

CONTRACT NO. C000419

**THE NEW YORK STATE DIVISION OF THE BUDGET
MANAGEMENT CONSULTING SERVICES AGREEMENT
WITH MCKINSEY & COMPANY, INC. WASHINGTON D.C.
FOR THE PERIOD
September 1, 2012 – August 31, 2015**

THIS IS AN AGREEMENT ("AGREEMENT") dated as of September 1, 2012 by and among the NEW YORK STATE DIVISION OF THE BUDGET (hereinafter referred to as "DIVISION"), and McKinsey & Company, Inc. Washington D.C. (hereinafter referred to as "McKinsey" "CONTRACTOR", or "Secondary Management Consultant"), with offices located at 1200 19th Street, NW, Suite 1100, Washington, DC 20036.

WITNESSETH

WHEREAS, the DIVISION works to promote the best use of State resources and is responsible for ensuring that fiscal and program priorities are properly carried out and in establishing financial and budgetary policies/programs for New York State; and

WHEREAS, the DIVISION requires the services of a management consulting firm to advise the DIVISION on an as-needed basis in short-term engagements that focus on the review of management and fiscal issues relating to State programs, practices and initiatives.

WHEREAS, the DIVISION issued a Request for Proposals (RFP) for Management Consulting Services, dated June 5, 2012, a copy of which is attached hereto as, Appendix B, for management consulting services; and

WHEREAS, after an evaluation of the Proposals submitted for the performance of such work, the DIVISION determined that the Contractor is the most responsible, technically qualified, and competent to serve as Secondary Management Consultant based upon its Proposal; and

WHEREAS, the Contractor is willing to serve as a management consultant to the DIVISION, as outlined in the RFP and herein;

NOW, THEREFORE, in consideration of the terms and conditions of this AGREEMENT, it is hereby mutually agreed by and between the DIVISION and the CONTRACTOR (each individually a "Party" and collectively "Parties"), as follows:

I. SERVICES

- A. The DIVISION does hereby engage McKinsey to provide management consulting services consistent with Section 3 of the RFP. Upon request, the Management

Consultant will be asked to provide assistance, guidance or analysis on, but not limited to, the following:

Program-Related Matters

- Assist DIVISION staff in reviewing and evaluating programs and initiatives in one or more State entities (i.e., agencies, public authorities, boards, commissions, etc.). Identify best practices, analytical techniques, change management, or strategy development for State programs or proposed initiatives.
- Review the success, return on State investment, and productivity and cost-effectiveness of programs and initiatives.
- Provide technical assistance to the DIVISION in program issues and the valuation of assets held by State entities.

Financial Plan-Related Matters

- Analyze the fiscal impact of changes in proposed or existing State and local programs which have impact on the State Financial Plan.
- Evaluate and advise the DIVISION on general or specific budgetary and management issues that may arise. This may include Consultant's interpretation of proposed management policies and its relation to State financing and the State's structure

State Operations and Management

- Analyze State entity operations, policies and processes to measure performance, identify opportunities to improve service, and increase efficiency. This may include, but not be limited to:
 - Analyzing and documenting current policies and processes;
 - Performing best practice research and benchmarking to other approaches at comparable entities;
 - Conducting workflow analyses; and
 - Designing accountability programs.
- Assess the functions performed by a State entity or group of entities to address operational improvement opportunities. This may include, but not be limited to, examining statutory responsibilities, organizational structures, resources (budget, personnel, equipment, technology, facilities, and other assets), and workload.

- Assist in developing implementation plans, generating project cost estimates and providing implementation and support services that may include, but not be limited to, program management support to facilitate project completion, including implementation steps, resource allocation, quality assurance, review of project schedules, monitor and manage issues and risks, create key performance indicators and management performance reports, and develop detailed baseline analytics;
- Perform quality assurance reviews of existing operations, including the review of transactions between the DIVISION and agencies, authorities and other parties the DIVISION may work with.

