

Request for Bids for HVAC Services

Issued By:

The Town of Saratoga

Responses must be received no later than

November 20, 2019 at 4PM

I. Executive Summary

Situated along the Hudson River, approximately 35 miles from Albany, the Town of Saratoga (Town) is a municipality with offices located at 12 Spring Street, Schuylerville, NY 12871. The Town office building is two stories, with Town and Court offices located in the west wing and private offices in the north wing.

The Town is seeking qualified HVAC contractors to multi-zone systems to provide heating and cooling to office suite 103 in the lower level of the north wing, suite 203 on the second floor of the north wing, and the Town Clerk's office in Suite 201 on the second floor of the west wing. Qualified vendors are to submit a completed proposal with required attachments by November 20, 2019 at 4pm. Minority and Woman-Owned Businesses and Service Disabled Veteran Enterprises are encouraged to apply

II. Scope of Services

The Town of Saratoga is soliciting proposals for the installation of a multi-zone HVAC system servicing three (3) offices in separate wings of the building and on different floors. The town is interested in Mitsubishi (or like brand) heating and cooling units. Proposals are to include the furnishing of all materials, labor, and other fees as applicable. Bidders are strongly encouraged to attend the bid workshop to view the offices where the units are to be installed and placement of heat pump/compressor.

III. Form of Proposal

Bidders must complete a proposal containing the following information:

- A brief description of the firm, emphasizing areas of expertise or focus of practice;
- Three client references for similar, recent projects;
- Product Specifications, including a plain language explanation of why these units are the best product solution;
- Timeline for delivery of completed services;
- Identify the proposed project team, including any sub-contractors to be used (Each will be required to show proof of insurance naming the Town as additionally insured upon notice of award);

Estimates must be broken down using the attached form "Addendum A: Cost Worksheet." The proposal with all required addenda are to be returned to the Town of Saratoga by electronic or snail mail by July 1, 2019 at 4pm

IV. Criteria for Bid Award

Bids will be awarded according to the methodology prescribed by Section 103 of the General Municipal Law, subject to Local Law 3 of 2015, which allows the Town to award bids based on "best value" methodology. A copy of Local Law 3 is attached.

Selection of the Contractor will be on a non-discriminatory basis without regard to race, color, national origin, gender, sexual orientation, or age.

V. Anticipated Schedule

Bid Schedule:

- Request for Bids advertised: November 5, 2019
- Pre-Bid Conference / Site Visit: November 12, 2019 10AM
- Deadline for Submission of Bids: November 20, 2019
- Bid Awarded: November 22, 2019

Work is to commence within a timeframe agreed upon at bid award and memorialized in a contract.

VI. Detailed Requirements / Specifications

To facilitate the comparison of Bids for the financial component of the overall scoring, fees and expenses must be presented on the enclosed Cost Worksheet (attached Addendum A) and sealed separately for subsequent review. Bids that do not include a fully completed Cost Worksheet, or that alter the form, may be disqualified.

Bids shall remain in effect for a minimum of 90 days following the proposal due date.

The Town 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;
- request clarification of bid details following submission of bids;
- withdraw this Request for Bids without awarding a contract.

VII. Submission Requirements

Bids should be sent by snail mail to:

Thomas N. Wood, Supervisor
Town of Saratoga
Mailing Address (USPS) (FedEx and UPS) and Physical Address
12 Spring Street, Schuylerville, NY 12871

OR electronically to:

Drew Alberti, Project Manager, Flatley Read, Inc. at Drew@FlatleyRead.com

All questions concerning this solicitation must be sent to Drew Alberti, Project Manager, Flatley Read, Inc.: Drew@FlatleyRead.com or 518-577-5681

Email or envelope should be labeled: "HVAC Replacement Project" and received no later than July 1, 2019 at 4:00 p.m.

