Release Date: Friday September 30, 2016

Invitation for Bids

Less than Truckload Shipping throughout New York IFB

Submission Deadline: Wednesday, November 30, 2016

IFB Title	Less than Truckload Shipping throughout New York State IFB
Issuing Office	New York State Office of Temporary and Disability Assistance (OTDA)
Contract Period	Five (5) Year contract Term
Direct Inquiries to	Holly Clifton 93 Broadway, Menands, NY 12204 otda.sm.commercial.trucking@otda.ny.gov
Bid Due Date	Bid submissions must be received by mail or hand-delivery at the address listed below, No later than 3:00 p.m., ET on Wednesday November 30, 2016.
Deliver Bid to	New York State Office of Temporary and Disability Assistance Attention: Laurie Eckert 40 North Pearl Street, Suite 12 D Albany, NY 12243

NOTICE TO OFFERORS

1. Sealed bids will be received by the Office of Temporary and Disability Assistance (OTDA), at the above address in this Invitation for Bids (IFB). When submitting a bid, you must:

2. Prepare your bid in accordance with the instructions in **SECTION 6.0** (Bid Content/Submission/Delivery)**.**

3. Sign the bid, and throughout the IFB and its Attachments where indicated, include five (5) original Contractor Signature Pages, which if your bid is selected, will be the final Agreement between your firm and OTDA (Contract #C021933).

4. All bids must contain the following language on the outside of the envelope or packaging: **"SEALED BID FOR IFB LESS THAN TRUCKLOAD SHIPPING – DO NOT OPEN UNTIL (WEDNESDAY, NOVEMBER 30, 2016)**." Failure to provide this information may result in the premature opening of the bid, which may compromise its confidentiality. It is the responsibility of the Offeror to ensure arrival of its bid at OTDA prior to the scheduled due date and time.

5. **LATE BIDS MAY BE REJECTED.** Faxed and electronic bids will NOT be accepted.

6. Whether you are submitting a bid or not, it is important that you answer this IFB, as failure to respond to three (3) successive IFBs may result in your name being removed from the mailing list for this type of commodity or service. Even, if you are NOT submitting a bid, you should complete the information below, include the reason(s) for not bidding, and return to the Office of Temporary and Disability Assistance, following the instructions provided in Number 4 above and **SECTION 6.3**– Bid Delivery.

INFORMATION REQUIRED FROM OFFEROR:

<table>
<tr><td colspan="4">NAME OF COMPANY:</td></tr>
<tr><td colspan="2">Federal Tax Identification Number:</td><td colspan="2">NYS Vendor ID Number (if available):</td></tr>
<tr><td colspan="4">Complete Address:</td></tr>
<tr><td colspan="4">Place an “X” in the appropriate space:
☐ We are not submitting a bid for the following reason(s):
☐ We request removal of our name from the mailing list for this title.
☐ Our bid is enclosed.</td></tr>
<tr><td colspan="2">Offeror’s Signature: (Signature of an Official Authorized to Bind the Offeror):</td><td>Date:</td><td>Official Title:</td></tr>
<tr><td colspan="4">E-mail Address:</td></tr>
<tr><td colspan="2">Printed/Typed name of signatory :</td><td>Telephone Number:
( )</td><td>Fax Number:
( )</td></tr>
</table>

* If Offeror does not currently have a NYS Vendor ID Number, please complete and e-mail the Substitute Form W-9 (located at: http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) to otda.sm.commercial.trucking@otda.ny.gov prior to submission of bid.

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CONTRACT

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ATTACHMENT A OFFEROR'S CERTIFIED STATEMENTS

1. OVERVIEW:

1.1. The Office of Temporary and Disability Assistance (OTDA) will receive bids from qualified firms (the "Offerors"), pursuant to the provision of Article XI of the State Finance Law. To be eligible for contract award, Offerors must submit a complete response to this Invitation for Bids (IFB) in conformance with **SECTION 6.0** (Bid Content/Submission/Delivery).

1.2. "Offeror" shall refer to any business entity submitting a response to this IFB, which is in good standing under the laws of the State of New York and has the authority to enter into this agreement and carry out its obligations. At the time that the Offeror executes a contract with OTDA for their services, an Offeror shall become the "Contractor." "Contractor" shall refer to a responsive and responsible Offeror who has submitted the lowest bid and is working under an executed contract with OTDA.

1.3. Contract Period and Renewals:

It is the intention of OTDA to enter into one contract for a term of five (5) years, the "Term" or "Contract Term."

2. CALENDAR OF EVENTS:

Issuance of IFB	Friday, September 30, 2016
Mandatory Offerors Conference	Monday, October 24, 2016 @ 1:00 P.M., E.T.
Deadline for Submission of Written Questions	Monday October 30, 2016, 3:00 P.M., E.T.
OTDA Responses to Questions (on or about)	Thursday, November 10, 2016
Deadline for Submission of Bids	Wednesday, November 30, 2016, 3:00 P.M., ET
Reference Checks (not earlier than the week of)	Monday, December 5th, 2016
Anticipated Contractor Selection	Wednesday, March 8, 2017
Anticipated Office Of State Comptroller Approval	Monday, May 1, 2017
Anticipated Contract Commencement	Thursday, June 15, 2017

Sealed bids will be received by OTDA for the services specified herein under the terms and conditions of this solicitation. BIDS RECEIVED AFTER THE DEADLINE FOR SUBMISSION OF BIDS AS STATED ABOVE MAY BE REJECTED. OTDA assumes no responsibility for delivery delays.

3. STATEMENT OF WORK:

OTDA intends to procure the services of a Contractor to provide shipping services for forms and publications to local district offices throughout New York State, as well as office supplies and equipment to OTDA's internal State office locations.

OTDA oversees a number of programs, which are implemented on the local level by county social services offices. It is OTDA's responsibility to supply these local offices with necessary

quantities of the current program forms and publications, most of which are updated or reordered several times throughout the year. Timely shipment of these forms and publications is critical to continued effective operations of OTDA's programs.

Ensuring these services require the assistance of a Contractor, who will provide Less than Truckload Shipping Services throughout New York State. The Agreement will commence on June 15, 2017 for a term of five (5) years upon approval by the Office of the State Comptroller.

Offerors must be able to perform all of the work included in **APPENDIX W** (Scope of Work) throughout the Contract Term. Only one Contract will be awarded to a single Offeror for the provisions of all items described in this IFB.

4. MANDATORY REQUIREMENTS:

4.1 Bids will be considered only from bona fide trucking companies possessing transportation equipment and personnel capable of delivering the services described in this IFB.

4.2 The Offeror shall provide evidence that it has maintained an organization capable of performing the services, hereinafter described, for at least the past three (3) years. Acceptable proof of the Offeror's financial viability will be determined by a review of the Offeror's most recent Vendor Responsibility Questionnaire, as required and described in this solicitation at IFB SECTION 5.6 (Vendor Responsibility). Acceptable proof of that the Offeror has maintained an organization capable of performing the work, to include the projected volume and frequency, hereinafter described, in continuous operation for at least the past three (3) years, will be determined based upon a review of the Offeror's references required by IFB SECTION 4.7(References).

4.3 The Offeror shall procure all required insurance(s) as indicated in **Appendix I** (New York State Insurance Requirements). Contractor must provide proof of current insurance, certifications, and licensing within forty-eight (48) hours of notification of selection of award.

4.4 The Offeror shall agree to meet the reporting requirements in **SECTION 5.7** (Minority and Women-Owned Business Enterprise (M/WBE) and Equal Employment Opportunity (EEO) Participation Requirements).

4.5 The Offeror must certify that it has read, understands, and accepts all provisions of "**Appendix A**-Standard Clauses for New York State Contracts," dated January 2014, attached hereto. **Appendix A** contains important information related to the contract to be entered into as a result of this IFB and will be incorporated, without change or amendment, into the contract entered into between OTDA and the selected Offeror. By submitting a response to the IFB, the Offeror agrees to comply with all the provisions of **Appendix A;** documents in **Appendix E** (Required Forms); **Appendix I** (New York State Insurance Requirements); **Appendix Y** (Service-Disabled Veteran-Owned Business Enterprises (SDVOBs) Utilization; and **Appendix Z** (Minority and Women-Owned Business Enterprise (M/WBE) and Equal Employment Opportunity (EEO) Participation Requirements For All NYS Office of Temporary and Disability Assistance Contracts and Grants), all attached hereto, and hereby expressly made a part of this IFB as fully as if set forth at length herein and shall govern any situations not covered by this IFB or **Appendix A**.

4.6 Offeror is advised that the State's intent in having the requirements listed above is to ensure that only a qualified and responsible Offeror is awarded a Contract. OTDA retains the right to request additional information pertaining to the Offeror's ability, qualifications, and procedures used to accomplish all work under this Contract as it deems necessary to ensure safe and satisfactory work.

4.7 References - Each Offeror must provide a minimum of three (3) references in the space provided in **Appendix R** (References). E-mail addresses and phone numbers are required. Offerors have the responsibility to contact references prior to bid submission to ensure references are available and willing to be a reference. If the contact information is not sufficient or the reference is not available after three (3) attempts to contact him/her or he/she is unwilling to be a reference, this requirement will not be met and the Offeror may be considered non-responsive.

A. References must be from corporations, institutions and/or government agencies, such as the General Services Administration (GSA) and Veterans Administration (VA), for which the Offeror provides/provided similar services, and with contracts that met similar terms and conditions.

B. References shall confirm that the Offeror has the ability to perform jobs similar in scope and size, nature and complexity of this IFB.

C. References should supply satisfactory evidence that the Offeror has had previous experience, adequate financial resources, and the organizational capacity to perform the type, magnitude, and quality of work specified in this IFB.

4.8 Offeror's Conference: OTDA will convene a **MANDATORY** Offeror's Conference at OTDA, 93 Broadway in Menands, New York, at the time and date specified in **SECTION 2**, (Calendar of Events). Parties interested in attending the Offerors' Conference should submit their request to attend by email to otda.sm.commercial.trucking@otda.ny.gov no later than 5:00 p.m. E.T, at least five (5) calendar days prior to the date of the Offeror's Conference as specified in **SECTION 2,** (Calendar of Events).

NOTE: Failure to meet any of the mandatory requirements in whole or in part **WILL** result in a bid being found non-responsive and therefor eliminated from consideration. An incomplete bid **MAY** result in a non-responsive bid determination and rejection.

5. ADMINISTRATIVE INFORMATION:

The following administrative information will apply to this IFB. Failure to comply fully with this information may result in your proposal being determined to be "non-responsive."

5.1 OFFEROR'S CONFERENCE:

OTDA's **MANDATORY** Offeror's Conference will be held at 93 Broadway in Menands, New York, at the time and date specified in **SECTION 2**, (Calendar of Events). Parties interested in attending the Offeror' Conference should submit their request to attend by email to otda.sm.commercial.trucking@otda.ny.gov no later than 5:00 p.m. E.T., at least five (5) calendar days prior to the date of the Offeror's Conference as specified in **SECTION 2,** (Calendar of Events). The email should include the following information:

- Name of Organization; and

- Contact Information of up to two participating representatives (names, titles, addresses, phone numbers, and email addresses).

