

**INTERNET SERVICE PROVIDER
REQUEST FOR PROPOSAL #022017**

February 23, 2017

SEALED BIDS ARE DUE AND RECEIVED IN THE UNIVERSITY SERVICES DEPARTMENT:

By May 2, 2017 at 2:00 PM, EDT. No Facsimile bids or Email bids will be accepted.

Sealed bids must be marked "SEALED BID - INTERNET SERVICE PROVIDER" and may be hand carried or mailed to:

SUNY Fredonia
University Services
405 Maytum Hall
280 Central Ave.
Fredonia, NY 14063

Bidder shall provide six (6) (2 original and 4 copies) of the RFP response to Technical Specifications in separate sealed envelopes, marked as "Technical Specification original" and "Technical Specification Copy" on the envelopes.

Bidder shall provide four (4) (2 original and 2 copies) of Cost Proposal in separate sealed envelopes, marked as "Cost Proposal Original" and "Cost Proposal Copy" on the envelopes.

Questions concerning RFP specifications/requirements are to be in writing, mailed, e-mailed or faxed to 716-673-4977, received no later than the close of business on: March 16, 2017. No telephone questions will be accepted.

To: University Services
ISP RFP #022017
e-mail: university.services@fredonia.edu
or
Fax: 716-673-4977

Only written questions will be addressed. Questions shall cite page and item number being referenced. A full question and answer sheet will be provided to all vendors who submitted the "Acknowledgement" form and indicated that they will be responding to the RFP request. Only written answers are official. Answer sheet will be provided by March 23, 2017.

Any cost incurred by the bidder in the preparation of a proposal is the sole responsibility of bidder.

Pursuant to State Finance Law §§139-j & 139-k, this solicitation for RFP #022017 includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit proposals through final award and approval of the Procurement Contract by SUNY Fredonia and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated Staff is identified as follows: Shannon Moore, Director of Contracts, (716) 673-4998 and Soteris Tzitzis, Director University Services, (716) 673-3257, fax (716) 673-4977.

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I. ACKNOWLEDGEMENT: RECEIPT OF REQUEST-FOR-PROPOSAL DOCUMENTS

RETURN THIS FORM IMMEDIATELY

Proposal Number: 022017
Title: Dedicated Internet Service Provider

Please take a moment to acknowledge receipt of the attached bid documents. Your compliance with this request will help us to maintain proper follow-up procedures while ensuring that all recipients have the opportunity to submit a proposal.

Date Issued: February 23, 2017 Date received? ____/____/____

Do you plan to submit a proposal? Yes____ No____

Print or type the following information:

Company name: _____

Address: _____

City or Town: _____

Contact person: _____

Phone: _____

Fax: _____

E-Mail _____

Federal ID # _____

If applicable, place an "x" in the appropriate box: *(check all that apply)*

- Small Business (if checked, provide # of employees ____)
- Disabled Veteran Owned Business
- Minority Owned Business (NYS Certified)
- Women Owned Business (NYS Certified)

This form may be completed and emailed to: Shannon.moore@fredonia.edu or faxed to: 716-679-4977, a cover sheet is NOT necessary.

Pursuant to State Finance Law §§139-j & 139-k, this solicitation for RFP #022017 includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit proposals through final award and approval of the Procurement Contract by SUNY Fredonia and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a).

Designated Staff is identified as follows:

Soteris Tzitzis, Director University Services, (716) 673-3257, fax (716) 673-4977
Shannon Moore, Director of Contracts, (716) 673-4998, fax (716) 673-4977

II. SCOPE OF WORK

The State University of New York at Fredonia invites interested contractors to submit proposals for Dedicated Internet Service (ISP). The purpose is to provide to the University Internet Service, which is managed end-to-end over fiber, dedicated Internet access. The intent of this RFP is to enter into a Contract with a qualified Contractor, Internet Service Provider, (ISP). It should be noted that the University operates its own Domain Name servers.

The ISP to include **up to 1 GB** managed service (for Incubator Client Service) from the campus to the SUNY Fredonia Incubator Building located at 214 Central Ave., Dunkirk, New York, 14048.

This service is to begin on July 1, 2017

A. TIMELINE OF BID ACTIVITY

Distribution of RFP

February 23, 2017

Last date for Mail, E-mail, Faxed submission of questions:	March 16, 2017
Date for responses to questions:	March 23, 2017
Final date for submission of proposals:	May 2, 2017 by 2:00 PM EST
Notice of award expected by:	May 5, 2017
AG and OSC approvals	June 15, 2017 (estimate)
Start date:	July 1, 2017

Dates are anticipated targets - SUNY reserves the right to adjust dates as required to best meet the needs of the University.

SUNY reserves the right to amend this RFP prior to the scheduled submission date. All prospective bidders will be notified in writing. If warranted, the submission date will be changed to allow sufficient time for bidders to complete and submit proposals.

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SECTION A

Instructions, Conditions and Notices to Contractors

A. Issuing Office

The sole point of contact at the State University of New York at Fredonia, (hereinafter "University") for purposes of this Request for Proposal (RFP) is University Services.

B. Pre-Proposal Conference

No pre-proposal conference will be held.

C. Questions

Each Contractor is responsible for reading carefully and understanding fully the terms and conditions of this RFP. All contact between Contractors and the University will be formally made in writing through University Services. Requests for clarification or additional information must be made in writing to University Services and received at University Services no later than close of business, [March 16, 2017](#). The envelope, if by US Postal Service Mail, in which such requests are sent should bear the following phrase: **"QUESTIONS: RFP #022017"**. Only written communications relative to the procurement shall be considered.

All questions will be answered in writing. Both questions and answers will be distributed, without identification of the inquirer(s), to all Contractors who are on record with the University Services as having received this RFP. Question and answer sheet will be provided to all vendors who submitted the "ACKNOWLEDGEMENT" form and indicated that they will be responding to the RFP request. No oral communications can or shall be relied upon for proposal purposes.

To the extent that a question causes a major change to any part of this RFP, an amendment shall be issued addressing such.

D. Submission of Proposals

Proposals must be:

- (1) submitted in the format set forth herein
- (2) made in the official name of the firm or individual under which Contractor's business is conducted (including the official business address, Federal Identification Number, New York State Identification number, Telephone and Fax Number.)
- (3) signed by a person duly authorized to commit Contractor to the proposal
- (4) submitted in envelopes clearly marked with the assigned RFP number
- (5) separated into Technical and Cost volumes
- (6) addressed to University Services as set forth herein.

The Contractor must submit **two (2) originals (marked "original") and four (4) copies** of the Technical volume plus **two (2) originals and two (2) copies** of the Cost volume sealed under separate cover. Co-mingling of technical and financial information or failure to submit the **Technical and Cost Proposals separately** and sealed may result in the proposal being deemed **NON-ACCEPTABLE** and thereby rejected. The volumes, which contain original documents, should be clearly identified as the **ORIGINAL Technical and the ORIGINAL Cost Volume**. The University reserves the right to photocopy additional copies of any or all parts of the proposal for the evaluation and selection process.

E. Closing Date

Proposals must arrive in University Services on or before May 2, 2017, 2:00 P.M. eastern/daylight local time, in the format set forth herein.

Contractors mailing proposals should allow sufficient mail delivery time to insure timely receipt by University Services. Proposals, amendments to proposals, or requests for withdrawal of proposals arriving after the closing time and date shall not be considered. There shall be no public opening of the proposals. The names of Contractors will not be released until after award.

F. Late Proposals

Any proposal, request for withdrawal, or modification of a proposal that is not received at the designated location, time and date set forth herein will be considered late and shall not be considered. Delivery of the proposal to the specified location by the prescribed time and date is the sole responsibility of the Contractor. Exceptions may be authorized, at the sole discretion of the Director of University Services, when the reason for the late proposal, late request for withdrawal or late modification of a proposal is due to the action or inaction of the University. A record of the late proposal, request for withdrawal, or modification of a proposal, shall be made in the appropriate procurement file.

G. Duration of Proposal Offer

Proposals shall be valid for a minimum of 180 days following the closing date of this RFP. If an award is not made during that period, the proposal shall automatically extend for another 120 days, unless the Contractor gives specific written notice to the Director of University Services at least 15 days before the expiration of the then current 180 day period. Proposals shall automatically renew for an additional 120 days until such time as an award is made or proper written notice is given to the University of Contractor's intent to withdraw its proposal. By submission of a proposal, Contractor guarantees that its offer shall be firm for the period specified above.

H. Amendments to the RFP

If it becomes necessary to revise any part of this RFP, notice of the revision will be given in the form of an amendment to Contractors who are on record with University Services as having received this RFP. All amendments shall become a part of this RFP. Each Contractor must acknowledge receipt of amendments, and the failure of a Contractor to acknowledge any amendment shall not relieve the Contractor of the responsibility for complying with the terms thereof.

I. Alternate Proposals

In the mutual interest of receiving the best proposal, the University will consider alternate price and technical proposals, specifically for dedicated internet service only. In order to submit an alternate proposal, however, a Contractor must also submit a proposal in the exact format required herein.

J. Economy of Preparation

Each proposal should be prepared simply and economically, providing a straightforward, concise description of the Contractor's offer and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content.

K. Unable To Propose

If Contractor is unable or unwilling to submit a proposal in response to the requirements, Contractor

must provide a brief written explanation of the reasons to the Director of University Services on or before the proposal due date. Failure to do so may result in Contractor's removal from the active vendor's list.

L. Public Information Act Notice

Contractors shall specifically identify those portions of their proposals that they deem to contain confidential, proprietary information or trade secrets and shall provide specific justification, with respect to each separate portion identified, why such materials, upon request, should not be disclosed by the State under the Freedom of Information Act.

In order for such claims of confidentiality to be considered, Contractors must clearly identify and provide individual justification for each and every section that is claimed to contain confidential, proprietary information or trade secrets. It is NOT sufficient to preface your proposal with a proprietary statement, or to use a page header or footer that arbitrarily marks some or all pages as confidential. General claims of confidentiality or similar blanket designations shall not be effective.

M. Two Volume Proposal

The selection procedure for this procurement requires an independent evaluation of the technical and cost proposals. This separation allows for evaluation of technical proposals on their technical merit only. Consequently, Contractor shall submit its proposal in two separately sealed volumes as indicated below.