Management Issues, Changes and Federal Mandates/Statutes, Local Issues

- Advise the DIVISION on public management matters, as appropriate, including modifications or conditions for which New York State would be affected. Identify ways to meet new mandates, changes or requirements.
- Assist in analyzing the cash flow and financial position of municipalities, public authorities and other State entities.

B. The CONTRACTOR agrees to perform and furnish the services and labor required in connection herewith in accordance with all conditions, covenants and representations contained in this AGREEMENT.

C. At the onset of each project, the CONTRACTOR and DIVISION will mutually agree on a statement of work (SOW), which shall define the services to be provided and the total cost for the project..

II. TERM

McKinsey agrees to perform the aforesaid services for a three year period beginning September 1, 2012 and ending August 31, 2015, with two optional one-year extensions.

III. COMPENSATION

A. McKinsey's rates for services rendered under this AGREEMENT shall not exceed the hourly rates as shown below:

| Title | Hourly Rate | | | | |
|--------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| | Contract Year 1 2012-2013 | Contract Year 2 2013-2014 | Contract Year 3 2014-2015 | Contract Year 4 2015-2016 | Contract Year 5 2016-2017 |
| Engagement Partner | | | | | |
| Project Manager | | | | | |

| | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|
| Senior Management Analyst | | | | | | | | |
| Management Analyst | | | | | | | | |

The above rates shall apply to all hourly compensation paid under this AGREEMENT. The not-to-exceed hourly rates are inclusive of any reproduction, travel, postage or other expenses related to the engagement.

- B. Total payment under this AGREEMENT shall not exceed \$3,000,000.
- C. CONTRACTOR will only be compensated for services that are performed in accordance with a mutually agreed upon SOW as described in Section I.C.
- D. Billings for services rendered shall be submitted to the DIVISION after the first day of the month following the month in which the work was performed.
- E. As stated in Section 7.3.4 of the RFP, the CONTRACTOR acknowledges that it will not receive payment on any invoices submitted under this AGREEMENT unless or until it complies with the State Comptroller's electronic payment procedures.
- F. Fees shall become payable by the STATE upon receipt of an approvable invoice in accordance with this section. Properly invoiced fees not paid within 30 days of receipt of the invoice will be paid with interest in accordance with the New York State Prompt Payment Law. Any and all such invoices shall contain a detailed itemization of requested compensation which shall at the minimum include:
 - 1. The number assigned to this AGREEMENT and the CONTRACTOR's taxpayer identification number;
 - 2. Name(s), and title(s) as identified in this section, of the CONTRACTOR staff providing services;
 - 3. Name(s) of DIVISION employees, or their designee(s), requesting the services and directly involved;
 - 4. Specific identification of the deliverable(s) provided; and
 - 5. Time period in which the services were performed and date deliverable was accepted by the DIVISION.

All invoices should be submitted electronically to contracts@budget.ny.gov.

- G. The CONTRACTOR shall not be reimbursed for the preparation of invoices or billing statements or for the correction of any error in previously submitted invoices or billing statements.

IV. RESERVATIONS

- A. The DIVISION reserves the right to utilize the secondary management consultant under the provisions delineated in the RFP.

- B. The DIVISION reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. In that event, the CONTRACTOR will, as directed by the DIVISION, cooperate and work in harmony with such consultants and contractors.

V. RELATIONSHIP OF PARTIES

The relationship of the CONTRACTOR to the DIVISION shall be that of an independent contractor. In accordance with such status as an independent contractor, the CONTRACTOR covenants and agrees to act consistent with such status: to neither hold itself out as, nor claim to be, an officer or employee of the DIVISION or the State by reason hereof; and not to, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DIVISION or the State, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.