The agenda for the Offeror's conference will be emailed to all Offerors known to OTDA confirming the time and location prior to the Offeror's Conference. Attendance to Offeror's Conference is **MANDATORY.**

5.2 QUESTIONS:

A. To be given consideration by OTDA, all questions, supporting documentation or other matters related to this procurement, must be submitted via e-mail to: otda.sm.commercial.trucking@otda.ny.gov with the following subject line: "Less than Truckload Shipping throughout New York State IFB."

B. Questions must be received no later than 3:00 pm E.T. on the Deadline for Submission of Written Questions date listed in **SECTION 2** (Calendar of Events). Any questions received after this date and time will not be answered unless OTDA determines otherwise, in its sole discretion, based on the best interests of furthering the procurement.

C. Each question must, to the degree possible, cite the specific IFB Section to which it refers. OTDA encourages Offerors to suggest cost saving alternatives at this time, as OTDA may not be able to consider them after the due date for Questions. Should Offerors seek to take issue with the specific bid submission format; the issue should be addressed during the question and answer phase of the procurement. OTDA will e-mail official answers to the questions to all Offerors known to OTDA, as well as post them on OTDA's website: http://otda.ny.gov/contracts/procurement-bid.asp. Responses to the questions will be provided by OTDA on or about the OTDA Responses to Questions date listed in **SECTION 2** (Calendar of Events). Only answers provided in writing by OTDA will be considered official.

D. OTDA's Responses to Questions, along with the information contained in this IFB, any amendment(s) and/or addendum(s) provided by OTDA, will become part of this IFB, and will become part of the resulting Contract. Offerors should consider all information pertaining to this IFB when calculating rates for their bid submission.

NOTE: Procurement documents may, from time to time, be amended and/or addenda(s) issued by OTDA. It is the Offeror's responsibility to become aware of any such amendment(s) and/or addenda(s) prior to submission of a bid. All amendment(s) and/or addenda(s) to procurements will be posted to the OTDA website at http://otda.ny.gov/contracts/procurement-bid.asp. Only OTDA's website will contain all amendment(s) and/or addenda(s) to the procurement documents, including the Official Responses to Questions submitted. Offerors should review OTDA's website prior to submission of a bid to ensure that they have all information required to submit a complete and responsive bid.

5.3 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE PRIMARY POINT OF CONTACT:

New York State Finance Law (SFL) §139-j restricts contact by Offerors with any governmental entity regarding procurement contracts. Subject to certain exceptions set forth in SFL §139-j (3), contacts between Offerors and governmental entity personnel, other than the governmental entity's designated contact person(s), are prohibited during the restricted period of the governmental procurement. Pursuant to State Finance Law §139-j and §139-k, this procurement

includes and imposes certain restrictions on communications between OTDA and an Offeror during the procurement process. An Offeror is restricted from making contacts from the earliest notice of intent to solicit bids through final award and approval of the procurement contract by the Office of the State Comptroller ("Restricted Period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3)(a). Designated staff, as of the date hereof, are identified in this IFB. OTDA employees are required to obtain certain information when contacted during the Restricted Period and make a determination of the responsibility of the Offeror pursuant to these two statutory provisions. Certain findings of non-responsibility can result in rejection for contract award. In the event of two (2) findings within a four (4)-year period, the Offeror is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found on the Office of General Services (OGS) website:

http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html.

The primary point of contact for this procurement is:

Holly Clifton
NYS Office of Temporary and Disability Assistance
Bureau of Management Services
93 Broadway
Menands, NY 12204
Phone: (518) 473-3132
Email Address: otda.sm.commercial.trucking@otda.ny.gov

Other permissible points of contact for this procurement are:

Laurie Eckert
NYS Office of Temporary and Disability Assistance
Bureau of Contract Management
40 North Pearl Street, Suite 12 D
Albany, New York 12243
Phone: (518) 408-3784
Email Address: Laurie.Eckert@otda.ny.gov

John Binseel
NYS Office of Temporary and Disability Assistance
Bureau of Contract Management
40 North Pearl Street, Suite 12D
Albany, New York 12243
Phone: (518) 474-7091
Email Address: John.Binseel@otda.ny.gov

Michael Barber
NYS Office of Temporary and Disability Assistance
Minority and Woman Owned Business Unit
40 North Pearl Street, Suite 12D
Albany, New York 12243

Phone (518)473-5683;
Email Address: Michael.Barber@otda.ny.gov

The following activities are permissible contacts by an Offeror:

A. Submission of a written proposal in response to this IFB,

B. Submission of written questions prior to the deadline for submission of written questions,

C. Complaints filed by an Offeror stating that the designated point of contact has failed to respond in a timely manner,

D. Negotiations following award,

E. Debriefings to Offeror(s) that were not award recipients,

F. Filing of an appeal or protest, or

G. Any contact initiated by OTDA employees.

State Finance Law requires that procurements over $15,000 include a certification by the Offeror that all information provided to the agency is complete, true, and accurate with regard to prior non-responsibility determinations within the past four (4) years based on:

A. Impermissible contacts or other violations of State Finance Law Section §139-j, or

B. The intentional provision of false or incomplete information to a governmental entity.

See **Appendix E** (Required Forms) for Offeror Disclosure of Prior Non-Responsibility Determinations Forms, which must be included with Offeror's proposal.

5.4 ETHICS REQUIREMENTS:

All Offerors and their employees must be aware of and comply with the requirements of the New York State Public Officers Law, and all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations doing business with OTDA, and for applicable Federal laws and regulations of similar intent. In signing this bid, each Offeror guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers, relationships, etc. involving OTDA and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as may be required or permitted by law.

5.5 SUBCONTRACTING:

In the event that the Contractor utilizes subcontractors to perform any of the services pursuant to the Agreement resulting from this IFB, OTDA shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractors of the Contractor prior to their performance of services.

The Contractor shall require all proposed subcontractors to complete such Appendices included in this IFB as are deemed necessary by OTDA prior to any such proposed subcontractor's

performance of services under the Agreement resulting from this IFB. The Contractor acknowledges that this requirement is ongoing for the term of the Agreement, and the Contractor shall be required to disclose to OTDA its intention to enter into any subcontracts for the performance of any services under the Agreement.

Failure to disclose the identity of any and all subcontractors used by the Contractor together with a detailed description of their responsibilities may, at the sole discretion of OTDA, result in a disqualification of the subcontractor or termination of the Agreement resulting from this IFB. The Subcontractor/Supplier Identification form can be found in Appendix E (Required Forms).

The Contractor shall be fully responsible to OTDA for the acts and omissions of its subcontractors and of persons either directly or indirectly engaged by them in connection with the performance of the Agreement resulting from this IFB.

OTDA reserves the right to remove any of the subcontractor's staff if, in OTDA's discretion, such subcontractor's staff is/are not performing in accordance with the Agreement, or for any other reasonable work-related cause. OTDA reserves the right to approve or disapprove any proposed changes in subcontractor's key staff. OTDA in each instance will be provided with a summary of the experience of the proposed subcontractor's key staff member Although Subcontracting for the Less than Truckload Shipping Services is permissible under these IFB requirements. In all cases, OTDA shall consider the selected Offeror to be the sole responsible entity with regard to all provisions of the contract resulting from this IFB.

5.6 VENDOR RESPONSIBILITY:

Section 163 of the State Finance Law (purchasing services and commodities) requires that contracts be awarded, on the basis of lowest price, to a responsive and responsible vendor. The State and courts have determined that responsibility includes integrity, previous performance, legal authority to do business in New York State, and the financial and organizational ability to perform the contract.

A. Vendor Responsibility requires that contractors complete and certify specific information on a Vendor Responsibility Questionnaire as unchanged, or in the event of an award or other changes, update information on an on-going basis. OTDA recommends that Offerors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at: http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at https://portal.osc.state.ny.us .

B. Offerors must provide their New York State Vendor Identification Number when enrolling in the VendRep System and to participate in this IFB. To request assignment of a New York State Vendor Identification Number, Offerors must complete the Substitute Form W-9: Request for Taxpayer Identification Number & Certification, located at http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf. Offerors must e-mail the completed form to Laurie.Eckert@otda.ny.gov. Offeror's NYS Vendor Identification Number will be provided via e-mail within forty-eight (48) business hours, along with further instructions. Offerors, who do not already have a New York State Vendor Identification Number, must submit the completed W-9 prior to submission of bids.

C. Offerors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or by contacting the Office of the State Comptroller's Help Desk for a copy of the paper form. Please call the Office of the State Comptroller Help Desk with any questions at 1-(518) 408-4672 or 1-(866) 370-4672.

D. The Contractor shall at all times during the Contract Term remain responsible. The Contractor agrees, if requested by the Commissioner of OTDA or his/ her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

5.6.1 Suspension of Work (for Non-Responsibility)

The Commissioner of OTDA or his/her designee, in his/her sole discretion, reserves the right to immediately suspend any or all activities under the Contract resulting from this IFB, at any time, when he/she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OTDA or his/her designee issues a written notice authorizing a resumption of performance under the Contract.

5.6.2 Termination (for Non-Responsibility)

Upon written notice to the Contractor, and a reasonable opportunity for the Contractor to be heard with appropriate OTDA officials or staff, the Contract may be terminated if the Contractor is determined by OTDA to be non-responsible. If the Contractor is determined by OTDA to be non-responsible, OTDA shall inform the Contractor of such ruling in writing. The Contractor shall have thirty (30) calendar days from the postmark date or read receipt if sent by email of OTDA's notice to request a meeting with OTDA to explain the ruling and to demonstrate the finding to be incorrect or to correct/resolve any issue impacting Contractor's responsibility. If OTDA's finding remains unchanged after meeting with the Contractor, the Contractor shall be removed from consideration for this contract or the contract shall be terminated in accordance with the applicable contractual provisions.

5.7 Minority and Women-Owned Business Enterprise (M/WBE) and Equal Employment Opportunity (EEO) Participation Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN.

A. NEW YORK STATE LAW

1. Pursuant to New York State Executive Law Article 15-A and 5 NYCRR 140-145 OTDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority and Women-Owned Business Enterprises and the employment of minority group members and women in the performance of OTDA contracts.

2. In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of Minority and Women-Owned Business Enterprises in state procurement contracting versus the number of Minority and Women-Owned Business Enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified Minority and Women-Owned Business Enterprise program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OTDA establishes goals for maximum feasible participation of New York State certified Minority and Women-Owned Business Enterprises ("M/WBE") and the employment of minority group members and women in the performance of New York State contracts.

B. Business Participation Opportunities for M/WBEs

1. For purposes of this solicitation, OTDA hereby establishes an overall goal of 30% for M/WBE participation, 15% for New York State certified Minority Business Enterprise ("MBE") participation and 15% for New York State certified Women Business Enterprise ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide meaningful participation by M/WBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that OTDA may withhold payment pending receipt of the required M/WBE documentation. The directory of M/WBEs can be viewed at: https://ny.newnycontracts.com. For guidance on how OTDA will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

2. In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the M/WBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OTDA may withhold payment from the Contractor as liquidated damages.

3. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to M/WBEs had the Contractor achieved the contractual M/WBE goals; and (2) all sums actually paid to M/WBEs for work performed or materials supplied under the Contract.

4. By submitting a bid or proposal, an Offeror on the Contract ("Offeror") agrees to demonstrate its good faith efforts to achieve its goals for the utilization of M/WBEs by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at , provided, however, that an Offeror may arrange to provide such evidence via a non-electronic method by contacting their contract manager. Please note that the NYSCS is a one stop solution for all of your M/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Offeror's

M/WBE requirements please see the attached M/WBE guidance, "Your M/WBE Utilization and Reporting Responsibilities under Article 15-A."

5. Additionally, an Offeror will be required to submit the following documents and information as evidence of compliance with the foregoing:

   a) An M/WBE Utilization Plan with their bid or proposal. Any modifications or changes to the M/WBE Utilization Plan after the Contract award and during the Term of the Contract must be reported on a revised M/WBE Utilization Plan and submitted to OTDA.

      OTDA will review the submitted M/WBE Utilization Plan and advise the Offeror of OTDA acceptance or issue a notice of deficiency within thirty (30) calendar days of receipt.

   b) If a notice of deficiency is issued, the Offeror will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OTDA a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OTDA to be inadequate, OTDA shall notify the Offeror and direct the Offeror to submit, within five (5) business days, a request for a partial or total waiver of M/WBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

   c) OTDA may disqualify an Offeror as being non-responsive under the following circumstances:

      i. If an Offeror fails to submit an M/WBE Utilization Plan,
      ii. If an Offeror fails to submit a written remedy to a notice of deficiency,
      iii. If an Offeror fails to submit a request for waiver, or
      iv. If OTDA determines, in its sole discretion, that the Offeror has failed to document good faith efforts.

   d) The Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its M/WBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the Term of the Contract to OTDA, but must be made no later than prior to the submission of a request for final payment on the Contract.

   e) The Contractor will be required to submit a Contractor's quarterly M/WBE Contractor Compliance & Payment Report to OTDA, by the 10th day following each end of quarter over the Term of the Contract documenting the progress made toward achievement of the M/WBE goals of the Contract.

C. Equal Employment Opportunity Requirements

1. By submission of a bid or proposal in response to this solicitation, the Offeror agrees with all of the terms and conditions of **Appendix A** – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 for the construction, demolition, replacement, major repair,

renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

2. The Offeror will be required to submit their company's Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement or Form OTDA 4970, to OTDA with their bid or proposal.

3. To ensure compliance with this Section, the Offeror will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Form OTDA 4934 - Staffing Plan) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, on a quarterly basis, or upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that an Offeror may arrange to provide such report via a non-electronic method by contacting their contract manager.

4. Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and any sub-contractors, if applicable, will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

Please refer to **Appendix Z** (Minority and Women-Owned Business Enterprise (M/WBE) and Equal Employment Opportunity (EEO) Participation Requirements For All NYS Office of Temporary and Disability Assistance Contracts and Grants, attached and incorporated by reference herein, for the specific EEO and M/WBE requirements and associated forms required by this procurement. These forms are to be submitted without change to goals specified in the IFB or contract, unless otherwise authorized by OTDA. Copies of the required OTDA Forms are identified in this Appendix and available on OTDA's Internet site at http://otda.ny.gov/contracts/mwbe/forms.asp.

5.8 SERVICE DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (SDVOB) IN STATE CONTRACTING:

1. OTDA is in full accord with the aims and efforts of the State of New York to promote Service-Disabled Veteran-Owned Businesses (SDVOBs), as enacted in 2014 by Article

17-B of the Executive Law. This Law acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, Offerors to this IFB are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the resulting contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

2. Offerors are strongly encouraged, to the maximum extent practical and consistent with legal requirements of the State Finance Law, the Executive Law and any implementing regulations, to use responsible and responsive NYS certified SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Prospective awardees to this IFB are subject to the provisions of Executive Law Article 17-B and the regulations (9 NYCRR Part 252) issued thereunder. Offerors are reminded that they must continue to utilize small, and minority and women-owned businesses (M/WBEs), consistent with current State law (Executive Law Article 15-A).

3. Offerors will complete, Appendix Y, (Form OTDA-4200), Service-Disabled Veteran-Owned Businesses (SDVOBs) Utilization Plan, to demonstrate their proposed utilization of NYS certified SDVOBs as part of their bid/proposal. OTDA has set a goal for SDVOB utilization for this procurement 0 %.

4. The successful Offeror/Contractor will report on the *actual* participation by each SDVOB during the term of the contract to OTDA on a quarterly basis according to policies and procedures to be set by OTDA.

5. NOTE: Information about SDVOB certification and set asides for SDVOB participation in public procurement can be found at: http://www.ogs.ny.gov/Core/SDVOBA.asp, which provides certification information and guidance for State agencies in making determinations and administering set asides for procurements from SDVOBs.

5.9 INSURANCE REQUIREMENTS:

Within forty-eight (48) hours of notification of award the Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the Term of the Contract, policies of insurance as set forth in **Appendix I** (New York State Insurance Requirements), written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York ("admitted" carriers) with an A.M. Best Company rating of "A-" or better or as acceptable to OTDA.

5.10 TAX LAW §5-A:

Each Offeror is required to file the completed and notarized Form ST-220-CA with OTDA certifying that the Offeror filed a ST-220-TD with the NYS Department of Taxation and Finance (DTF). Offerors shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. Failure to make either of these filings may render an Offeror non-responsive. Website links to the Contractor certification forms and instructions are provided below.

NOTE: NYS Department of Taxation and Finance receives the completed Form ST-220-TD, **NOT** OTDA. OTDA **ONLY** receives the Form ST-220-CA.

A. ST-220-CA

Form ST-220-CA provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at the following Department of Taxation and Finance (DTF) web site http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf and in **Appendix E** (Required Forms).

ST-220-TD

B. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/2007/fillin/st/st220td_507_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Vendors may call DTF at (518) 485-2889 for any/all questions relating to Section 5-a, of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: http://www.tax.ny.gov/.

5.11 FREEDOM OF INFORMATION LAW:

All Bids upon submission will become the property of OTDA, except late Bids, which if rejected, will be returned unopened. During the evaluation process, the content of each bid will be held in confidence and details of any bid will not be revealed (except as may be required under the New York State Freedom of Information Law: NYS Public Officers Law, Article 6). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information in which the disclosure of would cause injury to the competitive position of commercial enterprise. This exception would be effective during and after the evaluation process. Information relating to Offeror price submissions, including commercial, book or list pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary by the Offeror after contract final approval.

Should an Offeror feel the firm's bid contains any trade secrets or other confidential or proprietary information; Offerors must specifically identify those parts of the bid that is claimed as a trade secret or other confidential or proprietary information, and must submit a request to exempt such information from disclosure. Such request must be in writing, must state the reason(s) why the information should be exempt from disclosure and must be provided at the time of submission to the subject information.

Requests for exemption of the entire content of a bid from disclosure have generally not been found to be meritorious and are discouraged. Offerors are cautioned to limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, in which the disclosure of would cause a substantial injury to the competitive position of the firm.

Use of generic trade secret legends encompassing substantial portions of the Bid or simple assertions of trade secret interest without substantive explanation of the basis therefore will be regarded as non-responsive to this requirement for specificity and explanation.

Non-responsive requests for exemption from public access will not be considered by OTDA in the event a Freedom of Information request for Bid information is received.

5.12 RIGHT TO MODIFY OR CANCEL IFB:

OTDA reserves the right to modify and/or cancel any or all parts of this IFB, including but not limited to, the date and time by which bids must be submitted and received by OTDA, at any time prior to the Deadline for Submission of Bids listed in **SECTION 2.0** (Calendar of Events). Modifications to this IFB shall be made by issuance of amendment(s) and/or addenda(s).

Prior to the Deadline for Submission of Bids, any such clarifications or modifications as deemed necessary by OTDA will be posted to the OTDA website and subsequent e-mail notification will be provided to all interested Vendors known to OTDA. OTDA reserves the right to cancel this IFB, in whole or in part, and to reject any/all bids received in response to this IFB.

If the Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in this IFB, the Offeror shall immediately notify OTDA, in accordance with **SECTION 5.3** (Office of Temporary and Disability Assistance Primary Point of Contact), of such error in writing and request clarification or modification of the document.

If, prior to the Deadline for Submission of Bids, an Offeror fails to notify OTDA of a known error or an error that reasonably should have been known, the Offeror shall assume the risk of bidding. If awarded the contract, the Offeror shall not be entitled to additional compensation by reason of the error or its correction.

5.13 RIGHTS AS TO ALL BIDS

OTDA reserves all rights with respect to bids, including, but not limited to the following:

A. Cancel this IFB in whole or in part at its discretion.

B. Reject any/all bids received in response to this IFB.

C. Reissue a modified version of this IFB.

   NOTE: OTDA's right to issue modifications, etc., permits any addition or deletion of requirements as OTDA may deem appropriate. Any such modifications issued on or before the Deadline for Submission of Bids shall be posted on OTDA's website at http://otda.ny.gov/contracts/procurement-bid.asp.

D. Amend any part of this IFB, at any time prior to award, upon written notification to potential Offerors.

E. Utilize any/all ideas submitted in the Bid received, unless those ideas are covered by legal patent or proprietary rights and the Offeror has notified OTDA in writing of such legal patent or proprietary rights.

F. Disqualify any Offeror whose conduct and/or bid fails to conform to the requirements of this IFB.

G. Direct any Offeror to submit bid modifications addressing subsequent IFB amendments.

H. Accept all or part of a selected Contractor's bid based on Federal and State requirements.

I. Eliminate any requirements that are not met by all Offerors upon notice to all parties submitting bids.

J. Correct any arithmetical or typographical errors in any bid, in the event that the fees or costs in two or more bids are not comparable, make appropriate adjustments to render the fees and costs comparable.

K. Waive any immaterial deviation or defect in a bid. A waiver of immaterial deviation or defect shall in no way modify this IFB documents or excuse the Offeror from full compliance with this IFB requirements.

L. Change any of the scheduled dates, including start dates, stated herein upon notice to all Offerors.

M. Request best and final offers from each Offeror, whose bid was deemed by OTDA as responsive to the requirements of this IFB.

N. Reject any bid that contains false or misleading statements or that provides references that do not support an attribute, condition or qualification claimed by the Offeror.

O. Terminate review of bids found nonresponsive or financially inappropriate.

P. Rescind a contract award if a signed contract does not result from good faith negotiations with OTDA within a reasonable period of time as determined by OTDA in its sole discretion.

