



**STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
Office of Budget & Management Analysis  
Bureau of Fiscal Services  
Building 9, Room 234  
W.A. Harriman Campus  
Albany, NY 12227**

Patricia Mitchell, Chief Financial Officer  
Eric Mostert, Assistant Director, Budget & Accounting Services  
Catherine Golden, Assistant Director, Procurement Services

January 12, 2009

Dear Prospective Bidder,

The New York State (NYS) Department of Taxation and Finance (DTF) is soliciting proposals from vendors to design, develop and operate a Cigarette Excise Tax and Prepaid Sales Tax Program. Qualifications and mandatory requirements are outlined in the Request for Proposals (RFP) 08-32 for this procurement.

The RFP 08-32 will be posted on Monday, January 12, 2009 after 1:00 p.m. on the Department's web site at: <http://www.nystax.gov/procurement>. If you are unable to obtain a copy of the RFP from our website, please e-mail [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us) or call (518) 457-0954 to request a copy.

Vendors should be advised of new legislation for Procurement Lobbying on ALL Procurement Contracts effective January 1, 2006. Details of guidelines, regulations, forms and the designated contact(s) are provided on the Department's web site at: <http://www.nystax.gov/procurement>. Additional information can be found at the New York State Office of General Services website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Interested bidders must meet the minimum qualifications described in Section II, Qualifying Requirements. All questions regarding this RFP must be submitted via (1) e-mail (preferred) to [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us); (2) fax to (518) 435-8413; or (3) mail to the above address. All questions must be received by February 9, 2009, 2:00 p.m. EST. Please reference the relevant page and section of the RFP as well as the RFP number, 08-32.

All proposals must be received no later than May 1, 2009, 2:00 p.m. EST.

Sincerely,

A handwritten signature in black ink that reads "Karen Brino". The signature is written in a cursive, flowing style.

Karen Brino  
Contract Administrator

# STATE OF NEW YORK

DEPARTMENT OF TAXATION & FINANCE



## REQUEST FOR PROPOSAL

08-32

### CIGARETTE EXCISE TAX and PREPAID SALES TAX PROGRAM

**All Inquiries to:**

New York State Department of Taxation and Finance  
Procurement Bureau  
W.A. Harriman State Campus  
Building 9, Room 234  
Albany, NY 12227

**Designated Contacts:**

Catherine Golden  
Karen Brino  
Telephone: (518) 457-0954  
e-mail: [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us)

## TABLE OF CONTENTS

<b>SCHEDULE OF EVENTS (Bid Timetable)</b> .....	<b>1</b>
<b>PREFACE</b> .....	<b>2</b>
<b>A Proposal Questions/Inquiries:</b> .....	<b>2</b>
<b>B Procurement Lobbying – Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines</b> .....	<b>2</b>
<b>C Proposal Amendments/Announcements</b> .....	<b>2</b>
<b>D Response to Bidder Questions and Requests for Clarification</b> .....	<b>3</b>
<b>E Notification of Intent to Bid</b> .....	<b>3</b>
<b>F Submission of Bids</b> .....	<b>3</b>
<b>I INTRODUCTION</b> .....	<b>4</b>
<b>A Purpose</b> .....	<b>4</b>
<b>B Program Overview</b> .....	<b>4</b>
<b>C Program Objectives</b> .....	<b>5</b>
<b>D Implementation</b> .....	<b>5</b>
<b>E Contract Duration</b> .....	<b>6</b>
<b>II QUALIFYING REQUIREMENTS (PASS/FAIL)</b> .....	<b>7</b>
<b>A Firm Experience</b> .....	<b>7</b>
<b>B Financial Stability</b> .....	<b>7</b>
<b>III PERFORMANCE REQUIREMENTS</b> .....	<b>9</b>
<b>A Systems</b> .....	<b>9</b>
<b>B Order Processing</b> .....	<b>10</b>
<b>C Payment Processing</b> .....	<b>10</b>
<b>D Inventory</b> .....	<b>11</b>
<b>E Program Management</b> .....	<b>12</b>
<b>IV CASH MANAGEMENT REQUIREMENTS</b> .....	<b>14</b>
<b>A Reporting</b> .....	<b>14</b>
<b>B Funds Processing and Availability</b> .....	<b>14</b>
<b>C Collateral</b> .....	<b>14</b>
<b>D Wire Transfers</b> .....	<b>14</b>
<b>E Automated Clearing House (ACH) Network Rules and Regulations</b> .....	<b>15</b>
<b>V PERFORMANCE STANDARDS and LIQUIDATED DAMAGES</b> .....	<b>16</b>
<b>A Cigarette Excise Tax and Prepaid Sales Tax Program</b> .....	<b>16</b>
<b>B Future Program Changes</b> .....	<b>16</b>
<b>C Evaluating Contractor Compliance with Performance Standards</b> .....	<b>16</b>
<b>D Liquidated Damages and Reimbursements</b> .....	<b>17</b>
<b>E Performance Standards and Associated Liquidated Damages and Reimbursements Matrix</b> .....	<b>19</b>
<b>VI FINANCIAL REQUIREMENTS</b> .....	<b>29</b>
<b>A Operations Fees</b> .....	<b>29</b>
<b>B Development Fees</b> .....	<b>30</b>
<b>C Other Fees</b> .....	<b>30</b>
<b>VII PROPOSAL CONDITIONS, INVARIABLE and NEGOTIABLE CONTRACT CONDITIONS</b> .....	<b>32</b>
<b>A Proposal Conditions</b> .....	<b>32</b>
<b>B Invariable Conditions</b> .....	<b>35</b>
<b>C Negotiable Conditions</b> .....	<b>50</b>
<b>VIII PROPOSAL RESPONSE REQUIREMENTS</b> .....	<b>55</b>
<b>A Qualifying Requirements</b> .....	<b>55</b>
<b>B Performance Response Requirements</b> .....	<b>57</b>
<b>C Cash Management Response Requirements</b> .....	<b>58</b>

## TABLE OF CONTENTS

<b>D</b>	<b>Financial Response Requirements</b> .....	<b>59</b>
<b>E</b>	<b>Proposal Conditions, Invariable and Negotiable Contract Conditions Response Requirements</b> .....	<b>60</b>
<b>IX</b>	<b>PROPOSAL SUBMISSION</b> .....	<b>64</b>
<b>A</b>	<b>Proposal Content and Organization</b> .....	<b>64</b>
<b>B</b>	<b>Submission of Proposals</b> .....	<b>65</b>
<b>X</b>	<b>PROPOSAL EVALUATION</b> .....	<b>67</b>
<b>A</b>	<b>Proposal Clarification</b> .....	<b>67</b>
<b>B</b>	<b>Evaluation Process Overview</b> .....	<b>67</b>
<b>C</b>	<b>Final Ranking/Contract Award</b> .....	<b>68</b>

### Exhibits

#### RFP Specific Exhibits

- Exhibit 1 - RFP Glossary
- Exhibit 2 - Overview of the Cigarette Excise and Prepaid Sales Tax Program
- Exhibit 3 - Analysis of Heat Transfer Stamp
- Exhibit 4 - Commission Rates for Cigarette Tax Agents
- Exhibit 5 - Cigarette Stamp Tax Transmission File Layout
- Exhibit 6 - Change Control Procedure
- Exhibit 6.1 – Change Control Analysis Form
- Exhibit 6.2 – Change Control Procedure – Change Control Request Form
- Exhibit 7 - Funds Transfer Agreement
- Exhibit 8 - Undertaking for Bank Deposits and Assignments of Securities

#### Administrative Exhibits

- Exhibit A - Bid Protest Policy
- Exhibit B - Contractor Data Requirement Listing (CDRL)
- Exhibit C - ST-220 Contractor Certification Forms

### Appendices

- Appendix A – Standard Clauses for New York State Contracts

### Attachments

#### Program Attachments

- Attachment 1 – Bidder’s Checklist
- Attachment 2 – Notification of Intent to Bid
- Attachment 3 – Qualifier Response Form
- Attachment 4 – Systems Response Form
- Attachment 5 – Order Processing Response Form
- Attachment 6 – Payment Processing Response Form
- Attachment 7 – Inventory Response Form
- Attachment 8 – Program Management Response Form
- Attachment 9 – Cash Management Reporting Response Form
- Attachment 10 – Funds Processing and Availability Response Form
- Attachment 11 – Collateral Response Form
- Attachment 12 – Wire Transfer Response Form

#### Administrative Attachments

- Attachment A - Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines
- Attachment B - Designation of Prime Contact
- Attachment C – Vendor Responsibility Form
- Attachment D – DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code
- Attachment E– Offerer Disclosure of Prior Non-Responsibility Determinations
- Attachment F – Offerers Certification of Compliance with State Finance Law
- Attachment G – Public Officers Law

## **TABLE OF CONTENTS**

Attachment H – MacBride Fair Employment Principles

Attachment I – Financial Response Form – Direct Fee

Attachment J - Financial Response Form – Compensating Balances

## SCHEDULE OF EVENTS

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### SCHEDULE OF EVENTS (Bid Timetable)

<u>Date</u>	<u>Event</u>	<u>Description/Reference</u>
1/12/09	RFP Issued	
<b><u>2/9/08</u></b> <b><u>2 pm EST</u></b>	Deadline for submission of written questions and requests for clarification.	Refer to page 2 for instruction.
	Deadline for Submission of Offerer Affirmation of Understanding of and Compliance with Procurement Lobbying Guidelines.	Refer to page 2 for instruction. Submit Attachment A.
2/23/09 2 pm EST	Issuance of DTF responses to Bidder questions and requests for clarification.	DTF responses will be posted on the DTF website. See page 3 for information.
3/20/09	Deadline to file Notification of Intent to Bid.	Refer to page 3 for instruction. Submit Attachment 2.
5/1/09 2 pm EST	Final Date for receipt of Bidder proposals.	See Section IX for complete instructions.
6/12/09	Notification of DTF intent to award contract.	See Section VII for details.

### POST AWARD TIMETABLE

<u>Date</u>	<u>Event</u>
7/27/09	Deadline for contract signature.
11/16/09	DTF User Acceptance Testing begins.
12/15/09	Certification Date
1/8/10	Implementation Date

## PREFACE

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### PREFACE

#### A Proposal Questions/Inquiries:

Prospective Bidders will have the opportunity to submit written questions and requests for clarification regarding this Request for Proposal (RFP). All questions must be submitted via e-mail (preferred), mail, or fax and received by the date and time indicated in the Schedule of Events. Questions must reference the relevant page and section of the RFP and must be directed to the following individual and office:

E-mail: [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us)

Written Correspondence: New York State Dept. of Taxation and Finance  
Attn: Catherine Golden, Assistant Director, Procurement  
Procurement Bureau  
W.A. Harriman State Campus  
Building 9, Room 234  
Albany, N.Y. 12227

Fax: (518) 435-8413

Prospective Bidders should note that all clarifications and exceptions, including those relating to the terms and conditions of the RFP are to be resolved prior to the submission of a bid. Bidders entering into a contract with the State are expected to comply with **all** the terms and conditions contained herein.

All inquiries concerning this solicitation must be addressed to the following designated contacts:

Catherine Golden	(518) 457-0954	<a href="mailto:bfs_contracts@tax.state.ny.us">bfs_contracts@tax.state.ny.us</a>
Karen Brino	(518) 485-6091	<a href="mailto:bfs_contracts@tax.state.ny.us">bfs_contracts@tax.state.ny.us</a>

Contacting individuals other than the designated contacts listed above may result in the disqualification of the Bidder's proposal – please refer to the procurement lobbying law, the Department guidelines posted on the Department's procurement website at: <http://www.nystax.gov/procurement>, and additional requirements provided in Section VII - Proposal Conditions, Invariable and Negotiable Contract Conditions.

#### B Procurement Lobbying – Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines

New York State Finance Law 139-j(6)(b) requires that the Department of Taxation and Finance (DTF or Department) seek written affirmation from all Offerers as to the Offerer's understanding of and agreement to comply with the DTF procedures relating to permissible contacts during a Government Procurement. Information related to the Procurement Lobbying Law and DTF guidelines can be found on the Department's Procurement website at: <http://www.nystax.gov/procurement>.

**Offerers are required to sign and submit Attachment A: Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines, by the date and time specified in the Schedule of Events.** This attachment may be submitted in conjunction with Bidder questions.

#### C Proposal Amendments/Announcements

All amendments, clarifications and any announcements related to this bid will be posted on the Department's Procurement website at: <http://www.nystax.gov/procurement>.

## PREFACE

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It is the responsibility of the Bidder to check the website for any amendments, clarifications or updates. All applicable amendment information must be incorporated into the Bidder's proposal. Failure to include this information in your proposal may result in the Bidder's proposal being deemed non-responsive.

### **D Response to Bidder Questions and Requests for Clarification**

The Department will provide a written response to all substantive questions and requests for clarification. Bidder questions and clarification requests will be posted, with the DTF responses, on the DTF Procurement website at: <http://www.nystax.gov/procurement> by the date specified in the Schedule of Events.

### **E Notification of Intent to Bid**

If your firm is submitting a proposal in response to the RFP, a "Notification of Intent to Bid," Attachment 2 should be completed and submitted by the date and time specified in the Schedule of Events. Contact information provided on this form may be used to notify Bidders of Request for Proposal changes.

**IT IS INCUMBENT ON THE PROSPECTIVE BIDDER TO NOTIFY THE DESIGNATED CONTACTS OF ANY TERM, CONDITION, ETC., THAT PRECLUDES THE VENDOR FROM SUBMITTING A BID.**

### **F Submission of Bids**

The Bidder must submit proposals as instructed in Section IX, Proposal Submission.



## SECTION I - INTRODUCTION

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### I INTRODUCTION

#### A Purpose

The New York State Department of Taxation and Finance is soliciting proposals from commercial banks or document processors, subcontracting with a commercial bank, if applicable, with operations in New York State, for the development, implementation, maintenance and operation of a Cigarette Excise Tax and Prepaid Sales Tax Program for New York State and New York City.

Article 20 of the New York State Tax Law empowers the Commissioner of Taxation and Finance to levy and collect taxes on the possession for sale and/or use of cigarettes in New York State. Section 472 of such law further authorizes the Commissioner to license cigarette stamping Agents to purchase and affix cigarette excise tax stamps. Agents authorized to purchase on credit must pay for such tax stamps within thirty (30) days after the date of purchase when collateralized with a surety bond or alternative security. This section also authorizes the Tax Commissioner to prescribe a schedule of stamping Agent commissions. Section 1103 of Article 28 of the New York State Tax Law mandates that Prepaid Sales Tax be imposed on cigarettes possessed for sale or use within New York State. The Prepaid Sales Tax must be paid the same time and in the same manner as the Cigarette Excise Tax imposed by Article 20 of such law.

