

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
AGREEMENT FOR PROFESSIONAL AUDITING SERVICES FOR THE STATE'S ANNUAL
FINANCIAL STATEMENTS AND EMEDNY

WITH
KPMG LLP

NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C001119

THIS AGREEMENT ("Agreement") is made effective as of the date set forth in Section I (Term), below, and is by and between the New York State ("State") Office of the State Comptroller, by the Department of Audit and Control ("OSC"), whose main office and principal place of business is 110 State Street, Albany, New York, 12236, and KPMG LLP (the "Auditor" or "Contractor") whose principal place of business is located at 3 Chestnut Ridge Road, Montvale, New Jersey 07645 and whose office is located at 515 Broadway, Albany, New York, 12207 (OSC and the Auditor are individually referred to as a "Party" and collectively referred to as the "Parties").

W I T N E S S E T H

WHEREAS, OSC is responsible for conducting an audit of the combined financial statements of the State and eMedNY for the fiscal year ending on March 31, 2021, and for each of the four succeeding fiscal years;

WHEREAS, OSC issued Request for Proposals #20-11 (Professional Auditing Services for New York State's Annual Financial Statements and eMedNY) dated February 18, 2020 ("RFP"), which is attached hereto as Exhibit A, soliciting vendor proposals for an auditor to provide all auditing services as detailed in RFP Section 6.0 (Scope of Services) and Attachment J (eMedNY Audit – Scope of Work) ("Services");

WHEREAS, the Auditor responded to the RFP with a proposal dated April 10, 2020 ("Proposal"), which is attached hereto as Exhibit B, confirming its ability to perform the Services; and

WHEREAS, based upon the evaluation of the various proposals submitted in response to the RFP, the Auditor's proposal offered the best value and, therefore, it is in the best interests of OSC to retain the Auditor to perform the Services in accordance with the terms and conditions of this Agreement.

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

I. TERM

This Agreement shall commence on October 1, 2020 and shall continue for a period of five years, subject to earlier termination as provided for in Section XVIII (Termination and Suspension).

II. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES

This Agreement shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed a part of this Agreement. Conflicts between these documents shall be resolved in the following order of precedence:

1. Appendix A – Standard Clauses for New York State Contracts;

2. Agreement – (This Document):

- Appendix B – Proposer and Contractor Compliance Requirements and Procedures for Participation by Minority Group Members and Women With Respect to OSC Contracts;
 - Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
 - Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
 - Appendix E – Proposer’s Certifications/Acknowledgements;
 - Appendix F – Proposer’s Disclosure of Prior Non-Responsibility Determinations;
 - Appendix G – OSC Consultant Disclosure Reporting Requirements;
 - Appendix H – Proposer/Contractor Compliance Requirements and Procedures for Participation by Service-Disabled Veteran-Owned Businesses;
 - Appendix I – Executive Order on Independence of Auditors;
 - Appendix J – Confidentiality and Security Policies and OSC IT Standards
3. Exhibit A – RFP #20-11, including the Questions and Answers and any Addenda or Amendments;
4. Exhibit B – The Proposal (Exhibits B1 – Technical Proposal, B2 – Cost Proposal, and B3 – Administrative Proposal), including any clarifications thereto; and
5. Exhibit C – Annual Engagement Letter (draft to be proposed by Auditor, subject to review and approval by OSC; provided, however, that the annual engagement letter shall be substantially in accord with the terms of this Agreement).

III. **SERVICES**

- A. OSC hereby retains the Auditor to perform the Services, and the Auditor hereby agrees to perform the Services, which shall include all deliverables (“Deliverables”) and work as described in the RFP. Deliverables include the reports set forth in RFP Sections 6.2 (annual reports on financial statements), 6.3 (the eMedNY audit report), 6.4.A (the Report on Internal Control), 6.4.B (the Compliance Report), and other reports specified in the RFP if requested by OSC.
- B. Nothing contained herein shall prohibit OSC from contracting at any time with third parties or from performing any of the work itself or through other State entities, for any Services that otherwise may be requested or required of the Auditor pursuant to this Agreement, and the Auditor shall not assert an exclusive right to perform such Services.

IV. **COMPENSATION**

OSC shall compensate the Auditor pursuant to this Agreement in accordance with the Fee Schedule as set forth in the Auditor’s proposal, Exhibit B2 – Cost Proposal. Total compensation for Services provided under this Agreement shall not exceed the sum of \$9,712,910. The Auditor will not be reimbursed for travel expenses, meals, lodging, or any other administrative or overhead costs.