Q. Require an Offeror to clarify its bid, to assure a full understanding of the bid, and to request revisions to all bids from Offerors susceptible to an award prior to award of the contract. Any request for clarification or revision is solely at the discretion of OTDA.

R. Require an Offeror to demonstrate, to the satisfaction of OTDA, its ability to perform the services required by this IFB.

S. Require any or each Offeror to provide an oral presentation of its bid.

T. Require an on-site visit.

U. Use Offeror's information obtained through site visits, management interviews, and the State's investigation of Offeror's qualifications, experience, ability or financial standing, and any material or information submitted by the Offeror in response to the agency's request for clarifying information in the course of evaluation and/or selection under this IFB.

V. Negotiate additional terms and conditions in the Contract resulting from this IFB which are in OTDA's best interest and which do not substantially alter the requirements of this IFB.

W. Proceed to the next lowest-price qualified responsible Offeror in the event that the Offeror who had achieved lowest price prior to contract award cannot satisfy the requirements as stated in this IFB.

X. OTDA shall have unlimited rights to disclose or duplicate, for any purpose whatsoever, all information or other work product developed, derived, documented or furnished by the Offeror under any Contract resulting from this IFB.

Y. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of OTDA. OTDA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use such documentation and to authorize others to do so.

5.14 DEBRIEFING:

Consistent with New York State Finance Law §163(9)(c), a debriefing may be requested by the unsuccessful Offeror within fifteen (15) calendar days of release by the state agency of a notice in writing or electronically that the Offeror's offer is unsuccessful.

(i) Such notice shall be provided to all unsuccessful Offerors by OTDA for the specific procurement.

(ii) OTDA, upon a request made within fifteen (15) calendar days of release of the written or electronic notice from the unsuccessful Offeror for a debriefing, shall schedule the debriefing to occur within a reasonable time of such request. Debriefings shall be conducted by OTDA with the unsuccessful Offeror in-person. The parties, however, may mutually agree to utilize other means such as, but not limited to, by telephone, video-conferencing or other types of electronic communications. OTDA's personnel participating in the debriefing discussion shall have been involved with and knowledgeable about the procurement and the evaluation and selection of the successful Offeror.

(iii) Such debriefing shall include, but need not be limited to:

(A) the reasons that the proposal, bid or offer submitted by the unsuccessful Offeror was not selected for award;

(B) the qualitative and quantitative analysis employed by the agency in assessing the relative merits of the proposals, bids or offers;

(C) the application of the selection criteria to the unsuccessful Offeror's proposal; and

When the debriefing is held after the final award, the debriefing shall also include the reasons for the selection of the winning proposal bid or offer.

The debriefing shall also provide, to the extent practicable, general advice and guidance to the unsuccessful Offeror concerning potential ways that their future proposals, bids, or offers could be more responsive.

5.15 PROTESTS:

Procedure for Handling of Protests/Appeals of Bid Specifications and Proposed Awards.

a) Formal Written Protests

Final agency decisions or recommendations for award may be reconsidered only in the context of a formal written protest as described below. Any Offeror or prospective Offeror who believes that there are errors or omissions in the procurement process or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to OTDA and request administrative relief concerning such action ("Formal Protest").

I. A Formal Protest must be submitted in writing to OTDA to the Director of OTDA Bureau of Contract Management (BCM), 40 North Pearl Street, Suite 12D, Albany, New York 12243.

II. A Formal Protest must include a statement of all legal and/or factual grounds for disagreement with an OTDA specification or purchasing decision; a description of all remedies or relief requested; and copies of all applicable supporting documentation.

b) Deadline for Submission of Formal Protests

I. OTDA must receive Formal Protests concerning errors, omissions or prejudice including patently obvious errors in the bid specifications or documents at least ten (10) calendar days before the Deadline for Solicitation for Bids, listed **SECTION 2** (Calendar of Events)**.**

II. OTDA must receive Formal Protests concerning a pending contract award within seven (7) calendar days after the protesting party ("Protester") knows or should have known of the facts which form the basis of the protest.

c) Review and Final Determination of Protests

I. Formal Protests will be resolved through written correspondence. However, the Protester may request a meeting to discuss a Formal Protest or OTDA may initiate a meeting on its own motion, at which time the participants may present their concerns. OTDA may elect to decline such a meeting.

II. Where further formal resolution is required, the Director of BCM shall designate an OTDA employee ("Designee") to determine and undertake the initial resolution or settlement of any protest.

III. The Designee will conduct a review of the records involved in the Formal Protest, and provide a memorandum to the Director of BCM summarizing the facts as determined by the Designee, an analysis of the substance of the Formal Protest, and a preliminary recommendation. The Director of BCM shall: (a) evaluate the Designee's findings and recommendations, the procurement record, and (b) review the materials presented by the Protestor and/or any materials required of or submitted by other Offerors, (c) if necessary, consult with agency counsel, and (d) prepare a response to the Formal Protest ("Protest Decision").

d) A copy of the Protest Decision, stating the reason(s) upon which it is based and informing the Protester of the right to appeal an unfavorable decision to the Office of the State Comptroller (OSC), shall be sent to the Protester or its agent within forty-five (45)

calendar days of receipt of the Formal Protest, except that upon notice from OTDA to the Protester that such period may be extended. The Protest Decision will be recorded and included in the procurement record, or otherwise forwarded to OSC upon issue.

e) Appeals

Upon receipt of OTDA's Protest Decision, a Protester has ten (10) business days to file an appeal of the determination with the OSC Bureau of Contracts. The appeal must be in writing, and be filed with Charlotte Davis, Director, Bureau of Contracts at the following address: New York State Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany, New York 12236. The Protester's appeal must contain an affirmation in writing that a copy of the appeal has been served on OTDA, the successful Offeror (except where the contracting agency upholds the protest and the successful Offeror is the appealing party) and any other party that participated in the protest. In its appeal, the interested party shall set forth the basis on which it challenges the contracting agency's determination. The OSC Bureau of Contracts will conduct its determination of the appeal in accordance with its established policy.

f) Reservation of Rights and Responsibilities of OTDA

OTDA reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and OTDA. If OTDA determines that there are compelling circumstances, including the need to proceed immediately with the contract award in the best interest of the State, then these protest procedures may be suspended and such decision shall be documented in the procurement record. OTDA will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

g) Procurement Activity Prior to Final Protest Activity

Receipt of a Formal Protest shall not generate a stay action on the procurement unless otherwise determined by OTDA, in its sole discretion. If a Formal Protest or appeal is received by OTDA on a recommended award prior to the underlying contract being forwarded to the Office of the State Comptroller (OSC), notice of receipt of the protest and appeal will be included in the procurement record forwarded to OSC. If a final Protest Decision or final decision on appeal has been reached prior to transmittal to OSC, a copy of the final decision will be included in the procurement record and forwarded with the recommendation for award.

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

h) Record Retention of Bid Protests

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

5.16 TRANSITION:

A. Upon expiration of the Agreement resulting from this IFB, the Contractor agrees to cooperate in assisting OTDA in the transition of the services provided through the Agreement resulting from this IFB, to any new contractor selected for subsequent contract periods. The Contractor shall, upon the appointment of the successor contractor, provide access to such successor contractor all necessary records in the Contractor's possession relating to the Less than truckload shipping services provided under this Agreement. At OTDA's request, the Contractor shall, at current Industry Standards hourly rates, as determined by the New York State Department of Labor, for appropriate job titles, make appropriate staff available to OTDA and to the successor contractor during normal business hours to answer questions regarding such records and the services which have been provided by the Contractor under the Agreement resulting from this IFB. The Contractor shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that Less than truckload shipping services are uninterrupted and are not adversely impacted by the change in Contractor.

5.17 ADDITIONAL INFORMATION:

A. Neither illegal drug use of any type nor consumption of alcoholic beverages, by the Contractor, employees, subcontractors or other personnel shall be permitted while performing any phase of work under the Contract Agreement resulting from this IFB. Contractor must certify that they will maintain a drug-free workplace, Appendix E (Required Forms).

B. The State shall not be liable for any expense incurred by the Contractor as a consequence of any traffic infraction or parking violations attributable to Contractor its employees and subcontractors.

C. OTDA's interpretation of specifications shall be final and binding upon the Contractor.

B. **IMPORTANT NOTICE TO POTENTIAL OFFERORS**: Receipt of the bid documents does not indicate that OTDA has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on OTDA's evaluation of your bid submission compared to the specific requirements and qualifications contained in the bid documents.

6. BID CONTENT/SUBMISSION/DELIVERY:

6.1 BID CONTENT:

A. Quantities – The quantities stated in the IFB and in **Appendix P** (Pricing Schedule) are estimated ANNUAL quantities. The contract resulting from the IFB shall be for the actual quantities ordered during the course of the contract term. OTDA makes no guarantees regarding the quantities actually ordered throughout the Term of the contract.

B. Incurred Costs - OTDA is not liable for any cost incurred by Offerors in preparation for or prior to the approval of an executed contract by the New York State Office of the State Comptroller. No cost will be incurred by OTDA for the Offeror's participation in any pre-contract award activity.

C. The prices submitted on the Offeror's **Appendix P** (Pricing Schedule) must include the Offeror's complete costs for reimbursement purposes for the delivery of all services as specified in the **Appendix W** (Scope of Work). Prices shall include any ancillary fees and costs including permits, licenses, insurance, etc. and services not explicitly stated in these specifications, but necessarily attendant thereto.

D. The prices submitted by Offerors for each item listed in **Appendix P** (Pricing Schedule), once approved by OTDA and the Office of the State Comptroller, are fixed for the entire Term of the Contract and are not subject to change other than as permitted in Article 4 of the Final Agreement, (IFB Section 10 (Contract Terms and Conditions).

E. Prior to submitting Offeror's Appendix P (Pricing Schedule), Offerors must consider all requirements as set forth in this IFB, along with OTDA's Responses to Questions, and any amendment(s) and/or addendum(s) provided during the bidding process.

F. The Contractor shall provide to OTDA, upon request, services at or below the awarded bid rate. The Contractor shall refer to the specifications outlined in **Appendix W** (Scope of Work)**.**

6.2 BID SUBMISSION INSTRUCTIONS:

A. Submit ONE (1) complete bid package, consisting of: TWO (2) originals of all forms listed in **Appendix E** (Required Forms); **Attachment A** (Offeror's Certified Statements); FIVE (5) original Contract Signature pages each individually notarized; and FIVE (5) original signed Appendix P (Pricing Schedules), signed by an authorized signatory (as attested to on the List of Authorized Signatures, in **Attachment A,** where indicated and notarized where indicated. This package shall be the official BID proposal. An identical electronic copy of the bid package and Contract Signature page must also be provided on a CD or Flash Drive in PDF Format.

B. Content of Bids - To be considered responsive, the Offeror must submit a complete response that satisfies all of the requirements stated in this IFB.

C. Bids must conform to the bid submission requirements specified herein. A bid that fails to conform may be considered non-responsive and may be rejected.