1. Volume I - Technical

This volume should be prepared in a clear and concise manner with pages numbered. Volume I must contain the following sections:

a. Executive / Management Summary

The Executive/Management Summary should contain a brief synopsis of how the Contractor's proposal meets the needs of the University. This summary shall include reference to the duration of the proposal, verification of compliance with New York State Law, and performance capability.

b. References

Contractors to provide up to three (3) references of accounts, preferably educational, for which they are currently providing comparable service, both in scope and size for a minimum of three years. Cited references should be able to confirm, without reservation, the Contractor's ability to perform as mandated in this solicitation. The University will rely on the cited references to obtain past performance, information in the evaluation of this proposal.

The University reserves the right to take any or all of the following actions: to reject a proposal based on an unsatisfactory reference, to contact any person or persons associated with the referenced site, to request additional references, to contact organizations known to have used in the past or currently using the services supplied by the Contractor or the Contractor's subcontractors, to contact independent consulting firms for additional information about the Contractor or the Contractor's subcontractors, and to visit any or all of the reference sites for demonstrations.

c. The Technical Proposal

The information/items specified herein must be addressed in the technical proposal. The proposal must expressly indicate that it satisfies each point of the RFP requirements and specifications, reference Section B. Simple YES or NO responses to stated requirements are insufficient. Rather, the Contractor must describe in detail how the proposed services meet or exceed the stated requirements. Additionally, the Contractor must explain in detail, any exception or deviation from the requirements.

1. Please provide a company/corporation organization chart and staffing profile, including years of tenure for staff. Additionally, please provide resumes for “key personnel,” which includes the general manager or sales manager who will call on the University and the chief engineer. The general manager and chief engineer must have a minimum of five (5) years experience, in at least one comparable account, specifically tier-one or tier -two provider. The University will rely on the cited experience and quality of resumes of the Contractor’s general manager and chief engineer in the evaluation of contractor’s proposal.

2. Please provide an implementation plan, from start to finish providing milestones, demonstrating how the service will commence on July 1, 2017 after contract award. The University will rely on the cited implementation plan of the Contractor in the evaluation of proposals.

Contractors are urged to read the specifications very carefully and to submit any questions, in writing, by the due date for questions. Misinterpretation of specifications by the Contractor shall not relieve the Contractor of responsibility to accurately address the requirements of this RFP or to perform the contract, if awarded.

2. Volume II - Financial

This volume consists of and must contain the following:

a. **Signed Originals**

The Contractor must complete RFP signature pages and Acknowledgment by Corporation as part of Contractor's proposal. Failure to submit these signed documents may cause the Contractor’s proposal to be rejected, at the sole discretion of the University.

b. **Pricing Section**

This volume shall be in accordance with Section B - Pricing. Alternate price proposals may be submitted, but each Contractor submitting a proposal is required, at a minimum, to submit a price proposal exactly in accordance with Section B.

c. **Bidders Qualifications**

Pursuant to State University of New York’s compliance requirements mandated by all terms and conditions as set forth by Affirmative Action Clauses, Exhibit A-1, each proposal submitted by a Contractor must include a completed and signed Bidders Qualifications form.

d. **Bid Proposal**

Each proposal submitted by a Contractor must include the Bid Proposal form completed and signed.

e. Attachment A-1

Each proposal submitted by a Contractor must include the Attachment A-1 form completed and signed.

f. Attachment E

Each proposal submitted by a Contractor must include the Attachment E form completed and signed. A copy of this form is included in Section K.

g. Financial Viability

The University reserves the right to require, during proposal evaluation, that the Contractor provide a copy of its most current Annual Report or audited Statement of Financial Condition or other acceptable financial information. These documents may be relied on in any determination regarding Contractor financial responsibility.

h. Certified Minority/Women Business Enterprise (M/WBE)

Contractors must submit, as part of their financial proposal, the names of any subcontractors that are certified M/WBE's verified pursuant to section 314 of the Executive Law of New York State.

N. Incurred Expenses

The University shall not be responsible for any costs incurred by any Contractor in preparing and submitting a proposal in response to this RFP.

O. Cancellation of the RFP

The University may cancel this RFP, in whole or in part, or reject all proposals submitted in response to the RFP when such action is determined to be fiscally advantageous to the University and/or the State or otherwise in the best interest of the University and/or the State.

P. Oral Presentations

Contractors may be required to make individual presentations to the University Evaluation Committee, or its designated representatives, in order to clarify their proposals. If the University feels that such presentation is needed, University Services will schedule a time and place for oral presentations. Contractor is required to make the oral presentation within seven workdays after request by the University. Each Contractor should be prepared to discuss and substantiate any of the areas of the proposal submitted, as well as its qualifications to furnish the specified products and services. Notwithstanding the possibility of a request for an oral presentation, Contractors shall not rely on the possibility of such a request and shall submit a complete and comprehensive written response to this solicitation.

Q. Solicitation, Proposal Acceptance, Award and Discussions

This RFP creates no obligation on the part of the University to award a contract or to compensate Contractors for proposal preparation expenses. The University reserves the unilateral right to cancel this solicitation at any time and to accept or reject any and all proposals, in whole or in part, received in response to this RFP; the unilateral right to award a contract in whole or in part; to award a contract to one Contractor; to waive or permit cure of minor irregularities; and to conduct discussions with qualified Contractors in any manner necessary to serve the best interest of the University.

Discussions may be conducted with those responsible Contractors who submit proposals initially judged by the Director of University Services to be reasonably susceptible of being selected for award. However, the University reserves the right to award a contract based upon the proposals received without further discussions.

R. Evidence of Responsibility

Prior to the award of a contract pursuant to this RFP, University Services may require Contractor to submit such additional information bearing upon Contractor's ability to perform the contract as deems appropriate. The University Services may also consider any information otherwise available concerning the financial, technical, and other qualifications or abilities of the Contractor.

S. Formation of Agreement/Contract with Successful Contractor

This RFP shall also include any other forms or documents deemed necessary by University Services. This RFP and any resulting contract shall be governed by the laws of State of New York, State University of New York's Exhibit A and Exhibit A-1.

T. New York State Finance Law §§ 139-j and 139-k

In accordance with State Finance Law Section 139-j, all questions pertaining to this procurement shall be made formally to the following Designated Staff: Soteris Tzitzis, Director University Services and Shannon Moore, Director Contract Services as indicated below. Contact made to other staff regarding this procurement may disqualify the firm and affect future procurements with government entities in the State of New York. Please refer to the OGS' (www.ogs.state.ny.us/aboutogs/regulations/defaultAdvisoryCouncil.html) for more information on this law.

U. The University reserves the right to request clarifications from Bidders for purposes of assuring a full understanding of responsiveness and further reserves the right to permit revisions from all Bidders determined to be susceptible to being selected for contract award prior to award.

V. The University reserves the right to modify the requirements of this RFP after its release. All vendors that have requested the RFP documents will receive written notification of any modifications to the requirements of this RFP. If any modifications make compliance with the original procurement Process Schedule, impractical, the University will adjust the timetable accordingly.

W. The University reserves the right to eliminate mandatory requirements unmet by all Bidders and adjust or correct any arithmetic errors in Contractor's Proposals.

X. The University reserves the right to reject separable portions of any offer, to negotiate terms and conditions consistent with the solicitation, and to make an award for any or all remaining portions.

Y. All Bidders responding to this RFP shall be accorded fair and equal treatment with respect to their opportunity for discussion and revision of offers. The University, upon request, will provide a debriefing to any unsuccessful Bidder that responded to this RFP regarding the reasons that the bid submitted by the unsuccessful Bidder was not selected for award. Requests for a debriefing are to be sent in writing to Soteris Tzitzis, Director University Services, within 15 business days of date of notice that vendor was not selected.

SECTION B

Description/Specifications/Requirements/Statement of Work

1.0 BACKGROUND

The University currently has dedicated Internet access, via redundant fiber through two (2) demarcation points to current ISP. The University also provides point to point 200 megabit/sec managed service from the campus to the SUNY Fredonia Incubator Building located at 214 Central Ave., Dunkirk, New York, 14048.

The network infrastructure of the University is designed and managed by the campus Manager of Network Design and Development. It should be noted that the University operates its own Domain Name servers.

The network serves the communications needs of more than 2,500 computers located in academic and administrative offices. In addition, Ethernet connectivity is offered to the more than 2600 students living in university residence halls.

2.0 OBJECTIVES, TERM OF CONTRACT

The State University of New York at Fredonia invites interested contractors to submit proposals for Dedicated Internet Service. The purpose is to provide to the University's Internet Service, which is managed, end to end internet access. The intent of this RFP is to enter into a Contract with a qualified Contractor, Internet Service Provider, (ISP).

The Contract term and pricing will be for a three (3) year initial term from July 1, 2017, and/or date of execution of approved Contract by the State Comptroller's Office (OSC) and end on June 30, 2020.

3.0 CAMPUS REQUIREMENTS

- 3.1. Provide dedicated internet service at 0.5 gigabit/sec with price scaling to 5.0 gigabit/sec. The University may increase or decrease internet service at any time during the term of the contract as it deems best for the university.
- 3.2 The Contractor is required to monitor the status of their network connection and provide immediate notification in the event that a failure has been detected, indicating the nature of the problem and time of recovery. Contractor must provide on-line real time statistical reporting of inbound and outbound link activity. Provide sample copy of report.
- 3.3. The contractor must be registered autonomous system provider and cooperate in Border Gateway Protocol. Provide proof. Provide ASN#'s.
- 3.4. The Contractor must have at least two (2) egress points from their network to their upstream peers. The contractor to provide list of their Internet Peering Relationships and bandwidth capacity to each. The Contractor must provide documentation for the redundant physical connection with demonstrated separate physical paths into contractor's network.
- 3.5. The contractor must provide for single egress into the campus from their facility.
- 3.6. Contractor must indicate the circuit provider and the local loop provider in their proposal.
- 3.7. The Contractor must operate a Network Operations Center **24 hour / 7 day a week coverage** directly accessible by the University. Provide location, names, phone numbers,

etc.