VIII. Additional Requirements

- A. Non-Collusive Bidding: All bids must be accompanied by the attached Non-Collusive Bidding Certification (Addendum B, Attached).
- B. Procurement Lobbying Law: All bids must be accompanied by the attached Affirmation of Understanding and Agreement (Addendum C, attached)
- C. Equal Employment Opportunity Policy (EEO): All responses must include a statement that the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members 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 if awarded all or part of this contract.
- D. Insurance: Contractor shall maintain and provide the following insurance: Commercial General Liability insurance of \$1 million per occurrence and \$2 million in the aggregate; Commercial Automobile Liability with a limit of \$1 million for both bodily injury and property damage; Excess/Umbrella Liability of \$5 million; Errors and Omission insurance as necessary with a limit of \$1 million and evidence of Workers Compensation/Employers' Liability insurance providing statutory NYS coverage. Policies must add the Town of Saratoga, State of New York, and Town of Saratoga Highway Department as additionally insured.
- E. Minority and Woman Owned Business Utilization: The Town Board will utilize the best value methodology, which includes consideration of small, minority, and woman owned businesses. NYS Certified Minority and Woman Owned Business Enterprises are encouraged to respond.
- F. Iran Divestment Act Certification: By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state financial law. *A statement of non-investment in the Iranian energy sector will be included in all contracts.*

IX. List of Attachments

ADDENDA (Forms Required with Submittal)

- Addendum A - Cost Worksheet
- Addendum B - Non-Collusive Bidding Certification
- Addendum C - Procurement Lobbying Law, Affirmation of Understanding and Agreement

- Addendum D – Iran Disinvestment Act

APPENDICES (Information for Potential Bidders)

- Appendix A – Local Law No. 3 of 2015
- Appendix B – Standard Clauses of NYS Contracts

Addendum A: Cost Worksheet

Scope of Services	Cost
Materials	
Labor	
Other Fees	

Note To Bidder:

Is this cost worksheet completed strictly in accordance with the specifications as noted herein?

_____ Yes _____ No

If "No" attach a letter explaining in detail the deviation.

Sign the Bid:

By signing this bid you indicate your express authority to sign on behalf of yourself, your company or other entity and fully acknowledge acceptance of this Bid Proposal.

Signature _____

Company/Firm Name _____

Date _____

Addendum B

Non-Collusive Bidding Certification

By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies 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 purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Company Name

Authorized Representative Name (Print)

Title

Signature

Date

Addendum C

Procurement Lobbying Law, Affirmation of Understanding and Agreement

The following website has all information regarding New York State's Guidelines and Frequently Asked Questions on Procurement Lobbying Law:

<https://www3.ogs.state.ny.us/legal/lobbyinglawfaq/default.asp>

All bidders must sign the following certification:

AFFIRMATION OF UNDERSTANDING AND AGREEMENT

[Pursuant to State Finance Law (SFL) §139-j (3) and §139-j (6) (b) and Procurement and Contract Guidelines ("Guidelines")]

The proposer affirms that it understands and agrees to comply with the procedures of the state relative to permissible Lobbying Contacts as required by SFL §139-j (3) and §139-j (6) (b).

By: _____ Date: _____
Signature of Authorized Individual the Proposer

Name: _____
Name of Authorized Individual for Proposer (please print name)

Title: _____
Title of Authorized Individual for Proposer (please print)

Contractor or Vendor Name: _____

Contractor or Vendor Address: _____

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the Town from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder / proposer submits the following certification:

By submission of this bid or proposal, each bidder / proposer and each person signing on behalf of any bidder / proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization under penalty of perjury, that to the best of its knowledge and belief, that each bidder / proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

Dated: _____, New York

_____, 20__

Signature

Printed Name

Title

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVE., ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Saratoga

Local Law No. 3 of the year 2015

A local law authorizing contract awards based on best value methodology

Be it enacted by the Town Board
(Name of Legislative Body)

of the Town of Saratoga as follows:

SECTION 1. Title. This Local Law shall be known as “A Local Law to Authorize Contract Awards Based Upon Best Value Methodology”.

SECTION 2. Legislative Findings and Declaration of Intent.

General Municipal Law §103 (“GML §103”) sets forth the general rules applicable to the awarding of contracts for public work and contracts for purchase by a municipality.

Prior to January 27, 2012, GML §103 required that contracts for public work involving an expenditure of more than \$35,000 and all purchase contracts involving an expenditure of more than \$20,000, shall be awarded by the appropriate officer, board or agency of a municipality to the lowest responsible bidder furnishing the required security after advertisement for sealed bids.