D. The hardcopy originals and an electronic CD or Flash drive of the bid must be received by OTDA on or before (3:00 P.M. ET) on the Deadline for Submission of Bids as noted in **SECTION 2** (Calendar of Events). Any bid made in response to this IFB not received by 3:00 P.M. ET on or before the closing date for receipt of bids may be considered non-responsive and may not be accepted at OTDA's sole discretion.

E. Bid Deviations - Offerors must submit bids in strict accordance with bid submission instructions herein and the **Appendix P** (Pricing Schedule). Material Alterations in the bid submission format will not be accepted and will result in rejection of the bid submission.

6.3 BID DELIVERY:

All bids received by OTDA must be packaged, sealed and submitted with a label on the outside of the package or shipping container with the following information:

Offeror's name and address
Name of IFB as listed on Front Sheet
"Deadline for Submission of Bids" as listed in **SECTION 2** (Calendar of Events)
The following Statement**: SEALED BID FOR THE LESS THAN TRUCKLOAD SHIPPING THROUGHOUT NEW YORK STATE-DO NOT OPEN UNTIL WEDNESDAY, NOVEMBER 30, 2016.**

A. In the event that an Offeror fails to provide such information in the subject line or on the return bid envelope or shipping material, OTDA reserves the right to open the shipping package or envelope to determine the procurement that it is intended for. The Offeror shall have no claim against OTDA arising from such opening and such opening shall not affect the validity of the bid or the procurement.

B. Notwithstanding OTDA's right to open a bid to ascertain the procurement information as stated above, the Offeror assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with such requirements.

C. Offerors assume all risks for timely, properly Bid submitted deliveries. Bids must be received prior to or on the Deadline for Submission of Bids listed in **SECTION 2** (Calendar of Events).The Offeror shall have no claim against OTDA arising from misdirected or incomplete delivery that results in the Offeror missing the bid submission due date/time. Neither facsimile nor electronic bid submissions are acceptable and will not be considered.

D. The original bid package must be received by:

Laurie Eckert
Bureau of Contract Management
New York State Office of Temporary and Disability Assistance
40 North Pearl Street, Suite 12D
Albany, New York 12243
(518) 408-3784

E. Offerors must allow sufficient mail delivery time to ensure receipt of their bid by the Deadline for Submission of Bids specified in **SECTION 2** (Calendar of Events).

F. Hand Deliveries – Offerors should allow extra time to comply with the security procedures in effect at 40 North Pearl Street, in Albany, New York when hand delivering bids or using deliveries by independent courier services.

Note: Offerors must provide Identification to the security guards for inspection. Offerors assume all risks for timely, properly submitted deliveries.

G. To access the OTDA building at 40 North Pearl Street, all visitors must check in with the security guard stationed in the lobby, and provide the name and phone number of the

OTDA contact listed in **SECTION 6.3 (D)** above. If OTDA's contact is not available, call 518-486-6352 for assistance.

H. All bids received on or before the Deadline for Submission of Bids shall become the property of OTDA and will not be returned to the Offeror.

I. Period of Validity - The Offeror's must certify in **Attachment A** (Offeror's Certified Statements) that the provisions of its bid will remain valid for A minimum of one hundred and eighty (180) calendar days from the "Deadline for Submission of Bids" specified in **SECTION 2** (Calendar of Events) is required.

7. METHOD OF AWARD:

All bids received shall be subject to evaluation by OTDA, assisted by such other personnel as deemed appropriate, for the purpose of selecting the Offeror with whom a contract will be executed. Only bids judged to be responsive to the submission requirements set forth in **SECTION 6.2** (Bid Submission Instructions) of this IFB will be evaluated.

8. EVALUATION POLICY:

OTDA is committed to a fair and impartial evaluation process characterized by:

A. Requirements based upon OTDA's substantiated needs;

B. Equal opportunity for incumbent and non-incumbent Offerors; and

C. Evaluation by a structured impartial process.

9. EVALUATION PROCESS:

One contract will be awarded to one responsive and responsible Offeror submitting the lowest bid total in accordance with the IFB for the provision of **Appendix W** (Scope of Work). Award will be based on an evaluation process that consists of the following:

Bid Opening/ Ranking

Administrative Review

Responsiveness and Responsibility Determination of Apparent Low Offeror

9.1 BID OPENING/RANKING:

A. The bid opening will be conducted after the Deadline for Submission of Bids stated in **SECTION 2** (Calendar of Events). All timely bids will be opened and recorded. A minimum of two (2) OTDA staff will conduct the bid opening, one to open and announce the bids and one to record them.

B. Bids will be ranked according to the **Appendix P**: (Pricing Schedule) Grand Total.

C. The lowest bid will be screened to ensure that the bid is compliant with the content requirements set forth in **SECTION 6.0** (Bid Content/Submission/Delivery), and includes all forms listed in **Appendix E** (Required Forms).

D. **Appendix E** (Required Forms) is included to ensure compliance with all the IFB requirements. Offerors will be given an opportunity to correct any error of a procedural or non-substantive nature that does not give them a competitive advantage.

E. All pricing should be the lowest pricing offered based on anticipated estimated annual pounds per region as stipulated in **APPENDIX P** (Pricing Schedule).

F. In the event of a tie bid, the decision must be made in accordance with the State Finance Law section 163(10)(a) and as specified in this IFB.

G. The apparent lowest bid submission will be reviewed to ensure the Offeror is both responsive and responsible in accordance with Section 163 of the New York State Finance Law.

9.2 ADMINISTRATIVE REVIEW:

OTDA will ensure that the bid submission is complete and accurate. This may include confirming that the Offeror understood the specifications and can perform/deliver at the bid price, particularly if there are large variances in the bid prices between the apparent low bid and the next low bid, and ascertaining that all documents are submitted and appendices are signed.

9.3 RESPONSIVE AND RESPONSIBLE DETERMINATION:

Section 163 of the State Finance Law (SFL) requires that contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible Offeror." Section 163(9) of the SFL requires that prior to making an award of a contract each contracting entity shall make a determination of responsibility of the proposed contractor. The lowest bid submission will be further evaluated to determine responsiveness and responsibility of the Offeror. Details on Vendor Responsibility procedures and requirements are outlined in **SECTION 5.6** (Vendor Responsibility)**.**

Responsive Determination: OTDA will verify that the apparent lowest Offeror is responsive by meeting all Mandatory Requirements and specifications as stated in **SECTION 4** (Mandatory Requirements).

Responsible Determination: OTDA will verify that the apparent lowest bid is responsible in accordance with section 163(9) of the SFL. Responsibility determinations involve a review of the following four major categories:

A. The business must possess the integrity to perform the contract. Factors considered include criminal indictments, criminal convictions, civil fines and injunctions imposed by government entities, anti-trust investigations, ethical violations, tax delinquencies, debarment or suspension by a government entity, prior determinations of integrity-related non-responsibility, etc.

B. The business entity performed at acceptable levels on other government contracts. Factors considered include reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc.

C. The business entity must be legally capable of performing the contract. Factors considered include authority to do business in New York State, licensing (e.g. with the Education Department or Department of State), debarment by the State Labor Department due to a prevailing wage violation, etc.

D. The business entity must be financially and organizationally capable of performing the contract. Factors considered include assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, existence of appropriate accounting and auditing procedures for control of property and funds, etc.

If requested, Offeror must document its ability to perform the services required of a Contract providing services similar in scope of this IFB through submission of financial statements documenting its service history. The Offeror must be financially stable and able to substantiate the financial statements of its company. In addition to Less than Truckload Shipping services, current financial statements may be requested and must be provided within five (5) business days. OTDA reserves the right to request additional documentation from the Offeror and to request reports on financial stability from independent financial rating services. OTDA reserves the right to reject any Offeror who does not demonstrate financial stability sufficient for the scope of this bid.

If the lowest bid is submitted by an Offeror who is found to be non-responsive or non-responsible, the bid will be rejected and the next lowest bid will be reviewed. Prior to finding an Offeror non-responsible, OTDA will provide written notice, together with an opportunity to rebut the concerns over the Offeror's responsibility, either in writing or at a meeting with the prospective contracting entity.

10. NOTIFICATION OF AWARD

The contract resulting from this IFB is subject to review and approval first by the Office of the Attorney General (OAG), and second by the Office of the State Comptroller (OSC), in accordance with State Finance Law Section 112. The contract will not be fully executed until it is approved by OSC.

News releases or any other disclosure relating to this contract award shall not be made by any Offeror or its agent without the written pre-approval of OTDA. Such unauthorized release will be considered a material breach of this Agreement.

In addition to sending out award and non-award letters to Offeror's submitting bids by the date/time specified in **SECTION 2** (Calendar of Events), the bid results will be posted on OTDA's website (www.OTDA.ny.gov).

11. CONTRACT TERMS AND CONDITIONS

The successful Offeror shall enter into an Agreement with OTDA, subject to the terms and conditions found on the pages following immediately hereafter. These terms and conditions, the content of the selected Offeror's bid, together with this IFB and any amendments thereto, and formal questions and answers passed during the bidding process, will be made a part of the final agreement, hereinafter referred to as the "Agreement." The Five (5) original Contract Signature Pages signed by an authorized signatory where indicated and notarized where indicated, as required by IFB **SECTION 6.2(A)** (Bid Submission Instructions), shall be the official Contract Signature Page for the Agreement.

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STATE OF NEW YORK

OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE CONTRACT NUMBER C021933

LESS THAN TRUCKLOAD SHIPPING THROUGHOUT NEW YORK STATE

THIS AGREEMENT (hereinafter "Agreement" or "Contract") is made by and between the New York State Office of Temporary and Disability Assistance (hereinafter "OTDA"), and the Contractor ("Contractor" also known as the "Vendor") as defined in the IFB, is effective June 15, 2017, upon approval by the New York State Office of the State Comptroller after execution by all parties.

W I T N E S S E T H

WHEREAS, OTDA requires Less than Truckload Shipping throughout New York State; and

WHEREAS, to meet this requirement OTDA, issued an Invitation for Bids, for the purposes of entering into an Agreement for the issuance of Less than Truckload Shipping throughout New York State; and

WHEREAS, the Contractor reviewed and analyzed OTDA's needs as contained in said IFB, and submitted a Proposal;

WHEREAS, the Contractor is engaged in the business of providing services, maintenance and support, with the skills necessary to fulfill the needs pursuant to the terms of this AGREEMENT;

WHEREAS, OTDA, in reliance upon the expertise of the Contractor, selected the Contractor as the successful respondent to , and desires to engage the Contractor to fulfill OTDA's needs under the terms and conditions hereinafter set forth; and

WHEREAS, the Contractor is ready, willing and able to provide such services.

NOW, THEREFORE, in consideration of the terms set forth and the mutual covenants and obligations of the parties, the parties do hereby agree as follows:

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ARTICLE 1

AGREEMENT DURATION AND AMENDMENT

This Agreement shall commence upon June 15, 2017 or the date of final required approval by the Office of the State Comptroller, whichever is later, and shall continue for a five (5) year term, subject to the termination provisions of Article 20 (Termination of the Agreement).