Hence, a cigarette Agent is required to prepay the sales tax at the time that the Agent is required to purchase Cigarette Tax stamps. By affixing such stamps, the Agent evidences payment of both Cigarette Excise Tax and the Prepaid Sales Tax. In Article 1, Section 70.2 of the Cigarette Tax Regulations (20 N.Y.C.R.R §70.2) defines a stamp or cigarette stamp as, "any adhesive stamp, metered stamp, heat transfer stamp or other form of evidence of payment of the Cigarette Tax as prescribed by the Commissioner of Taxation and Finance."

The City of New York is authorized to impose its own Cigarette Excise Tax upon cigarettes possessed for sale or use within the City as set forth in Chapter 13 of Title 11 of the Administrative Code of the City of New York. The State and City of New York have agreed to jointly select a commercial bank or document processor to act as their agent for the sale and distribution of Cigarette Tax indicia. All facets of the administration of the distribution system are subject to the approval of the State and City. The various records and files to be maintained are specified by the State and/or City and are contained within this document. Unless otherwise noted, separate record keeping, account maintenance, and reporting are required to distinguish State and City activities.

#### B Program Overview

In the current Cigarette Excise Tax and Prepaid Sales Tax Program (the Program), approximately 80-90 authorized Agents purchase a stamp product which is the accepted indicia used to show proof of taxes paid on cigarettes. The stamps are currently manufactured under a separate contract with Meyercord, located in Carol Stream, Illinois and are transported to a secured site in the Capital District, New York. The stamps are transferred via secure transport to the incumbent Contractor's processing site where they must be stored to prevent theft, loss, destruction or unauthorized access.

Orders are placed, via the telephone, by authorized representatives of the Agents on a daily basis. Stamp orders are filled from the Contractor's working inventory, securely packaged, and prepared for pick-up by the United States Postal Service (USPS).

The Contractor is responsible for verifying the accuracy and authenticity of the order based on the agent profile information, maintaining an inventory tracking system for issued stamps and stamps in inventory, processing payments from the Agents, initiating a credit to the

## SECTION I - INTRODUCTION

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Department's tax receipt account for prepaid Sales Tax and maintaining information to meet the Department's reporting requirements.

The Contractor also maintains secure emergency sites throughout New York State to service Agents who do not receive their delivery of stamps due to a "lost in transit occurrence" or other emergency. Agents are allowed one (1) emergency per year. All emergency inventories must be replenished at the emergency site no later than 24 hours after use.

Exhibits 2 - 5 provide a more detailed overview of the Program.

### **C Program Objectives**

The objectives of this Program are:

- 1 to process orders and supply authorized cigarette Agents with Cigarette Excise Tax and Prepaid Sales Tax indicia in a timely, efficient and cost effective manner; and
- 2 to provide timely and accurate detail and management information to support payment of commissions, monitor and track agent payments, and monitor and control indicia inventory activity.

The successful Bidder must be able to implement parallel development and testing functions for the Program, and provide development systems and staffing to support activities within the scope of performing existing operations.

The Bidder must provide the testing resources, and demonstrate the capacity and experience to develop and implement changes for the system(s) and operations supporting the Program. The Bidder must demonstrate the ability and resources to respond rapidly, and in a cost-effective manner, to changes due to legislative mandate, administrative directive or Program enhancement. The Department may pursue alternatives to the current heat affixed stamps in the future. The Department is under no obligation to do so through the successful Bidder and reserves the right to develop and implement Program enhancements internally or by entering into agreements with other third party service providers. The successful Bidder must be willing to work in good faith with the Department and any other involved party or parties to develop and/or implement the requested Program enhancement services.

The Bidder must demonstrate storage sites processing facility(ies) and system(s) are secure, and that indicia, confidential material and information will be safeguarded. Disaster preparedness and disaster recovery plans must exist and be operational to ensure minimal disruption to the Program in the event of such occurrences.

Finally, the Department requires the successful Bidder to meet the requirements of this RFP regardless of other present or future business commitments.

### **D Implementation**

The services solicited herein must be operational on or before:

Wednesday, January 8, 2010

The Bidder must provide a comprehensive implementation plan which satisfies the Program Development and Implementation Requirements in Exhibit B, Contractor Data Requirement Listing (CDRL) of this RFP. The Bidder must demonstrate the ability to meet deadlines and to produce deliverables in a timely manner. The Contractor must cooperate with DTF during the certification process.

## SECTION I - INTRODUCTION

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### **E Contract Duration**

The initial contract term for this Program will be five (5) years (base term) with a single renewal option for a two (2) year period. The final contract for this procurement, drafts of which will be provided after Notification of Intent to Award, will be based upon the Proposal Conditions, Invariable and Negotiable Contract Conditions (Section VII) and Performance Standards and Liquidated Damages (Section V). If the Bidder disagrees with any of the provisions in Section VII.C, Negotiable Conditions, specific alternative language must be provided as part of the Bidder's proposal. Upon selection of the successful Bidder, the Department reserves the right to negotiate the final contract based on the RFP and the responses to the RFP. The successful Bidder must sign the contract within forty-five (45) calendar days after the award of the bid. If the successful Bidder fails to do so, the Department reserves the right to begin negotiations with the next highest ranked responsible Bidder.

The Agreement will also include an extension of up to twelve (12) months at the end of the initial term of the Agreement or the extension period, as applicable, to provide for an orderly transition of services to a subsequent service provider, at the sole discretion of the Department.

## SECTION II – QUALIFYING REQUIREMENTS

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### II QUALIFYING REQUIREMENTS (PASS/FAIL)

Only qualified entities may submit a proposal in response to this RFP. A qualified entity is defined as one that meets all of the following qualifying requirements. Entities not meeting the qualifying requirements as outlined in this section should not submit a proposal.

In response to this RFP, the Bidder must provide sufficient detail of how each requirement is met including, but not limited to, the specific detail requested for each requirement. Failure to provide complete and detailed information may result in the Bidder's proposal being deemed non-responsive.

The Bidder is solely responsible for providing references that are readily available to be contacted by DTF and that will respond to reference questions (see section VIII. A.1 for specific detail). If DTF is unable to contact any reference, the Bidder will be provided one opportunity, with a deadline, to assist in obtaining cooperation from those clients who have not responded. The Bidder may be eliminated if DTF is unable to verify required responses.

The Bidder's response to qualifying requirements will be evaluated in Phase One of the evaluation process, as outlined in Section X of this RFP. Bidders that do not meet qualifying requirements will not be considered for further evaluation.

#### A Firm Experience

The Bidder must be a commercial bank or document processor with operations in New York State and must possess the technical qualifications to develop, implement and operate the Program defined herein as evidenced by recent experience similar in size and scope to the Program defined in this RFP.

A document processor acting as a prime Bidder must subcontract with a commercial bank to handle the banking services (e.g., deposit, check clearing, online balance reporting, financial reporting, item research, etc.). Such subcontractor relationship must remain in force for the term of the agreement.

#### B Financial Stability

The primary Bidder, and a commercial bank acting as a subcontractor for depository bank services (commercial bank subcontractor), if applicable, must be a financially stable entity(ies), such that it may initiate and perform its obligations through the duration of the project. The commercial bank, acting as primary Bidder or as a subcontractor, must have a LACE Financial Rating of at least C+.

The DTF will not enter into a contract with any Bidder who cannot demonstrate itself to be a financially stable entity capable of initiating and performing its obligations throughout the duration of the contract. The DTF will conduct an evaluation of the Bidder's financial stability which will include, but not be limited to, a review of the Bidder's equity position, liquidity, profitability trends and future prospect for financial growth. The financial stability evaluation will also include a review of the entity's officers and management team, its organizational structure and the financial and operating relationship between business units and divisions.

As a condition of any resulting contract, the Contractor must continue to evidence financial stability. The on-going financial stability of the Contractor may be evaluated based upon criteria similar to that used in the evaluation process. If the Department elects to evaluate the Financial Stability, annual financial statements prepared by an accountant in accordance with Generally Accepted Accounting Principles (GAAP) will be required to be submitted for review

## **SECTION II – QUALIFYING REQUIREMENTS**

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to the Department within 90 days of the fiscal year end. The annual financial statements will be required for the Contractor, as well as any of its subsidiaries or parent companies. Any material change in ownership of the Contractor, or material financial change of the Contractor, will require a reevaluation of the contract in its entirety by the Department.

## SECTION III – PERFORMANCE REQUIREMENTS

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### III PERFORMANCE REQUIREMENTS

The Bidder shall provide labor, hardware/software and other equipment and materials required to successfully perform the objectives described in this RFP and will provide DTF support in execution of the Program. Areas of support include: system development, implementation and maintenance; order processing; payment processing; inventory control; and program management.

This section outlines the tasks and sub-tasks that the Bidder shall be required to perform. The standards that DTF will use to monitor and measure the Contractor's performance are identified in Section V. The Bidder shall also develop, maintain and deliver the requirements as identified in Exhibit B, Contractor Data Requirement Listing. Relevant data requirements are listed under specific tasks.

Failure to comply with performance standards identified by DTF or other agency audits (i.e., Office of the State Comptroller) or by DTF personnel may result in the imposition of liquidated damages or reimbursement to the DTF as outlined in Section V.

All requirements are considered critical to successful contract implementation and the Department will not issue a bid award to any Bidder who does not successfully demonstrate the capacity to meet that requirement.

#### A Systems

The Bidder shall develop, implement, and maintain a fully functional system or set of integrated systems that will be used to implement, monitor and maintain the Program. DTF will provide current program data during the implementation phase. The Bidder shall also provide DTF, and other DTF designated personnel, real time, read-only access to such system and its components.

Systems Contractor Data Requirements (CDR's - See Exhibit B): A001, A002, and A003.

##### 1 Agent Master File

Develop, implement, and maintain an automated agent master file that maintains accurate ordering and payment information for all authorized Agents.

##### 2 Payment Processing

Develop, implement, and maintain an automated payment processing system for the accurate and timely deposit of monies and to provide accounting and auditing.

##### 3 Order Tracking and Processing

Develop, implement, and maintain an automated order processing system that can track orders from time of receipt to fulfillment.

##### 4 Inventory Tracking

Develop, implement, and maintain an inventory control system for tracking, distribution and accounting of the physical inventory of indicia.

## SECTION III – PERFORMANCE REQUIREMENTS

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### 5 Systems Security

Establish, integrate and maintain security policies, standards and procedures for the purpose of preventing unauthorized access to the systems supporting the Program.

### B Order Processing

The Bidder shall provide, implement, operate and maintain a fully functioning processing center within New York State, which includes at a minimum toll-free access, receipt, recording, validating, filling, delivery via USPS, tracking and problem resolution to ensure timely delivery.

A validated order is an order that is compared against information included in the Agent master file to determine, at a minimum, if the Agent is an active Agent authorized by DTF:

- 1 for Type of stamps;
- 2 for Type of payment;
- 3 and Order is within the credit limit;
- 4 and Order does not cause the Agent to exceed the credit limit;
- 5 and Accounts receivable do not exceed 30 days.

Order Processing Contractor Data Requirements (CDR's - See Exhibit B): A004, A005, A007, A010, A011, and A025

### C Payment Processing

When purchasing indicia, Agents must pay Cigarette Excise Tax(es) and Prepaid Sales Tax, less their commission. The Agents' accounts are classified upon authorization of each Agent as either: a cash payment; Fedwire; ACH debit or under a line of credit. A "cash payment account" is the term used for those Agents that do not have a credit limit. "Cash payment accounts" require payment for indicia either 1) prior to sale (approximately 5 Agents purchase via this method) or 2) concurrent with the sale of indicia (approximately 50 Agents purchase via this method). Agents authorized to use credit are prescribed by the Department. Approximately 59 Agents are authorized to purchase on credit. Agents that are authorized to pay on credit may purchase via the other two methods. During the licensing process, the Department will determine if an Agent is eligible for credit and the maximum credit line permitted. The Agent's bond must cover the value of both Cigarette Excise Tax(es) and the Prepaid Sales Tax. The Contractor is required to ensure that an Agent's orders will not exceed their credit limit.

Payment Processing Contractor Data Requirements (CDR's - See Exhibit B): A008, A009, A012, A013, A014, A016, A017, A018 and A019

#### **Commissions for Tax Agents:**

##### Basis for Computation

Agents are compensated for their services and expenses in affixing indicia by a commission based on the excise tax portion of the indicia purchase price. N.Y.C.R.R., Title 20, Article One, Section 334.3 (b) Part (1) and (2) of the Cigarette Tax Regulations mandate that the commission be computed on the basis of a percentage of cumulative calendar year purchase of all "New York State Only" and/or the New York State portion of "Joint" State/City tax indicia. In addition, §4-16 of the Rules of the Board of Standards and Appeals (19 RCNY § 4-16) governs NYC compensation of Agents for the NYC portion of Joint Indicia.

## SECTION III – PERFORMANCE REQUIREMENTS

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### Commission Rates

The Contractor is responsible for crediting an Agent with the correct commission rate by using cumulative purchase totals which the Contractor maintains. There are two sets of commission rates in effect for each type of indicia sold. One set is for State sales up to and including \$5,611,200 and the other is for sales exceeding that amount in a calendar year.

Current commission rates for 20's are as follows:

Indicia Type	Accumulated Gross Sales		Rate of Commission*
Joint Indicia/NYS Portion:	At/Below	\$5,611,200	.4071%
	Above	\$5,611,200	.2893%
Joint Indicia/NYC Portion:	At/Below	\$5,611,200	.2171%
	Above	\$5,611,200*	.0992%
New York State Only	At/Below	\$5,611,200	.3696%
	Above	\$5,611,200	.2625%

\* Rate is in effect during a calendar year when cumulative gross sales reach \$5,611,200 on the NYS portion of the Joint Indicia or combined total state apportioned sales of Joint and State indicia whichever is first.

Note: Any modification to the commission rates will be done through the Change Control process (see Exhibit 6).

Exhibit 4 specifies the cost per roll, and the City/State commission rates for an Agent's purchase of tax indicia.

### **1 Receipt of Payments**

Establish and maintain a process for receipt and timely deposit of payments such as ACH credit/debit, FedWire, cash and certified checks.

### **2 Accounting Reports**

Establish bank documents and related accounting reports for all deposits into the four required accounts (NYS Excise Tax, NYC Excise Tax, Prepaid Sales Tax, and a split account) enabling reconciliation between account transactions and related data.

### **3 Funds Transfer**

Transfer funds daily to designated accounts and submit ST-810 to OSC, DTF, and DTF's Sales Tax Contractor.

## **D Inventory**

DTF orders all stamps needed for the Contractor to maintain adequate inventories. The Contractor is required to continually maintain an adequate supply of inventory on hand. New stamps are ordered and/or delivered as needed. DTF places orders for stamps (usually 100 cases of State 20's and 50 cases of joint 20's) approximately every 8-10 weeks.