V. PAYMENT AND INVOICES

- A.** The compensation for Services provided for pursuant to this Agreement shall be payable by OSC in the ordinary course of State business upon OSC's receipt of the Auditor's invoice. Approved invoices for payment will be processed in accordance with Article 11-A of the New York State Finance Law.
- B.** All invoices must include the following information:
1. OSC's Agreement #C001119, Auditor's taxpayer identification number, and Auditor's New York State Vendor Identification Number;
 2. a detailed description of Services provided, including:
 - the total number of hours or fraction thereof devoted to each such service, the hourly rate of each person performing such Services, and a comparison of the total hours billed by individual hourly rates;
 - the total amount billed for Services for the invoice period;
 - the beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement; and
 3. In order to track utilization of minority- and women-owned business enterprise ("M/WBE") participation goals as required by New York State Executive Law Article 15-A and 5 NYCRR 142.11, each invoice shall include AC 3239-H M/WBE Expenditure Report of Appendix B, which shall include the actual total cost of the contract work performed by each certified M/WBE for the work relating to the submitted invoice and the actual amounts of any payments made by the Auditor to each certified M/WBE as of the date the invoice is submitted. Failure to comply with the M/WBE participation goals set forth in the RFP may result in penalties as delineated in Appendix B.
 4. In order to track utilization of service-disabled veteran-owned business (SDVOB) participation goals in accordance with New York State Executive Law Article 17-B, beginning three months after contract performance has begun, and thereafter with each invoice during term, the Contractor must submit to OSC Form AC-3322-2 (Contractor's SDVOB Utilization Report), which shall include the actual total cost of the contract work performed by each certified SDVOB for the work relating to the submitted invoice and the actual amounts of any payments made by the Contractor to each certified SDVOB as of the date the invoice is submitted. Failure to comply with the SDVOB participation goals set forth in the RFP may result in penalties delineated in Appendix H.
- C.** Billings for all Services rendered in connection with the audit of the New York State Medicaid Program (eMedNY) will be invoiced separately from other billings, and shall contain the same information provided for in the foregoing subparagraph (A and B).
- D.** Billings for all Services rendered in connection with any cybersecurity risk assessment(s) will be invoiced separately from other billings, and shall contain the same information provided for in the foregoing subparagraph (A and B).
- E.** All invoices shall be subject to OSC's acceptance of the Services for which billing is being made and are to be submitted via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

**Office of the State Comptroller
Bureau of Finance
Contract Payment Unit
110 State Street, Stop 13-2
Albany, NY 12236-0001**

With a copy via email (preferred) to FinRep@osc.ny.gov or via hard copy mail to:

**Office of the State Comptroller
Bureau of Financial Reporting & Oil Spill Remediation
110 State Street, Mail Stop 9-7
Albany, New York 12236-0001
ATTENTION: Maria Guzman**

VI. NOTICES

Any notice or other communication given pursuant to this Agreement shall be in writing and addressed to such Party at the address set forth in this Agreement, and shall be effective:

- (i) When delivered personally to the Party for whom intended;
- (ii) Upon five days following the deposit of the notice or other communication into the United States Postal Service mail (certified mail, return receipt requested, or first class postage prepaid); or
- (iii) Upon actual receipt by the intended Party if such notice or other communication is sent by overnight mail service.

The following are the names and contact information for the OSC and the Auditor. The Parties shall notify each other, as soon as possible of any change.

OSC:

Name: Martha Ross
Title: Director of Financial Administration
Address: Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001
Telephone: (518) 474-7574

Auditor:

Name: Marie Zimmerman
Title: Partner
Address: KPMG LLP
515 Broadway
Albany, NY 12207
Telephone: (518) 427-4674

VII. COOPERATION

The Auditor and OSC and their respective agents, employees, and officers shall cooperate with each other to the fullest extent in connection with the Services. Pursuant to the terms and conditions of this

Agreement and all appendices hereto, OSC shall supply and make available necessary information and personnel to assist the Auditor to perform the Services.

VIII. STAFF

Auditor's "staff" includes employees, consultants, owners, officers, directors, subcontractors, subsidiaries, affiliates, partners (holds ownership interest in Auditor with Certified Public Accounting ("CPA") license, principals (holds ownership interest in Auditor without CPA license), and agents of the Auditor.

- A.** The principal supervisory and management staff, including engagement partners, managers, and other supervisors who will be assigned to provide the Services, shall be those who are set forth in the Auditor's Technical Proposal. The Auditor shall notify OSC prior to a change in designation of any of these persons. Any person substituted for any such staff shall possess at least the equivalent level of skill and experience, and shall fulfill the same requirements, as the person replaced. Such change in staffing shall be subject to the approval of OSC, which approval shall not be unreasonably withheld.
- B.** The Auditor shall make principal supervisory and management staff, including engagement partners, managers, and other supervisors who will be assigned to provide Services, available at all reasonable times to discuss matters under this Agreement with authorized representatives of OSC.
- C.** The Auditor specifically represents and agrees that its staff have and shall possess the experience, knowledge, and character necessary to qualify them for the particular duties to be performed hereunder.
- D.** The Auditor certifies that staff provided to perform Services possesses the necessary integrity and professional capacity (i.e., experience and knowledge) to meet OSC's reasonable expectations. Subsequent to the commencement of Services, whenever the Auditor becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OSC no longer possesses the necessary integrity or professional capacity, the Auditor shall immediately discontinue the use of such staff and notify OSC.
- E.** OSC reserves the right to request the removal of any of the Auditor's staff if, in OSC's discretion, such staff is not performing in accordance with this Agreement, or for any other reasonable work-related or lawful cause. The Auditor shall be fully responsible for performance of work by its staff and by subcontractor's staff. OSC reserves the right to bar anyone from access to OSC's premises and/or access to OSC's information resources.
- F.** The Federal Immigration Reform and Control Act, as amended (8 USC § 1324a et al.), obligates employers, such as the Auditor and its subcontractors, if any, to verify that their employees are legally entitled to work in the United States. In order to confirm that the employees are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to the legal entitlement to work in the United States of any Auditor or subcontractor employee assigned work under the Agreement. OSC does not provide sponsorship. The Auditor warrants to OSC that the employees assigned to OSC are eligible for employment in the United States. The Auditor is responsible for ensuring that the employees retain the authorization to legally work in the United States throughout the term of the Agreement. OSC does not discriminate against individuals on the basis of national origin or citizenship.