OTDA shall have the right to re-negotiate the terms and conditions of this Agreement in the event applicable New York State (State) or Federal statutes, policy, rules, regulations and/or guidelines are altered from those existing at the time of the execution of this Agreement, in order to be in continuous compliance therewith. It shall be understood that, in the event OTDA and the Contractor are unable to mutually agree to a set of terms and conditions through re-negotiation, the terms and conditions required to continue this Agreement in compliance with revised State or Federal statutes, policy, rules, regulations and/or guidelines shall be decided by the Commissioner of OTDA or his/her duly authorized representative(s) or designee(s), in accordance with Article 20 (Termination of the Agreement) herein.

Unless otherwise provided, this Agreement is subject to amendment only upon mutual consent of the parties, reduced to writing and approved by the Comptroller of the State of New York.

ARTICLE 2

EXECUTORY PROVISION

The New York State Finance Law, Section 112, requires that any contract made by a State department, which exceeds fifty thousand dollars, be first approved by the Comptroller of the State of New York before becoming effective. The parties recognize that the Agreement is wholly executory until and unless approved by the Comptroller of the State of New York.

This Agreement, attachments and the appendices attached hereto constitute the entire agreement between the parties with respect to the subject matter; all other prior agreements, representations, statements, negotiations and undertakings are superseded hereby. Any

provision of this Agreement that imposes or contemplates continuing obligations on a party will survive the expiration or termination of this Agreement. It is understood that unless the context clearly indicates otherwise, all references herein to this Agreement shall be deemed to include the Attachments and Appendices attached hereto, subject to Article 3 (Document Incorporation and Order of Precedence) of this Agreement.

ARTICLE 3

DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

This Agreement resulting from the Less than Truckload Shipping throughout New York State IFB consists of: the body of the Agreement; and the attachments and appendices attached to or incorporated by reference in this Agreement body.

In the event of any inconsistency in or conflict among the document elements of this Agreement identified in this Section, such inconsistency or conflict shall be resolved in the following order of precedence:

1. **Appendix A**-Standard Clauses for New York State Contracts;
2. Amendments to the Agreement;
3. **Agreement** - (this document);
4. **Attachment A**-Amendments to the Less Than Truckload Shipping throughout New York State Invitation for Bid, to include the Questions and Answers;
5. **Appendix P** – Pricing Schedule; and
6. **Attachment B**- The Less Than Truckload Shipping throughout New York State Invitation for Bid, including Clarifications thereto, all documents listed in Appendix E (Required Forms), and the Offeror's Certified Statements in Attachment A (Offeror's Certified Statements).

ARTICLE 4

COMPENSATION

OTDA shall compensate the Contractor pursuant to this Agreement in accordance with the Pricing Schedule as set forth in the Contractor's Bid, (**Appendix P**) upon receipt of each approved shipment.

The prices set forth in this Agreement may be adjusted following both the third and fourth year in accordance with the provisions of this Article. There shall be no price adjustment during the first three (3) years of the contract.

The Contractor may be granted an increase or decrease after the third year, dependent upon fluctuations in the latest published copy of the Consumer Price Index for All Urban Consumers (CPI-U): U.S. City average by, Expenditure Category "All Items," as published by the U S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212, for the twelve (12) month period immediately preceding the expiration date or 3.0 %, whichever is less.

The CPI-U is available through the Bureau of Labor Statistics web site at http://stats.bls.gov/.

ARTICLE 5

PAYMENT AND INVOICES

Invoicing will be submitted in arrears by the Contractor using the standard New York State invoice form (Form AC3253-S Revised 8/14). Timeliness of payment and any fees to be paid to the Contractor for late payment shall be governed by the laws of the State of New York. To ensure the timely processing and payment of contract invoices, they must be submitted to the Business Service Center (BSC).

Submit invoices via one of the following methods:

1. Preferred Method: Email a PDF copy of your signed invoice to the BSC at:

   AccountsPayable@ogs.ny.gov with a subject field as follows:

   Subject: Unit ID: TDA01 Contract # C021933

   (Note: do not send a paper copy in addition to your emailed invoice.)

2. Alternate Method: Mail invoices to BSC at the following U.S. postal address:

   NYS Office of Temporary and Disability Assistance
   Unit ID: TDA01
   c/o NYS OGS BSC Accounts Payable
   Building 5, 5th Floor
   1220 Washington Ave.
   Albany, NY 12226-1900

Include all Required Information on invoices:

Contractor's SFS Vendor Number;

Invoice number and date;

Unit ID# TDA01;

Name of the NYS Agency to which you provided the services: NYS Office of Temporary and Disability Assistance;

Contract #C021933; and

The period of service for which the claim is made or reference to deliverable completed.

If prompt payment discounts are applicable, the terms of the discounts must be included on all invoices as well as the amounts due if OTDA meets the terms, and the date for which the prompt payment discount(s) expires.

Invoices that do not comply with the above guidelines will be returned to the Contractor for corrections.

NOTE: do NOT include contractually required supporting documentation with the invoice submitted to the BSC.

A copy of the invoice sent to the BSC and all contractually required supporting documentation, such as reports, receipts, timecards and other schedules are to be sent to the contact listed below. Lack of submission of any contractually required supporting documentation will "stop the clock" in determining the statutorily prescribed period for invoice payment.

Invoices and the supporting documents required by OTDA are to be sent to the following address, unless directed otherwise:

NYS Office of Temporary and Disability Assistance
Attn: Holly Clifton
Bureau of Management Services
93 Broadway
Menands, New York 12204

The State shall not be liable for the payment of any taxes under this Agreement, however, designated, levied or imposed. No person, firm, or corporation is exempt from paying the State truck mileage, unemployment insurances taxes and other Federal, State, and local taxes to which the Contractor is subject.

The State represents that the Contractor is not liable for the payment of any transfer taxes including, but not limited to, sales taxes upon goods or services purchased for or provided for the State. For purposes of tax free transactions under the Internal Revenue Code, the New York State Registration Number is 14740026K.

Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, unless payment by paper check is expressly authorized by OTDA, in OTDA's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices as established by the State Comptroller.

The Contractor shall also comply with the State Comptroller's requirement to file a Substitute Form W-9. The form and the instructions for completing the W-9 can be found at the OSC's website: http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf.

ARTICLE 6

NOTICES

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

- via certified or registered United States mail, return receipt requested,
- by facsimile transmission,
- by personal delivery,
- by expedited delivery service, or

- by e-mail.

Such notices to OTDA shall be addressed as follows, unless directed otherwise:

State of New York Office of Temporary and Disability Assistance
NYS Office of Temporary and Disability Assistance
Attn: Holly Clifton
Manager, Bureau of Management Services
93 Broadway
Menands, New York 12204
Telephone Number: (518) 473-3132
Facsimile Number: (518) 402-0084
E-Mail Address: otda.sm.commercial.trucking@otda.ny.gov

Such notices to the Contractor shall be addressed to persons so designated by the Contractor.

Should either party change their contact information, notification to the other party must be sent within fifteen (15) business days of such change.

Unless otherwise noted, all communications with the Contractor shall be to the person designated in the IFB document section NOTICE TO OFFEROR, Offeror Information.

Unless specified otherwise in this Agreement, notices shall be effective when received.

ARTICLE 7

SERVICES

OTDA hereby retains the Contractor to perform the services, and the Contractor hereby agrees to perform the services, which shall include all deliverables, work and/or work products, as described in the IFB and **Appendix W** (Scope of Work) of the IFB.

Nothing contained herein shall prohibit OTDA from contracting at any time with a third party or from performing any of the work itself or through other State entities, for any services that otherwise may be requested or required of the Contractor pursuant to this Agreement, and the Contractor shall not assert an exclusive right to perform such services.

ARTICLE 8

STANDARD CONTRACT PROVISIONS

Standard Clauses for All New York State Contracts, attached hereto as **Appendix A**, is hereby fully incorporated into this Agreement.

The parties agree that this Agreement shall be construed and interpreted in accordance with the Laws of the State of New York. The Contractor shall be required to bring any legal proceeding against OTDA arising from this Agreement in to New York State courts.

Should any provision of this Agreement be declared or found to be illegal, unenforceable, ineffective, or void, then each party shall be relieved of any obligation arising from such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.

No term or provision of the Agreement shall be deemed waived and no breach consented to, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under this Agreement shall not constitute or consent to, a waiver of, or excuse for any other, different or subsequent breach.

It shall be understood that the Contractor is an independent contractor; the Contractor, its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of OTDA.

ARTICLE 9

ASSURANCES

The Contractor warrants that it has carefully reviewed the needs of OTDA, as described in the IFB and its attachments and otherwise communicated in writing by OTDA to the Contractor, that it has familiarized itself with OTDA's specifications, and warrants that it can provide such services as represented in its Bid and the other documents incorporated into this Agreement.

The Contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.

The Contractor warrants and affirms that the terms of this Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under this Agreement.

By entering into this Agreement, Contractor certifies that it is not on the "Entities Determined To Be Non-Responsive Offerors 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 Agreement any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Agreement, it must provide the same certification at the time the Agreement is renewed or extended. Contractor also agrees that any proposed assignee of the Agreement will be required to certify that it is not on the Prohibited Entities List before OTDA may approve a request for assignment of Agreement. During the Term of the Agreement, should OTDA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OTDA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that he/she/it has ceased its engagement in the investment activity that is in violation of the Iran Divestment Act within ninety (90) calendar days after the determination of such violation, then OTDA 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. OTDA 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.

ARTICLE 10

CONTRACTOR REQUIREMENTS

The Contractor shall provide to OTDA, upon request, services and commodities at the awarded bid rate, or less.

The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under this Agreement and to provide the services and commodities as specified in accordance with the IFB and the Contractor's Bid.

The OTDA Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the Contractor's facilities.

The Contractor agrees to strict adherence to the Specifications as outlined in **Appendix W** (Scope of Work) of the IFB.

Upon expiration of this Agreement, the Contractor agrees to cooperate in assisting OTDA with transition of the services provided through this Agreement to any new contractor selected for subsequent contract periods.

ARTICLE 11

NON-ASSIGNABILITY

Full responsibility for the delivery of services must be provided by the Contractor under this Agreement. Should the Contractor seek external financing, OTDA reserves the right to approve the assignment of the Agreement for financing purposes.

Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation or other entity, other than the parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of this Agreement.

ARTICLE 12

RECYCLED OR RECOVERED MATERIALS

In accordance with the laws of the State of New York, contractors are encouraged to use recycled or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications.

ARTICLE 13

PUBLIC OFFICERS LAW

The Contractor agrees not to engage in any conduct that the Contractor knows would violate or would assist an employee of OTDA in violating Sections §73 and §74 of the Public Officers Law.

The Contractor guarantees knowledge of and full compliance with Sections §73 and §74 of New York State Public Officers Law including the provisions for any dealings, transactions, sales, contracts, services, offers, relationships, etc., involving OTDA and/or State employees. Failure to comply with these provisions may result in termination of this Agreement as well as civil or criminal proceedings as may be required or permitted by law.