Inventory Contractor Data Requirements (CDR's – See Exhibit B): A004 and A020



## SECTION III – PERFORMANCE REQUIREMENTS

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### 1 Storage/Facilities

Establish and maintain primary and emergency sites within New York State for the secure storage of indicia. Emergency sites shall be located as follows:

Upstate:

Albany	(within 25 miles)
Buffalo	(within 25 miles)
Queensbury	(within 25 miles)
Syracuse	(within 25 miles)

Downstate:

New York City  
Long Island (Eastern)

### 2 Inventory Levels

Establish and maintain adequate inventory levels for processing all orders received at processing and emergency sites.

### 3 Security

Provide security that eliminates risk of loss of indicia, including in transit to agent, to prevent duplication, theft, unauthorized access and/or use at all sites.

## E Program Management

The Bidder shall provide effective and qualified management and leadership empowered to make timely decisions, engage company resources and successfully resolve issues with other associate Contractors; provide effective management of subcontractors to ensure customer and mission support is responsive, efficient and transparent; ensure coordination and interface with relevant DTF support teams across the internal and external stakeholder organizations; and provide effective and proactive communication and coordination with DTF in order to ensure clear performance accountability and successful mission accomplishment.

Program Management Contractor Data Requirements (CDR's – See Exhibit B): A015, A021, A022, A023 and A024

### 1 Reports

Provide timely, accurate report information reflecting financial, administrative and operational components of the Program. This information will be used by DTF to identify, fulfill and accurately track and project current and future State revenue; validate inventory information; and ensure qualifications of cigarette tax Agents. See required data for reports in Exhibit B.

### 2 Resources

Provide comprehensive training to Contractor staff and DTF staff regarding financial systems interfaces and processing requirements such that each party can perform its contractual obligations and to ensure all performance standards are met.

## SECTION III – PERFORMANCE REQUIREMENTS

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### 3 Invoicing

Provide accurate invoicing to DTF within 30 calendar days from the end of the month to ensure invoices are submitted promptly and payment made timely to enhance Department fiscal planning.

### 4 Change Orders

Provide change analysis within the time frame and in the manner prescribed by DTF for review and approval – see Exhibits 6.1 and 6.2 for proper format.

### 5 Business Continuity

Provide and implement a plan that minimizes the period of time that DTF operations are impacted due to circumstances beyond the control of either party. Ensure that DTF operations are recovered and resumed as quickly as possible and that revenue streams are not impacted.

### 6 Implementation Plan

Develop and implement a comprehensive Implementation Plan which supports the Contractor's complete proposal for all development activities and ongoing operational activities.

Associated Contractor Data Requirements (CDR's – see Exhibit B) – Program Management - Implementation: A006

### 7 Data Protection

Provide and maintain a secure environment to protect the confidentiality, integrity, and availability of all data related to the Program. Ensure that a management and operational structure is in place to focus on information security policies, standards, and best practices.

### 8 Transition Period

If there is a change in Contractor, the incumbent Contractor shall fully cooperate with the Department and the follow-on Contractor, as necessary, to ensure a smooth transition.

## SECTION IV – CASH MANAGEMENT REQUIREMENTS

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### IV CASH MANAGEMENT REQUIREMENTS

Certain requirements in this section are considered critical to successful contract implementation. This section outlines specific requirements the Bidder must agree with and/or address relating to Cash Management.

#### A Reporting

The Primary Bidder, and the commercial bank acting as a subcontractor, if applicable, must agree to and sign the Undertaking for Bank Deposits and Assignment of Securities Agreement (Exhibit 8 of this RFP) subsequent to contract award and prior to Program implementation.

#### B Funds Processing and Availability

- 1 The Contractor must guarantee, at a minimum, that:
  - funds availability provided to New York State is equivalent to funds availability provided to the commercial bank, by the Federal Reserve, for checks processed through the Federal Reserve; and
  - funds availability provided to New York State is equivalent to the funds availability provided to the commercial bank by financial institutions for checks processed through direct send programs.
- 2 The Bidder must ensure the prevention of unauthorized debits, both paper remittance and Electronic Funds Transfer (EFT), presented against a DTF tax receipt account, and must report any such unauthorized debits to DTF and the Office of the State Comptroller (OSC).
- 3 The Bidder must be willing to negotiate the terms of their standard banking agreement(s) prior to their inclusion in any subsequent contract for the services in this RFP.
- 4 The Bidder must inform the OSC and DTF of any changes that affect individual check end-point and availability schedules. Any changes and/or revised availability schedules must be transmitted to OSC and DTF in a timely manner.

#### C Collateral

Sections 105 and 106 of the State Finance Law require financial institutions holding deposits of State monies to pledge collateral with the OSC to the extent deemed appropriate by the OSC. As required by such law, the Bidder must agree to pledge securities as outlined in Section 105 of State Finance Law or obtain a surety bond by an insurance company with a AAA rating to secure the State's interest in any depository account and any "pass through" accounts to the extent deemed appropriate by OSC. OSC shall establish and periodically review and adjust, as necessary, the amounts held as collateral. Collateral must be held at the NYS fiscal agent. DTF reserves the right to periodically verify the amount of collateral held.

#### D Wire Transfers

The Primary Bidder, and the commercial bank acting as a sub-contractor, if applicable, must agree to and sign the OSC Funds Transfer Agreement (Exhibit 7 of this RFP) subsequent to contract award and prior to Program implementation. Modification to this agreement may be requested; it is the sole discretion of the OSC to approve any modification request.

## SECTION IV – CASH MANAGEMENT REQUIREMENTS

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The Bidder must also agree to wire transfer funds from any accounts associated with the Program to an OSC designated account.

The Bidder must also provide a system for OSC to initiate/release wire transfers to the NYS General Account.

### **E Automated Clearing House (ACH) Network Rules and Regulations**

The Bidder must notify DTF and OSC of rule changes that impact the processing of DTF's transactions through the ACH network prior to the change becoming effective.

Any commercial bank associated with this RFP:

- must be a member of the National Automated Clearinghouse Association (NACHA) and agree to conform to all ACH Rules and Regulations; and
- must be able to act as both an Originating Depository Financial Institution (ODFI) and a Receiving Depository Financial Institution (RDFI) (able to both initiate and receive ACH entries).

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

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### V PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

#### A Cigarette Excise Tax and Prepaid Sales Tax Program

Timeliness, accuracy and completeness performance standards establish the acceptable level of service for all aspects of the Contractor's processing operations. Each critical requirement in the Program has a corresponding timeliness and/or accuracy and completeness standard. The matrix in Section V.E. identifies Performance Standards and the associated Liquidated Damages and Reimbursements.

The general performance standards include:

**TIMELINESS:** All processes, services, activities and deliverables, etc., must be 99.5% timely in accordance with the stated and/or agreed upon requirements, schedules, time frames, etc.

**ACCURACY AND COMPLETENESS:** All processes, services, activities and deliverables, etc., must be 99.5% complete and accurate according to the stated and/or agreed upon requirements.

In all cases, the Contractor is accountable for compliance with standards. All individual detail standards stated in the Program support the general standards.

#### B Future Program Changes

The performance standards reflect current statutes, rules, regulations, policy and procedures. Future changes that alter the Program may require that the performance standards be adjusted accordingly.

The Department also reserves the right to add performance standards and liquidated damages as appropriate after the Program has been finalized to ensure that the Contractor is accountable for all aspects of the Program. If additional performance standards and liquidated damages are required, the Contractor may propose additional fees to support the resources required to meet the performance standards consistent with the Change Control Procedure outlined in Exhibits 6, 6.1 and 6.2.

#### C Evaluating Contractor Compliance with Performance Standards

The Department's Performance Audit Program for Contractor services provides a means to evaluate compliance with performance standards. Accordingly, the Performance Audit Program would ensure:

- Timely and accurate processing of orders, payments, reports, and electronic files, consistent with the performance standards;
- Appropriate controls are implemented and maintained for complete, accurate, and timely processing of cigarette tax indicia remittances, purchases and all related procedures consistent with performance standards;
- Automated processing and deposit systems are implemented and maintained consistent with performance standards;
- Security measures are implemented and maintained consistent with performance standards;
- Disaster recovery capability is maintained consistent with performance standards;

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

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- Complete and accurate documentation is maintained consistent with the performance standards; and
- Liquidated damages may be assessed for failure to achieve performance standards.

The Contractor's performance will be evaluated through a variety of generally accepted audit methodologies, including but not limited to:

- Review of system reports for timeliness, accuracy, security access;
- On-site review for compliance with policy, procedures, standards;
- Review of order and payment transactions (sampling, as well as evaluation of the entire universe of cigarette tax indicia transactions);
- Review of documentation;
- Data file comparisons for data accuracy; and
- Review of related back office transactions handled by the Department's staff responsible for Cigarette Excise Tax and Prepaid Sales Tax operations.

Timeliness may be evaluated on a continuous basis through the use of operation and management reports. The Contractor will be informed in advance of reviews and audits related to the Processing Environment and General Controls. Prior to each review, the Department will inform the Contractor of the intended scope and methodology. The Contractor will have the option of proposing an alternative methodology if appropriate; however, the final methodology must be approved by the Department. Unannounced visits may be utilized, as appropriate.

### D Liquidated Damages and Reimbursements

Failure to comply with the performance standards identified through Performance Audit and/or Contractor "errors" identified by Department personnel may result in the imposition of liquidated damages or reimbursements. Additionally, civil and/or criminal penalties exist for violation of secrecy and confidentiality statutes.

The matrix in Section V.E. identifies the liquidated damages and reimbursements that may be imposed and is organized into the following components.

#### 1 Processing Environment

- Reimbursement to the Department of any losses including cost incurred to maintain the existing Program with the current Contractor if the initial implementation is late;
- Reimbursement to the Department of any losses including cost incurred if system maintenance and/or enhancement is late and/or inaccurate based upon the agreed upon schedule;
- Reimbursement to the Department of any losses including lost interest if a late implementation of the initial system, maintenance, and/or enhancement prevents the timely and/ or accurate deposit and processing of payments; and
- Flat fee for each occurrence the system documentation is inaccurate and/or late based upon the agreed schedule.

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

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### 2 General Controls

- Flat fee for each occurrence of violation per day; and
- General Controls include Security, Disaster Recovery, Procedures, Change Control, Internal Controls and Data Retention and Reports.

### 3 Performance Audit Monitoring

- Flat fee for each occurrence of violation per day.

### 4 Timeliness and Accuracy of Payment/Ordering Transaction Processing

- Flat fee for each occurrence of violation per day;
- Reimbursement of lost interest to the Department associated with untimely deposit;
- Reimbursement to the Agent(s) for losses, including costs, incurred as a result of the Contractor's failure to meet the performance standards (e.g., interest, penalties, fees, etc.); and
- Reimbursement to the Department for any losses, including cost, incurred as a result of Contractor failure to meet the performance standards.

### 5 Accuracy and Completeness of Payment/Order Transaction Processing

- Reimbursement of lost interest to the Department associated with untimely deposit;
- Reimbursement to the Agent(s) for losses, including costs, incurred as a result of the Contractor's failure to meet the performance standards (e.g., interest, penalties, fees, etc.);
- Reimbursement to the Department for any losses, including cost, incurred as a result of Contractor failure to meet the performance standards; and
- Reimbursement to the Department for any losses, including cost, incurred for any incomplete and/or inaccurate records on the Cigarette Tax Indicia systems, files and/or reports.

The following table has been developed based on the Program requirements as defined in the Cigarette Excise Tax and Prepaid Sales Tax Program. Failure to comply with **any** requirement or standard in the Program is subject to assessment of liquidated damages and/or reimbursement at the Department's discretion.

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

### E Performance Standards and Associated Liquidated Damages and Reimbursements Matrix

<b>1 PROCESSING ENVIRONMENT 99.5% TIMELY, COMPLETE AND ACCURATE</b>			
	<b>PERFORMANCE STANDARD</b>	<b>LIQUIDATED DAMAGES</b>	<b>REIMBURSEMENTS</b>
<b>1.1</b>	<p><b>System and Program Development and Implementation Activity</b></p> <p>All system and Program development activities, deliverables, etc., for complete Program must be operational and be delivered to the Department according to the agreed upon schedules.</p>		Reimbursement to the Department for any expenses including losses incurred for failure to meet the agreed upon implementation schedule. If appropriate, the losses will include the cost to maintain the existing Program with the existing Contractor until full implementation by successful Contractor.
<b>1.2</b>	<p><b>System Enhancement/Maintenance</b></p> <p>The Contractor must accurately and timely test data, implement production fixes, perform system modifications and notify the Department of the results as identified in the RFP and/or as agreed upon in subsequent negotiations.</p>		Reimbursement to the Department for any expenses including losses incurred for failure to perform system enhancement /maintenance as prescribed.
<b>1.3</b>	<p><b>Program Documentation</b></p> <p>All documentation related to the Cigarette Excise Tax and Prepaid Sales Tax processing systems must be complete, accurate, and available for Department review and approval according to the agreed upon schedule.</p>	Flat fee of \$250 for failure to complete the documentation based upon the cure period. Also a flat fee of \$250 for each occurrence the agreed upon deliverable date is missed and/or late; or for each occurrence the deliverable is incomplete or inaccurate after the agreed upon cure period. Corrective action and a timetable will be specified by the Department for each violation.	



## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

<b>2 GENERAL CONTROLS 99.5% TIMELY, COMPLETE AND ACCURATE</b>			
	<b>PERFORMANCE STANDARD</b>	<b>LIQUIDATED DAMAGES</b>	<b>REIMBURSEMENTS</b>
<b>2.1</b>	<p><b>Logical Security System</b></p> <p>The Contractor must implement and maintain the agreed upon logical system security measures to prevent unauthorized access to Cigarette Excise Tax and Prepaid Sales Tax indicia data including, but not limited to:</p> <ul style="list-style-type: none"> <li>- all supporting department data (inventory, agent profiles, etc.);</li> <li>- cigarette tax indicia system data; and</li> <li>- depository information.</li> </ul>	<p>Liquidated damages of \$2,000 for each violation of unauthorized access; corrective time frames will be specified by the Department for each violation.</p>	
<b>2.2</b>	<p><b>Security/Confidentiality for Personnel</b></p> <p>The Contractor must implement and maintain the agreed upon comprehensive security and confidentiality provisions in accordance with the requirements of this RFP.</p> <p>Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 889-aa; State Technology Law Section 208). 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 Contractor's Agents, officers, employees or</p>	<p>Liquidated damages of \$2,000 for each violation of the security measures as it relates to the Program. Corrective time frames will be specified by the Department for each violation.</p>	

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

<b>2 GENERAL CONTROLS</b> <b>99.5% TIMELY, COMPLETE AND ACCURATE</b>			
	<p>subcontractors.</p> <p>The Contractor must agree to support Department efforts to criminally prosecute employees who have violated the requirements with respect to the Program.</p>		
2.3	<p><b>Physical Security</b></p> <p>The Contractor must maintain the agreed upon physical security measures for all sites and services associated with the Program including, but not limited to:</p> <ul style="list-style-type: none"> <li>– Cigarette Tax indicia, current and prior series inventories;</li> <li>– All proposed locations, including: <ul style="list-style-type: none"> <li>-- Emergency site locations;</li> <li>-- Primary Cigarette Tax indicia processing site;</li> </ul> </li> <li>– Storage site(s), if applicable; and</li> <li>– Transportation of Cigarette Tax indicia.</li> </ul>	<p>Liquidated damages of \$2,000 for each violation of the security measures as it relates to the Program. Corrective time frames will be specified by the Department for each violation.</p>	
2.4	<p><b>Internal Controls</b></p> <p>The Contractor must maintain and implement the agreed upon internal control measures.</p>		<p>Reimbursement to the Department for any expenses including losses incurred as a result of failure to maintain/ implement internal control procedures.</p>

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

<b>2 GENERAL CONTROLS</b> <b>99.5% TIMELY, COMPLETE AND ACCURATE</b>			
<b>2.5</b>	<b>Change Management Process and Procedures</b>  The Contractor must utilize the mutually agreed upon Change Control Procedure to identify, request, analyze, prioritize and track any changes to the Program.  The Contractor must provide the Department thirty (30) days prior notification of proposed changes to other Contractor systems (e.g., ACH) that impact the Program.	Liquidated damages of \$500 for each violation.	

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

<b>2 GENERAL CONTROLS</b>			
<b>99.5% TIMELY, COMPLETE AND ACCURATE</b>			
<b>2.6</b>	<p><b>Disaster Recovery and Fail Safe Operations</b></p> <p>The Contractor must notify the designated Department staff within the agreed upon time frames of all disasters and/or business disruptions that impact the Program.</p> <p>The Contractor must maintain, test and update as necessary (at least once annually) disaster recovery/fail safe operations procedures throughout the duration of the Agreement. In addition, the Contractor must provide the Department with an annual briefing to discuss disaster recovery/fail safe operations procedures, test results; updates, etc.</p> <p>The Contractor must recover within the agreed upon time frames from all disasters and/business disruptions to ensure that all Cigarette Tax indicia orders are processed and monies are deposited timely.</p>	Liquidated damages of \$500 for each failure to maintain the agreed upon Disaster Recovery Plan and Fail Safe Operations that impacts the Program.	Reimbursement to the Department of all direct costs incurred but not limited to interest expense, processing costs, etc., for failure to maintain the Plan and/or implement the Plan.
<b>2.7</b>	<p><b>Files and Reports</b></p> <p>The Contractor must provide the Department with accurate and timely reports (e.g., Operations Reports, Accounting Management Reports, Cash Management Reports, etc.) as required in Exhibit B, Contractor Data Requirements, and maintain and retrieve data in accordance with the agreed upon frequency and format.</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard. Corrective action and a timetable will be specified by the Department for each violation.

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

<b>3 PERFORMANCE AUDIT MONITORING REQUIREMENTS 99.5 % TIMELY, COMPLETE AND ACCURATE</b>			
	<b>PERFORMANCE STANDARD</b>	<b>LIQUIDATED DAMAGES</b>	<b>REIMBURSEMENTS</b>
<b>3.1</b>	<p><b>Performance Audit Monitoring</b></p> <p>The Contractor must cooperate fully with the Department, or its designee, in all Performance Audits and Reviews.</p>	Liquidated damages of \$500 per day, with a limit of \$5,000 per audit, for each failure to meet the requirement.	
<b>3.2</b>	<p><b>OSC Audits and Reviews</b></p> <p>The Contractor must cooperate fully with Office of the State Comptroller (OSC), or its designee, for all aspects of audits, reviews, etc.</p>	Liquidated damages of \$500 per day, with a limit of \$5,000 per audit, for each failure to meet the requirement.	

<b>4 TIMELINESS OF PAYMENT/ORDER PROCESSING 99.5% TIMELY</b>			
	<b>PERFORMANCE STANDARD</b>	<b>LIQUIDATED DAMAGES</b>	<b>REIMBURSEMENTS</b>
<b>4.1</b>	<p><b>Payment Processing</b></p> <p>The Contractor must ensure same day deposit for all payment types received prior to the established cut off time.</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.
<b>4.2</b>	<p><b>Aging Accounts Receivable</b></p> <p>The Contractor must initiate payment processes for credit orders in accordance with the requirements set forth in this RFP.</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.
<b>4.3</b>	<p><b>Prepaid Sales Tax</b></p> <p>The Contractor must create, process, and reconcile the Prepaid Sales Tax information and returns (including ST-810) according to the agreed upon schedule.</p>	Liquidated damages of \$100 per day for each day the agreed upon schedule is late.	

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

<b>4 TIMELINESS OF PAYMENT/ORDER PROCESSING 99.5% TIMELY</b>			
<b>4.4</b>	<p><b>Agent Orders</b></p> <p>The Contractor must process all Cigarette Tax indicia orders for next day delivery. Orders received on Friday prior to the stated cut-off must be processed for delivery on Saturday, providing Saturday is not a legal holiday. Orders received after the stated cut-off must be fully processed for delivery as though the order had been received the next business day prior to the stated cut-off.</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.
<b>4.5</b>	<p><b>Emergency Orders</b></p> <p>The Contractor must process all emergency orders, up to the inventory of stock maintained at an emergency site, according to the agreed upon schedule.</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.
<b>4.6</b>	<p><b>Delivery of Indicia</b></p> <p>The Contractor must ensure delivery/pickup to the USPS in time for next day delivery for orders received prior to the stated cutoff time.</p> <p>The Contractor shall cooperate with the Department and the USPS regarding lost and missing orders.</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.
<b>4.7</b>	<p><b>Insufficient Fund Notification</b></p> <p>Upon notification of insufficient funds, the Contractor must:</p> <ul style="list-style-type: none"> <li>-- Notify the Department of insufficient funds for an Agent within one business hour, within the business day of 8:00 a.m. - 4:30 p.m., of the Contractor being informed.</li> <li>-- At the Department's</li> </ul>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

<b>4 TIMELINESS OF PAYMENT/ORDER PROCESSING</b> <b>99.5% TIMELY</b>			
	<p>direction, immediately lock Agent accounts to prevent additional Cigarette Tax indicia purchases.</p> <p>-- Suspend all sales of indicia to a defaulted Agent pending the State's and/or City's receipt of confirmed replacement payment(s) due in good funds and the State/City's reauthorization of authority to purchase on credit.</p>		
<b>4.8</b>	<p><b>Lost and/or Stolen Indicia</b></p> <p>a) When a loss occurs (i.e., indicia stolen, lost) under the control of the Contractor, the Contractor must reimburse the Department for the face value of the indicia within ten (10) business days and allow for research of missing indicia.</p> <p>b) When a loss occurs out of the control of the Contractor (specifically, indicia lost or stolen in transit), the Contractor must reimburse the Department the replacement value within 14 business days.</p> <p>c) Notify the Department of any loss within one (1) hour of the Contractor being made aware of the loss.</p>	<p>Liquidated Damages of \$100 for each time the notification to the Department is late.</p>	<p>a) Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard; and if not timely, reimbursement for lost interest for each day beyond the specified time frame for failure to meet the standard.</p> <p>b) Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard; and if not timely, reimbursement for lost interest for each day beyond the specified time frame for failure to meet the standard.</p>

## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

<b>5 ACCURACY AND COMPLETENESS OF PAYMENT/ORDER PROCESSING 99.5% COMPLETE AND ACCURATE</b>			
	<b>PERFORMANCE STANDARD</b>	<b>LIQUIDATED DAMAGES</b>	<b>REIMBURSEMENTS</b>
<b>5.1</b>	<p><b>All Payment Types</b></p> <p>All payment transactions must be processed accurate and complete in accordance with all stated RFP requirements.</p>		Reimburse Agent for any principal, lost interest, interest income, and bank fees as a result of failure to meet the standard.
<b>5.2</b>	<p><b>Agent Orders</b></p> <p>The Contractor must process all indicia orders (regular orders and emergency orders).</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.
<b>5.3</b>	<p><b>Agent Credit Lines</b></p> <p>The Contractor must not process orders from Agents when the order results in Agent(s) exceeding the Department set credit limits.</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.
<b>5.4</b>	<p><b>Delivery of Indicia</b></p> <p>The Contractor must ensure delivery of all indicia orders.</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.
<b>5.5</b>	<p><b>Insufficient Fund Notification</b></p> <p>The Contractor must notify the Department of all Agent insufficient fund notifications.</p>	Liquidated damages of \$500 for each failure to meet the standard.	
<b>5.6</b>	<p><b>Locked Accounts</b></p> <p>The Contractor upon Department direction must lock any specified Cigarette Tax Agent account(s).</p>		Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.
<b>5.7</b>	<p><b>Supply of Cigarette Tax Indicia Inventory</b></p> <p>The Contractor must maintain access to one month's supply of inventory to fill and complete orders.</p>		Reimbursement to the Department for any expenses including losses incurred as a



## SECTION V – PERFORMANCE STANDARDS and LIQUIDATED DAMAGES

<b>5 ACCURACY AND COMPLETENESS OF PAYMENT/ORDER PROCESSING 99.5% COMPLETE AND ACCURATE</b>			
	<p>The Contractor must maintain one case (NYS 20 - 25 rolls per case) of State-only indicia in each upstate emergency site and one case (Joint 20 - 25 rolls per case) each of State-only and Joint indicia in each downstate emergency site.</p> <p>Accurately and completely maintain all physical inventories and associated records and implement all inventory tracking procedures.</p>		<p>result of failure to meet the standard.</p>
<b>5.8</b>	<p><b>Prepaid Sales Tax</b></p> <p>The Contractor must accurately and completely process Prepaid Sales Tax information according to the Department's procedures.</p>		<p>Reimbursement to the Department for any expenses including losses incurred as a result of failure to meet the standard.</p>

## RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program SECTION VI – Financial Requirements

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### VI FINANCIAL REQUIREMENTS

This Section outlines Bidder payment information and provides instruction for the completion of the Bidder's financial proposal.

#### A Operations Fees

A commercial bank bidding as a prime Contractor must prepare two cost proposals, one assuming payment by direct fee, and another assuming payment by compensating balances. A document processor bidding as prime Contractor must prepare a cost proposal assuming direct fee.

The State reserves the right to reimburse the commercial bank Contractor via direct payments or compensating balance payments, or a combination of both, at the State's direction.

Payment for services shall be billed by the Contractor to DTF and will be paid in accordance with Article 11 of the State Finance Law and the voucher and audit procedures established by the Office of the State Comptroller (OSC). The Contractor shall provide DTF with an invoice or voucher within 30 days of the end of the month in which services are rendered, including appropriate detail to permit DTF to identify all fees and charges imposed by the Contractor for such invoice/voucher. In addition, the Contractor shall provide DTF with an invoice or voucher within 30 days of the end of New York State's fiscal year (March 31) and within 30 days of the end of the Federal fiscal year (September 30) for all required payments for change control enhancements and for development and operation fee payments approved by the DTF in such fiscal year and in accordance with the Change Procedure. The Contractor must include the appropriate detail to permit DTF to justify payment of such invoice or voucher.

The numbers of rolls in Exhibit 3 of this RFP are shown for illustration purposes only. They represent actual volumes for the stated time periods. Such volumes, or any other, do not represent a volume guarantee. Payments by the State will be based on the actual number of rolls sold monthly. The Contractor will be reimbursed monthly, based on items processed the previous month.

DTF will pay for systems development after DTF's certification of all services associated with the Certification Date.

#### 1 Payment by Direct Fee

If the State elects to pay by direct fee, the State may choose to either offset the fee payment with Earnings Credits (as hereinafter defined) or request direct reimbursement from the Contractor. Earnings Credits are to be calculated using the following formula:

$$\text{Earnings Credits} = (\text{average available account balance}) \times (1 - \text{RR}) \times (\text{ECR}) \times \text{Time}$$

Where:

RR = Federal Reserve Bank Reserve Requirement percentage (currently 10%)

ECR = Earnings Credit Rate defined as the monthly average investment yield on the three-month Treasury Bill, as determined at the weekly auction and published in the New York Times. The **Earnings Credit Rate** shall be determined by the OSC and confirmed with the Contractor.

Time = Number of days in period/365.

If payment is by direct fee, the Contractor must provide a monthly account analysis, along with an invoice to DTF. No costs should be assessed against the bank accounts without the prior written approval of OSC and DTF.

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VI – Financial Requirements**

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#### **2 Payment by Compensating Balance**

If the State elects to pay by compensating balance, the value of the compensating balance shall be calculated using the same formula as “Payment by Direct Fee,” provided, however, that the Earnings Credit Rate shall be 50 basis points higher than the monthly average investment rate on the three-month Treasury Bill as determined at the weekly auction and published in the New York Times. The **Earnings Credit Rate** shall be determined by the OSC and confirmed with the Contractor.

If payment is by compensating balances, the Contractor must provide a monthly account analysis to the Office of the State Comptroller (OSC) and to DTF for each account associated with the DTF Program. This analysis must include the monthly volume and total costs associated with the Account.

No costs should be assessed against the bank accounts without the prior written approval of OSC and DTF.

All proposed fees must be guaranteed for the first three years of the base term and adjustable thereafter on an annual basis, using the CPI-U methodology stated in the CPI-U Section below. However, if the Department initiates change controls which result in efficiencies, DTF expects to reduce operations fees through the fee change control procedure.

The Bidder must propose a fully loaded operations fee at the roll level (including, but not limited, to all costs related to bank services required in this RFP, staffing, facilities, equipment, systems maintenance, management Program support and training).

Fees incurred for the United States Postal Service (USPS) will be considered a pass-through cost and will not include any add-ons for profit. The Contractor is to supply documentation provided by the USPS Office for these costs.

#### **B Development Fees**

For the Program, the Bidder must complete a development cost table, if applicable, for services prior to the operational date (including, but not limited to, systems development, testing and all Program report requirements). The Department may elect to pay the development fees either as a one-time payment or as monthly payments over a two-year period after certification is achieved. Development fees should be presented for both options.

The Bidder must identify the hourly programming rate for systems enhancement services.

The Bidder must also identify the hourly User Acceptance Testing (UAT) rates for systems enhancement services. The rates provided shall be applicable to both testing performed in connection with the Bidder’s development of an enhancement and bidder resources used to support the Department’s testing of an enhancement.

DTF will pay for systems development only after the total certification of all services associated with the Certification date.