IX. SUBCONTRACTORS

In the event that the Auditor utilizes subcontractors, which shall include any affiliates of KPMG (including member firms of KPMG International and KPMG-controlled entities) and any other third parties, to perform any of the Services, OSC shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractors of the Auditor prior to their performance of Services. To the extent that any such affiliates or subcontractors are proposed and approved for use by OSC (including DOH, as applicable) in the performance of such services, Auditor will have full responsibility to cause each such entity to comply with the required level of Confidentiality set forth in this Agreement and Auditor shall be responsible and wholly liable to OSC, the State, and any indemnitees of OSC or the State for any consequences of such entities' failure to comply.

The Auditor shall require all proposed subcontractors to complete such Appendices or attachments included in this Agreement as are deemed necessary by OSC (including as may be updated from time to time) prior to any such proposed subcontractor's performance of Services. The Auditor acknowledges that this requirement is ongoing for the term of this Agreement, and the Auditor shall be required to disclose to OSC its intention to enter into any subcontracts for the performance of any Services.

Failure to disclose the identity of any and all subcontractors used by the Auditor together with a detailed description of their responsibilities may, at the sole discretion of OSC, result in a disqualification of the subcontractor or termination of this Agreement.

The Auditor, as the single source of responsibility, shall be fully responsible to OSC and liable for the acts and omissions of itself, its subcontractors and of persons either directly or indirectly engaged by them in connection with the performance of the Services and this Agreement (including any extensions thereof).

OSC reserves the right to approve or disapprove any proposed changes in subcontractor's key staff. OSC in each instance will be provided with a summary of the experience of the proposed subcontractor's key staff member and an opportunity to interview that person, prior to giving its approval or disapproval.

X. RELATIONSHIP OF PARTIES; RIGHTS TO WORK PRODUCT

The relationship of the Auditor and its staff to OSC shall be that of an independent contractor, and not that of an agent or employee of OSC. The Auditor, as an independent contractor, shall not have the authority to contract for or bind OSC for any purpose whatsoever. The Auditor covenants and agrees that its staff will not hold themselves out as agents, officers, or employees of OSC, and that they will not make any claim, demand, or application for any right or privilege applicable to any officer or employee of OSC, including but not limited to, Workers' Compensation coverage, Social Security coverage, or Retirement System benefits.

All work performed by Auditor and its personnel for OSC under the Agreement is intended as work for hire. Such work is specially ordered and commissioned for use as contributions to a collective work, or is other such work as specified by Section 101(2) of the U.S. Copyright Act [17 U.S.C. 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York. Furthermore, OSC and the Auditor agree that the State of New York is the owner of all copyrights regarding such work. The Auditor warrants to the State of New York that it, and all of its staff, who have been, or may be used in regard to the Agreement, forfeit all past or future claims of title or ownership to the work produced under the Agreement.

Any final reports, analyses, and data (whether statistical or otherwise), transmitted to OSC by the Auditor shall become the sole and exclusive property of OSC for such use as OSC shall deem appropriate, other than Auditor's work papers, which Auditor may retain; provided that if and to the extent that any Auditor property is contained in any of the Deliverables ("Auditor Property"), Auditor hereby grants OSC, under

Auditor's intellectual property rights in such Auditor Property, a royalty-free, non-exclusive, non-transferable, perpetual license to use such Auditor Property for OSC's normal business purposes.

All reports, programs, Deliverables, documentation, analyses, and data transmitted to OSC shall be subject to the provisions of Article 6 of the New York Public Officers Law (Freedom of Information Law; "FOIL"). Accordingly, disclosure of items related to this Agreement shall be permitted consistent with the laws of the State of New York and specifically FOIL, as set forth in §87 of the Public Officers Law. If the Auditor specifically identifies, in writing at the time of submittal to OSC, information in such reports, programs, Deliverables, documentation, analyses, and data as a trade secret or proprietary information as provided by FOIL, and further provides an explanation of why the disclosure of the identified information would cause substantial injury to the competitive position of the Auditor, OSC will, except as may be required by law, including FOIL, and except as may be required in any governmental or judicial proceeding or inquiry, prior to releasing any records so identified, notify Auditor to afford Auditor an opportunity to seek a protective order or other remedy to protect such records from disclosure. Determinations as to the availability or exemption from disclosure of the identified information will be made by OSC in accordance with FOIL at the time a request for such information is received.

XI. AUDITOR INDEPENDENCE AND PROFESSIONAL STANDARDS

A. The Auditor has entered into contracts with:

- OSC for audit services for Common Retirement Fund ("CRF") financial statements (New York State and Local Retirement System ("ERS" or the "Retirement System") contract ERS005).