- 3.8. The Contractor is required to provide two (2) weeks advanced notice, in writing to the University before conducting network maintenance that affects the University's connectivity. Prior approval by the University is required.
- 3.9. The contractor must provide disaster recovery procedures in place outlining how an outage to the branch or node directly affecting the University would be addressed.
- 3.10. The contractor must be able to provide a minimum of ten (10) public IP addresses for testing and virtual private network connectivity.
- 3.11. The Contractor must provide Tier Level Internet Service and provide a summary of their peering points and capacity of these points, with a point of presence in New York State.
- 3.12. The Contractor to maintain private peering agreements with other National and International Internet Service Providers with a minimal reliance upon public exchange points. At least 50% of the Contractor's traffic to other Internet Service Providers must utilize private peering connections.
- 3.13. The Contractor to demonstrate with ping log connectivity with low latency (maximum of 100ms RTT within the US, 150ms between Europe and US) and no packet loss throughout their network and on peering connections.
- 3.14. The contractor will agree to refund the University for Interruptions in Internet Service. Rate of penalty based on actual monthly cost of lost service. Example: Monthly rate divided by total hours of month times the number of hours internet is down.
- 3.15. The University's primary demarc location is: SUNY Fredonia, 116 Maytum Hall, Fredonia, New York 14063. Provide in detail on how you will provide this service to the demarc location.
- 3.16. The Contractor must provide and maintain circuit termination equipment and necessary router(s) to connect the University's Ethernet infrastructure to the Internet. All termination equipment and router(s) must be approved by the Data Communications Network Manager. Provide in detail, list of equipment you will use for this service contract.
- 3.17. The contractor must provide disaster recovery procedures in place outlining how an outage to the branch or node directly affecting the University would be addressed.
- 3.18. The contractor must be a company primarily engaged (primary business) in providing Internet Services. No Brokers of internet service is allowed. Describe fully your business operations.
- 3.19. Contractors are to include their qualifications to meet RFP specifications in terms of past and current experience by providing evidence of a minimum 5 years of experience providing similar scope of service to similar size organizations. Must provide at least three references.
- 3.20. The University reserves the right to contract the services of other Internet Service Providers for redundancy purposes. Provider would provide complementary peering, i.e. provider "A" should peer with a different backbone provider than provider "B" and not peer with the same upstream network access point.

- 3.21. The Contractor must demonstrate diverse connectivity to their service providers. Specifically we wish to avoid circuit paths that follow the same physical route to minimize outages that might arise from accidental, malicious or natural causes. Specifically we are looking for redundancy with diverse connectivity. Describe fully.
- 3.22. Contractor must support IPv4 and IPv6 protocols. Provide how it is supported.

4.0 INCUBATOR REQUIREMENTS

- 4.1 Contractor must provide point to point up to 1 GB managed service (for Incubator Client Service) from the campus to the SUNY Fredonia Incubator Building located at 214 Central Ave., Dunkirk, New York, 14048. Provide in detail on how you plan to provide this service.

SECTION C

Pricing

Contractors shall submit their proposal for pricing on the enclosed pricing proposal forms. Using the enclosed forms will help ensure consistency in the financial evaluation. The pricing proposal forms must be completed in full for each proposal and shall be incorporated herein.

Price evaluation will be performed based on fixed prices for the dedicated Internet service totaled as outlined below on the price sheet. Contractors must include all one-time charges, installation fees and fees associated with the service on the pricing proposal form. Additionally, Contractors are required to provide fixed prices for all other bandwidths included in the financial evaluation, including one-time charges and installation fees.

Please note that your pricing is to include the local access circuit in your cost.

The University may increase or decrease bandwidth within the initial contract term or any remainder contract term as the necessity arises. All changes in bandwidth will be invoiced on a prorated basis to the date of increase or decrease bandwidth for payment. The University reserves the right to contract the services of another ISP contractor for Internet Service and Internet 2 service as deemed necessary by the University.

Any tie in cost proposal will be determined by a flip of a coin to determine lowest cost provider if there are two vendors with the total points awarded. If more than two, then each vendor name will be put into a basket/container and the lowest cost provider will be pulled by campus personnel.

Notes

In the mutual interest of receiving the best proposal, the University will consider alternate price and technical proposals. In order to submit an alternate proposal, however, a Contractor is to submit a proposal in the format, technical and price herein. Evaluation will be accomplished in the same manner as done for dedicated Internet service.

Worksheets for automated price quotation systems may be used to provide additional information, but price evaluation will be based on prices entered on the pricing proposal form.

Blanks on the Pricing Proposal Form will be interpreted as zero (0) cost to university and no price will be allowed for that item. The Statement of Work is described in Section B of this document.

Section C
Price Proposal Submittal Form:
Dedicated Internet Service
page 1 of 2

A. Campus - Cost per gigabit/sec service is to include the access circuit. Complete cost per month and yearly cost below for each segment. **EACH SEGMENT MUST BE FILLED IN, IN ORDER FOR COST PROPOSAL TO BE ACCEPTED.**

0.5 gigabit/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
1.00 gigabit/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
2.00 gigabit/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
3.00 gigabit/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
4.00 gigabit/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
5.00 gigabit/sec -	Cost per month: \$ _____	Yearly cost: \$ _____

Note: For cost evaluation purposes, the yearly cost for 0.5 gigabit/sec will be used as total cost for A.

B. Incubator - point to point **UP TO 1 GB** (Up & Down) managed service (for Incubator Client Service) from the campus to the SUNY Fredonia Incubator Building located at 214 Central Ave., Dunkirk, New York, 14048. Complete cost per month and yearly cost below for each segment. **EACH SEGMENT MUST BE FILLED IN, IN ORDER FOR COST PROPOSAL TO BE ACCEPTED.**

200 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
225 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
250 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
275 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
300 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
325 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
350 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
375 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
400 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
425 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
450 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
475 meg/sec -	Cost per month: \$ _____	Yearly cost: \$ _____

Section C
Price Proposal Submittal Form:
Dedicated Internet Service
page 2 of 2

0.5 gig/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
0.75 gig/sec -	Cost per month: \$ _____	Yearly cost: \$ _____
1.0 gig/sec -	Cost per month: \$ _____	Yearly cost: \$ _____

Note: For cost evaluation purposes, the yearly cost for 200/200 megabit/sec will be used as total cost for B, Incubator Client Service.

Total Cost:	A. Campus - Cost per 0.5 gigabit/sec:	Yearly Cost: \$ _____
	B. Incubator (Incubator Client Service) Point to Point 200/200 megabit/sec managed service:	Yearly Cost \$ _____

TOTAL YEARLY COST (A and B) = \$ _____

Contractor: _____

Print Name of person with signature authority to sign for company

Title: _____

Signature: _____

Date: _____

SECTION D

Inspection and Acceptance

The Contractor is required to commence providing the dedicated Internet Service on July 1, 2017 after contract award by the University. The University will not accept the Internet service until the actual rate (Specific gigabit/sec rates as delineated in Section C Pricing - Pricing Proposal Form) to be utilized is realized. The University will notify the Contractor in writing upon acceptance.

SECTION E

Deliveries or Performance

See Section D.

SECTION F

Contract Administration Data

1. Roles of the State University of New York at Fredonia's Manager of Network Design and Development.

The Director of University Services is the State University of New York at Fredonia's authorized representative for all contract matters related to this contract. Additionally, throughout the duration of the contract, the Director of Contract Services shall also be an individual with authority to modify any provisions of this contract including, without limitation, the statement of work, pricing or any other sections.

The State University of New York at Fredonia Manager of Network Design and Development and designated staff shall be the principal interface on behalf of the State University of New York at Fredonia for post-award technical matters, and shall have the authority to explain and provide further details regarding the State University of New York at Fredonia's expectations concerning the work to be performed hereunder and/or the items to be provided herein. The Manager of Network Design and Development and designated staff shall have no authority to modify any provisions of this contract.

2. **Invoicing**

The Contractor shall provide monthly invoices in arrears. Additionally, invoices shall be accompanied by monthly utilization reports as specified in Section B of this RFP. The actual monthly charge shall be calculated as specified in Section B of this RFP and in accordance with the pricing structure as specified in Section C of this RFP.

Throughout the duration of any resultant contract, the Contractor shall provide one (1) paper copy of each invoice. The paper invoice must contain the following minimum information:

1. Invoice Number
2. Invoice Date
3. Invoice Amount with gigabit/sec amount of Internet Service provided.
4. The full company or corporate name and address; payment address if it differs from corporate address.
5. The full nine (9) digit Federal Tax Identification number (for U.S.)

Contractors only) and/or NYS SFS number.
6. Contract Number.

Direct invoices to the following address:

State University of New York at Fredonia
State Accounting Office
Maytum Hall, Room 401
Fredonia, New York 14063

Any invoice that is unclear, illegible or does not conform to these specific requirements shall be returned to the Contractor for re-issuance.

3. Schedule of Payments

The Contractor shall provide monthly invoices in arrears for services performed during the previous month. The University will make payments on a monthly basis in accordance with the State of New York's prompt payment legislation. The University will commence payments upon written acceptance in accordance with Section D, E and F of this RFP.

4. Assignment

No part of the work specified herein may be assigned. (See Exhibit A).

5. Notices

Notices under this contract shall be in writing and shall be considered effective upon personal delivery to the individual listed below or five calendar days after deposit in any U.S. mailbox, first class and addressed to the other party as follows:

For the State University of New York at Fredonia:

Soteris Tzitzis, Director of University Services
State University of New York at Fredonia
University Services
405 Maytum Hall
Fredonia, New York 14063
Telephone: 716-673-3257
Facsimile: 716-673-4977
Email: tzitzis@fredonia.edu

For Contractor: **(please complete the following)**

Telephone: _____
Facsimile: _____
Email: _____

SECTION G

Contract Requirements

1. Term of Contract

The initial contract term shall commence on July 1, 2017 or such earlier date as the University directs. The contract term shall terminate three (3) years after the beginning date on June 30, 2020 unless terminated in accordance with the contract.

2. Insurance Requirements

The Contractor shall defend, indemnify and save harmless the State University of New York, its officers, employees and agents, from any and all claims, liability, losses and causes of actions which may arise out of the errors, omissions and performance or non-performance by the Contractor, employees or agents, of the work covered by this contract. The University shall not assume any obligation to indemnify, hold harmless or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this agreement.

The Contractor shall secure, pay the premiums for, and keep in force until the expiration of this contract, including any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by the Contractor under this contract. The amounts of insurance coverage specified below shall be the minimum amount of available insurance to satisfy claims; a policy which allows the costs associated with investigating, management or defense of any claim, or any other cost incurred by the insured or the insurance carrier, to be deducted from the policy limits is not acceptable.