#### **C Other Fees**

Note: Systems maintenance costs must be priced as a part of the fully loaded operations fee, not billed as a separate cost.

FDIC Fees must be stated separately, and should not be included within the Operational Fees. FDIC fees must be a pass-through cost only and no additional fees may be added. The State may elect to pay the FDIC fees as an add-on to this contract or include the fees in the overall existing

## RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program SECTION VI – Financial Requirements

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relationship with the Contractor and pay for them by compensating balances, if the Bidder is a commercial bank.

### CONSUMER PRICE INDEX – URBAN (CPI-U) COMPUTATION METHODOLOGY

Consumer Price Index for All Urban Consumers (CPI-U) adjustments shall not exceed the annual change for the prior one-year contract year. For example, if the contract term is five years and begins on January 1, 2010 and the operations fees are fixed for the initial three-year contract period (Year 1 is January 1, 2010 to December 31, 2010; Year 2 is January 1, 2011 to December 31, 2011; and Year 3 is January 1, 2012 to December 31, 2012), then the CPI-U adjustment for Year 4 (January 1, 2013 to December 31, 2013) shall use the average annual change for the twelve (12) month period ending three (3) months prior to the period the change is to take effect (October 1, 2011 to September 30, 2012) in deriving the CPI-U adjustment.

The authoritative document in computing the CPI-U shall be the U.S. Department of Labor, Bureau of Labor Statistics, *Summary Data from the Consumer Price Index, Table 10, Consumer Price Index for All Urban Consumers (CPI-U): Selected areas*. All items indexed (1982-1984 = 100) unless otherwise noted within the Summary Data.

The index used shall be the selected local area, if the service provided is among the local areas listed (e.g., N.Y. - Northern N.J.-Long Island) with the 1982-1984 base rate. If the local area is not among those listed, then the appropriate regional urban and size classification should be utilized (e.g., Northeast urban, Size C - 50,000 to 500,000).

#### Example:

Selected Local Area:	=	N.Y. - Northern N.J. - Long Island
Contract Year	=	January 1, 2008 to December 31, 2008
Computation Methodology	=	(September 2007 - October 2006) / (October 2006)
CPI-U	=	(228.308-221.7) / (221.7)
<b>CPI-U</b>	=	<b>0.0299</b>

YEAR	MONTH	INDEX
<b>2006</b>	<b>October</b>	<b>221.7</b>
2006	November	220.9
2006	December	221.3
2007	January	221.767
2007	February	233.066
2007	March	224.551
2007	April	225.780
2007	May	227.146
2007	June	228.258
2007	July	228.628
2007	August	228.326
<b>2007</b>	<b>September</b>	<b>228.308</b>

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

#### **VII PROPOSAL CONDITIONS, INVARIABLE and NEGOTIABLE CONTRACT CONDITIONS**

This Section outlines conditions concerning the Request for Proposal, the Bidder's response and proposal conditions, invariable and negotiable contract conditions related to any awarded Contract. This Section is arranged as follows:

**Part A: Proposal Conditions** outlines conditions directly related to the submission of bids in response to this RFP.

**Part B: Invariable Conditions** outlines invariable conditions related to the submission of bids as well as any resultant Contract. **Invariable Contract Conditions** will be included in any Contract awarded as a result of this RFP without change. The Bidder must agree to the invariable conditions without change. Bidders are not permitted to propose extraneous terms with respect to these provisions. If extraneous terms are proposed, the bid will be disqualified as non-responsive.

**Part C: Negotiable Conditions** are Negotiable Contract conditions to be addressed in the Contract awarded as a result of this RFP. Bidders are allowed to propose extraneous terms for each of these provisions.

#### **A Proposal Conditions**

These conditions are directly related to the submission of bids in response to this RFP.

##### **1 Issuing Agency**

This RFP is issued by the New York State Department of Taxation and Finance ("the Department" or "DTF"), which is responsible for all criteria stated herein and for evaluation of all proposals submitted.

##### **2 Solicitation**

This RFP is a solicitation to bid, not an offer of a Contract.

##### **3 Liability**

The State of New York is not liable for any costs incurred by a Bidder in the preparation and production of any proposal, or for any work performed prior to the execution of a formal Contract.

##### **4 Proposal Ownership**

All proposals and accompanying documentation becomes the property of the State of New York and will not be returned. The Department reserves the right to use any portions of the Bidder's proposal not specifically noted as proprietary.

##### **5 Timely Submission**

Bidders are solely responsible for timely delivery of their proposal to the location set forth by the stated bid due date/time and are solely responsible for delays in receipt including, but not limited to those due to third-party carriers.

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

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#### **6 Non-Collusive Bidding Certification (Reference State Finance Law Section 139-d and Appendix A, Clause 7)**

In accordance with Section 139-d of the State Finance Law and Appendix A, Standard Clauses for New York State Contracts, by submission of this bid, each bidder, and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

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

#### **7 MacBride Fair Employment Principles**

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

#### **8 Proposal Effective Period**

The Bidder's proposal must be firm and binding for a period of at least 180 days following the bid proposal due date.

#### **9 Bidder Proposal Clarification**

The Department reserves the right to require a Bidder to provide clarification and validation of its proposal, to the satisfaction of the Department, through any means the Department deems necessary. Failure of a Bidder to cooperate with the Department's effort to clarify a proposal may result in the proposal receiving a reduced evaluation score or being labeled as non-responsive and given no further consideration.

Additionally, the Department reserves the right to use information submitted by the Bidder in response to the Department's request for clarifying information in the course of evaluation and selection under this RFP.

#### **10 Bid Opening**

Bids will not be opened publicly. The Department reserves the right at any time to postpone or cancel a scheduled bid opening.

#### **11 Bid Evaluation and Selection**

See **Section X: Proposal Evaluation**, regarding bid selection and evaluation methodology. To the extent permitted by law, Bidder proposals shall not be disclosed,

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

except for purposes of evaluation and approval, prior to approval of any resulting Contract by the Office of the State Comptroller. Submitted proposals may be reviewed and evaluated by any personnel or agents of the Department, other than one associated with a competing Bidder.

#### **12 Disqualification for Past Performance and Findings of Non-Responsibility**

The Bidder may be disqualified from receiving awards if the Bidder; or the commercial bank acting as a subcontractor, if applicable; or anyone in the Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or Contracts or is deemed non-responsible.

#### **13 Bidder Notification of Intent to Award**

The successful Bidder will be advised of selection by the Department through the issuance of a "Notification of Intent to Award Letter." Bidders whose bids have not been selected by the Department in response to this RFP shall be notified of such non-selection.

#### **14 Contract Approval**

Any Contract resulting from this RFP will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller.

#### **15 Disclosure of Contract Award Information**

Public announcements or news releases shall not be made prior to Contract award. Requests concerning bid information or the evaluation of a bid submitted will be considered under the Freedom of Information Law (FOIL) only after Contract negotiations are complete and the Contract is approved by the State Attorney General's Office and the Office of the State Comptroller.

#### **16 Debriefing Sessions**

Bidders will be notified in writing and may request the opportunity for a debriefing session. Such sessions will be limited to discussions of evaluation results as they apply to the Bidder receiving the debriefing.

#### **17 Bid Protest Policy**

The Department's procedures for handling protests of bid awards are set forth in **Exhibit A: Bid Protest Policy**.

#### **18 Reserved Rights**

The Department reserves the right to exercise any of the following:

- a. Change any of the scheduled dates stated herein.
- b. Amend RFP specifications after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all Bidders.
- c. Withdraw the RFP, at its sole discretion.
- d. Not award a Contract as a result of this RFP.
- e. Re-bid this RFP, at its sole discretion.

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

- f. Eliminate a mandatory requirement when all Bidders cannot meet such requirement.
- g. Evaluate, accept and/or reject any and all proposals, in whole or in part, and to waive technicalities, irregularities, and omissions if, in the Department's judgment, the best interests of the State will be served. In the event compliant bids are not received, the Department reserves the right to consider late or non-conforming bids as offers.
- h. Require the Bidder to demonstrate, to the satisfaction of the Department, any information presented as a part of their proposal.
- i. Use proposal information obtained through site visits, management interviews and the Department's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the Department's request for clarifying information in the course of evaluation and selection under this RFP.
- j. Determine a tie breaking mechanism for award of the Contract to serve the best interests of the State.
- k. Negotiate with the successful Bidder(s) within the scope of the RFP to serve the best interests of the State.
- l. Conduct Contract negotiations with the next highest-ranked responsible Bidder should the Department be unsuccessful in negotiating an agreement with the selected Bidder(s) within 45 days from Notification of Award or upon failure of the selected Bidder to successfully complete the Development Phase upon approval of the initial Contract, at the sole discretion of DTF.

#### **B Invariable Conditions**

The Bidder *must agree* to the invariable conditions in this Section without change. Bidders are not permitted to propose extraneous terms with respect to these provisions. If extraneous terms are proposed, the bid will be disqualified as non-responsive. **Invariable Conditions** will be included in any Contract awarded as a result of this RFP without change.

##### **1 Appendix A – Standard Clauses for New York State Contracts**

Appendix A – Standard Clauses for New York State Contracts will be incorporated, in its entirety, into any Contract resulting from this RFP.

##### **2 Contract Order Of Precedence/Rules of Construction**

- a. The Contract will consist of the following documents and the following order of precedence shall control in the event of a conflict:
  - i. Appendix A;
  - ii. DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law and Internal Revenue Code;
  - iii. Written amendments to the Contract;
  - iv. The main body of the Agreement, including Appendices and Exhibits (other than Appendix A, DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax



## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

Law and Internal Revenue Code, the RFP, Contractor's Bid Proposal, questions and answers and Contractor Service Agreements);

- v. The RFP (excluding Appendix A and DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law and Internal Revenue Code) including any amendments, clarifications and the questions and answers;
  - vi. The Contractor's Bid Proposal; and
  - vii. The Contractor's Service Agreements.
- b. In the event of a conflict between or among the documents referenced in a clause above, the latest in time document shall govern.

#### **3 Outstanding Tax Liabilities**

All outstanding tax liabilities, if any, due to the State of New York from the Contractor, or Contractor's partners, officers, agents or subcontractors engaged in providing services under this Agreement, other than tax liabilities being contested by any such party, must be satisfied prior to the execution of this Agreement, or a payment schedule arranged for their speedy satisfaction.

#### **4 Equal Employment/Business Participation Opportunities for Minority Group Members and New York State Certified Minority/Women-Owned Businesses**

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered DTF Contracts.

##### a. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A, including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that the provisions of Appendix A, Clause 12 – Equal Employment Opportunities for Minorities and Women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to work in connection with the State Contract.

##### b. Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses

Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as Subcontractors and suppliers on this Contract for the provision of services and materials. To locate New York State Certified M/WBE, the directory of Certified Businesses can be viewed at:

[http://www.empire.state.ny.us/Small\\_and\\_Growing\\_Businesses/mwbe.asp](http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp).

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

#### **5 Financial Stability**

Contractors are required to evidence financial stability as a material condition of any Contract awarded as a result of this RFP. Financial stability may be evaluated annually based upon criteria similar to that used in the bidding process to include the reports required for the Contractor's particular organizational structure as set forth in the RFP and as otherwise required by the Department.

In addition to annual financial statements, interim financial statements based on the period ending six months from the fiscal year end must be submitted for review by the Department within 45 days of the end of the six month financial period.

The Contractor is required to immediately notify the Department of a significant expansion of the Contractor or any change in ownership or organizational structure. Any significant change in ownership or significant expansion of organizational structure may require a re-evaluation of the Contract, in its entirety, by the Department.

#### **6 Independent Contractor**

It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor and, in no manner shall they be deemed employees of the Department, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of the Contract awarded under this RFP, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

#### **7 Prime Contractor/Subcontracting**

Contractor may subcontract for services performed in connection with this Contract. A subcontractor shall be defined as any firm or person who is not a full time employee of the Contractor, engaged or assigned to perform work under the Contract.

The State reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to:

- that the proposed subcontractor is on the Department of Labor's list of companies with which New York State cannot do business or on the List of Debarred Offerers maintained by the Office of General Services under State Finance Law §139-j(10)(b); or
- the Department determines that the company is not qualified, has unsatisfactory contract performance, or service has been previously provided.

In the performance of work under the Contract, Contractor remains primarily liable for the successful completion of all work in accordance with the Contract, and jointly and severally liable for the timely performance of all work or goods/materials furnished pursuant to this contract by third parties acting for or through Contractor. The Contractor shall be so liable even where subcontracting, independent Contractors, consortiums or partnering for a portion of the work is expressly authorized under the Contract.

Contractor shall remain primarily liable to the Department for the acts and omissions in the performance of services under the Contract of the subcontractors and/or persons either directly or indirectly employed by it or by the subcontractors, as it is for the acts and

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

omissions in the performance of services under the Contract or persons directly employed by the Contractor. Contractor shall not in any way be relieved of any financial, programmatic or service responsibility under the Contract by its agreement with any subcontractor or by the Department's approval of such an agreement with a subcontractor.

The work performed by the subcontractor must be in accordance with the terms of the Contract including, but not limited to the following:

- Appendix A;
- That subcontractor shall comply with the provisions of Section 5-a of the Tax Law and all Secrecy provisions;
- That nothing contained in any agreement with the subcontractor shall impair the rights of the Department;
- That nothing contained herein shall create any contractual relation between any subcontractor and the Department;
- That subcontractor shall maintain all records with respect to work performed;
- That the DTF shall have the same authority to audit the records of all subcontractors as it does those of the Contractor; and
- Financial stability.

The Department reserves the right to request a list of subcontractors to ensure compliance.

#### **8 Cooperation with Third Parties**

The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Department, as necessary to ensure delivery of products or coordination of performance of services.

#### **9 Termination of the Contract**

- a. The Department may terminate the Contract, or any portion thereof, immediately for failure to: meet implementation or certification dates; remain financially stable or responsible; adhere to the secrecy provisions; or for a violation of procurement lobbying act requirements. Otherwise, the Department may terminate the contract for material breach including, but not limited to, repeated performance problems, security breach, failure to comply with revised Tax Law Section 5-a, or the Contractor is otherwise deemed non-responsible upon 90 days written notice.
- b. The Department may terminate the Contract, or any portion thereof, for convenience upon reasonable notice, without penalty or other early termination charges due, if determined to be in the best interests of the State.
- c. The parties may agree to mutually terminate the Contract, or any portion thereof, on terms satisfactory to both parties.
- d. The Department reserves the right to terminate the Agreement immediately if the Contractor's financial stability is reasonably determined by the Department to be in question.

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

#### **10 Payments**

All payments will be made in accordance with Article 11-A of the New York State Finance Law. Additional information related to payment can be found in Section VI of this RFP.