The State Legislature and Governor amended GML §103 (A8692/S6117) on January 27, 2012 to provide local governments greater flexibility in awarding contracts by authorizing the award of purchase contracts, including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law, on the basis of best value.

Enactment of such a local law provides additional procurement options to localities in ways that may expedite the procurement process and result in cost savings. The “best value”

standard for selecting goods and services vendors is critical to efforts to use strategic sourcing principles to modernize the supply chain and ensure that taxpayers obtain the highest quality goods and services at the lowest potential cost, while also ensuring fairness to all competitors.

The federal government, approximately half of the states and many localities have added best value selection processes to their procurement options, in recognition of these advantages. With the increased complexity of the goods and services that municipalities must obtain in order to serve taxpayers, it is critical to consider selection and evaluation criteria that measure factors other than cost in the strictest sense.

Taxpayers are not well served when a public procurement results in low unit costs at the outset, but ultimately engenders cost escalations due to factors such as inferior quality, poor reliability and difficulty of maintenance. Best value procurement links the procurement process directly to the municipality's performance requirements, incorporating selection factors such as useful lifespan, quality and options and incentives for more timely performance and/or additional services.

Even if the initial expenditure is higher, considering the total value over the life of the procurement may result in better value and long-term investment of public funds. Best value procurement also encourages competition and, in turn, often results in better pricing, quality and customer service. Fostering healthy competition ensures that bidders will continue to strive for excellence in identifying and meeting municipalities' needs, including such important goals as the participation of small, minority and women-owned businesses, and the development of environmentally-preferable goods and service delivery methods. Best value procurement will provide much-needed flexibility in obtaining important goods and services at favorable prices, and will reduce the time to procure such good and services.

SECTION 3. Definitions.

A. "Best value" shall mean the basis upon which a contract may be awarded after a competitive bid or competitive offer for the purchase of goods or services to the bidder or offeror which optimizes quality, cost and efficiency, among responsive and responsible bidders or offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for bidders or offerors that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law to be used in evaluation of offers for awarding of contracts for services. Other factors that may be used to determine the "best value" are:

1. cost of maintenance for good(s) or service(s);
2. features of the offered product or service set forth in detailed specifications for the product offered;
3. warranties and/or maintenance to be provided with the product or service ;
4. product life of good(s) or service(s);

5. references, past performance and reliability, including reliability or durability of the product being offered and current or past experience with the provision of similar goods or services;
6. organization, staffing (both members of staff and particular abilities and experience), and ability to undertake the type and complexity of the work;
7. financial capability; or
8. record of compliance with all federal, State and local laws, rules, licensing requirements, where applicable, and executive orders, including but not limited to compliance with existing labor standards and prevailing wage laws.

SECTION 4. The Best Value Award Methodology. When developing solicitation documents for competitive bids or competitive offers for the award of purchase contracts including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law, the Town Board may, and subject to the requirements herein and the applicable requirements set forth in the Town's Purchasing Policy, determine that an award of a purchase contract shall be based upon best value methodology. In making such determination, the Board shall consider the recommendation, if any, of the Department Head or designee of the Department the purchase contract is being procured for. The Department Head or designee shall, in all instances, obtain the approval of the Town Board to utilize best value methodology prior to issuance of the competitive bid or competitive offer documents.

SECTION 5. Requirements. Where the basis for an award of a purchase contract will be the best value offer, the Town Board shall, in all instances:

- A. Document in the procurement record as a component of the competitive award process and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted, and
- B. Shall select a formal competitive procurement process in accordance with guidelines established under the Town's Purchasing Policy and document the determination in the procurement record. The process of selection shall include, but may not necessarily be limited to, a clear statement of need; a description of the required specifications governing performance and related factors; a reasonable process for ensuring a competitive field; a fair and equal opportunity for offerers to submit responsive offers; and a balanced and fair method of award. Where the basis for the award is best value, documentation in the procurement record shall, where practicable, include a quantification of the application of the criteria to the rating of proposals and the

evaluation results, or, where not practicable, such other justification which demonstrates that best value will be achieved.

- C. The solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by the Town in its determination of best value.

SECTION 6. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances shall be adjudged by an Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 7. Effective Date. This Local Law shall take effect immediately upon filing with the New York State Secretary of State.

Appendix B:

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the 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). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment 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 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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 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.

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