it: (1) has reviewed and understands the Policy and Procedure of SUNY, related to SFL §§ 139-j and 139-k, (2) agrees to comply with SUNY's procedure relating to Contacts with respect to this procurement, and (3) has provided information that is complete, true, and accurate with respect to SFL §§ 139-j and 139-k. Bidder understands that SUNY reserves the right to terminate any resulting contract in the event it is found that the certification filed by the Bidder in accordance State Finance Law §§139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, SUNY may exercise its termination right by providing written notification to the Bidder in accordance with the written notification terms of the contract.

Firms Name and Address:	
FEIN #:	
Telephone Number: (____)____-____	
Fax Number: (____) ____-____	
Email Address:	
Bidder's Name and Title:	
Bidder's Signature:	
Date:	

Attachment 4: Non-Collusive Bidding Certification

By Submission Of This Bid, Bidder And Each Person Signing On Behalf Of Bidder Certifies, And In The Case Of Joint Bid, Each Party Thereto Certifies As To Its Own Organization, Under Penalty Of Perjury, That To The Best Of His/Her Knowledge And Belief:

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A Bid Shall Not Be Considered For Award Nor Shall Any Award Be Made Where [1], [2], [3] Above Have Not Been Complied With.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:
NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE

_____	_____
_____	_____
_____	_____

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAME LEGAL RESIDENCE

President:

Secretary:

Treasurer:

Identifying Data

Potential Contractor	
Address	
Telephone	
Name of Responsible Corporate Officer	
Title of Responsible Corporate Officer	
Signature:	

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By _____
Name:
Title:
Address:

By _____
Name:
Title:
Address:

Attachment 5: Diversity Practices Questionnaire

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Circle one: **Yes / No**

If **Yes**, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers? _____%
3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹ _____%
4. Does your company provide technical training² to minority- and women-owned business enterprises? Circle one: **Yes / No**

If **Yes**, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? Circle one: **Yes / No**

If **Yes**, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Circle one: **Yes / No**

If **Yes**, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Circle one: **Yes / No**

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Circle one: **Yes / No**

If Yes, complete the MWBE Utilization Plan, Form No. 7557-107.

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of
Owner/Official

Printed Name of Signatory

Title

Name of Business

Address

City, State, Zip

Attachment 6: Service Level Agreement

This Service Level Agreement ("SLA") sets forth the service level and performance objectives of the Firm/Vendor/Vendor in providing hosting services (the "Services") to SUNY. The Firm/Vendor/Vendor will use commercially reasonable efforts to meet the following service level and performance objectives to support the operation of the facilities, server(s), computer equipment, operating software and connectivity used to provide the Services to SUNY.

1. Uptime Commitment.

The Firm/Vendor/Vendor will use commercially reasonable efforts to ensure the Firm/Vendor/Vendor's Systems are available 99.9% of the time (the "Uptime Commitment"). All Uptime Commitment will be measured within the Firm/Vendor/Vendor's System on a monthly basis calculated to include twenty-four (24) hours per day over each month, but excluding from the numerator and denominator in the calculation the duration in time of any temporary shutdowns due to scheduled maintenance (which will not exceed in the aggregate sixteen (16) hours per month), telecommunications or power disruptions caused by third parties, and any other causes beyond Firm/Vendor/Vendor's reasonable control. The Firm/Vendor/Vendor agrees to notify the Group promptly of any factor, occurrence, or event coming to its attention that may affect the Firm/Vendor/Vendor's ability to meet the Uptime Commitment, or that is likely to cause any material interruption in the Services.

2. Exclusive Remedy.

The Firm/Vendor/Vendor will use commercially reasonable efforts to correct any material problems in the Services, including any failure to satisfy the Uptime Commitment. In the event that the Firm/Vendor/Vendor fails to satisfy the Uptime Commitment for a given month, the Group's sole and exclusive remedy will be to receive a service credit equal to the following percentage of the monthly fees for the Services for the stated uptime:

97% to 99.9%	15%
94% to 96.9%	25%
92% to 93.9%	50%
90% to 91.9	75%
Below 90%	100%

In no event will the service credit exceed the monthly fees paid by SUNY for the Services. SUNY acknowledges and agrees that if the remedies set forth in this section are applied, any failure of the Firm/Vendor/Vendor to meet the requirements in this SLA will not constitute a breach of the Agreement.