The Contractor must maintain adequate records, as prescribed by the Department, to substantiate all claims for payment and, upon request, must make those records available to the Department for examination.

#### **11 Public Announcements**

Public announcements or news releases relating to this RFP or the resulting agreement shall not be made by any Bidder or its agent without the prior approval of the Department. Such approval shall not be considered until an executed Contract is approved by the Office of the Attorney General and the Office of the State Comptroller.

#### **12 Amendments**

Amendments to the Contract awarded as a result of this RFP will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller, where necessary.

#### **13 Contract Execution**

The Bidder must be willing and capable of entering into a contract within 45 calendar days after Notification of Intent to Award is issued.

#### **14 Contract Term**

The Contract shall become effective following approval by the New York State Attorney General and the Office of the New York State Comptroller and shall continue for a five (5) year term Agreement, thereafter. The Agreement may be extended upon mutual agreement of the parties, for one (1) two-year term.

The Agreement will also include an extension of up to twelve (12) months at the end of the initial term of the Agreement or the extension period, as applicable, to provide for an orderly transition of services to a subsequent service provider, at the sole discretion of the Department.

#### **15 Ownership of Data/Data Security**

- a. All data under the Contract shall be and remain the property of the Department, and the Contractor must, during the term of the Contract (including any extensions and/or transition periods), provide the Department with access to any such data maintained by Contractor.
  - i. The Contractor must, in accordance with applicable law and the instructions of the Department, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate data integrity safeguards against the deletion or alteration of such data.
  - ii. Promptly after the termination or expiration of the Contract, the Contractor shall provide all such data still within its possession or that of its subcontractors to the Department, or sanitize such data, consistent with applicable law and instructions from the Department.

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

- b. Upon the Department's reasonable request, Contractor shall correct, to the extent practicable, at Contractor's sole expense, reports, data and/or image output that fail to achieve the Performance Standards.

#### **16 Payment for Services**

All proposed fees are guaranteed for the first three (3) years of the base term described in this RFP.

- a. Sections 105 and 106 of the State Finance Law require financial institutions holding deposits of State monies to pledge collateral with the Office of the New York State Comptroller to the extent deemed appropriate by the Comptroller.
- b. A financial institution providing depository bank services must be insured by the FDIC through the term of the Agreement, including any extensions and/or transition periods.
- c. The method of compensation shall be by means of direct payment and/or compensating balances or a combination of the two, at the State's discretion. The State reserves the right to change the compensation method. The State agrees not to change the method of compensation at a frequency greater than once annually, except in extraordinary situations, as determined by the State. The State shall provide the Contractor with at least ninety (90) days advance notice of change of compensation method.
- d. If the State elects to pay by direct payment, the State may choose to either offset the fee payment with Earnings Credits or request direct reimbursement from the Contractor (as described in Section VI of this RFP).

Payment may be by means of direct payment or compensating balances (if the Contractor is a bank).

- Compensating balances will be established and maintained by OSC.
- Payment for services (including development fees) via direct fee shall be billed by Contractor to the Department and will be paid in accordance with the voucher and audit procedures established by the State Finance Law and OSC.
- Proposed fees shall be guaranteed for the first three years of the base term. Thereafter, any fee increase shall not exceed the annual change in the CPI-U *for all Urban Customers* for the prior one-year period.

The Contractor shall provide the Department with an invoice or voucher within 30 calendar days after the end of the month in which services are rendered, in appropriate detail to permit the Department to identify all fees and charges imposed by the Contractor pursuant to the Agreement. In addition, the Contractor shall provide the Department with an invoice or voucher within 30 days of the end of the New York State fiscal year for all required payments for change control enhancements for development and operation fee payments approved by the Department in such fiscal year in accordance with the Change Procedure. The Contractor must include the appropriate record detail as prescribed by the Department to substantiate such claim for payment.

#### **17 Implementation Plan**

A mutually agreed upon Implementation Plan as described in Exhibit B, CDRL of this RFP will be included as part of the Agreement.

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

#### **18 Implementation**

The testing and acceptance criteria and performance measurements included in the Implementation Plan will be reasonably determined by the Department.

A mutually agreed upon Implementation Plan setting forth timetables for implementing the services will be included as part of the Contract.

- a. The Department shall, in its sole and reasonable judgment, determine the number of implementation deliverables that it desires to test, the performance measures for an implementation deliverable, or the final implementation deliverable, the length of user acceptance testing and the means of testing such deliverables. Contractor may make recommendations to the Department regarding the performance measures, length of user acceptance testing, and the means of testing an implementation deliverable and/or the final implementation deliverable, but the Department shall have final responsibility for determining such criteria.
- b. User acceptance testing shall begin as set forth in the implementation plan or when Contractor informs the Department, in writing, that an implementation deliverable, or the final implementation deliverable, complies with the relevant performance measures, and is ready for user acceptance testing by the Department. The Department shall have a defined number of days, as set forth in the implementation plan, from receipt of such notice to test such deliverable for compliance with the performance measures. The Department shall provide Contractor, within 15 business days after the expiration of the test period, with a notice of defects, a notice of acceptance or a notice of certification (applicable to the final implementation deliverable), as applicable. Upon receipt of a notice of defects, Contractor shall diligently proceed to correct all defects and thereafter notify the Department that such deliverable is again ready for user acceptance testing. This process shall continue until the Department delivers to Contractor a notice of acceptance for the implementation deliverable, or a notice of Certification for the final implementation deliverable, as applicable.

#### **19 Program Management**

The Contractor's processing and operations sites must be in compliance with applicable building codes and the Americans with Disabilities Act.

- a. Personnel Changes by Contractor
  - i. The Contractor shall notify the Department of any and all planned personnel changes (including but not limited to terminations, reassignments and organizational restructuring) of managers responsible for the provision of services. Such notification must be received by the Department at least fourteen (14) days prior to the effective date of the change when feasible, or else as soon as possible after the change.
  - ii. If the personnel change for a manager(s) is in the control of the Contractor, and the Department believes the result of such change will cause degradation of the services performed by Contractor, then the Department may pursue the dispute resolution process (as described in subsection C.1. below) regarding such change.
  - iii. Staff Management

The Department shall have the right to request the removal of any Contractor manager or staff person assigned to the provision of services under the Agreement, for work-related cause, provided that such cause is not one which is prohibited by law as a basis for terminating an employee.

**RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**  
**SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

- b. Program Enhancements
  - i. The Department may request that the Contractor provide enhancement services (through the Change Control process) which are beyond the scope of services identified in the RFP. However, the Department is under no obligation to ask the Contractor to provide enhancement services and reserves the right to develop and implement such program enhancements internally at the Department or to obtain such enhancement services from a third party. The Contractor agrees to work in good faith with the Department and any other involved party to develop such enhancements.
  - ii. The Contractor will not be paid for such enhancement services performed internally at the Department or through a third party.
    - 1 Contractor must maintain lockboxes on behalf of the Department with the US Postal Service, in a configuration defined by the Department. Lockboxes shall be owned by the Department through the Contract term and upon Contract termination or expiration.
    - 2 Contractor must maintain one or more processing sites in order to perform services under the Contract. The Department shall have the right to disapprove any change in processing site(s) if the Department reasonably determines that the change would adversely affect provision of the services under the Contract.
    - 3 Contractor must provide those management and staff resources necessary to perform the services under the contract.
      - a. The Department shall have the right to require removal of any Contractor manager assigned to the provision of services under the Contract, for work-related cause, provided that such cause is not one which is prohibited by law as a basis for terminating an employee.
      - b. The Department may request the removal of any Contractor staff person assigned to perform services under the Contract, for reasonable work-related cause.
    - 4 Contractor shall acquire, operate and maintain the equipment necessary to support performance of services under the Contract, through the Contract term (including any extensions and/or transition periods).

## **20 Change Control Procedure**

- a. All changes to the services and fees set forth in the RFP must be initiated through the Change Control Procedure as set forth in Exhibit 6 of this RFP.
- b. All changes to the Contract, whether programmatic changes or fee changes, must be made through the defined Change Control Procedure.
- c. Contractor may be required to proceed with enhancements prior to completion of the fee change procedure. In such a case, the fee change will be retroactive to a date mutually agreed to by the parties.

## **21 Warranties**

- a. Computer virus warranty

**RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**  
**SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

b. No disabling code warranty

Contractor warrants that all Contractor Software Deliverables shall not contain disabling code planted by Contractor that will activate upon a predetermined date or that can be remotely activated by Contractor without the State's prior written consent. Contractor shall make an inquiry (including applicable license agreement, if necessary) with respect to whether any Licensed Third-Party Software Deliverable furnished to DTF by or through Contractor contains any disabling code, and shall notify DTF accordingly.

c. Qualified staff

Contractor warrants that each of Contractor's employees and agents assigned to perform services under the Contract has the proper skill, training and background so as to be able to perform the services in a competent and professional manner.

**22 Disaster Recovery/Fail Safe Operations**

- a. The Contractor shall develop and deliver to the Department for its review and approval, on or before a date as reasonably determined by the Department, and at no additional cost, a Disaster Recovery Plan for the Program services provided under the Agreement. The Department's approval of the Disaster Recovery Plan shall not be unreasonably withheld.
- b. The Contractor agrees to provide the Department with reasonable access to that portion of its Disaster Recovery Plan relevant to the services provided under the Agreement. The Contractor shall provide the Department with any reports or findings of any regulatory agency dealing with the Contractor's disaster recovery capabilities, unless it is prohibited from making such disclosure by law or by any such agency. The Contractor shall also make available any reports of its independent auditors relating to such plans. The Contractor shall provide the Department with reasonable access to any results of any tests of the Contractor's disaster recovery facilities conducted by the Contractor or any third party. The Contractor shall provide an annual briefing to the Department related to its disaster recovery strategy.
- c. Contractor shall no later than twenty-four hours after the occurrence of an event requiring activation of the disaster recovery plan, inform the Department that the plan has been activated. At that time, Contractor shall provide the Department with a description of the nature and extent of the disaster, an assessment of the impact on all services provided pursuant to the Contract and a description of the specific recovery actions with their associated timeframes which have been or will be taken as part of the plan. Contractor will provide appropriate periodic updates of the recovery process as required by the Department.
- d. Contractor agrees to provide the Department with any updates to the disaster recovery plan with respect to the services provided under the Contract, and/or any plans to implement recommendations resulting from routine testing of the disaster recovery plan. Contractor must maintain, test (at least once annually on a date as reasonably determined by the Department), and update the plan as necessary throughout the duration of the Contract (including any extensions and/or transition periods). In addition, Contractor must inform the Department on an annual basis as to the status of disaster recovery operations.



## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

#### **23 Transition Period**

A transition period will be required to wind down Contractor activities and ease the move to a subsequent Contractor. During this period, services will continue. Performance standards and liquidated damages/reimbursements will be applicable.

#### **24 Indemnification**

The Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by an intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

#### **25 Intellectual Property Rights Indemnity**

- a. The Contractor shall fully indemnify, defend and save harmless the Department, its officers, employees, and agents, from and against any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses), arising out of or related to any claim of, or action for, infringement of a patent, or of any copyright, trademark, trade secret or other third party intellectual property rights in each case to the extent caused by intellectual property provided by or through the Contractor and used to perform the services, without limitation. The foregoing provisions of this paragraph shall not apply to the Department's misuse or modification of such intellectual property, the Department's failure to use corrections or enhancements made available by the Contractor, or the Department's use of the intellectual property in combination with any product or information not provided by the Contractor, where such misuse, modification or combination gives rise to the infringement. The State shall give the Contractor:
  - i. Prompt written notice of any action, claim or threat of infringement suit, or other suit;
  - ii. The opportunity to take over, settle or defend such action, claim, or suit at the Contractor's sole expense; and
  - iii. Assistance in the defense of any such action at the expense of the Contractor.
- b. In the event that an action at law or in equity is commenced against the Department arising out of the performance of the Agreement by the Contractor, its officers, partners, employees, subcontractors, or agents and if the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification and defense provisions set forth herein, the Contractor, after receiving notice of such action, shall immediately notify the Department, in writing, specifying to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Agreement.
- c. If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Department the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

applicable, provided the Authorized User is given a refund for any amounts paid for the period during which Usage was not feasible.

#### **26 Litigation Support**

Contractor shall make available appropriate personnel during the term of the contract (including any extensions and/or transition periods) to provide affidavits and/or testify in any administrative or judicial proceeding as to the accuracy and trustworthiness of the systems and procedures utilized to provide services under the Contract.

#### **27 Contractor Cooperation**

Contractor and its employees, partners, agents and subcontractors shall cooperate with Department personnel and any other Contractors engaged by the Department to provide services under the Program.

#### **28 Dual Employment Provisions**

- a. Contractor shall implement and administer a "dual employment policy." Contractor shall agree that all of its personnel, whether permanent or temporary, involved in providing services pursuant to the Contract, shall be required to sign a document at the time of employment attesting that they are not employed by the Department or engaged in the activities set forth below.
  - i. Outside employment or business activity, unless otherwise permitted by the Department, must not relate to tax issues, preparation of tax returns, coupons or the determination of tax liabilities. Preparation of tax returns, coupons and other forms as required by Federal, State, or local taxing authorities, whether compensated or uncompensated, for a person or a business other than for one's self, one's spouse, child or spouse's child, grandchild, and one's own or spouse's brother, sister, parent or grandparent shall be prohibited;
  - ii. Maintaining accounting and/or bookkeeping records for any for profit firm, individual, association or corporation, whether compensated or uncompensated shall be prohibited, provided, however, that maintaining accounting and/or bookkeeping records for the purpose of preparing a tax return or coupon for himself or herself, his or her spouse, child or spouse's child, grandchild, and one's own or spouse's brother, sister, parent or grandparent shall be permitted; and
  - iii. Having direct financial interest in an organization which is involved with the preparation for clients of tax returns or other related documents required by the State or any other taxing authority shall be prohibited.
- b. Contractor employees may not use information, confidential or otherwise, obtained in the course of providing services to the Department under the Contract, to obtain benefits, financial or otherwise, for themselves or anyone else. Neither can employees use or disclose such information to cause embarrassment or injury to others.

#### **29 Continuity of Agreement**

The terms and conditions of this Agreement shall remain in full force and effect for the term of this Agreement and the Contractor agrees to provide all services for such term, regardless of any reorganizations, consolidations or mergers to which the Contractor is, or may become, a party. Notwithstanding the foregoing, Appendix A, Secrecy, Indemnification and Limitation of Liability shall survive the termination or expiration of this Contract.

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

#### **30 Performance Standards and Liquidated Damages/Reimbursements**

##### a. Performance Standards

Categories of Performance Standards shall be those set forth in Section V of this RFP. The Performance Standards establish minimum levels at which the services are to be performed by the Contractor. Performance audits will be conducted by the Department to determine the Contractor's level of compliance with the Performance Standards. The Contractor's performance will be evaluated by applying a variety of generally accepted audit methodologies. Liquidated damages and/or reimbursements may be imposed by the Department for the Contractor's failure to perform in accordance with a Performance Standard.