VI. STAFF

- A. The CONTRACTOR shall assign Mr. Eric Braverman as the lead engagement partner and the personnel referenced in its Proposal, but is not limited in its utilization of other personnel for its duties hereunder.
- B. The CONTRACTOR specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders and subcontractors have and shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties performed hereunder.
- C. This AGREEMENT is intended to secure the professional services of the CONTRACTOR because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the CONTRACTOR.
- D. The DIVISION has an absolute right and discretion to approve or disapprove any proposed staff and changes in staff. The CONTRACTOR shall notify the DIVISION of any proposed changes in staff immediately. The DIVISION, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.
- E. The CONTRACTOR shall be fully responsible for performance of work by its staff and by its subcontractor's staff and the DIVISION reserves the right to request removal of any CONTRACTOR staff or subcontractor staff if, in the DIVISION's discretion, such staff is not performing in accordance with this AGREEMENT.
- F. The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the DIVISION.

Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

VII. DIVISION REPRESENTATIVES

- A. The DIVISION, with the commencement of this AGREEMENT, designates as its representatives, Joan Hope and Jason DiGianni, or designee(s).
- B. Such representatives shall request, oversee, supervise and accept performance of services provided by the CONTRACTOR and shall receive any required submissions. Whenever an AGREEMENT action is to be taken or approval for services given by the DIVISION, such action or approval may be given only by the representatives designated pursuant to this Section.
- C. All Notices under this AGREEMENT shall be directed to the representatives identified in this Section, or their designees.
- D. The DIVISION may on written notice designate other individuals as its representatives.

VIII. MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION AND COMPLIANCE

A. General Provisions

- 1. The DIVISION is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- 2. The CONTRACTOR agrees, in addition to any other nondiscrimination provision of the AGREEMENT and at no additional cost to the DIVISION, to fully comply and cooperate with the DIVISION in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). The CONTRACTOR's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- 3. 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, liquidated damages pursuant to this Section or enforcement proceedings as allowed by the AGREEMENT

4. 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.

For purposes of the Article, affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation.

5. The CONTRACTOR shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of the CONTRACTOR's obligations herein.
6. The CONTRACTOR shall state in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.
7. The CONTRACTOR shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The CONTRACTOR and subcontractors shall not discriminate against any employee or applicant for employment because of 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.

B. Contract Goals

The DIVISION and CONTRACTOR have agreed to a goal of at minimum ten percent participation for New York State certified Minority-Owned Business Enterprises (MBE) and minimum ten percent participation for New York State certified Woman-Owned Business Enterprises (WBE). Over the term of the contract, the CONTRACTOR will allocate at least ten percent of funds paid under this AGREEMENT to one or more certified MBE firms and at least ten percent of funds paid under this AGREEMENT to one or more certified WBE firms. The CONTRACTOR agrees to use the MWBE Utilization Plan set forth in the Proposal

for the performance of MWBEs on the AGREEMENT pursuant to the prescribed MWBE goals set forth above. The 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 AGREEMENT. Upon the occurrence of such a material breach, the DIVISION shall be entitled to any remedy provided herein, including but not limited to, a finding of CONTRACTOR non-responsiveness

Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, CONTRACTOR must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the AGREEMENT. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the CONTRACTOR acknowledges that if the CONTRACTOR is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the AGREEMENT, such a finding constitutes a breach of contract and the CONTRACTOR shall be liable to the DIVISION for liquidated or other appropriate damages, as set forth herein and in the RFP.

C. Equal Employment Opportunity (EEO)

1. The CONTRACTOR agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
2. The CONTRACTOR and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

D. Penalties for Willful and Intentional Failure to Comply

1. Any contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements as set forth in the AGREEMENT shall be liable to the State for liquidated or other damages, as specified in the resulting contract, and shall provide for other appropriate remedies on account of such breach. Damages shall be calculated based on the actual cost incurred by the State agency related to the State agency's expenses for personnel, supplies, and overhead related to establishing, monitoring, and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance.
2. 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

DIVISION, the CONTRACTOR shall pay such liquidated damages to the DIVISION within sixty (60) days after they are assessed by the DIVISION 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 DIVISION.