- a. Commercial General Liability Insurance including all extensions-
\$2,000,000 each occurrence;
\$2,000,000 personal injury;
\$2,000,000 products/completed operations;
\$2,000,000 general aggregated
- b. Workmen's Compensation Insurance, Unemployment Insurance and Disability Insurance as required by the laws of the State of New York.
- c. If automotive equipment is used in the operation, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.

All policies for liability protection, bodily injury or property damage must specifically and expressly name the State University of New York as additional insured with respect to operations under the contract and premises occupied by the Contractor. With respect to the Contractor's liability for bodily injury or property damage under the items above, such insurance shall cover and not exclude Contractor's liability for injury to the property of the State University of New York System and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees or guests of the State University of New York.

Each insurance policy shall contain the following endorsement: "It is understood and agreed that the Insurance Company shall notify the Director of College Services in writing, forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy." A certificate of each policy of insurance shall be furnished to the Director of University Services. With the exception of Workmen's Compensation, upon the request of the Director of University Services a certified true copy of each policy of insurance, including the above endorsement manually countersigned by an authorized representative of the insurance company, shall be furnished. A certificate of insurance for Workmen's Compensation together with a properly executed endorsement for cancellation notice must always be furnished.

Following the notice of contract award, the requested Certificates and Policies shall be delivered as directed by the Director of University Services. Notices of policy changes shall be furnished to the Director of University Services.

All required insurance coverages must be acquired from insurers registered to do business in the State of New York and acceptable to the University. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of Best's Insurance Reports.

3. Parking

If at any time Contractor shall be on the premises of the State University of New York at Fredonia, then Contractor is responsible for acquiring a valid State University of New York at Fredonia parking permit and obeying all parking regulations. Contractor is responsible for ensuring this clause is included in Contractor's agreements with subcontractors.

4. Minority/Woman and Business Enterprise (M/WBE) Notice

M/WBE firms certified by New York State are encouraged to respond to this solicitation.

5. Order of Precedence (within this RFP/Contract)

In the event of a discrepancy or conflict in the performance of this contract, such discrepancy/conflict shall be resolved by giving precedence in the following order:

- a) Exhibit A and Exhibit A-1
- b) RFP
- c) Contract Clauses
- e) Documents, Exhibits and Other Attachments to contract
- f) Approved Agreement
- g) Contractor's response to RFP

PART II - CONTRACT CLAUSES

SECTION H

Contract Clauses

1. Scope of Work

The Scope of Work is defined in Section II, of this document.

2. Compensation and Method of Payment

Total compensation is shown in Section C of this document. Method of payment is defined in Section F of this document.

3. Contract Term

The contract term is July 1, 2017 and will terminate on contract end date of June 30, 2020.

4. Independent Contractor

It is understood and agreed that the Contractor is an independent contractor of the University and not an employee. The University shall not withhold income taxes, social security, or any other sums from the payments made to the Contractor hereafter. If the Contractor employs additional persons in the performance of this contract, those persons shall in no way be considered employees of the University, but rather they shall be employees or contractors of the Contractor, and the Contractor bears full responsibility for compensating those persons.

5. Multi-Year Contracts Contingent Upon Appropriations

If the State Legislature fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University's rights or the Contractor's rights under any termination section in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the University from future performance of the Contract, but not from their rights and obligations existing at the time of termination.

6. Specifications

All materials, equipment, supplies or services shall conform to Federal and State laws and regulations, and to the specifications contained herein.

7. Cost and Price Certification

By submitting cost or price information the Contractor certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations.

The price under this contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

8. Delays and Extensions of Time

(1) The Contractor agrees to perform the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the work specified in this contract.

(2) Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity,

acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

9. Suspension of Work

The Director of University Services unilaterally may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he or she may determine to be appropriate for the convenience of the University.

10. Payment of University Obligations

Payments to the Contractor pursuant to this contract shall be made no later than thirty (30) days after the University's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by the State of New York Finance Law are prohibited.

11. Delivery and Acceptance

Delivery shall be made in accordance with the solicitation specifications. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The University reserves the right to test any materials, equipment, supplies or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to, or on the date specified in the bid or proposal. Any material or service that is defective or fails to meet the terms of the solicitation specifications will be rejected. Rejected materials or services shall be promptly replaced or re-performed, at the direction of the University. The University reserves the right to purchase replacement materials or services in the open market. Contractors failing to promptly replace materials or re-perform services lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

12. Non-Hiring of Officials and Employees

No official or employee of the State of New York whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall, during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract.

13. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw material; and (c) to post in conspicuous places accessible to employees and applicants for employment, notices setting forth the substance of this section.

14. Termination for Convenience

(1) The performance of work under this contract may be terminated by the University in whole or in part, whenever the University shall determine that such termination is in the best interest of the University or the State of New York. Any such termination shall be effected by delivery to the

Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

(2) After receipt of a Notice of Termination, and except as otherwise directed by the Director of University Services, the Contractor shall:

- (a) stop work as specified in the Notice of Termination;
- (b) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;
- (c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (d) complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

15. Termination for Default

(1) The University may, subject to the provisions of paragraph (3) below, by written notice of default to the Contractor, terminate the contract in whole or in part in any one of the following circumstances:

(a) If the Contractor fails to perform within the time specified herein or any extension thereof,
or

(b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Director of University Services may authorize in writing) after receipt of notice from the Director of University Services specifying such failure.

(2) In the event the University terminates this contract in whole or in part as provided in paragraph (1) of this section, the University may procure substitute performance upon terms and in whatever manner the Director of University Services may deem appropriate.

(3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the University in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

(4) If, after notice of termination of this contract under the provisions of this section, it is determined for any reason that the Contractor was not in default under the provisions of this section, or that the default was excusable under the provisions of this section, the rights and obligations of the parties shall, if the contract contains a section providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to such section. If, after notice of termination of this contract under the provisions of this section, it is determined for any reason that the Contractor was not in default under the provisions of this section, and if this contract does not contain a section providing for termination for convenience of the University, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly.

(5) If this contract is terminated as provided in paragraph (1) of this section, the University, in addition to any other rights provided in this section, may require the Contractor to transfer title and deliver to the University, in the manner, at the times, and to the extent, if any, directed by the Director of University Services, (a) the fabricated or un-fabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the University; and the Contractor shall, upon direction of the Director of University Services, protect and preserve property in the possession of the Contractor in which the University has an interest. Payment for completed supplies delivered to and accepted by the University shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the University and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Director of University Services. The University may withhold from amounts otherwise due the Contractor hereunder such sum as the Director of University Services determines to be necessary to protect the University against loss because of outstanding liens or claims of former lien holders.

(6) The rights and remedies of the University provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(7) As used in paragraph (3) of this section, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

16. Procurement Lobbying Act

It is the policy of the State University to comply with the provisions of State Finance Law §§ 139-j and 139-k and related guidance offered by the Advisory Council on Procurement Lobbying and the Office of the State Comptroller.

Prior to approval by State University, or, if applicable, the State Comptroller, of the Contract for which this solicitation has been issued, a Respondent shall not communicate with State University other than with the persons identified in this solicitation as Designated Contact, or with a person who the Designated Contact has advised the Respondent is also a Designated Contact. The Designated Contacts, as of the date hereof, is Soteris Tzitzis, Director of University Services and Shannon Moore, Director of Contract Services.

17. Termination under New York State Finance Law §§ 139-j and 139-k

The State University reserves the right to terminate the contract resulting from this RFP in the event it is determined that the certification filed by the Respondent in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete. Upon such determination, the State University may exercise its termination right by providing written notification to the Respondent.

18. Arrearages

By submitting a response to this solicitation, Contractor represents that it is not in arrears in the payment of any obligation due and owing the State of New York, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award.

19. Compliance with Laws

The Contractor hereby represents and warrants that: **A.** It is qualified to do business in the State of New York and that it will take such actions as, from time to time hereafter, may be necessary to remain so qualified; **B.** It shall comply with all federal, State and local laws, regulations, and ordinances applicable

to its activities and obligations under this contract: and; C. it shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this contract.

20. Retention of Records

The Contractor shall retain and maintain all records and documents relating to this contract for three years after final payment by the University hereunder or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State of New York, State University of New York, including the Director of University Services or his designee, at all reasonable times.

21. Tax Exemption

The University is exempt from Federal Excise Taxes and New York Sales and Use Taxes.

22. EPA Compliance

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

23. Occupational Safety and Health Act

All materials, supplies, equipment, or services supplied as a result of this contract shall comply with the applicable U.S. and New York State Occupational Safety and Health Act standards.

24. New York Law Prevails

The provisions of this contract shall be governed by the laws of the State of New York.

25. Software Licensing

Licensor represents and warrants that the software, as delivered to the University, does not contain any program code, virus, worm, trap door, back door, timer, or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of Licensor-selected conditions, or manually on the command of Licensor.

26. Protests and Claims

Any protest regarding the award of this contract or claim arising out of this contract shall be administered in accordance with the University Procurement Policies.

27. Eligibility to Purchase

By submitting a proposal, Contractor agrees to extend the proposed price structure and discounts to all State University of New York campuses and facilities within the State of New York.

28. Changes

The Director of University Services may at any time, by written order, make unilateral changes within the general scope of this RFP/Contract.

The section entitled “Delays and Extensions of Time” prohibits the Contractor from making charges or claims for damages for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. If a change, as allowed above, causes an increase or decrease in the cost of the work, which is not time-related, the University shall make an equitable adjustment in the contract price and shall modify the contract.

The Contractor must assert its right to an adjustment under this section within 30 days from the date of receipt of the written order. Any request for an adjustment must be submitted in writing to the Director of University Services.

Failure to agree to any adjustment shall be a dispute under the Disputes section. However, nothing in this section shall excuse the Contractor from proceeding with the contract as changed.