##### b. Liquidated Damages/Reimbursements

The service levels associated with the Performance Standards and the amount of Liquidated Damages and Reimbursements are set forth in this RFP and shall be included in the Agreement. Procedures to impose Liquidated Damages and Reimbursements shall be addressed in the Agreement. In the event that the Contractor fails to meet any Performance Standard, and as a result thereof the Department's normal business operations are materially interrupted, then, the Department shall be entitled to immediately obtain substitute services from a third party or perform the services in-house on an interim basis until that failure has been cured. The Contractor shall not be paid for the services affected by the failure to meet the Performance Standard if substitute services must be performed by a third party or the Department and shall be liable for any additional costs to the State for substitute services. If Liquidated Damages are assessed for any failure to meet the Performance Standards, the Contractor shall make payment prior to initiating any challenge through the dispute resolution process.

- i. Contract will include performance standards to measure Contractor performance and liquidated damages/reimbursements for failure of Contractor to meet the standards as set forth in section V of the RFP.
- ii. Amount of liquidated damages/reimbursements that may be imposed shall be without limitation.
- iii. Liquidated damages/reimbursements may be imposed with or without conduct of a formal Department performance audit.
- iv. Liquidated damages/reimbursements shall be paid by Contractor before resorting to dispute resolution process.
- v. Contractor shall continue to perform services, including disputed services, until completion of dispute resolution process.

#### **31 Proposal Transmittal Letter**

A transmittal letter must be signed by an official authorized to bind the Bidder to proposal provisions.

#### **32 Designation of Prime Contact and Authorized Contract Negotiators**

During the bid evaluation and Contract negotiation, the Department requires direct access to Bidder personnel who have full authority to make commitments on behalf of the Bidder. The

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

Bidder must identify and certify a prime contact authorized to respond on behalf of the Bidder. The prime contact is responsible for responding to any evaluation clarification and for disseminating information to appropriate Bidder personnel.

Bidders must also identify individual(s) who will serve as authorized Contract negotiators and any restrictions under which their primary negotiators will operate. Any change in designation must be submitted in writing to the Department and include a revised form.

#### **33 Proposal Security/Freedom of Information Law**

During the evaluation process, each Bidder's proposal will be held in strict confidence by the Department staff and will not be disclosed except to the Office of the Attorney General and the Office of the State Comptroller as may be necessary to obtain the approvals of those agencies for the final Contract.

Public inspection of the bids is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The bids are presumptively available for public inspection. The Freedom of Information Law provides for exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. The Freedom of Information Law (Article 6 of the New York State Public Officers Law) provides that agencies may deny access to records or portions thereof that... "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise..." (Public Officers Law Section 87.2(d)). This exception would be effective both during and after the evaluation process.

Where a Freedom of Information request is made for trade secret or other information which, if disclosed, may cause substantial injury to the competitive position of the Bidder, the Bidder must explain with particularity why the designated portion of the bid meets the statutory criteria for exemption from disclosure.

The provisions of the Freedom of Information Law will also govern the confidentiality of any and all products or services supplied by the successful Bidder.

The ethical standards of the Public Officers' Code of Ethics (Section 74 of the Public Officers Law) provide that no officer or employee of a State agency shall disclose confidential information that he acquires during the course of his official duties except as otherwise required by law.

These standards control the confidentiality of a Bidder's proposal unless the Department grants a petition for records access in accordance with the Freedom of Information Law.

#### **34 Vendor Responsibility**

Article XI Section 163(4)(d) of the State Finance Law states that "service Contracts shall be awarded on the basis of best value to a responsive and responsible offerer." Upon identification of the Bidder with the highest evaluation score, the Department will evaluate the Bidder and the Commercial bank subcontractor, if applicable, to ensure responsibility. In the event a Bidder is found to be non-responsible, the Bidder may be disqualified from award.

During the Contract term, Contractors must agree to evidence vendor responsibility substantially similar to, or superior to, its status as of the execution of the Contract awarded as a result of this RFP. The Contractor must further also agree to notify the Department promptly of any material change in vendor responsibility or if a change in ownership occurs. A review of

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

vendor responsibility shall be undertaken prior to any Contract renewal/extension and the Department reserves the right to undertake such a review annually upon the anniversary date of any awarded Contract.

#### **35 Contractor Certification - Tax Law 5-A Amended April 26, 2006**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify, to the Department of Taxation and Finance (DTF), that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law also imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use taxes and Contractors must certify to DTF that each affiliate and subcontractor exceeding the \$300,000 sales threshold referenced above is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a Contract awarded to a Contractor meeting the registration requirements but who has not registered in accordance with the law.

#### **36 Secrecy Provisions**

All information regarding the Cigarette Tax imposed by Article 20 of the New York State Tax Law, the Prepaid Sales Tax on Cigarettes imposed pursuant to Section 1103 of the New York State Tax Law, and the Cigarette Tax imposed by Chapter 13 of Title 11 of the Administrative Code of the City of New York, obtained by the Contractor in the course of carrying out its responsibilities under any contract awarded pursuant to this RFP, shall be confidential, and shall not be disclosed or redisclosed except as provided by law.

All information regarding the Department of Taxation and Finance's operations, including, without limitation, automated tax system information, shall likewise be treated as confidential. For these purposes, "automated tax system information" includes, but is not limited to, functional, technical and detailed systems design; systems architecture; automated analysis techniques; systems analysis and development methodology; audit selection methodologies; and information regarding proprietary products such as software packages.

The Contractor acknowledges and agrees that only those persons with a need to know confidential information (as defined in this Section) for purposes of performing their job responsibilities under any contract awarded as a result of this RFP shall be afforded access thereto.

The Department shall have the right to send its officers and employees into the facilities of the Contractor in order to inspect such facilities and Contractor operations to determine whether the confidentiality of the information described in this Section is being adequately safeguarded. Remedial actions prescribed by the Department in the event that confidentiality is not being satisfactorily safeguarded shall be immediately implemented by the Contractor. If the Contractor fails to take such measures immediately, the failure shall be a material breach of the Contract, and the Department may resort to any of the remedies available to it under the Contract.

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

The Department shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Agreement safeguards.

If the Contractor fails to perform its obligations as set forth in the New York State Department of Taxation and Finance Secrecy Provisions and Federal Secrecy provisions, the Contract may be cancelled immediately upon written notice. At its sole discretion, the Department may elect not to allow a cure period for such failure.

The Contractor and all staff members shall agree not to divulge or use, for their own benefit or the benefit of others, confidential tax administration information; and to subscribe to § 73 and 74 of the Public Officers Law.

#### **37 Procurement Lobbying Act**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DTF and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by DTF 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, as of the date hereof, are identified in the Preface section of the Request for Proposal. DTF employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and in the event of two findings within a four-year period, the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Information related to the Procurement Lobbying Law and DTF guidelines can be found on the Department’s Procurement website at: <http://www.nystax.gov/procurement>.

Contacting individuals other than the designated contacts listed in the Preface Section of this document during the restricted period may result in the disqualification of the Bidder’s proposal - please refer to the Procurement Lobbying Law and the Department guidelines posted on the Department’s procurement website at: <http://www.nystax.gov/procurement>.

##### **a. Offerer Disclosure of Prior Non-Responsibility Determinations**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (1) a violation of State Finance Law §139-j or (2) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this Section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10) (b) and 139-k(3).

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or Contract documents, as applicable, for Procurement Contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

b. Offerer's Certification of Compliance with State Finance Law 139-k(5)

New York State Finance Law 139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law 139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Government Entity with respect to State Finance Law 139-k is complete, true and accurate.

The Department reserves the right to terminate any Contract awarded as a result of this RFP in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete.

### **38 Ethics Compliance**

All Bidders/Contractors and their employees must comply with Public Officers Law §73 and §74, Chapter 1 of the Laws of 2005, the Procurement Lobbying Reform Act of 2005, and other State statutes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the bid, the Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, Contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of Contracts, and/or other civil or criminal proceedings as required by law.

The Contractor shall complete and sign Attachment G, Public Officer's Law, Section 73.4, which addresses business or professional activities by state officers and employees and party officers. This Form shall be made part of this Contract.

## **C Negotiable Conditions**

**Negotiable Conditions** are Contract provisions to be addressed in the Contract awarded as a result of this RFP.

**Extraneous terms for each of the following conditions may be submitted as outlined in Section VIII.E.3, Negotiable Conditions Response Requirements.**

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

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#### **1 Dispute Resolution**

The first step of dispute resolution will be through conference between the Department and the Contractor. The party initiating the process shall notify the other party in writing and set forth the issues for resolution and provide all necessary documentation. Unresolved disputes will be considered by the Commissioner of Taxation and Finance, or his designee, whose decision is final and binding on the Department. During this period all work required hereunder shall be performed. If the Contractor pursues any legal or equitable remedy outside the Department, the Contractor will continue to perform work in accordance with the direction of the Department until such proceedings may be concluded and will continue to be paid, less an amount attributable to the disputed work. Disputes that go to litigation must be pursued in a court of competent jurisdiction of the State of New York. New York law will govern the dispute and venue must be laid in Albany County, New York.

#### **2 Information Security Breach and Notification Act**

The Contractor expressly agrees to comply with the provisions of Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005, commonly known as the Information Security Breach and Notification Act (the "ISBNA" or "Act"), and any future amendments thereto. Contractor shall comply with all obligations imposed by the notice provisions of the ISBNA with respect to any computerized "private information" (as defined in the Act) received, handled, processed, uploaded, or maintained by Contractor on behalf of DTF under this Contract (hereinafter, the "DTF Information"). In the event of a "breach of the security of the system" (as defined by the Act), Contractor shall immediately notify DTF upon discovery or notification of such breach. Such notice to DTF shall be made in one of the following ways: by contacting the Contractor's DTF liaison for the Contract; by e-mail to Dave\_Beals@tax.state.ny.us; or by telephone to Dave Beals at (518) 292-7827. Contractor shall immediately commence an investigation, in cooperation with DTF, to determine the scope of the breach and to restore the security of the system. To the extent DTF determines that further notifications are required to be sent out pursuant to the Act, Contractor shall be responsible for providing such notifications to all required recipients including, in accordance with New York State policy, non-New York State residents whose private information is reasonably believed to have been exposed as a result of the breach, and all costs associated with providing such notices shall be borne by the Contractor. It is expressly agreed that the Contractor shall be obligated to receive authorization from DTF **prior** to making any notifications to any individuals, the State Office of Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General's Office or any consumer reporting agencies, of a breach of the security of the system, or concerning making any determination to delay notifications due to law enforcement investigations. Contractor agrees that DTF shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a breach of the security of the DTF Information. Nothing contained herein shall be interpreted as reducing or altering Contractor's obligations under Section 899-aa of the General Business Law.

#### **3 Force Majeure**

Neither party will be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire, or any other cause beyond the reasonable control of the party that was so delayed or so unable to perform provided that such party was not negligent and shall have made reasonable efforts to avoid and overcome such cause. Such party will



**RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**  
**SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

**4 Licensed Software (third party and pre-existing contractor SW) and Custom Software**

- a. Department license to Licensed SW and accompanying documentation shall last through Contract term, including any extensions and/or transition periods.
- b. Contractor shall be responsible for SW maintenance through Contract term, including any extensions and/or transition periods.

i. Licensed Software

If the Contractor is the licensee or sub-licensee of third-party licensed software that the Department will use in connection with the Services performed under the Agreement, then the Contractor warrants that:

- 1 such license or sub-license has not expired; and
- 2 such license or sub-license allows the Department to use, execute, copy, display and distribute such software and documentation, for at least as long as the Contractor performs the services under the Agreement.

The Contractor grants the Department (including an agent, Contractor or outsourcer of the Department), without compensation, a perpetual, non-exclusive license to use, execute, copy, display and distribute for the Department's tax administration purposes, object code to pre-existing software created by the Contractor which is deemed necessary for the performance of the services of the Agreement.

ii. Custom Software

Upon final payment therefore, the Department shall own and possess all rights, title and interest in and to custom software created by the Contractor specifically for the Department under the Agreement, including, without limitation, all ownership and intellectual property rights.

- 1 A source code escrow shall be established for Licensed SW, if the vendor offers source code escrow to other customers.
- 2 With respect to Contractor's a) pre-existing software and documentation which is necessary for the performance of services under the Contract, b) software and documentation developed by contractor during the term of the Contract, and c) third party software and documentation furnished by Contractor to perform services under the Contract, Contractor warrants and represents full ownership, clear title free of all liens, and/or that Contractor has obtained all necessary rights to use such products for the purposes set forth in the Contract. The Department may require Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The Department's request or failure to request such documentation shall not relieve Contractor of liability under this warranty.

## **RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**

### **SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

#### **5 Most Favorable Terms**

The Contractor agrees that all fees, terms, warranties and benefits provided and offered by the Contractor are substantially similar to the best equivalent terms being offered by the Contractor to any present governmental agency for services of similar size, scope and complexity. If during the term of the Agreement, the Contractor enters into an arrangement with any other similar government customer, including New York State Department of Taxation and Finance, providing greater benefits or more favorable terms for services of similar size, scope and complexity as the services provided the Department pursuant to the Agreement, then the Agreement shall thereupon be deemed amended to provide the same to the Department.

#### **6 Ownership of Data/Data Security**

In the event that any data is lost or destroyed because of any act or omission of Contractor or any noncompliance with the obligations of Contractor under the contract, then Contractor shall, at its own expense, use its best efforts to reconstruct such data as soon as feasible. In such event, Contractor shall reimburse the Department for any costs incurred by the Department in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.

#### **7 Investigation Support**

- a. In the event of a suspected crime, or a breach of confidentiality or security, the Contractor and its subcontractors shall cooperate fully with the Department to the extent permitted by law to investigate and identify the responsible individuals. Consistent with applicable law, the Contractor and its subcontractors shall make their employees and all relevant records, whether historical or current, including personnel records, employee photographs and original documents, available to the Department investigators upon request.
- b. Investigators may interview Contractor employees without the presence of other Contractor employees, during normal business hours, either before or after any Contractor or subcontractor internal investigation, in support of an investigation being conducted by the Department, at the Department's discretion, to the extent permitted by law.

#### **8 Liability Provisions**

##### **Limitation on Liability**

Except where the Agreement provides that the Contractor's liability is without limitation, limits on Contractor liability shall be addressed in the contract.