E. Deficiency and Disqualification

Vendors will receive a notice of deficiency when the STATE's specified requirements have not been met. Failure to fully address the RFP's administrative requirements may result in disqualification of a Bidder from the procurement. Procedures for Disqualification of a vendor are described in Section 142.9 of the New York Code, Rules and Regulations.

F. Contractor Compliance Reports

CONTRACTOR shall submit to the State Quarterly M/WBE Compliance Reports for Workforce Composition and M/WBE subcontractor participation for the previous quarter by the 5th day of each new State fiscal quarter (January, April, July, and October).

G. Noncompliance and Dispute Resolution

Where there is a dispute that cannot be resolved between an agency and a Vendor on noncompliance in M/WBE Utilization or Workforce Diversity, the issue will be elevated to the DMWBD for resolution. If a resolution of the dispute recommended by the Executive Director of DMWBD is satisfactory to the parties, the parties shall so indicate by signing a dispute resolution memorandum indicating that the matter has been resolved and stating the terms of the resolution.

If a resolution cannot be agreed upon, the Executive Director of DMWBD will refer the complaint, within 30 calendar days of the receipt of the complaint, to DMWBD's hearing officer for a hearing. The decision of DMWBD's hearing officer shall be final and may only be vacated or modified as provided in Article 78 of the Civil Practice Law and Rules.

IX. GENERAL TERMS

A. Conflicts of Interest

Pursuant to Request for Proposals Section 4.3, the CONTRACTOR has provided a letter in the CONTRACTOR's proposal (incorporated as Appendix C), signed by an authorized executive or legal representative, attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with,

nor position the firm to breach any other contract currently in force with the State of New York, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.

The CONTRACTOR hereby covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the firm's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the DIVISION immediately of any such actual or potential conflicts of interest.

The DIVISION and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The DIVISION will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the DIVISION, a real or potential conflict of interest cannot be cured.

B. Warranties

The CONTRACTOR warrants that it will perform Services in good faith and in a professional manner and that the Services will conform in all material respects to the description of such Services set forth herein. The warranties expressly set forth in this AGREEMENT are in lieu of all other warranties, expressed or implied including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The CONTRACTOR shall perform Services in a workmanlike manner in accordance with industry standards.

C. Performance Monitoring

The CONTRACTOR's performance will be assessed by the State according to the achievement of CONTRACTOR's contractual obligations in a timely and professional manner, as set forth herein. The DIVISION will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

D. Indemnification and Liability

The CONTRACTOR shall be fully liable for any act or omission of the CONTRACTOR, its employees, subcontractors and agents, and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or tangible personal property or intellectual property caused by fault or negligence of CONTRACTOR, its employees, subcontractors or agents arising from the CONTRACTOR's performance of the Contract, without limitation; provided, however, that the CONTRACTOR shall not be obligated to indemnify the State for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act by the State or the acts of third parties, other than those provided by the

CONTRACTOR to perform under the Agreement. In connection with the foregoing, the State shall give CONTRACTOR, (i) prompt written notice of any action, claim or threat of suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at CONTRACTOR's sole expense, and (iii) assistance in the defense of any such action at the expense of CONTRACTOR.

Except as otherwise set forth as being without limitation in the indemnification paragraph above, the limit of liability shall be as follows: CONTRACTOR's liability for any damages arising out of, or related to the AGREEMENT, whether in contract, tort or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the amount paid to the CONTRACTOR for work performed under this AGREEMENT, or (ii) one million dollars (\$1,000,000), whichever is greater.

Notwithstanding the above, the CONTRACTOR and the State shall not be liable for any consequential, indirect or special damages of any kind which may result from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the State, the CONTRACTOR, or by others. The CONTRACTOR shall be fully responsible for performance of work by and conduct of its staff and subcontractor's staff and that the DIVISION reserves the right to request removal of any CONTRACTOR staff or subcontractor staff if, in the DIVISION's discretion, such staff is not performing in accordance with the AGREEMENT.