Based upon the determination of the OSC Audit Oversight Review Board ("Board"), made pursuant to the Comptroller's Executive Order on the Independence of Auditors Performing Services for the Office of the State Comptroller and the Common Retirement Fund (Appendix I), and in reliance upon certain representations made by the Auditor in its Proposal, the Auditor may serve as the Auditor of the Retirement System's financial statements, conditioned upon:

- i. The Auditor will comply with applicable independence rules and professional standards. The Auditor shall notify OSC of any conflict with independence or professional rules, prior to providing or continuing to provide, services under this Agreement.
 - ii. The Auditor shall strictly abide by the principles of the Generally Accepted Government Auditing Standards ("GAGAS") as promulgated by the United States Government Accountability Office ("GAO"), as such principles relate to audit organizations' performance of non-audit functions. The Auditor shall not provide any non-audit services prohibited by Sarbanes-Oxley Act of 2002, and shall adhere to any and all Executive Policies promulgated by the Comptroller regarding the independence of auditors.
 - iii. The Auditor shall not audit its own work in any of its engagements with OSC. The Auditor shall not assign any personnel listed in the Organizational Chart on page 42 of Auditor's Proposal, except for those personnel listed as Subject Matter Professionals to the contract listed in Section XI.A, above.
- B. The Auditor represents and covenants that it has, and will maintain during the term of this Agreement, quality control systems designed to achieve compliance with the requirements of this Section XI, and that it maintains, and will maintain during the term of this Agreement, adequate safeguards designed to achieve compliance with these requirements.**

- C. The Auditor shall take all reasonable steps to avoid creating a violation of independence rules and/or professional standards that would result in rendering the Auditor's performance of Services herein illegal or otherwise unlawful or in conflict with independence or professional rules. If the Auditor creates such a violation and the Auditor or OSC terminates this Agreement or performance of any part of the Services based upon such violation, the Auditor shall compensate OSC for any and all reasonable documented costs OSC may incur, including the cost of re-procuring a new auditor and costs attributable to any delays suffered by OSC in the audit, up to but not exceeding the annual fee for the year of the contract termination. The requirement to compensate OSC under this Section XI, subsection C shall not apply if the Auditor terminates the Agreement in accordance with Section XVIII.D (i).

XII. GENERAL WARRANTY

The Auditor warrants that the Services will be performed in a professional and workmanlike manner, in accordance with applicable professional auditor standards that would apply to a prudent professional person performing like-kind services for a similarly-sized and situated government client. Auditor shall re-perform, at its own expense, any work not in compliance with this warranty brought to its attention within 90 days of the initial performance/re-performance of such work.

XIII. CONFLICTS OF INTEREST

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

XIV. CONFIDENTIALITY, SECURITY, AND BACKGROUND INVESTIGATIONS

A. Definition

The term "Confidential Information" shall mean any and all information which is disclosed by either party ("Owner") to the other ("Recipient") verbally, electronically, visually, or in written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third-party software). For the purpose of this Agreement, "State Confidential Information" means Confidential Information provided by or on behalf of OSC and DOH, including by their respective contractors or consultants, in relation to or for the purpose of the provisioning of Services by Auditor pursuant to this Agreement.

B. Treatment

Owner's Confidential Information shall be treated as confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less protective than those in this Section and who have a justified business "need to know." This Agreement imposes no obligation upon the Parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was lawfully in the possession of or was lawfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third

party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; (e) is required to be disclosed by governmental or judicial order or applicable law provided that notice is promptly given to the Owner as soon as reasonably possible following receipt of such disclosure notice and that Recipient's disclosure will not be made until after such notice has been received by Owner, except to the extent prohibited as a matter of law, and (f) applicable professional audit standards as established by a regulating entity with jurisdiction over Auditor or an industry-recognized professional association with widely recognized and accepted professional auditing standards applicable to Auditor. With respect to (e) and (f) above, it is further provided that diligent efforts shall be undertaken by Auditor to limit disclosure to the maximum extent allowed by law. Subject to the foregoing, nothing stated in this Section XIV.B shall relieve the Auditor from obtaining the State's prior written consent to disclose any of the State's Confidential Information in response to a third-party request, including the request of any professional standards entity or organization that is a non-governmental or non-judicial entity.

C. Confidentiality of State Confidential Information

The Auditor and its staff may view, or have access to, State Confidential Information. State Confidential Information shall include, but not be limited to:

- Personal information about individuals, e.g., home addresses, home telephone numbers, social security numbers, payroll information, account numbers, health status;
- OSC security procedures, topology, practices and policies;
- Computer codes or other electronic or non-electronic information, the disclosure of which could jeopardize the security of OSC's computer systems; and
- Any other material designated as being "Confidential."

The Auditor, on its own behalf, and on behalf of its staff, agrees to preserve the confidentiality of any and all State Confidential Information viewed, accessed, or developed under the Agreement, and agrees:

- To view, access and use only the State Confidential Information relevant and necessary to provide the Services;
- To use its best efforts to preserve the confidentiality of the State Confidential Information;
- To use its best efforts to prevent disclosure of the State Confidential Information to any unauthorized person other than to OSC or DOH staff or their designated and authorized contractors or consultants;
- To abide by all OSC and State confidentiality policies and procedures, as identified and provided by OSC (the applicable policies and procedures are set forth in Appendix J, which is annexed hereto and fully incorporated herewith);
- That all reports and other materials, preliminary, final and otherwise, prepared for or relating to Services described herein (other than Auditor's work papers), shall be treated at all times as Confidential Information by the Auditor;
- All OSC Confidential Information shall remain the property of OSC; and