29. Responsibility

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

PART III

LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION I

List of Attachments

- Notary Acknowledgement
- Attachment 1- Proposal Submission Checklist
- Attachment 2- Proposer Qualifications Submission Form
- Attachment 3- Procurement Lobbying Act Disclosure and Certification
- Attachment 4 - Public Officer’s Law Form XIII
- Attachment 5- Non-Collusive Bidding Certification
- Attachment 6 - Encouraging Use of New York State Business in Contract Performance
- Attachment 7 - NYS Substitute W-9 Form
- Attachment 8 - NYS Vendor Responsibility (VendRep) Form

- Attachment 9 - ST-220-CA New York State Department of Taxation & Finance “Contractor Certification to Covered Agency”
- Attachment 10 - ST-220-TD New York State Contractor Certification (For Vendor Use - Not to be Submitted to University)
- Attachment 11- M/WBE EEO Policy Statement (Form 104)
- Attachment 12 - M/WBE Utilization Plan (Form 107)
- Attachment 13- EEO Staffing Plan (Form 108)
- Attachment 14 - Contract Template (draft template)
- Attachment 15 - Exhibit A- SUNY Standard Contract Clauses
- Attachment 16 - Exhibit A-1- SUNY Affirmative Action Clauses

PART IV

REPRESENTATIONS AND INSTRUCTIONS

SECTION J

Representations, Certifications, and Other Statements of Contractors

See Section I

SECTION K

Evaluation Factors, Method of Award

Method of Award

A sealed proposal is required.

This RFP is part of a competitive procurement process designed to serve the best interests of the State University of New York and the People of the State of New York. It is also designed to provide all proposers with a fair and even opportunity to have their services considered. University evaluators will conduct a comprehensive review of each responsive proposal submitted in accordance with the terms of this RFP. Proposals will be evaluated on the basis of “best value” by an evaluation committee comprised of IT and University Services representatives, and shall be conducted in the following steps:

A. Evaluation Committee

All RFP responses received by the closing deadline will be evaluated. The Director of University Services shall establish an Evaluation Committee (the "Committee") to review and rate the Technical proposals. The Committee shall be composed of campus IT personnel and any other individuals appointed by the Director of University Services.

The Director of University Services and Director of Contract Services will evaluate the Cost proposals.

B. Acceptability of Proposals

The committee shall determine which contractors have met the requirements of the RFP. Failure to comply with any mandatory requirement/s will normally disqualify a contractor's proposal. The

Director of University Services shall have the sole authority to determine whether any deviation from the requirements of this RFP is substantial in nature. The Director of University Services may waive or permit to be cured minor irregularities in proposals that are immaterial or inconsequential in nature, whenever it is determined to be in the University's best interest. In addition, the Director of University Services may reject in whole or in part any and all proposals, and conduct discussions with all responsible contractors in any manner deemed necessary to best serve the interests of the University.

The Committee shall thereafter review and rate each proposal/contractor for compliance with the mandatory requirements of the specifications as set forth herein, and all other necessary requirements of this procurement, to determine if the contractor is qualified.

C. Technical Evaluation

The Committee shall conduct its evaluation of the technical merit of the proposals in accordance with the requirements and specifications. The Contractor must satisfy and explicitly respond to ALL the requirements and specifications including a detailed explanation of how each item listed in the requirements and specifications is to be met. The last phase of this technical evaluation will be the ranking by the Committee of each qualified proposal on technical merit. Total of 65 points will be awarded by each evaluator. Total points of all committee members awarded will determine the responsible vendor for Technical requirements.

The criteria that will be used by the committee for the technical evaluation of proposals for this procurement are listed below with points allotted for each:

1. Contractors compliance with all the requirements, criteria and specifications. Maximum of 22 points will be awarded by each evaluator as they deem meets the criteria of the RFP.
2. Peering points. Maximum of 12 points will be awarded by each evaluator as they deem meets the criteria of the RFP.
3. Uptime. Maximum of 11points will be awarded by each evaluator as they deem meets the criteria of the RFP .
4. Contractors cited experience for "key personnel" the general manager and chief engineer, Network Operations Center, Accessibility, Disaster Recovery. Maximum of 10 points will be awarded by each evaluator as they deem meets the criteria of the RFP .
5. Egress Points. Maximum of 10 points will be awarded by each evaluator as they deem meets the criteria of the RFP.

Example: If committee if made up of 3 members and each committee member awarded 65 points each to the most responsible bidder meeting the requirements for a total of 195 points. Then the bidder is awarded 65 points.

The next most responsible bidder meeting the requirements is awarded a total of 187 points

Then the lowest bidders total points are divided by the next lowest total points = a percentage (xx.x%). That percentage is then multiplied by the 65 points equaling the points awarded the next most responsible bidder rounded to the nearest whole number. This same process continues for the third, fourth, etc., bidder, substituting each of their total points scores.

Example only: $195 \text{ points} \div 187 \text{ points} = 4.2\%$. $65 \text{ points} \times 4.2\% = 62 \text{ point}$ awarded to second most responsible bidder. (same for the third, fourth, etc. substituting their total points)

The terms "must" or "shall" are used throughout this document to indicate mandatory requirements. The Contractor's proposal is to state clearly that it meets all requirements and specifications; that is, that the Contractor is fully capable of delivering the items and providing the services as specified in this RFP. Each Contractor must provide a written detailed response to each requirement and specification.

Misinterpretation of requirements and specifications by the Contractor shall not relieve the Contractor of responsibility to accurately address the requirements of the RFP or to perform the contract, if awarded.

The Committee may request site visits for the purpose of evaluating proposals and/or Contractor's responsibility. The Committee may request additional technical assistance from any source. Industry standard references may be used during the evaluation process.

D. Financial Evaluation

Concurrent with the technical evaluation, the separate financial volume of each qualified proposal will be distributed to the Director of University Services. The Director will evaluate each qualified proposal. This information will then be used to establish a financial ranking. Information from the pricing proposal sheets contained in Section C will be used to compute the total price.

A total 35 points will be awarded.

25 points will be awarded for A - based on lowest 0.5 gigabit/sec, Campus yearly cost, includes one-time charges and installation fees.

10 points will be awarded for B - based on lowest 200/200 meg/sec managed service yearly cost for Incubator Client Service - (Point to Point **UP TO 1 GB**) managed service, includes one-time charges and installation fees.

Points to be awarded based on the following formula/s:

A. For cost evaluation purposes, the yearly cost for 0.5 gigabit/sec will be used as total cost for A.

1. lowest 0.5 gigabit/sec, includes all charges and installation fees (total cost) is awarded 25 points

2. lowest 0.5 gigabit/sec, includes all charges and installation fees (total cost) \div next second lowest 0.5 gigabit/sec total cost = $xx.x\%$.

$25 \text{ points} \times (xx.x)\% = \text{points awarded to next second lowest bidder, rounded to nearest whole number. (same goes for the third, fourth, etc.)}$

Example only: 25 point awarded based on lowest 1.0 gigabit/sec

Example only: $\$1,000.00 \div \$1,500.00 = 66.6\%$. $25 \times 66.6\% = 17 \text{ points}$ awarded to next lowest 1.0 gigabit/sec. (same for the third, fourth, etc.)

- B. For cost evaluation purposes, the yearly cost for 200/200 meg/sec rate, managed service will be used as total cost for B.
1. lowest yearly cost Point to Point using 200/200 meg/sec rate, managed service, includes one-time charges and installation fees is awarded 10 points.
 2. lowest yearly cost \div next lowest yearly cost 200/200 meg /sec point to point managed service = xx.x%

10 points x (xx.x)% = points awarded to next lowest bidder, rounded to nearest whole number. (same for the third, fourth, etc.)

Example only: $\$1,000.00 \div \$1,500.00 = 66.6\%$. $10 \times 66.6\% = 7$ points awarded to next lowest yearly cost for 200/200 meg/sec point to point managed service. (same for the third, fourth, etc.)

E. Final Ranking and Selections

Financial rankings of proposals will be combined with the corresponding technical ranking to determine a final ranking for each proposal. **Technical merit will have greater weight than price.** The Committee will recommend contract award to the responsible contractor or contractors whose proposal is (are) determined to provide overall best value to the University, considering the evaluation factors in this RFP, and price. Any tie in total points awarded (both technical and cost) will be decided by a flip of the coin by the Director of University Services.

F. Negotiation

The University has the right to accept the best proposal as submitted, without discussion or negotiation. Contractors should therefore not rely on having a chance to discuss, negotiate and adjust their proposals.

Responsible contractors who submit proposals initially judged by the Director of University Services to be reasonably susceptible of being selected for award may be asked to discuss their proposals with the University to facilitate arrival at a contract most advantageous to the University. If the Director of University Services determines that further discussion is in the best interest of the University, the Director of University Services will advise all qualified contractors to submit a best and final offer for consideration by the Committee.

However, discussions may not be conducted if the Director of University Services determines either that discussions are not in the best interests of the University or that discussions need not be conducted: (a) with respect to prices that are fixed by law or regulation, although consideration shall be given to competitive terms and conditions; (b) because the time of delivery or performance does not permit discussions; or (c) because it can be demonstrated clearly from the existence of adequate competition or accurate prior cost experience with the particular item that acceptance of an initial offer without negotiation would result in a fair and reasonable price.

G. Conflict of Interest

Conflict of Interest Information

A. Each solicitation that will result in the selection of a Contractor who will assist a unit in the formation, evaluation, selection, award, or execution of a State contract shall provide notice of the requirement of this regulation.

B. "Conflict of interest" means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

C. "Person" has the meaning a bidder, offerer, Contractor, consultant or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

D. If the Director of University Services makes a determination prior to award that facts or circumstances exist giving rise or which could in the future give rise to a conflict in interest, he may reject a bid or offer.

E. After award the University may terminate the contract, in whole or in part, if it deems such termination necessary to avoid an actual or potential conflict of interest. If the Contractor knew or reasonably could have been expected to know of an actual or potential conflict of interest prior to or after award and did not disclose it or misrepresented relevant information to the Director of University Services, the University may terminate the contract for default.

H. Weigh

TECHNICAL EVALUATION - 65%
FINANCIAL EVALUATION - 35%
TOTAL - 100%

[The remainder of this page has been intentionally left blank.]