3. Monitoring.

Firm/Vendor/Vendor will monitor and maintain Firm/Vendor/Vendor's Systems in working order each day (24 x 7). Firm/Vendor/Vendor will proactively manage and monitor all application server hardware devices and software to ensure optimal performance and reliability as well as to detect abnormal events or exceeded utilization or performance thresholds. Firm/Vendor/Vendor will proactively monitor the status of the operating systems (e.g., CPU, disk I/O, memory, processes, etc.), critical application layer daemons and processes and trigger appropriate event notification alarms caused by errors, exceeded thresholds, etc.

3.1 Maintenance.

Firm/Vendor/Vendor will operate, monitor and administer all servers, applications and networks supporting the Services. In order to provide such coverage, Firm/Vendor/Vendor may utilize a mixture of on-site and on-call support staff, automated server monitoring and automated paging technology. Contactor's on-site coverage is during Firm/Vendor/Vendor's normal business hours, Monday through Friday, excluding holidays recognized by Firm/Vendor/Vendor.

3.2 Scheduled Outages.

Maintenance outages, if necessary, will be conducted at a time and in a manner to minimize adverse impacts on the Services. Maintenance outages will include, but are not limited to the installation of upgrades, service packs and routine server or application configuration changes. Other maintenance outages may be necessary from time to time.

3.3 Change Control.

Firm/Vendor/Vendor will install new equipment, software, releases, upgrades, fixes, patches and other items necessary to maintain Firm/Vendor/Vendor's Systems to industry standards. Firm/Vendor/Vendor will proactively gather information from appropriate server, peripheral, operating system or database vendors regarding upgrades, defect patches or fixes.

3.4 Notice.

Firm/Vendor/Vendor will use commercially reasonable efforts to give the Group three (3) days notice prior to all non-routine management, maintenance, change control or other actions by Firm/Vendor/Vendor that may material impact the Service adversely.

Attachment 7 – NYS Business Subcontractor Identification Form

Encouraging the use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in SUNY contracts and strongly contribute to the economies of New York and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers/contractors for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers/contractors need to be aware that to the maximum extent practical and consistent with legal requirements, they are strongly encouraged to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers/contractors are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in SUNY contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under this contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. SUNY therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to New York State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract? Circle one: YES / NO

If YES, identify New York State Business(es) that will be used by attaching identifying information, e.g., contact information, dollar value of the subcontract or supply contract.

This form, along with accompanying information as required above, must be completed and submitted with your proposal.

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "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. **PROHIBITION AGAINST ASSIGNMENT** Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements. (b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph (3)(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-

approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

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

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

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

or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, 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 its knowledge and belief 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 it to SUNY a non-collusive bidding certification on Contractor's behalf.

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

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies 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, 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 SUNY and its representatives and entities 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. SUNY 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 SUNY 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, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) 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;

(2) at SUNY's request, 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

(3) 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.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY 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, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division

of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, 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 Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have 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(5) of the

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, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from: NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwbecertification@esd.ny.gov
<https://ny.newnycntracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

(b) The Contractor has complied with the Federal Equal Employment 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 Search 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 SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY 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 of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

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

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

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

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

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

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

27. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

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

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

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

28. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

29. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

1. DEFINITIONS. The following terms shall be defined in accordance with Section 31.0 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an 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.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or

authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

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: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 31.4 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University):

1(a) Contractor and its 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. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, 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; (ii) 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; (iii) At the request of the University 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, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject

time frame, not limited to work specifically under the contract.

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that 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, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-

owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

6. MWBE Utilization Plan.

(a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107). Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs

after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
- ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

7. Waivers.

(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

(b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

8. Quarterly MWBE Contractor Compliance Report.

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-114) to the University by the 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of fifteen percent (15%) for Certified Minority-Owned Business Enterprises and fifteen percent (15%) for Certified Women-Owned Business Enterprises.

10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

- a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.

END OF DOCUMENT

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