- That all Confidential Information shall be returned or destroyed within 30 days after the expiration or termination of the Agreement and that upon such destruction, the Auditor will certify as to the method of destruction. Auditor may retain a copy of information received, developed, or otherwise relating to this Contract solely in order to comply with its contractual obligations in the provisioning of Services hereunder and to the extent required by law or applicable professional standards as established by a regulating entity with jurisdiction over Auditor or industry-recognized professional association with widely recognized and accepted professional auditing standards applicable to Auditor, provided, however, that such information may not be used by Auditor for any purpose that is not expressly authorized under this Agreement. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction no earlier than seven years from date of creation of such record and in accordance with the Auditor's data destruction policies. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the destruction of records as contemplated by this paragraph, provided, however, that the Auditor's obligation to maintain the confidentiality of such data shall remain in effect and be a continuing obligation upon the expiration or termination of this Agreement.

D. Security

The Auditor and its staff shall be required to comply with all applicable facility and information security policies, standards, and procedures that are identified by OSC, copies of which shall have been provided to the Auditor and are attached hereto as Appendix J (Confidentiality and Security Policies and OSC IT Standards). To the extent that the applicability or scope of any such policies, standards, and procedures are modified or limited in relation to the Auditor in the course of providing Services, such are set forth as a "Note" on the cover sheet to the specific policy, standard, or procedure within Appendix J. The parties have reviewed each "Note" incorporated in Appendix J. Auditor shall also complete any training required, both present and future, by OSC in performing the Services.

The Auditor shall not connect any non-State computer, electronic storage device (e.g., USB drives), or telecommunications equipment to OSC network without express written permission of OSC; personal and corporate laptop computers, personal and corporate USB devices, smartphones, and tablets are included in this prohibition.

Where performance of Services involves use by the Auditor of State-owned or licensed, or OSC-owned or licensed, papers, files, computer disks or other electronic storage devices, data, or records at OSC or State facilities or offices, the Auditor shall not remove such records therefrom without the prior written approval from an authorized representative of OSC.

KPMG shall not perform any of the Services or disclose or distribute any State Confidential Information outside the continental United States ("CONUS") without the State's (i.e., OSC's or the New York State Department of Health's ("DOH"), as applicable), prior written permission to do so, including authorizing the disclosure, transmittal, access, processing, or storage of OSC Confidential Information outside the CONUS.

E. Background Investigations

OSC policy requires that background investigations be conducted on Auditor staff who will have access to OSC's IT systems, access to State Confidential Information/data, or routine access to

any OSC facility (“Covered Staff”). For purposes of this policy, “routine access” is defined as access to an OSC facility for five consecutive business days or 10 business days over the annual term of the engagement. Accordingly, with the signing of this Agreement, the Auditor certifies that it has or will conduct a background investigation on Covered Staff to whom the policy applies within the 12 months prior to the staff commencing Services under this Agreement. The Auditor agrees to undertake a background investigation of any new/replacement Covered Staff during the term of the Agreement prior to their commencement of Services.

At a minimum, background investigations shall include a review/evaluation of the following:

- identity verification, including Social Security Number search;
- employment eligibility, including verification of U.S. citizenship or legal immigration status where appropriate;
- criminal history/court records (Federal, State and local for the past five years);
- work experience/history for the past five years;
- pertinent skills, qualifications, and education/professional credentials; and
- references.

The Auditor must obtain, prior to Covered Staff commencing Services, the consent of such Covered Staff to allow OSC: (i) to review the background investigation records, including all supporting documentation, and (ii) to conduct its own background investigation. Only Covered Staff who have passed the background investigation, and provided such consent shall be assigned to provide Services to OSC under this Agreement. During the term of the Agreement and in accordance with Appendix A (Section 10, Records), the Auditor must maintain records related to the background investigations performed.

XV. DISPUTES AND DISSATISFACTION

In the event OSC or the Auditor is dissatisfied with the other’s performance under this Agreement, either Party must so notify the other in writing. The other Party must then make every good faith effort to solve the problem or settle the dispute amicably, including meeting with the Party’s representatives to attempt diligently to reach a satisfactory result. Nothing herein shall limit a Party’s ability to pursue all available remedies.

XVI. INDEMNIFICATION AND LIABILITY

- A.** Neither the Auditor, OSC, nor the State shall be liable for any delay or failure in performance beyond its control resulting from acts of war (which shall not include network security breaches or other cyber-related incidents); act of nature or God; electrical outage that is not caused by the obligated Party; government restrictions; or other similar causes that are beyond the control of any Party (“force majeure event”). The Party identifying such force majeure event shall notify the other Party that such force majeure event has occurred. The Parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such force majeure event continues for more than 90 days after notice, either Party may terminate for convenience all or any agreed upon portion of the Services upon 60 days’ written notice, provided, however, that if such termination for convenience occurs at Auditor’s request, Auditor will provide OSC and any successor auditor selected by OSC with detailed reports, including status, for all work completed by Auditor up to the last date that Services are provided, and, furthermore, will provide transitional support to a successor auditor to facilitate an orderly transition. This paragraph does not excuse either Party’s

obligation to take reasonable steps to follow its normal disaster recovery procedures, or OSC's obligation to pay for Services provided by the Auditor which have been accepted by OSC.