SECTION L

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

Attachment 1: Proposal Submission Checklist

√	Description
<input type="checkbox"/>	RFP Summary Information Form
<input type="checkbox"/>	Notary Acknowledgement Form
<input type="checkbox"/>	Attachment 1: Proposal Submission Checklist
<input type="checkbox"/>	Attachment 2: Proposer Qualifications Submission Form (References)
<input type="checkbox"/>	If required: Narrative addressing ability and experience
<input type="checkbox"/>	Attachment 3: Procurement Lobbying Act Disclosure and Certification
<input type="checkbox"/>	Attachment 4: Public Officer’s Law Form XIII
<input type="checkbox"/>	Attachment 5: Non-Collusive Bidding Certification
<input type="checkbox"/>	Attachment 6: Encouraging Use of NY State Business in Contract Performance
<input type="checkbox"/>	Attachment 7: NYS Substitute W-9 Form
<input type="checkbox"/>	Attachment 8: Vendor Responsibility File either the required Vendor Responsibility Questionnaire online via the New York State VendRep System or complete and submit a paper questionnaire. Select one: <input type="checkbox"/> completed online questionnaire <input type="checkbox"/> paper copy of questionnaire included in Proposal.
<input type="checkbox"/>	Attachment 9: ST-220-CA New York State Department of Taxation & Finance “Contractor Certification to Covered Agency”
<input type="checkbox"/>	Attachment 10: ST-220-TD New York State Department of Taxation & Finance (For Vendor Use ONLY – Not to be submitted to University)
<input type="checkbox"/>	Attachment 11: MWBE/EEO Policy Statement (Form 104)
<input type="checkbox"/>	Attachment 12: MWBE Utilization Plan (Form 107)
<input type="checkbox"/>	Attachment 13: EEO Utilization Plan (Form 108)
<input type="checkbox"/>	Attachment 14: Contract Template - <i>Proposer has reviewed; Do not return with proposal</i>
<input type="checkbox"/>	Attachment 15: Exhibit A – SUNY Standard Contract Clauses – <i>Proposer has reviewed; Do not return with proposal</i>
<input type="checkbox"/>	Attachment 16: Exhibit A-1 – SUNY Affirmative Action Clauses; <i>Proposer has reviewed; Do not return with proposal</i>

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

RFP #: 022017	RFP Title: Internet Service Provider	RFP Release Date: February 23, 2017 Electronic copies of this RFP are available at: https://fa.fredonia.edu/universityservices/request-proposal-rfp-022017
Key Events		
Questions/Requests for clarification due	March 16, 2017 (by 4:00 PM)	
Response to questions/requests for clarifications issued	March 23, 2017	
Notice of Intent to Proposal Due (if applicable)	NA	
Proposal Due Date and Time	May 2, 2017 by 2:00 PM	
Anticipated Notification of Award (Estimated)	May 5, 2017	
Anticipated Contract Start Date	July 1, 2017	
Anticipated Term Length of Contract	Three (3) Years	
<i>SUNY reserves the right, in its sole discretion, to modify the above schedule. Proposers will be notified via email of any changes in a timely manner</i>		
Designated Contact Information		
Primary Contact: Soteris Tzitzis, Director of University Services University Services State University of New York at Fredonia 405 Maytum Hall Fredonia, NY 14063 Email: soteris.tzitzis@fredonia.edu	Secondary Contact: Shannon Moore, Director of Contract Services University Services State University of New York at Fredonia 406 Maytum Hall Fredonia, NY 14063 Email: shannon.moore@fredonia.edu	Other Contacts:
Restricted Period		
In accordance with the requirements of New York State Finance Law Sections 139j and 139k ("Lobbying Law"), the restricted period for this procurement is now in effect. Therefore, all communications regarding this procurement must be handled through the State University of New York's designated contacts only.		
Proposer Information		
Legal Business Name of Proposing Company:		Proposer's Federal Tax Identification Number:
D/B/A – Doing Business As (if applicable):		NYS Vendor ID Number:
Street Address:	City/State:	Zip Code:
If applicable, place an "x" in the appropriate box: <i>(check all that apply)</i>		
<input type="checkbox"/> Small Business (if checked, provide # of employees ____) <input type="checkbox"/> Minority Owned Business (NYS Certified)		<input type="checkbox"/> Disabled Veteran Owned Business <input type="checkbox"/> Women Owned Business (NYS Certified)
If you are not submitting a proposal, place an "x" in the box and return this page only. <input type="checkbox"/> We are unable to propose at this time because:		
Proposers Signature:		Title:
Printed Name:		Date:

Person signing this signature page has signature authority for the company.

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

State University of New York

Notary Acknowledgement

(ACKNOWLEDGEMENT BY INDIVIDUAL)

STATE OF NEW YORK)
COUNTY OF) ss.:

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

Notary Public

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF NEW YORK)
COUNTY OF) ss.:

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

Notary Public

(ACKNOWLEDGEMENT BY CORPORATION)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this ___ day of _____, 20___, before me personally came _____, to me known, who being duly sworn, did depose and say that he/she resides in _____; that he/she is the _____ (title) of _____ (firm), the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

Attachment 2: Proposer Qualifications Submission Form

References:

References				
	Company Name & Address	Contact Name Email Address Phone Number	Number of Years of Continuous Service to Client	Types of Clients Served
1.				
2.				
3.				
4.				
5.				

Contract Terminations			
Company Name & Address	Contact Name, email address, Phone #	Date of Contract Termination	Reason for Contract Termination

Attachment 3: Procurement Lobbying Act Certification

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

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

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

The University's Procedures are available at: http://www.suny.info/policies/groups/public/documents/policies/pub_suny_pp_039630.htm

Please complete the following:

1. As defined in State Finance Law §§ 139-j (1)(a), has a governmental agency made a determination of non-responsibility with respect to the Offeror within the previous four years where such a finding was due to a violation of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO YES If yes, attach explanation and include Governmental entity which made finding, date of finding and basis of finding

2. Has a governmental entity terminated or withheld a procurement contract with the Offeror because of violations of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO YES If yes, attach explanation and include Governmental entity which terminated contract, date of contract termination or withholding and identify the related procurement contract

CERTIFICATION:

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

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

Attachment 4: SUNY Public Officer's Law Form XIII

**Purchasing and Contracting Procedures
(Procurement)**

**Inquiry to determine compliance with the provisions of Public Officers Law
§ 73 (4)**

Please indicate if you or any officer of your organization, or any party owning or controlling more than 10 percent of your stock if you are a corporation, or any member if you are a firm or association, is an officer or employee of the State of New York or of a public benefit corporation of the State of New York.

_____ **Yes**

_____ **No**

Name: _____ **Signed:** _____
(Please Print)

Title: _____ **Date:** _____

Attachment 5: Non-Collusive Bidding Certification

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

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

A Proposal Shall Not Be Considered For Award Nor Shall Any Award Be Made Where [1], [2], [3] Above Have Not Been Complied With; Provided However, That If In Any Case The Proposer(S) Cannot Make The Foregoing Certification, The Proposer Shall So State And Shall Furnish Below A Signed Statement Which Sets Forth In Detail The Reasons Therefore;

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 20____ as the act and deed of said corporation of partnership.

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

_____	_____
_____	_____
_____	_____
_____	_____

**IF PROPOSER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:
NAME LEGAL RESIDENCE**

President: _____

Secretary: _____

Treasurer: _____

President: _____

Secretary: _____

Treasurer _____

Attachment 5: Non-Collusive Bidding Certification - Page 2

Identifying Data

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

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

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By _____

By _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Attachment 6
ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

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

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

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

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its Contractors. The State therefore expects Proposers to provide maximum assistance to New York businesses in their use of the Contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

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

Will New York State Businesses be used in the performance of this Contract? _____ Yes _____ No

If yes, identify New York State Business(es) that will be used (identify below and/or attach identifying information).

Name: _____ **Signed:** _____
(Please Print)

Title: _____ **Date:** _____

Attachment 7

NYS Substitute W-9 Form

Visit the following link for a copy of the NYS Substitute W-9 Form

https://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf

Attachment 8

NYS Vendor Responsibility Form

Visit the following link to access information on submitting an online questionnaire or for obtaining a hard copy version (under the forms link at the left-hand side of the page).

http://www.osc.state.ny.us/vendrep/info_vrsystem.htm

Indicate below whether Proposer has submitted their Questionnaire Online:

Yes _____ No _____

If **Yes**, ensure that the certification is current and that it is accessible. Complete the information below:

If **No**, attach hard copy and complete the information below.

Company Name: _____

By: _____
(Please Print)

Date: _____

Attachment 9
ST-220-CA New York State Department of Taxation & Finance
“Contractor Certification to Covered Agency”

A fillable copy can be obtained at:
https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

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

ST-220-CA

(12/11)

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

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

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

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

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

When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_he resides at _____,
Town of _____,
County of _____,
State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): _he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

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

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

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

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

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

Attachment 10: ST-220-TD New York State Contractor Certification
Do Not Submit to SUNY – Submit Directly to NYS Tax Department per instructions

A fillable copy can be obtained at: https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf



Department of Taxation and Finance
Contractor Certification
 (Pursuant to Tax Law Section 5-a, as amended,
 effective April 26, 2006)

ST-220-TD
 (4/15)

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

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)	City	State	ZIP code
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ()	
Covered agency or state agency	Contract number or description	Covered agency telephone number ()	
Covered agency address	City	State	ZIP code
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000? Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>			

General information

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency*, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006). See *Need help?* for more information on how to obtain this publication.

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

Mail completed form to:

**NYS TAX DEPARTMENT
 DATA ENTRY SECTION
 W A HARRIMAN CAMPUS
 ALBANY NY 12227-0826**

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?

Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889
 To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

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

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 – Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 – Affiliate registration status

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 – Subcontractor registration status

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

Sworn to this ____ day of _____, 20____

(sign before a notary public)

(title)

Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

7 A Relationship	B Name	C Address	D Federal ID number	E Sales tax ID number	F Registration
---------------------	-----------	--------------	------------------------	--------------------------	-------------------

cc Page 4 of 4 ST-220-TD (4/15)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }

COUNTY OF _____ }

SS.:

On the ____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _____ he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

(Mark an X in the appropriate box and complete the accompanying statement.)

(If an individual): _____ he executed the foregoing instrument in his/her name and on his/her own behalf.

(If a corporation): _____ he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _____ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

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

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

Notary Public

Registration No. _____

Attachment 11: M/WBE EEO Policy Statement (Form 104)

**MINORITY AND WOMEN’S BUSINESS - EQUAL EMPLOYMENT
OPPORTUNITY PROGRAM POLICY STATEMENT**

Policy Statement

The _____ commits to carrying out the intent of the New York State
(Name of Contractor)

Executive Law, Article 15-A which assures the meaningful participation of minority and women’s business enterprises in contracting and the meaningful participation of minorities and women in the workforce on activities financed by public funds.