Any termination of this Agreement by OTDA under this Article shall be deemed to be a termination of the Contract for cause. The remedies set forth in this section shall be in addition to any other remedy available to OTDA under the Contract or under any other provisions of law.

ARTICLE 14

INDEMNIFICATION AND LIABILITY FOR DAMAGES

In performance of its duties, the Contractor shall fully indemnify and save harmless OTDA without limitations from suits, actions, damages and costs of every name and description, (including reasonable attorneys' fees and expenses) relating to personal injury (including wrongful death), damage to real or personal tangible or intangible property (including electronic systems, software, and databases) or intellectual property or any other claim for direct damages arising as a result of acts or omissions of the Contractor, its officers, employees, partners, or agents in performing this Agreement .

The Contractor shall be jointly and severally responsible for the actions of its agents, employees, partners, including losses arising from, but not limited to defective, untimely or inadequate performance.

Contractor shall abide by the pick-up and delivery requirements of the Agreement as outlined in **Appendix W** (Scope of Work). In the event the Contractor fails to pick-up or deliver a shipment within the prescribed time frames as outlined in **Appendix W**, the Contractor, at OTDA's discretion, shall be responsible for liquidated damages in the amount of one hundred dollars ($100.00) per day for each such shipment as well as any and all costs incurred by OTDA should OTDA need to reassign the contract. All liquidated damages incurred will be deducted from Contractor's Invoices.

OTDA may, in addition to other remedies available to it by law, recover by the deduction of such costs from monthly billing payments for up to sixty (60) calendar days, except in cases where risk of bankruptcy exists and then by invoking the provisions of the Performance Bond, to satisfy any claim for damages, penalties, costs and the like asserted by or against them; provided, however, that the Contractor shall not indemnify to the extent that any claim, loss or damage arising hereunder is caused solely by the negligent act or failure to act of OTDA.

As a condition of the foregoing indemnity obligations under this Article, OTDA shall provide Contractor: (i) prompt written notice of any claims for which indemnification may be sought hereunder; (ii) the opportunity, subject to the approval of the Department of Law, to take over, settle or defend any action or suit relating to such claim at Contractor's sole expense and: (iii) assistance in the defense of any such action or suit at the request and expense of the Contractor.

Within one month after the approval of this Agreement, by the Office of the State Comptroller, the Contractor will provide OTDA with a Performance Bond, drawn upon a financial institution approved or accepted by OTDA, the terms of which shall be subject to approval by OTDA, in the amount equating to 10% of the Contract amount, and maintained in force and effect, throughout the entire contract term, for the benefit of OTDA.

ARTICLE 15

FORCE MAJEURE

Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, flood, the elements, acts or omissions of public utilities or internet service, or any

other causes not reasonably foreseeable or beyond the control of a party or any cause within the reasonable control of either party except as specifically stated elsewhere in this Agreement. The parties are required to use commercially reasonable efforts to eliminate or minimize the effect of such events during performance of this Agreement.

ARTICLE 16

RECORD RETENTION AND DESTRUCTION

The Contractor, during the course of this Agreement and for a period of six (6) years following its termination or final payment hereunder, whichever occurs later, agrees to maintain and make available for audit by duly authorized representatives of OTDA, the individual states, and the United States Government all records or documentation arising hereunder or relating hereto.

Additionally, all records involving matters in litigation or audit must be kept for a period of not less than three (3) years following the termination of the litigation or audit provided. Electronic copies of any documents related to this Agreement may be substituted for the originals with the prior written approval of OTDA, provided that the copy procedures are accepted by OTDA as reliable and are supported by an adequate retrieval system.

At the end of the Retention Period, the Contractor shall destroy all hardcopies of documents by shredding or incinerating after they have been retained until the end of the Documentation Retention Schedule. Copies of computer backups shall be destroyed by incineration or other proven method to destroy such media after they have been retained until the end of the Document Retention Schedule. The Contractor shall deliver to the OTDA Project Manager a certified statement, signed by the individual(s) responsible for performing the destruction; statement must include date/time, method of destruction and disposal site.

The Contractor shall be responsible for assuring that the provisions of this Article shall apply to any subcontract related to performance under this Agreement.

ARTICLE 17

ACCESS TO AND AUDIT OF AGREEMENT RECORDS

The Contractor agrees to preserve all Agreement-related records in accordance with the provisions of Paragraph 10 of **Appendix A** (Standard Clauses for New York State Contracts) of this Agreement for the Term of this Agreement. All records and information obtained by OTDA pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by OTDA in any manner, in its sole discretion, as it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such records or information. Notwithstanding the preceding sentence and in addition to the provisions set forth in **Appendix A** herein, OTDA agrees, in those instances in which it has discretion, not to disclose outside those government agencies involved in the performance of this Agreement and then only to the personnel who are involved in the performance of the particular data contained within this Agreement.

The Contractor hereby agrees that all documents furnished by the Contractor shall be subject to public disclosure by OTDA in the normal course of business in accordance with the requirements of the Public Officers Law, Article 6, except for proprietary information the disclosure of which would cause substantial injury to the competitive position of Contractor enterprise. Information relating to Contractor price submissions, including commercial, book or list pricing, applicable

discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to the Contractor. Contractor may otherwise preserve proprietary rights as to confidential or business process information in accordance with procedures established under applicable State laws, provided that (i) Contractor informed OTDA prior to or with submission of its bid, in writing, that such records are being furnished, are proprietary and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) Contractor stated the reasons with specificity why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by OTDA.

The Contractor shall promptly notify OTDA of any request for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or the Contractor's regular outside auditors to the Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of the Contractor, shall not require notification to OTDA provided that rights of confidentiality or proprietary interests are preserved.

ARTICLE 18

CONFIDENTIALITY OF INFORMATION

The Contractor, its officers, agents and employees, shall treat all information, with particular emphasis on information relating to public benefit recipients and providers, which is obtained through its performance under this Agreement, as confidential information to the extent required by the laws of the State of New York and of the United States and any regulations promulgated hereunder.

ARTICLE 19

Intentionally Left Blank

ARTICLE 20

TERMINATION OF THE AGREEMENT

This Agreement shall be subject to the following termination provisions:

a) All or any part of this Agreement may be terminated by mutual written agreement of the contracting parties.

b) all or any part of this Agreement may be terminated immediately by OTDA in the event of the failure of the Contractor to perform within the time requirements set forth in this Agreement, termination effective upon Contractor's receipt of written notice of OTDA.

c) All or any part of this Agreement may be terminated by OTDA for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto. In the event that the Contractor is in breach of its obligations under this Agreement other than for a) willful violation or b) a violation that presents a danger to the health, safety, or welfare of the employees, agents, or citizens of the State, OTDA shall give the Contractor written notice specifying Contractor's failure and ten (10) calendar day period to submit a corrective action plan. The corrective action plan shall define the scope and timeline of the cure. If OTDA reasonably determines, in its sole discretion, that the failure to comply is a) a willful violation, b) presents a danger to the

health, safety, or welfare of the employees, agents, or citizens of the State, or c) is not remedied by the Contractor's corrective action plan within then (10) calendar days, in OTDA's sole discretion, OTDA may terminate this Agreement immediately upon notice to the Contractor, termination effective upon Contractor's receipt of written notice from OTDA. The Contractor agrees to incur no new obligations or to claim any expenses made after receipt of notification of termination. Termination for cause shall create a liability upon the Contractor for legal damages.

d) this Agreement may be terminated if OTDA deems that termination would be in the best interest of OTDA, provided that OTDA gives written notice to the Contractor not less than sixty (60) calendar days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of the Contractor's receipt for notice in the case of hand delivery. In the case of termination under this paragraph, OTDA agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith, up until the time of notice of termination

a) Should OTDA determine that Federal and/or State funds are unavailable, OTDA may terminate this Agreement immediately upon notice to the Contractor. If the initial notice is oral notification, OTDA shall follow this up with Written notice within ten (10) days of oral notification. OTDA will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from OTDA.

a) In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion, the Contractor shall cancel as many outstanding obligations as possible, and the Contractor shall take all reasonable measures to mitigate any damages for which OTDA may be liable. OTDA will not be obligated to pay the Contractor for any lost and/or anticipated profits.

b) If this Agreement is terminated for any reason, OTDA shall have the right to award a new contract to a third party. In the event of termination for cause, OTDA shall have the right to seek recovery of damages, and for all additional costs incurred in reassigning the contract, subject to the limitations set forth in Article 24 (Limitation of Liabilities) of this Agreement.

a) It is understood that OTDA reserves the right to suspend or reduce the Contractor services during the Term of this Agreement. It should also be understood that OTDA reserves the right to enter into multiple agreements with other contractors for the same products and services provided herein. OTDA does not guarantee any minimum or maximum volume of work. Such action(s) by OTDA shall not be considered a breach of this Agreement or otherwise give rise to damages on the part of the Contractor, provided, however, that the Contractor is given written notification of such action. OTDA reserves the sole discretion for the volume of work provided to the Contractor pursuant to this Agreement, and makes no commitment to any specific minimum or maximum volume of work.

The State reserves the right to immediately terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k

was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the award recipient.

ARTICLE 21

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ARTICLE 22

LOBBYING CERTIFICATION

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a federal agency be subject to a requirement that any Federal Contractor or grantee (such as OTDA) must be required to certify that no Federal funds will be used to lobby or influence a Federal officer or a Member of Congress. The certification that OTDA has been required to sign for the U.S. Health and Human Services Administration for Children and Family Services provides that the language of this certification (shall) be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of $10,000 to $100,000 for failing to make a required report. As a sub-recipient, the Contractor understands and agrees to the Federal requirements for certification and disclosure.

ARTICLE 23

CONFLICT OF INTEREST

The Contractor hereby covenants and represents that it currently has no conflicts of interest with respect to services and any other client representation, consultant contract or employment, and that the Contractor shall immediately advise OTDA whenever it becomes aware of any situation that involves or appears to involve such a conflict of interest or potential conflict.

ARTICLE 24

LIMITATION OF LIABILITIES

The Contractor shall be liable for breach of any express warranties, obligations and indemnifications set forth herein and, except where expressly provided otherwise, such liability by Contractor for direct damages under this Agreement shall not exceed, in aggregate, the greater of the dollar amount of this Agreement, as indicated by the State Comptroller's Open Book New York http://wwe1.osc.state.ny.us/transparency/contracts/contractsearch.cfm or two (2) times the amount paid to the Contractor. The Contractor shall not be responsible for loss of records or data unless the Contractor is required to back-up the records or data.

Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind that may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OTDA, the Contractor, or by others.

The warranties set forth herein 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.

Where express loss liabilities set forth herein provide for a higher loss limitation liability than as set forth in this paragraph, or where such express provisions impose the Contractor liability "without limitation," such express warranties, obligations and indemnifications shall supersede the loss limitation cap contained in this Article. For any suit, action, claim, damages or costs arising under or connected to the title, patent and copyright actions by third parties, the Contractor shall be fully liable for damages without limitation should the same arise in performance of this contract. Notwithstanding the foregoing, Contractor remains liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of Contractor, its officers, employees or agents.