- B.** The Auditor shall be fully liable for any act or omission of the Auditor or any of its staff and shall fully indemnify, defend and hold harmless OSC and the State, their officials, agents and employees (including those entities to which the Auditor has shared OSC Confidential Information as stated in the Confidentiality sections herein), without limitation, from suits, actions, damages and costs of every name and description (including reasonable attorney's fees and expenses) arising from personal injury (including wrongful death) and/or damage to real or tangible personal property (including electronic systems, software, and databases) or intellectual property caused by any intentional act or the negligence, gross negligence, willful misconduct, fraud, or failure to comply with applicable laws of the Auditor or any of its staff; provided, however, that the Auditor shall not be obligated to indemnify OSC for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of OSC.

For third-party claims, OSC shall give the Auditor:

1. prompt written notice of any action, claim, suit, proceeding, or threat of such action relating to this Agreement;
2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Auditor's sole expense; and
3. reasonable assistance in the defense of any such action at the expense of Auditor.

Notwithstanding the foregoing, the State reserves the right to join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving a significant public interest.

To the extent stated in AICPA Code of Conduct 1.228.020, Auditor's obligation to indemnify shall not extend or apply to claims alleging that the State's financial statements are inaccurate or incomplete to the extent any such inaccuracy or incompleteness is due to an act of OSC.

- C.** In no event would any indemnification provided under Section XVI.B, above, be effected by KPMG if doing so would violate applicable, generally-accepted professional audit standards as established by a regulating entity with jurisdiction over Auditor or industry-recognized professional association with widely-recognized and accepted professional auditing standards applicable to Auditor (e.g., AICPA) that prohibit indemnification under such circumstances.
- D.** For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, the Auditor shall be liable for any act or omission of the Auditor or any of its officers, directors, employees, subsidiaries, affiliates, partners, agents or subcontractors, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges paid to the Auditor. The Auditor shall not be responsible for loss of records or data unless the Auditor is required to back-up the records or data.
- E.** Notwithstanding the above, neither Party shall be liable for any consequential, indirect, or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OSC, the Auditor, or by others.

- F. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due Auditor such moneys as may be necessary to satisfy any claim for damages OSC may have against Auditor.

XVII. RESPONSIBILITY TERMS

- A. The Auditor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Auditor's Vendor Responsibility Questionnaire ("Responsibility Questionnaire") provided to the Auditor by OSC prior to execution of this Agreement. The Auditor further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Responsibility Questionnaire.
- B. The Auditor shall provide to OSC updates to the Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information related to such Responsibility Questionnaire becomes available. The Auditor shall, on an annual basis from the anniversary date of execution of this Agreement, re-certify such Responsibility Questionnaire, noting any changes, whether material or non-material, or submit a certification of "no change" to OSC.
- C. Notwithstanding Subsection (B) hereinabove, OSC reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Responsibility Questionnaire, (ii) to inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) to require the Auditor to provide such information to OSC within a reasonable timeframe to be established at OSC's sole discretion.
- D. OSC reserves the right to make a final determination of the Auditor's non-responsibility ("Determination of Non-Responsibility") at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (ii) the Auditor's failure to disclose material information; or (iii) OSC's discovery of any other material information which pertains to the Auditor's responsibility.
- E. If OSC preliminarily determines the Auditor to be non-responsible, OSC shall provide written notice to the Auditor detailing the reason(s) for the preliminary determination, and shall provide the Auditor with an opportunity to be heard before the determination is finalized.
- F. Upon a Determination of Non-Responsibility of the Auditor, OSC reserves the right to terminate this Agreement for cause pursuant to Section XVIII (Termination and Suspension).

XVIII. TERMINATION AND SUSPENSION

- A. OSC may terminate or suspend this Agreement, or terminate or suspend the Services with respect to a specific matter or matters, with or without cause upon 15 days' prior written notice. However, if OSC seeks to terminate the Agreement for cause, breach or default by the Auditor, OSC shall first notify the Auditor in writing of its intent to terminate, identify the alleged deficiencies in performing giving rise to the intent to terminate, and shall not terminate the Agreement for cause, breach or default if the Auditor cures the specified deficiencies in accordance with the requirements of this Agreement within thirty (30) days of Auditor's receipt of notice of such deficiencies. Nothing herein shall preclude OSC's ability to terminate the contract without cause (i.e., for convenience) at any time during the Term of this Agreement.
- B. In the event of termination, the Auditor shall be entitled to compensation for Services performed through the date of termination which are satisfactorily performed in accordance with the requirements of this Agreement. In the event of suspension, the Auditor shall be entitled to

compensation for non-suspended Services which are satisfactorily performed in accordance with the requirements of this Agreement.

- C. Either Party may terminate this Agreement or performance of any part of the Services if it reasonably determines that (i) a governmental or regulatory entity with jurisdiction over Auditor or industry-recognized professional association with widely recognized and accepted professional auditing standards applicable to Auditor (including, without limitation, the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board or the Securities and Exchange Commission) or entity having the force of law has introduced a new, or modified an existing, law, rule or regulation, the result of which would render the Auditor's performance of any part of the Services to be provided hereunder illegal or otherwise unlawful, or in conflict with independence or professional rules, or (ii) if in regard to an existing relationship, circumstances change such that the Auditor's performance of any part of the Services would be illegal or otherwise unlawful or in conflict with independence or professional rules.
- D. If a violation of independence rules and/or professional standards develops that would render the Auditor unable to legally perform the Services, OSC may terminate this Agreement, in OSC's sole discretion.