The CONTRACTOR warrants that its services shall be performed in accordance with applicable professional standards and that the CONTRACTOR shall correct, at no charge to the DIVISION or the STATE, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

E. Reports and Findings

Any and all reports and findings rendered to the DIVISION by the CONTRACTOR shall be the exclusive property of the DIVISION and subject to its exclusive use and control. The CONTRACTOR hereby waives any and all rights to such reports and findings and the control thereof.

The CONTRACTOR shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during the course of its performance under the terms of the AGREEMENT.

F. Ownership

CONTRACTOR will retain all right, title and interest in and to all materials developed by it prior to the Effective Date of this AGREEMENT and/or developed outside of CONTRACTOR's obligations hereunder.

G. Records Access

DIVISION staff, others authorized by the DIVISION such as representatives of the Federal government, or other STATE agencies authorized by STATE law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the CONTRACTOR involved in transactions relating to this AGREEMENT during the contract period and for a period of six years after final payment for said services. The CONTRACTOR will make all records, including related documents of any and all subcontractors, available to New York State.

H. Work Paper Retention and Availability

The work papers to be prepared by the CONTRACTOR during the AGREEMENT will be the CONTRACTOR'S property although copies thereof and access to them will be made available, upon request, to the DIVISION, representatives of the Federal government and STATE agencies when authorized by the DIVISION, and other STATE agencies authorized by existing law, for a period of six (6) years following the date of the final payment under the contract. All such requests, and their disposition, shall be authorized by the DIVISION.

The CONTRACTOR agrees to make personnel available to explain fully all data, materials, and work papers developed during the engagement for a period of six (6) years following the date of the final payment under the contract.

X. DISPUTES AND DISSATISFACTION/CONFLICT RESOLUTION

In the event the DIVISION is dissatisfied with the CONTRACTOR's performance of the Services provided under the Agreement, including but not limited to a breach of the Agreement on the part of the CONTRACTOR, the DIVISION shall notify the CONTRACTOR of the dispute in writing. In the event the CONTRACTOR has any disputes with the DIVISION, the CONTRACTOR shall notify the DIVISION in writing. Such notification in both cases shall hereinafter be referred to as "Notice of Conflict", or in the case of contract breach, "Notice of Default".

If either the DIVISION or the CONTRACTOR notifies the other of such dispute or dissatisfaction, the Party receiving the notification shall then make good faith efforts to amicably resolve the problem or settle the dispute, including meeting with the notifying Party's representatives to diligently attempt to reach a mutually satisfactory result.

In the event of a dispute, both Parties will continue to fulfill their performance obligations under the Agreement.

Nothing shall limit either Party's ability to pursue all legal remedies. If the Parties are unable to amicably resolve the dispute after the steps described above, then either Party may seek legal or equitable relief in a court of competent jurisdiction.

XI. TERMINATION

- A. The DIVISION reserves the right to terminate the services of the CONTRACTOR, in whole or in part, upon thirty (30) days written notice for any reason, or immediately for cause. Upon notice of termination, the CONTRACTOR shall stop work immediately and complete only those specific assignments, if any, subsequently approved by the DIVISION. In the event of termination other than for cause, the CONTRACTOR shall be entitled to compensation for services performed through the date of termination that are accepted by the STATE, and for any subsequent services that are accepted by the STATE, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the DIVISION. The CONTRACTOR agrees to cooperate to the fullest respect with any successor consultants and contractors.
- B. After receipt of the Notice of Termination, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the Notice.
- C. The CONTRACTOR shall submit its termination claim to the DIVISION promptly after receipt of a Notice of Termination, but in no event later than 30 days from the effective date thereof, unless one or more extensions in writing are granted by the DIVISION upon written request of the CONTRACTOR within such 30-day period or authorized extension thereof. Upon failure of the CONTRACTOR to submit its termination claim within the time allowed, the DIVISION may determine, on the basis of available information, the amount, if any, due to the CONTRACTOR by reason of termination, and shall thereupon pay to the CONTRACTOR the amount so determined.
- D. The CONTRACTOR agrees to transfer title to the DIVISION, and to deliver in the manner, at the time, and to the extent, if any, directed by the DIVISION, such information and work products for which the CONTRACTOR produced and received compensation by the DIVISION.
- E. In addition, non-compliance with the procurement laws as noted in Section XIII of this AGREEMENT will lead to contract termination.