M/WBE Contract Goals

_____ % Minority Business Enterprise Participation

_____ % Women’s Business Enterprise Participation

EEO Contract Goals

10% Minority Labor Force Participation

10% Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

Attachment 12: M/WBE Utilization Plan (Form 107)

A fillable copy can be obtained at: <https://www.suny.edu/sunyp/docs/618.docx>



**UNIVERSITY-WIDE MWBE PROGRAM
UTILIZATION PLAN**

SUNY Project No. _____ Bid Date: Click here to enter a date. Agreement/Contract Value: _____

Contractor: _____ Primary Contact: _____

Address: _____ City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-Mail: _____

GOALS: MBE _____% WBE _____% Campus: _____

SUBCONTRACTOR	FEDERAL ID #	DOLLAR VALUE OF CONTRACT OR PURCHASE ORDER	DESCRIPTION OF WORK OR SUPPLIES	SUBCONTRACTOR/SUPPLIER SCHEDULE	
				START DATE	COMPLETION DATE
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____ Check One: MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____ Check One: MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____ Check One: MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____ Check One: MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.

in accordance with the SUNY Contract Documents and Executive Law Article 15-A, my firm seriously expects to use the NYS certified MBE/WBE certified firms listed above. The Contractor shall immediately notify and request approval prior to any changes to this plan from the University-wide MWBE Program Office.

NAME: _____ TITLE: _____ COMPANY OFFICER'S SIGNATURE: _____ DATE: Click here to enter a date.

APPROVED: DEFICIENT: MWBE PROGRAM COORDINATOR: _____ DATE: _____

Attachment 13: EEO Staffing Plan (Form 108)

A fillable copy can be obtained at: http://www.suny.edu/sunyvp/lookup.cfm?lookup_id=621

EEO STAFFING PLAN

Instructions on page 2

Solicitation No.: [REDACTED]	Reporting Entity:	Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
Offeror's Name: [REDACTED]	<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor Subcontractor's name _____	
Offeror's Address: [REDACTED]		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Work force by Gender		Work force by Race/Ethnic Identification						Disabled		Veteran					
	Total Male (M)	Total Female (F)	White (M)	White (F)	Black (M)	Black (F)	Hispanic (M)	Hispanic (F)	Asian (M)	Asian (F)	Native American (M)	Native American (F)	(M)	(F)	(M)	(F)
	Officials/Administrators															
Professionals																
Technicians																
Sales Workers																
Office/Clerical																
Craft Workers																
Laborers																
Service Workers																
Temporary /Apprentices																
Totals																

PREPARED BY (Signature): [REDACTED]	TELEPHONE NO.: [REDACTED]	DATE: [REDACTED]
NAME AND TITLE OF PREPARER (Print or Type):		EMAIL ADDRESS: [REDACTED]
Submit completed with bid or proposal		

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (ADM/EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

Instructions for completing:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offeror's total work force.
4. Enter the total work force by EEO Job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
 - **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
 - **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
 - **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
 - **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
- OTHER CATEGORIES**
- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activities (es)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
 - **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
 - **GENDER** Male or Female

Attachment 14: Formal Contract

STATE UNIVERSITY OF NEW YORK CONTRACT NUMBER _____

THIS AGREEMENT is made by and between the STATE UNIVERSITY OF NEW YORK, (hereinafter "SUNY"), an educational corporation organized and existing under the laws of the State of New York, and having its principal place of business located at State University Plaza, Albany, New York 12246, on behalf of the campus, State University of New York at Fredonia, located at 280 Central Ave., Fredonia, New York 14063 hereinafter referred to as "University" and [Contractor Name] (hereinafter "Contractor"), a [state type of legal entity] having its principal place of business located at [address]

W I T N E S S E T H:

WHEREAS, The University requires Contractor provide the services described in the Request for Proposal (RFP) dated [insert date of RFP] attached hereto as Exhibit B; and,

WHEREAS, Contractor has represented that it has the specialized expertise to perform said Services and holds all necessary licenses to practice and perform the Services contemplated in this Agreement; and

WHEREAS, University desires to enter into an agreement with Contractor for such Services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made, the parties agree as follows:

1. **Contractor's Representations and Warranties.** Contractor shall provide all of the services described in Exhibit B. Contractor understands and agrees that it is responsible for the performance of services in accordance with the terms and conditions of this Agreement. Contractor warrants that the Services it provides under this Agreement will conform to the specifications set out in the RFP and that Contractor will exercise due professional care and competence in performing the Services. Contractor represents that it is fully capable and willing to provide the services required by this Agreement; that it has full right and authority to enter into this Agreement; no consent, authorization, order or approval of, or filing or registration with any governmental agency, commission, board, other regulatory body, any person or entity or any corporate affiliates is required for or in connection with the execution and delivery of this Agreement by the Contractor and the performance of the work to be performed hereunder; that it is not a party to, subject to, or bound by, any agreement, judgment, order, writ, injunction or decree which would prevent the carrying out of this Agreement.
2. **Liability.** Contractor understands and agrees that it is responsible for the performance of the Services in accordance with the terms and conditions of this Agreement. The University may look solely to Contractor for remedy, redress, liability or indemnification for any failure to perform, whether caused by Contractor itself or by one or more of its subcontractors, agents or employees. Contractor shall be fully liable for the actions of its officers, employees,

subcontractors, agents, licensors, or affiliates and shall fully indemnify and save harmless SUNY, University and the State from suits, actions, damages and costs of every name and description presented, brought, or recovered against SUNY, University and the State of New York for, or on account of any liability which may be incurred by reason of Contractor's performance of this Agreement.

3. **Indemnity.** (a) Contractor. Contractor shall fully indemnify, defend and save harmless SUNY, the University, its officers, employees and agents without limitation, from and against any and all damages, expenses (including reasonable attorneys fees), claims, judgments, liabilities, losses, awards, and costs which may be finally assessed against SUNY or the University in any action for or arising out of or related to this Agreement. The State of New York reserves the right to join in any such claim, demand or suit, at its sole expense, when it determines there is an issue involving a significant public interest. (b) SUNY and the University. Subject to the availability of lawful appropriation and consistent with the New York State Court of Claims Act, SUNY, the University shall hold the Contractor harmless from and indemnify it for any final judgment of a court of competent jurisdiction for its failure to perform its obligations hereunder or to the extent attributable to the negligence of SUNY, the University or of its officers or employees when acting within the course and scope of their employment in connection with this Agreement.
4. **Effective Date, Term and Termination.** Unless modified as provided herein, this Agreement shall begin on [date] and end on [date]. The Agreement may not be extended. This Agreement may be terminated by SUNY and/or the University for any of the following reasons:
 - (a) Convenience of SUNY and/or the University: This Agreement may be terminated at any time upon receipt of thirty (30) days prior written notice given by SUNY and/or the University for whatever reason, or for unavailability of funds.
 - (b) Event of default: Except as otherwise provided in this Agreement, in the event the Contractor's service is deemed unsatisfactory, due to the fault or negligence of Contractor, its employees and subcontractors, a written cure notice will be sent to Contractor by SUNY and/or the University. Contractor shall have thirty (30) days to correct the deficiencies noted. If the deficiencies are not corrected, SUNY and/or the University may terminate this Agreement immediately upon written notice.
 - (c) Additional grounds for SUNY and/or the University to terminate Agreement: SUNY and/or the University shall have the right to terminate this Agreement in the event the State Finance Law sections 139-j and 139-k certifications executed by Contractor are found to be false or incomplete or if applicable, the Department of Taxation and Finance Contractor Certification form, ST 220-CA, statements are found to be false or incomplete.
5. **Rates.** Rates for services incurred may not exceed the rates quoted in the Cost Proposal attached hereto as Exhibit C. Such rates are in compliance with Section 6 of State of New York Executive Order 10.
6. **Payment and Invoicing.** Contractor will invoice fees and expenses as set forth in the Cost Proposal attached hereto as Exhibit C, as well as any applicable taxes incurred in connection with the Services (except for taxes imposed on Contractor's entity income), on a monthly basis

in arrears. Payment to Contractor shall be made upon the University's receipt and approval of an invoice. Interest for any unpaid balance that is 30 days past receipt by the University of an acceptable invoice will accrue pursuant to Section 179g of New York State Finance Law. Payment for invoices submitted by Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Executive Director of Business Operations and Procurement Office of Business Operations and Procurement of the State University of New York or designee, in her/his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York state procedures and practices. Contractor shall comply with the OSC procedures to authorize payments. Authorization forms are available at the OSC website at www.osc.state.ny.us/epay, by email at epunit@osc.state.ny.us or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the OSC's electronic payment procedures, except where the Executive Director of Business Operations and Procurement Office of Business Operations and Procurement has expressly authorized payment by paper check as set forth above.

7. **Modification of Services.** The University reserves the right at any time during the performance of this Agreement to alter or terminate all services, upon [Insert Number] days written notice, without constituting grounds for any claim by Contractor for allowances for damages. If such change or alteration results in a reduction of the work covered by the Agreement, a proportionate deduction shall be made from the consideration herein. Services provided by Contractor through the date of such written notice will be paid by the University upon receipt and approval of necessary invoices. In the event of modification of the services, the parties will work together in good faith to agree upon an appropriate change order to the existing Scope of Services contained in the RFP, including any additional fees if applicable.
8. **Acceptance of Deliverables.** If the University reasonably determines that the Deliverables (as defined below) fail in any material respect to meet the mutually agreed specifications and/or other acceptance criteria, the University shall notify Contractor in writing of such failure and specify in reasonable detail the nature of such failure. Contractor shall make such revisions as necessary to cause such Deliverable to meet the specifications and/or other acceptance criteria, and re-submit such Deliverable to the University. At such time as a Deliverable meets such specifications and/or acceptance criteria, the University shall provide Contractor with written notice of such acceptance. In any case, each such Deliverable shall be deemed accepted unless rejected in writing within ten (10) calendar days of the delivery by Contractor of such Deliverable. Notwithstanding the rejection of any Deliverable by the University, operational use of such Deliverable shall be deemed to constitute acceptance thereof.
9. **Rights in Deliverables.** Contractor hereby assigns to the University ownership of all materials created by Contractor specifically for the University hereunder and required to be delivered to the University by virtue of their description or specification as a deliverable in the RFP, upon payment in full of all applicable invoices. Deliverables exclude Contractor's proprietary tools, methodologies, and any enhancements made to such tools and methodologies which shall remain the sole property of Contractor, and exclude any third party

components whether or not included or embedded therein. Deliverables shall be deemed to be “works made for hire” under federal copyright laws. Notwithstanding anything to the contrary, Contractor retains all rights to its knowledge, experience and know-how (including processes, ideas, concepts and techniques) acquired in the course of performing the Services.