XIX. TRANSITION

The Auditor shall, upon the appointment of the successor contractor, provide access to such successor contractor all necessary records in the Auditor's possession relating to the Services provided under this Agreement at no cost to OSC. At OSC's request, the Auditor shall, at then-current (hourly) rates for similarly-situated government entities, also make appropriate staff available to OSC and to the successor contractor during normal business hours to answer questions regarding such records and the Services which have been provided by the Auditor under this Agreement. The Auditor shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that the Services required are uninterrupted and are not adversely impacted by the change in contractor.

XX. MISCELLANEOUS PROVISIONS

A. WAIVER

The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.

B. SEVERABILITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

C. PUBLIC COMMUNICATION

Neither the Auditor nor any of its staff, shall make any statement to the press or issue through any media of communication any statement bearing on the Services performed or data collected under this Agreement, without the prior written approval of OSC.

If pursuant to this section, the Auditor publishes a work related to any aspect of performance of Services hereunder, or the results and accomplishments attained in such performance, the State shall have, in addition to any rights and remedies it may have, a perpetual, royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

No Party grants any other party the right to use any of its trademarks, trade names, logos, seals, or other designations, whether in any promotion, publication, or otherwise, without the other Party's prior written consent.

D. ETHICS COMPLIANCE

The Auditor and its staff shall comply with the requirements of Public Officers Law §§ 73 and 74, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

E. SURVIVAL

The provisions of Sections XII (General Warranty), XIV (Confidentiality, Security, and Background Investigations), XVI (Indemnification and Liability), XIX (Transition) and Appendix A shall survive the expiration or termination of this Agreement.

F. ELECTRONIC COMMUNICATIONS

OSC agrees that Auditor may communicate with OSC by electronic mail or otherwise transmit or share for viewing documents in electronic form using WebEx or Microsoft Teams or other OSC-pre-approved electronic method, which approval may be provided by email, during the course of this engagement. OSC agrees that the final hardcopy or electronic version of a previously-labeled draft report, including a draft Deliverable, that Auditor labels as "Final" and transmits to OSC shall supersede any previously-transmitted draft versions, including such that may have been transmitted electronically by Auditor to OSC.

G. USE OF MEMBER FIRMS OF KPMG INTERNATIONAL OR AUDITOR-CONTROLLED ENTITIES

Subject to and without waiver of this Agreement's subcontractor requirements as set forth in Article IX (Subcontractors), OSC acknowledges that in connection with the performance of Services under this Agreement, Auditor may request the use the services of Auditor-controlled entities and/or member firms of KPMG International to complete the Services required by this Agreement. Auditor shall provide written notice to OSC of Auditor's proposed use of any such third parties in advance of Auditor's commencement of the Services under this Agreement, and update on a continuing basis as needed. Prior to the commencement of services by any such third party, OSC must provide its written approval, which may be provided by email. OSC reserves the right to disapprove the use of any such proposed third party. Each such third party shall be considered a subcontractor under this Agreement and, where required by OSC, must complete the attachments or Appendices to this Agreement (as may be updated from time to time) as requested. To the extent that any such third parties are proposed and approved for use by OSC (including DOH, as applicable) in the performance of such services, Auditor will have full responsibility to cause each such entity to comply with the required level of Confidentiality set forth in this Agreement and Auditor shall be responsible and wholly liable to OSC, the State (including DOH), and any indemnitees of OSC or the State for any consequences of such entities' failure to comply. Accordingly, subject to OSC's prior written permission to use any such third parties for the performance of Services, OSC consents to Auditor's disclosure to and use by such third parties of data and information, including but not limited to Confidential Information, received from or at the request or direction of the OSC, for the purposes set forth herein, provided, however, that Auditor shall not authorize the performance of Services by or disclose or provide any OSC Confidential Information to any such entity outside the CONUS without OSC's (or DOH's, as applicable) prior, written permission approving the disclosure, transmittal, access, processing, or storage of such information outside the CONUS.

H. EXPORT CONTROL

Auditor and OSC acknowledge and agree that each shall comply with all applicable United States export control laws and regulations in the performance of each Party's respective activities under the Engagement Letter. Unless requested by the Auditor to complete its audit, OSC shall not provide Auditor, or grant Auditor access to, (a) information (including technical data or technology), verbally, electronically, or in hardcopy, (b) software or (c) hardware, that is controlled for export by the United States government under the Arms Export Control Act of 1976, Export Control Reform Act of 2018, the International Traffic in Arms Regulations ("ITAR"), Export Administration Regulations ("EAR"), Department of Energy Part 810 Regulations or Nuclear Regulatory Commission Part 110 Regulations, except information, software or hardware that is classified as EAR99 under the EAR ("Export Controlled Information"). If Auditor requests Export Controlled Information from OSC, OSC shall provide Auditor with notice of provision of Export Controlled Information at least 48 hours prior to providing such Export Controlled Information to Auditor.

XXI. ENTIRE AGREEMENT/APPROVALS

This Agreement and the appendices, exhibits and attachments hereto constitute the entire Agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties hereto. This Agreement and any amendment hereof shall not be deemed executed, valid, or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by the OSC Bureau of Contracts pursuant to Section 112 of the State Finance Law, and filed in the Office of the State Comptroller.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

In addition to the acceptance of this Agreement, the OSC and Auditor signatures on this page also certify that originals of this signature page will be attached to all other originals of this Agreement.