XII. FORCE MAJEURE

Neither party will be liable for losses, defaults, or damages under this AGREEMENT which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this AGREEMENT, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire or any other cause beyond the

reasonable control of the party that was so delayed or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

XIII. COMPLIANCE WITH PROCUREMENT LAWS

- A. By execution of this AGREEMENT, the CONTRACTOR certifies that information provided to the State of New York with respect to the Vendor Responsibility Questionnaire, Procurement Lobbying Certifications, Contractor Disclosure Forms (A and B) and Section 5-a of the Tax Law (Forms ST-220-TD and ST-220-CA) is complete, true and accurate.
- B. The CONTRACTOR hereby acknowledges that the Vendor Responsibility Questionnaire and certification are made part of this AGREEMENT by reference hereto and that any misrepresentation of fact in the Questionnaire and attachments, or in any CONTRACTOR responsibility information that may be requested by the DIVISION, may result in termination of this AGREEMENT. During the term of this AGREEMENT, any changes in the provided Questionnaire shall be disclosed to the DIVISION, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the AGREEMENT.

Should it be determined at any time that the CONTRACTOR is not responsible, the DIVISION will notify the CONTRACTOR in writing setting forth the basis for the determination and affording the CONTRACTOR reasonable time in which to refute the determination, justify why the basis for the determination is not relevant to this AGREEMENT or to take corrective action to eliminate the responsibility impediment. If the responsibility condition cannot be reconciled to the satisfaction of the DIVISION and the State of New York, the AGREEMENT will be terminated by written notification.

- C. CONTRACTOR hereby acknowledges that State Finance Law Section 163(4)(g) imposes certain reporting requirements on the contractor doing business with New York State, In furtherance of these reporting requirements, the CONTRACTOR agrees to complete and submit an initial planned employment data report and an annual employment report (Forms A and B respectively). Complete instructions and forms may also be accessed at: <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>.
- D. IRAN DIVESTMENT ACT

By entering into this Contract, Contractor certifies 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" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such 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 the Contract will be required to certify that it is not on the Prohibited Entities List before the DIVISION may approve a request for Assignment of Contract.

During the term of the Contract, should the DIVISION receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the DIVISION 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 DIVISION shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The DIVISION reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

XIV. ENTIRE AGREEMENT

This AGREEMENT and its Appendices constitute the entire AGREEMENT between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This AGREEMENT shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto. Appendix A, Standard Clauses for New York State Contracts, Appendix B, the Request for Proposals dated June 5, 2012, and Appendix C, the Proposal submitted by the CONTRACTOR dated July 9, 2012, are hereby made a part of this AGREEMENT as if fully set forth at length herein.

XV. CONDITIONS PRECEDENT

This AGREEMENT and any subsequent amendments to this AGREEMENT shall not be deemed executed, valid or binding unless and until approved in writing by the Offices of the Attorney General and State Comptroller.

XVI. USE BY OTHER STATE AGENCIES

The DIVISION shall have the option to extend the terms and conditions related to the scope of services covered by this AGREEMENT to any New York State agency.