10. **New York Information Breach and Notification Requirements.** Contractor hereby acknowledges and agrees to use commercially reasonable efforts to maintain the security of private information (as defined in the New York State Information Security Breach and Notification Act, as amended “ISBNA”(General Business Law § 889-aa; State Technology Law § 208) that it creates, receives, maintains or transmits on behalf of SUNY and to prevent unauthorized use and/or disclosure of that private information; and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic private information that it creates, receives, maintains or transmits on behalf of SUNY (“SUNY Data”). Contractor hereby acknowledges and agrees to fully disclose to SUNY pursuant to the ISBNA, and any other applicable law any breach of the security of a system where Contractor creates, receives, maintains or transmits private information on behalf of SUNY following discovery or notification of the breach in the system as to any resident of New York State whose private information was, or is reasonably believed to have been acquired by a person without valid authorization (“Security Incidents”). The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the system. Contractor shall be liable for the costs associated with such breach if caused by Contractor’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor’s agents, officers, employees or subcontractors. In the event of a Security Incident involving SUNY Data pursuant to the ISBNA, SUNY has an obligation to notify every individual whose private information has been or may have been compromised. In such an instance, Contractor agrees that SUNY will determine the manner in which such notification will be provided to the individuals involved pursuant to the ISBNA and agrees to indemnify SUNY against any cost of providing any such legally required notice. Upon termination or expiration of this Agreement, Contractor will follow SUNY’s instructions relating to any SUNY Data remaining in Contractor’s possession. Upon authorization from SUNY, Contractor will use data and document disposal practices that are reasonable and appropriate to prevent unauthorized access to or use of SUNY Data and will render the information so that it cannot be read or reconstructed.
11. **Confidentiality.** The parties agree that unless otherwise indicated, all information generated in whole or in part or in existence to be used for the purposes of this Agreement (whether written, printed, graphic or electronically recorded materials) is proprietary confidential information. Contractor acknowledges that this Agreement is subject to the New York State Freedom of Information Law (“FOIL”) as set forth in Article 6 of the New York State Public Officers Law, and that only Contractor’s proprietary information that satisfies the requirements of §87(2)(d) of the Public Officers Law shall be excepted from disclosure there under. Subject to FOIL, Contractor’s proprietary information may include all non public information relating

to its obligations under this Agreement. Contractor may identify the portions of its proposal and or this Agreement that it deems proprietary. Contractor's proprietary information which includes trade secrets information owned by the Contractor shall remain unpublished, except where publication is required by FOIL or other applicable law. Contractor shall inform its employees when it believes that its employees are being given trade secrets information under New York State Public Officers Law. To the extent that the information is managed by SUNY and to the extent applicable to SUNY, SUNY's disclosure of such confidential information to third parties under this agreement shall be in accordance with § 87 of New York State Public Officers Law.

12. **Non-Solicitation.** During the term of this Agreement, neither Party will directly or indirectly solicit, hire or utilize as an independent contractor the other party's employees or subcontractors involved in the performance of this Agreement.
13. **Dispute Resolution.** Except as otherwise provided in this Agreement, any dispute arising under this Agreement shall be amicably resolved by the parties. If the parties are unable amicably to resolve the dispute within thirty (30) days, then either party may seek legal or equitable redress.
14. **Forum Selection.** The laws of New York State will govern this Agreement without regard for New York State's choice of law statute. The parties agree to bring any action to construe, interpret or enforce this Agreement in a New York State court of competent jurisdiction. Contractor agrees to submit itself to such court's jurisdiction.
15. **Severability and Enforceability.** If any provision of this Agreement is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Agreement, unless it prevents accomplishment of the objectives and purposes of the Agreement, which determination shall be submitted as a dispute under paragraph 10 herein. In the event of any holding that the illegality or invalidity prevents accomplishment of the objectives and purposes of the Agreement, the parties will immediately commence negotiations to remedy such illegality or invalidity.
16. **Compliance with Law.** Contractor shall comply with all laws, rules, orders, regulations, and requirements of federal, State and municipal governments applicable hereto, including the provisions of Exhibits A and A-1, attached to and made a part of this Agreement.
17. **Waiver.** Any provision of this Agreement may be waived by mutual written consent of the parties hereto, provided, however, no such waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.
18. **Approval of New York Oversight Agencies.** This Agreement is subject to the approval of the New York State Office of Attorney General (AG) and New York Office of State Comptroller (OSC). This agreement shall not be valid and enforceable until such approval is given.

19. **Notice.** Any notice to parties hereunder must be in writing, signed by the party giving it and shall be served either personally or by registered mail, addressed as follows:

TO SUNY FREDONIA:

Soteris Tzitzis, Director University Services
SUNY Fredonia
405 Maytum Hall
280 Central Avenue
Fredonia, New York 14063

TO CONTRACTOR:

or to such other addressee as may be hereafter designated by notice. All notices become effective only when received by the addressee.

20. **Insurance.** For Contractor to carry its responsibilities under this Agreement, Contractor shall obtain and maintain during the term of this Agreement the following insurance coverage:
- i. Workers Compensation and Disability Benefits Coverage for the life of this Agreement for the benefit of such employees as are required to be covered by the New York State Workers Compensation Law. Evidence of such insurance coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board.
 - ii. General Liability Insurance from an insurance company licensed by the State of New York with a rating of at least "A-" as published with Standard & Poors with limits no less than One Million Dollars (\$1,000,000) per claim and Two Million dollars (\$2,000,000) in the aggregate. Such policy shall name the State University of New York as an additional insured and shall designate the State University of New York as the loss payee, and shall contain a provision that the State University of New York shall receive at least thirty (30) days written notice prior to material change, cancellation or expiration of such policy.
 - iii. Certificates of insurance for the coverages stated in this Paragraph shall be delivered upon execution of this Agreement.
21. **Merger, Integration and Precedence.** This Agreement constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of the contract are hereby superseded. This agreement may be amended only upon the mutual written consent of the parties. In the event of any inconsistency or conflict among the documents comprising this Agreement, such

inconsistency or conflict shall be resolved by giving precedence to the documents in the following order:

1. Exhibit A, Standard Contract Clauses
 2. Exhibit A-1, Affirmative Action Clauses
 3. This Agreement;
 4. This RFP
 5. Successful Proposers RFP Response
22. **Parties' Relationship.** The relationship of Contractor to SUNY arising out of this Agreement shall be that of an independent contractor. Contractor will have sole responsibility for the payment of salary (including withholding of income taxes and social security), workers compensation, disability benefits, and all other benefits for its personnel. Personnel supplied by either party will not for any purpose be considered employees or agents of the other party. Each party shall be solely responsible for the supervision, daily direction and control of its employees.
23. **Incorporation of the Equal Opportunity Clause:** “This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.”
24. **Responsibility:** The Company (hereafter “Contractor”) shall at all times during the Contract Term remain responsible. The Contractor agrees, if requested by the Chancellor of SUNY or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The Chancellor of SUNY or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Chancellor of SUNY or his or her designee issues a written notice authorizing a resumption of performance under the Contract. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate State University officials or staff, the Contract may be terminated by the Chancellor of SUNY or his or her designee at the Contractor’s expense where Contractor is determined by the Chancellor of SUNY or his or her designee to be non-responsible. In such event, the Chancellor of SUNY or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

[The remainder of this page has been intentionally left blank.]

Contract Signature Page

IN WITNESS WHEREOF, the parties hereto executed this Agreement the day and year written.

CONTRACT NUMBER _____

Agency Code: _____

Agency Certification

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

CONTRACTOR

STATE UNIVERSITY OF NEW YORK
AT FREDONIA

By: _____

By: _____

Dated: _____

Dated: _____

APPROVED AS TO FORM
ATTORNEY GENERAL

APPROVED AND FILED
NYS STATE COMPTROLLER

By: _____

By: _____

Dated: _____

Dated: _____

**State University of New York
Notary Acknowledgement**

(ACKNOWLEDGEMENT BY INDIVIDUAL)

STATE OF NEW YORK)

COUNTY OF _____) ss.:

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

Notary Public

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF NEW YORK)

COUNTY OF _____) ss.:

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

Notary Public

(ACKNOWLEDGEMENT BY CORPORATION)

STATE OF NEW YORK)

COUNTY OF _____) ss.:

On this ___ day of _____, 20____, before me personally came _____, to me known, who being duly sworn, did depose and say that he/she resides in _____; that he/she is the _____ (title) of _____ (firm), the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

Standard Contract Clauses

EXHIBIT A**State University of New York****February 11, 2014**

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

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

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

3. COMPTROLLER'S APPROVAL. (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the

threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

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

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

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

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to SUNY a non-collusive bidding certification on Contractor's behalf.

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

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

practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

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

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

12. **EQUAL EMPLOYMENT OPPORTUNITIES**

FOR MINORITIES AND WOMEN.

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

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

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

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

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

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

amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

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

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

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

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

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

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.**

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as proposers, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Proposers are hereby notified that

if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

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

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

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

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

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Proposers/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/reqs/docs/ListofEntities.pdf>

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

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

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

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

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

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

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

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

A. Affirmative Action Clauses

EXHIBIT A-1

December 12, 2014

B. State University of New York

1. DEFINITIONS. The following terms shall be defined in accordance with Section 310 of the Executive Law:

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

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

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

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority

ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

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

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

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

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other

agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

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

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

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

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

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract. (f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

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

specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

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

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

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

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and woman owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. MWBE Utilization Plan.

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

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

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

dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

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

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

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

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

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

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

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

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

7. Waivers.

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

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

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

8. Quarterly MWBE Contractor Compliance Report.

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

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

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

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

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

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

10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each

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

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

11. DAMAGES FOR NON COMPLIANCE.

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

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

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

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