CONTRACT NUMBER: C001119

KPMG LLP

OFFICE OF THE STATE COMPTROLLER

Marie Zimmerman
SIGNATURE

Martha Ross
SIGNATURE

Marie Zimmerman
PRINTED NAME

Martha Ross
PRINTED NAME

Partner
TITLE

DIRECTOR OF FINANCIAL ADMINISTRATION
TITLE

12/11/2020
DATE

12/14/20
DATE

CONTRACTOR'S ACKNOWLEDGEMENT

STATE OF New York
COUNTY OF Albany

SS.: electronic signature applied in Rensselaer County, New York

On the 11th day of December in the year 2020, before me personally appeared Marie Zimmerman, known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she maintains an office at 515 Broadway Albany NY, and further that he/she is the a Partner of KPMG LLP, the business described in the foregoing instrument; that he/she is authorized to execute the foregoing instrument on behalf of the business for the purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of the business as the act and deed of the business.

Jan E. Weninger
Notary Public
Registration No. 02WE4660481

State of New York
Saratoga County
My Comn Exp 7/31/2021

APPROVED AS TO FORM:
NYS ATTORNEY GENERAL

APPROVED:
THOMAS P. DINAPOLI, COMPTROLLER

BY: _____
DATE _____

	APPROVED DEPT. OF AUDIT & CONTROL	
BY:	Jan 19 2021 David Burmaster	
DATE		FOR THE STATE COMPTROLLER

From: [Maggi, Benjamin](#)
To: [RFP; Contract Approval](#)
Cc: [Kristen L. Ferraro; Amanda M. Orłowski](#)
Subject: Approved - RE: OSC Contract #C001119 with KPMG, LLP
Date: Tuesday, December 22, 2020 2:50:11 PM

Approved As To Form: 12/22/2020 by Benjamin Maggi

Received: 12/22/2020

Reminder: Agencies must forward the contract approved by the OAG Contract Approval Section along with the email in which the OAG Contract Approval Section approved the contract, to OSC via the Comptroller's EDSS system. If you are not enrolled in the EDSS system and have not made alternative arrangements with OSC on how to submit your transaction, please contact OSC at [REDACTED] or email [REDACTED].

OAG: CAS please file and enter. "P"

Benjamin L. Maggi
Assistant Attorney General
New York State Office of the Attorney General
Contract Approval Section
The Capitol, Albany, NY 12224
(518) 776-2350
ATTORNEY CLIENT PRIVILEGED/NOT FOR DISSEMINATION

The information contained in this electronic mail message is privileged and confidential and intended only for the individual or individuals named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender immediately to notify us of the error and delete the original message. Thank you.

APPENDIX D

OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY

Whereas, it is the policy of the Office of the State Comptroller (OSC) and the New York State Common Retirement Fund (CRF) to procure goods and services in a fair, equitable and open manner and to protect the procurement process from improper influences; and

Whereas, procurement lobbying activities must be monitored and documented to assure the integrity of the procurement process;

Now, therefore, I, Thomas P. DiNapoli, Comptroller of the State of New York, in consideration of the foregoing, do hereby order as follows;

1. **Applicability.** This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller's fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller's fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller's fiduciary responsibilities.
2. **General Counsel.** The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. **Procedural Controls.** The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
 - a. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
 - b. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
 - c. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
 - d. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only

at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;

- e. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;
 - f. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
 5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
 6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

/s/

Thomas P. DiNapoli
Comptroller, State of New York

Last Revised Date: March 14, 2007

Original Date: February 14, 2002

OSC PROCUREMENT INTEGRITY PROCEDURES

In order to ensure that procurements of goods or services¹ by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

The General Counsel to the Comptroller shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF.

A copy of these Procurement Integrity Procedures will be given to every OSC employee, consultant, or other person assigned to any task related to an OSC or CRF procurement. A copy of these procedures will be incorporated into every Request for Information (RFI), Request for Proposals (RFP) or Invitation for Bids (IFB) issued by OSC or CRF.

Any OSC employee who violates these procedures may be subject to disciplinary action, such as a reprimand, suspension, demotion, or dismissal. Any vendor who violates these procedures may, after notice and an opportunity to be heard, be determined to be a non-responsible vendor, and on the basis of such a determination may be ineligible to receive a contract award.

Every reasonable effort will be made to assure compliance with these procedures, but a minor deviation from these procedures that does not impair the fairness and integrity of the procurement process will not require the invalidation of a contract award.

1. OSC employees must provide every interested vendor² with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question³ concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC's written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: RFP@osc.state.ny.us. OSC's Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.

¹ These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller's fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities.

² For the purposes of these procedures, the term "interested vendor" means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF.

³ For the purposes of these procedures, the term "substantive question" means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal.

3. A vendor may not exert or attempt to exert any improper influence⁴ relating to the vendor's bid or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.
4. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor's bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process⁵. If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant

⁴ For the purposes of these procedures, the term "improper influence" means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74.

⁵ For the purposes of these procedures, the term "attempt to influence the procurement process" means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract.

Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.

11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.
12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011