ARTICLE 25

PRODUCT DELIVERY

Delivery must be made in accordance with the terms of Article 7 (Services) of this Agreement and the IFB.

ARTICLE 26

MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISE (M/WBE) REPORTING REQUIREMENTS

The Contractor shall comply with the following OTDA New York State M/WBE Contract System reporting requirements as set forth below:

A. OTDA has developed compliance requirements to ensure that (i) all contractors as defined under Executive Law § 310 (3) (to include those who submit bids/proposals in an effort to be selected for contract award as well as those successful Offerors/proposers with whom OTDA enters into State Contracts, as defined in Executive Law § 310 (13) [hereinafter "Contractors"], as well as proposed or actual "Subcontractors", as defined in Executive Law § 310 (14) shall comply with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, and, (ii) there are meaningful participation opportunities for certified minority or women-owned business enterprises (M/WBEs) in the OTDA procurement process. Contractors participating in and/or selected for procurement opportunities with OTDA shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for Minority and Women Business Enterprises, including but not limited to the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-145). Please refer to Appendix Z, attached and incorporated by reference herein, for the specific EEO/M/WBE requirements. To streamline the M/WBE compliance tracking, vendors may now report payments and track goals using an electronic monitoring and compliance system. The New York State Contract System will allow vendors to electronically update their contact information, provide subcontractor payment data for contract audits and provide revenue and payment data for concession audits. The system will also allow Subcontractors to enter the system to verify receipt of Contractor payments. Data is to be submitted without change to goals specified in the IFB or contract, unless otherwise authorized by OTDA. The electronic monitoring and reporting system can be viewed at https://ny.newnycontracts.com/?TN=ny. The Vendor

Guide and Vendor Training Manual are available on the OTDA's internet site at http://otda.ny.gov/contracts/mwbe/forms.asp.

Vendors who cannot access the electronic monitoring and compliance tracking system may also opt to submit hardcopy forms to the designated OTDA Contract Program Manager. Please refer to Appendix Z, for the specific EEO/M/WBE requirements and associated forms required by this procurement. These forms are to be submitted without change to goals specified in the IFB or contract, unless otherwise authorized by OTDA. Copies of the required OTDA Forms are identified Appendix Z and available on OTDA's Internet site at http://otda.ny.gov/contracts/mwbe/forms.asp.

ARTICLE 27

SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (SDVOBS) UTILIZATION

1. Contractor agrees, to the maximum extent practical and consistent with legal requirements of the State Finance Law, the Executive Law and any implementing regulations, to use NYS certified Service-Disabled Veteran-Owned Business Enterprises (SDVOBs) in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Contractor acknowledges being subject to the provisions of Executive Law Article 17-B and the applicable regulations (9 NYCRR Part 252), and that the directory of NYS certified SDVOBs is located at: http://ogs.ny.gov/Core/docs/CertifiedNYSDVOB.pdf. Contractor acknowledges that the SDVOB utilization goal for this Agreement is 0 %. Contractor further acknowledges that this requirement is separate and distinct from the similar requirement elsewhere in this Agreement to utilize small, minority and women- owned businesses (M/WBEs), consistent with current State law (Executive Law, Article 15-A).

2. Contractor agrees to report on actual participation by each SDVOB during the term of the contract to OTDA on a quarterly basis according to policies and procedures to be set by OTDA.

3. Contractor agrees that, following contract execution, if OTDA determines that the contractor may not have acted in good faith, has failed, is failing, or is refusing to comply with the participation or utilization contractual goals for SDVOB participation, OTDA may after giving the contractor an opportunity to be heard, make a determination that Contractor has failed to meet the contract goals and may be in breach of contract.

4. Upon determination that the Contractor is in breach of contract, as set forth in this Article, OTDA may require the submission of a corrective action plan for meeting the contractual goals, and may also assess actual damages as authorized by regulation [9NYCRR Section 252.2 (s)] 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 service-disabled veteran-owned business enterprise programmatic goals.

NOTE: Information about SDVOB certification and set asides for SDVOB participation in public procurement can be found at: http://www.ogs.ny.gov/Core/SDVOBA.asp, which provides certification information and guidance for State agencies in making determinations and administering set asides for procurements from SDVOBs.

ARTICLE 28

DISPUTES

This disputes provision shall apply to any dispute of the parties relating to performance under this Agreement except liquidated damages. Any dispute concerning any question of fact or law arising under this Agreement, which is not disposed of, by mutual agreement of the parties shall be initially decided by the adjudicator designee (hereinafter "Designee") of the Director the Bureau of Contract Management (hereinafter "Director"). The Director shall also designate the person who will present OTDA's position in the dispute (hereinafter "Advocate"). Within thirty (30) calendar days of such designations, the Advocate will state and brief the Designee on OTDA's position on the dispute. The Contractor will then have thirty (30) calendar days to make its submission; the submission may include any material the Contractor deems relevant to the dispute. All documents may be sent either by surface mail, by carrier, or electronically.

The Advocate will have a right to submit a response to the Contractor's submission. The response must be limited to the material rebutting evidence and arguments raised by the Contractor in its most recent submission and must be submitted within fifteen (15) calendar days of receipt of the Contractor's submission. If the Advocate submits a response, the Contractor will have thirty (30) calendar days to prepare and submit a response to the Advocate's rebuttal submission. This response shall consist wholly of material which responds to evidence or arguments raised in the Advocate's rebuttal. Any actual submission by the Advocate shall generate a right of rebuttal by the Contractor.

The Advocate and the Contractor will be informed in writing by the Designee when the submission process is deemed complete. The Designee shall have the right to take administrative notice of relevant matters of law and fact as he believes appropriate, in accordance with general principles of Administrative Law.

The Designee will prepare and forward the recommended written decision to the Director. The Director shall: (a) evaluate the Designee's findings and recommendations, (b) review the materials presented by the Contractor and the Advocate, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the dispute either ratifying, modifying, or reversing the recommended decision. The Director's decision will be rendered within forty-five (45) calendar days of the date when the submission process is deemed complete.

A copy of the Director's decision stating the reason(s) upon which it is based and informing the Contractor of the right to appeal an unfavorable decision to the General Counsel of OTDA, will be issued to both parties. The dispute decision shall be deemed a final and conclusive agency decision unless a written notice of appeal is received no more than fifteen (15) calendar days after the date the decision is received by the Contractor. Such notice of appeal must be filed with the General Counsel of OTDA.

The General Counsel of OTDA or his or her designee(s) shall hear and make a final decision on all appeals. A formal dispute appeal may not introduce new facts unless responding to facts or issues unknown to the Contractor prior to the final dispute decision. The General Counsel's decision will be rendered within thirty (30) calendar days of the date that the notice of appeal is received by the General Counsel.

If the Contractor is unwilling to accept the decision rendered through this procedure or if a decision is not made within ninety (90) calendar days after the record is deemed final, it may then pursue its normal legal remedies de novo, but it is specifically agreed that any and all reports rendered through this procedure shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Agreement by the State shall govern operation thereunder and the Contractor and OTDA shall continue to perform under the Contract.

The Director and General Counsel shall have the power to change any or all of their designees or otherwise alter the rules of proceeding upon written notice to the Contractor.

The Contractor shall be required to bring all legal proceedings relating to this Agreement against OTDA or the State of New York in the Supreme Court of the State of New York in the County of Albany or the New York State Court of Claims or any Court of Competent Jurisdiction.

ARTICLE 29

ANTI-KICKBACK

The Contractor understands that it must comply with federal Executive Order 11246, the Copeland "Anti-Kickback Act" (18 USC 874), Section 306 of the Federal Clean Air Act, Section 306 of the Federal Clean Water Act, and that it must certify that neither it nor its principals are debarred or suspended from Federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by OTDA (see Federal Executive Order 12549 and 7 CFR Part 3017).

ARTICLE 30

DRUG-FREE WORKPLACE

The Contractor agrees to comply with the provisions of Section 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have its representative execute the certification provided to the Contractor.

ARTICLE 31

OTHER AGENCY USE

Upon request by any other New York State Agency, the Contractor shall enter into an agreement with such agency for the purchase of the goods and services that are the subject of this Agreement. Such new agreement shall provide that the cost of such goods and services to the agency entering into such agreement shall be the same as charged to OTDA under this Agreement except that the Contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can be attributed to the fact that the agency requires the Contractor to be obligated to standard contractual provisions that are more onerous than those contained in Standard New York State

Appendix A . In the event that a volume discount is applicable to the increase in services due to other agency use, both OTDA and the other agency shall share in the cost savings.

Upon request by a local social services district, New York City Human Resources Administration (NYC HRA) or its designated purchasing agent, the Contractor shall enter into an agreement with such district or agent for the purchase of the goods and services that are the subject of this Agreement. Such new agreement shall provide that the cost of such goods and services to the district/agent entering into such agreement shall be the same as charged to OTDA under this Agreement except that the Contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can be attributed to the fact that the municipality constituting the local social services district requires the Contractor to be obligated to standard contractual provisions are more onerous than those contained in Standard New York State Appendix A. In the event that a volume discount is applicable to the increase in services due to other agency use, both OTDA and the other agency shall share in the cost savings.

ARTICLE 32

ENTIRE AGREEMENT

All provisions stated in the Less Than Truckload IFB are incorporated into this Agreement and are part of the contractual obligations under this Agreement, unless explicitly stated herein that such provision(s) is deemed excluded from this Agreement.

This Agreement, the Attachments, and Appendices, hereto 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, and approved by the by the Comptroller of the State of New York.

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Contract Signature Page

Agency Code: 27000 Contract Number: **C021933**

Agency Certification

In addition to 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

_____ _____

Agency Signature **Dated**

_____ _____

Contractor Signature **Dated**

Contractor Signatory Name (Printed): _____

Contractor Signatory Title: _____

Corporate, Partnership Or Individual Acknowledgement

STATE OF NEW YORK)

) SS.:

COUNTY OF)

[Check One]

(☐ **If an individual):** On this _____day of_____, 20__, before me personally came _____, to me known and known to me to be the person described in and who executed the foregoing instrument and (s)he acknowledged to me that (s)he executed the same.

(☐ **If a corporation):** On this_____ day of_____, 20__, before me personally came _____, to me known who being duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____of the_____, the corporation described in and which executed the foregoing instrument; that (s)he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that (s)he signed her/his name thereto by like order.

(☐ **If a partnership):** On this_____ day of_____, 20__, before me personally came_____, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for herself/himself depose and say that (s)he is a member of the firm of_____, and that (s)he executed the foregoing instrument in the firm name of _____, and that (s)he had authority to sign same, and (s)he did duly acknowledge to me that (s)he executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

_____

Notary Public

Approved as to Form:
Eric T. Schneiderman
Attorney General

By: _____

Date: _____

Approved:
Thomas P. DiNapoli
State Comptroller

By: _____

Date: _____