XVII. ADDITIONAL SERVICES

The DIVISION may, at any time, by written notice, request changes or additions to work or services within the general scope of this AGREEMENT (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of this AGREEMENT, an equitable adjustment shall be agreed upon by the Parties and made in the price using the billing rates set forth in the AGREEMENT, and the CONTRACTOR shall be notified in writing accordingly. A change to the scope of the AGREEMENT would be subject to the approval of OSC. Nothing in this clause shall excuse the CONTRACTOR from proceeding with this AGREEMENT as modified.

XVIII. INTERPRETATION

In the event of any discrepancy, disagreement or ambiguity among the following documents - this AGREEMENT, Appendix A (Standard Clauses for New York State Contracts), Appendix B (Request for Proposal) and Appendix C (Proposal) - they shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

- A. Appendix A – Standard Clauses for New York State Contracts
- B. This AGREEMENT as it appears prior to the signature page incorporated herein
- C. Appendix B – Request for Proposal dated June 5, 2012
- D. Appendix C – Proposal dated July 9, 2012

XIX. ADDITIONAL PROVISIONS

This AGREEMENT shall be deemed executory only to the extent of moneys annually appropriated and available for this purpose, and no liability on account thereof shall be incurred by the DIVISION beyond the amount appropriated. It is understood that neither this assignment nor any representation by any public employee or officer creates any legal or moral obligation to request to appropriate, or make available, moneys for the purpose of the AGREEMENT.

XX. GOVERNING LAW/STANDARD CLAUSES

This AGREEMENT shall be governed by the laws of the State of New York Appendix A, Standard Clauses for NYS Contracts, attached hereto is expressly made a part of the AGREEMENT as fully as if set forth at length herein.

C000419

IN WITNESS WHEREOF, each of the Parties hereto has caused this AGREEMENT to be executed by its duly authorized officers on the day and year stated below.

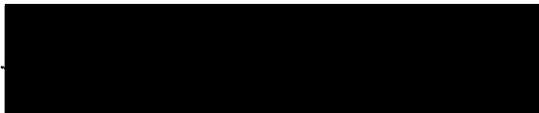
Agency Certification

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

Approved by:

McKinsey & Company, Inc. Washington D.C.

NEW YORK STATE DIVISION OF THE BUDGET

By: 
Name: Vivian Riefberg _____

By: 
Name: Joan Hope

Title: Director

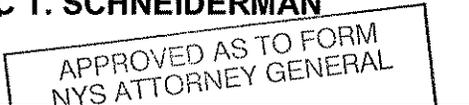
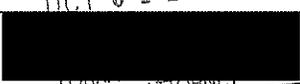
Title: Administrative Officer

Date: 9/25/12

Date: 10/2/12

**Attorney General:
ERIC T. SCHNEIDERMAN**

**State Comptroller:
THOMAS P. DINAPOLI**

By: 
Date: OCT 04 2012

PRINCIPAL ATTORNEY

By: 
Date: OCT 30 2012

CONTROLLER

CORPORATE ACKNOWLEDGMENT FORM

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and that all information provided is complete, true and accurate.

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF Washington, DC }
: SS.:
COUNTY OF }

On the 28th day of September in the year 2012 before me personally appeared VIVIAN RIEFBERG, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at 8504 Beech Tree Court, Bethesda, Montgomery County, Maryland; and further that:

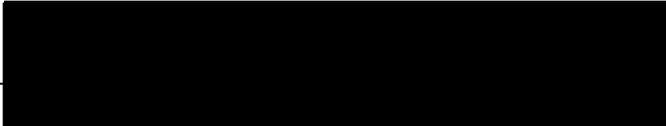
[Check One]

[] If an individual: he executed the foregoing instrument in his/her name and on his/her own behalf.

[X] If a corporation: she is the Director of McKinsey & Company, Inc. Washington D.C., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

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

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



Notary Public
Registration No.

State of:



APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS (December 2011)

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment

for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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

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

by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

Appendix A, the terms of this Appendix A shall control.

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

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

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

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

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

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

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

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

22. 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 (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law 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.

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

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