- a. Liquidated Damages/Reimbursements do not represent an exclusive remedy and the Contractor shall be liable for actual direct damages of the Department in an amount not to exceed the greater of three times (3X) the annual amount payable by the Department under the Contract in the year giving rise to the liability, or the data recovery and/or development costs and any excess operating costs to cover moving the services in-house or to a subsequent contractor. The Liquidated Damages/Reimbursements shall be in addition to the amount of direct damages subject to this liability limit.

**RFP to Provide Cigarette Excise Tax and Prepaid Sales Tax Program**  
**SECTION VII – Proposal Conditions, Invariable and Negotiable Contract Conditions**

- b. Damages resulting from Contractor's (i) willful, malicious, intentional misconduct, (ii) intentional tortious conduct, or (iii) gross negligence, shall be without limitation.

## SECTION VIII – PROPOSAL RESPONSE REQUIREMENTS

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### VIII PROPOSAL RESPONSE REQUIREMENTS

#### A Qualifying Requirements

This Section identifies the proposal response requirement for the Qualifying Requirements identified in Section II of the RFP. Bidders should submit their response to this section utilizing Attachment 3.

**PLEASE NOTE:** Failure to adequately respond to all of these requirements may result in the Bidder being removed from further evaluation. Incomplete responses will result in reduced technical evaluation points.

#### 1 Firm Experience

The Bidder must provide, at a minimum, the information requested below, for itself and any prospective subcontractor(s).

Evidence of the Bidder's recent experience in providing services similar in size and scope such as those required by this RFP must be provided. Such evidence should include:

- a. A description of the project(s). Such description should include, but is not limited to the client services were provided for, the application, daily volumes, and the duration of the project(s).
- b. The names and telephone numbers of client staff who administered the project(s) described and/or supervised the project (references). Staff will be contacted to confirm entity experience. **The Bidder is solely responsible for providing contacts that are readily available to be contacted by the DTF and who will respond to DTF questions.**
- c. A description of any activities in which the Bidder is engaged which may constitute a conflict of interest to this Program and an explanation as to how conflicts will be handled to ensure the DTF program is not impacted.
- d. A statement of capacity and willingness of the Bidder to perform the work set forth in Section III – Performance Requirements, regardless of any contingencies which may occur.

#### 2 Financial Stability

##### a. Financial Data

The Bidder, and the Commercial Bank acting as a subcontractor, if applicable, must submit proof of financial stability required for its particular organizational structures as set forth in the requirements listed in paragraphs i through viii below. Audited/reviewed financial statements, required where indicated below, must have been prepared by a CPA in accordance with GAAP. All required information must be provided for any predecessor company within the last three years and any other subsidiary, affiliate, and/or related company requested by the Department. Any additional information requested must be submitted.

- i. If the Bidder, and the Commercial Bank acting as a subcontractor, if applicable, is a subsidiary of a parent company that is publicly held, the Bidder must comply with the preceding requirements by either (a) submitting separate, audited/reviewed, annual financial statements for the parent and subsidiary for the last three years OR (b) by submitting audited/reviewed, annual financial statements for the parent for the

## SECTION VIII – PROPOSAL RESPONSE REQUIREMENTS

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last three years, unaudited/internal annual financial statements for the subsidiary for the last three years and the spreadsheet(s) used for consolidation.

In addition to i (a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required for both the parent and subsidiary.

- ii. If the Bidder, and the Commercial Bank acting as a subcontractor, if applicable, is a subsidiary of a parent company that is privately held, the Bidder must either (a) comply with the requirement outlined in paragraph one OR (b) submit separate annual, unaudited/internal company financial statements for both the parent and subsidiary for the last three years, a separate Dunn and Bradstreet Comprehensive Report (dated within 21 days of the date the bid was submitted) for both the parent and Bidder, and a statement explaining why annual, audited/reviewed statements are not available.

In addition to ii (a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/ internal) are required for both the parent and subsidiary.

- iii. If the Bidder, and the Commercial Bank acting as a subcontractor, if applicable, is a publicly held company and is not a subsidiary of a parent company, it must provide audited or reviewed annual financial statements for the last three years. Plus, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required.

- iv. If a Bidder, and the Commercial Bank acting as a subcontractor, if applicable, is a privately held company and is not a subsidiary of a parent company, it must either (a) fulfill the requirements set forth in iii above OR (b) provide annual, unaudited/internal company financial statements for the last three years, a Dunn and Bradstreet Comprehensive Report (dated within 21 days of the date the bid was submitted) and a statement explaining why annual audited/reviewed statements are not available.

In addition to iv (a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required.

- v. If the Bidder is not a bank, the Bidder must provide its primary bank reference, including the name and phone number of the relationship manager.
- vi. The Bidder, and the Commercial Bank acting as a subcontractor, if applicable, must provide documentation attesting to any significant line(s) of credit that are available to the Bidder. This documentation must include information identifying the source of such lines and detailing the maximum credit amount(s) available to the Bidder, outstanding balance(s), and current amount(s) available.
- vii. The Bidder, and the Commercial Bank acting as a subcontractor, if applicable, must indicate whether or not it guarantees the debt of any other entity.
- viii. If the Bidder, and the Commercial Bank acting as a subcontractor, if applicable, is a subsidiary of a parent company, the Bidder must explain, in detail, the inter-company financial relationship between the parent company and the Bidder. The Bidder must indicate if the parent company guarantees the debt of the Bidder, or if the Bidder guarantees the debt of the parent company.

### **b. Organizational Data**

At a minimum, the Bidder must provide:

## SECTION VIII – PROPOSAL RESPONSE REQUIREMENTS

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- i. organizational charts, including a listing and detailed description of:
  - the Bidder's primary business units and divisions;
  - key executives;
  - any and all subsidiaries; and
  - any and all minority interests, joint ventures, or other type of business affiliations.
- ii. brief biographies of its key officers and management.

### B Performance Response Requirements

All requirements in Section III Performance Requirements are considered critical to successful contract implementation and the Department will not issue a bid award to any Bidder who does not successfully demonstrate the capacity to meet all requirements. The Bidder response must address the tasks, subtasks and Contractor Data Requirements for each of the critical requirements.

**PLEASE NOTE:** Failure to adequately respond to all of these requirements may result in the Bidder being removed from further evaluation. Incomplete responses will result in reduced technical evaluation points.

#### 1 Systems

With Attachment 4, the Bidder must provide a detailed description of how each of the critical System requirements will be met including, but not limited to, the development, implementation and maintenance of the Agent Master File, Payment Processing, Order Tracking, Inventory Tracking and Systems Security. The response must address each of the Contractor Data Requirements (CDR's) identified for this section (A001, A002, and A003).

#### 2 Order Processing

With Attachment 5, the Bidder must provide a detailed description of how each of the critical order Processing requirements will be met including, but not limited to, the provision, implementation, operation and maintenance of the Order Processing. The response must address each of the Contractor Data Requirements (CDR's) identified for this section (A004, A005, A007, A010, A011 and A025).

#### 3 Payment Processing

With Attachment 6, the Bidder must provide a detailed description of how each of the critical Payment Processing requirements will be met including, but not limited to, the development, implementation and maintenance of the Payment Processing, Receipt of Payments, Accounting Reports and Funds Transfer. The response must address each of the Contractor Data Requirements (CDR's) identified for this section (A008, A009, A012, A013, A014, A016, A017, A018 and A019).

#### 4 Inventory

With Attachment 7, the Bidder must provide a detailed description of how each of the critical Inventory requirements will be met to maintain adequate inventories including, but not limited to, Storage/Facilities, Inventory Levels and Security. The response must address each of the Contractor Data Requirements (CDR's) identified for this section (A004 and A020).

## SECTION VIII – PROPOSAL RESPONSE REQUIREMENTS

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### 5 Program Management

With Attachment 8, the Bidder must provide a detailed description of how each of the critical Program Management Requirements will be met including, but not limited to, the Reports, Resources, Invoicing, Change Orders, Business Continuity, Implementation Plan, Data Protection and Transition Period. The response must address each of the Contractor Data Requirements (CDR's) identified for this section (A015, A021, A022, A023 and A024).

### C Cash Management Response Requirements

#### 1 Reporting

With Attachment 9, the Contractor, and the Commercial bank acting as a subcontractor, if applicable, must agree to sign (subsequent to award and prior to implementation) the Undertaking for Bank Deposits and Assignment of Securities agreement (See Exhibit 8 of this RFP).

#### 2 Funds Processing and Availability

With Attachment 10 the bidder must:

- a. Describe how the funds availability, which is passed to the DTF, will be computed. The description must include, but is not limited to, a description of the following as it relates to funds availability:
  - availability for check deposits;
  - actual float calculated on each check;
  - float including fractional availability;
  - float factor assigned to each account and, if based on a sample or a periodic experience, with each customer deposit;
  - float factor used and how often it is re-evaluated ; and
  - float factor assigned to all of the commercial bank, or customers based on a bank average.
- b. Describe how unauthorized debits, including paper remittance and EFT, presented against a DTF tax receipt account, will be prevented and reported.
- c. For informational purposes, the Bidder must provide a copy of their standard banking agreement(s) which it (or a commercial bank subcontractor) will seek to have DTF or OSC agree to. Submission of such agreements is for informational purposes only, and DTF and OSC may not be bound by the terms of any such agreement(s) in any subsequent contract for services in this RFP.
- d. The Bidder must address other issues affecting availability, including, but not limited to the following issues/questions:
  - i. If availability is determined by individual check endpoint, provide latest availability schedule that will apply to OSC and DTF (include a separate weekend schedule, if applicable). If this schedule does not pertain to checks of all dollar sizes, explain. Specify any charge for this service.
  - ii. Is availability assignment made continuously as the Department's checks are released for collection, or is assignment made at specific times during the day? If at specific times, state these times.

## SECTION VIII – PROPOSAL RESPONSE REQUIREMENTS

- iii. List the transit deadlines for availability assignment to the DTF accounts. Include both weekday and weekend deadlines.
- iv. State the willingness and capacity to provide Saturday availability.
- v. State the level of willingness to negotiate funds availability.
- vi. Quantify the direct send program for a normal weekday, as follows:
  - direct sends to Correspondents;
  - direct sends to Federal Reserve Bank; and
  - direct sends to Regional Check Processing Centers.
- vii. State how frequently updated availability schedules are published and confirm willingness to provide revised availability schedules to OSC and DTF in a timely manner.

### 3 Collateral

With Attachment 11, the Contractor must confirm its willingness to pledge securities as outlined in Section 105 of State Finance Law or to obtain a surety bond by an insurance company with AAA rating to secure the states interest in any depository account and any pass-through accounts to the extent deemed appropriate by OSC.

### 4 Wire Transfers

With Attachment 12, the Contractor, and the Commercial bank acting as a subcontractor, if applicable, must agree to sign (subsequent to award and prior to implementation) the OSC Funds Transfer Agreement (See Exhibit 7 of this RFP). Any modifications to this agreement should be identified in the proposal response. It is the sole discretion of the OSC to approve any modification.

The Contractor and the Commercial bank acting as a subcontractor, if applicable, must affirm agreement to wire transfer funds from any account associated with the Program to an OSC designated account.

The Contractor and the Commercial bank acting as a subcontractor, if applicable, must also describe the system for OSC to initiate/release wire transfers to the NYS General Account.

## D Financial Response Requirements

A Commercial bank bidding as a prime Contractor must prepare two cost proposals, one assuming payment by direct fee, and another assuming payment by compensating balances. A document processor bidding as a prime contractor must prepare a cost proposal assuming payment by direct fee. Attachment I assumes payment by direct fee; Attachment J assumes payment by compensating balance.

Bidders are also required to provide a copy/sample of a monthly account analysis or a monthly account analysis and invoice and describe its ability to customize these forms to DTF requirements.

**ALL COSTS ASSOCIATED IN THE PERFORMANCE OF SERVICES REQUIRED FOR THE CIGARETTE EXCISE AND PREPAID SALES TAX PROGRAM MUST BE INCLUDED IN THE BIDDER'S FINANCIAL PROPOSAL - NO OTHER ADD ON COSTS ARE PERMITTED.**

All proposed fees must be guaranteed for the first three years of the base term for the Program (see Section VI – Financial Requirements) and are adjustable thereafter on an annual basis, using the CPI-U methodology stated in CPI-U matrix of Section VI. However, if the Department initiates change controls



## **SECTION VIII – PROPOSAL RESPONSE REQUIREMENTS**

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which result in efficiencies, DTF expects to reduce operations fees through the fee change control procedure.

### **Operations Fees**

Complete Attachments I and J, as applicable, providing all Operations Fees as described in Section VI.A. of this RFP(required for both direct and compensating balance payments).

### **Development Fees**

The DTF may elect to pay development fees either as a one-time payment or as monthly payments over a two-year period after certification is achieved.

Complete Attachments I and J, as applicable, providing all Development Fees as described in Section VI. B. of this RFP (required for both direct and compensating balance payments).

### **FDIC Fees**

The State may elect to pay for FDIC fees as an add-on to this contract or include the fees in the overall existing relationship with the Contractor and pay for them by compensating balance.

Complete Attachments I and J, as applicable, providing all FDIC fees as described in section VI.C. of this RFP (required for both direct and compensating balance payments).

## **E Proposal Conditions, Invariable and Negotiable Contract Conditions Response Requirements**

### **1 Proposal Conditions**

By submission of a proposal in response to this RFP, the Bidder accepts the Proposal Conditions identified in Section VII. A.

### **2 Invariable Contract Conditions Proposal Response Requirements**

- a. By submission of a proposal in response to this RFP, Bidder accepts the Invariable Contract Conditions identified in Section VII. B items 1-38 without revision.
- b. Proposal Transmittal Letter

The transmittal letter must include the following information:

- the complete name and address of the Bidding entity;
  - the Federal or Taxpayer Identification Number of the entity;
  - an affirmation that the proposal is binding for the required period indicated in Section VII.A.8;
  - any restrictions under which the Bidder's primary negotiators will operate during Contract negotiation; and
  - designation of any trade secret, confidential or proprietary information in response to Section VII.B.33 of this RFP.
- c. Designation of Prime Contact
 

Complete and submit Attachment B, Designation of Prime Contact form.
  - d. Proposal Security/Freedom of Information Law

## SECTION VIII – PROPOSAL RESPONSE REQUIREMENTS

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If the bid proposal contains trade secrets or other confidential or proprietary information, the Bidder must submit a written request to except such information from disclosure with their bid proposal.

With the bid transmittal letter, required under Section VIII.E.2.B above, the Bidder must specifically identify the page number, line or other appropriate designation of the information that is a trade secret, confidential or proprietary and explain, in detail, the reason such information would be exempt from disclosure. Notations in the header, footer or watermark of the bid document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information.

Bidders should be advised that the confidentiality of their proposals is founded upon statute, as described herein. A nondisclosure agreement, whether prescribed by the Department or the Bidder, would not alter the rights and responsibilities of either party under the Freedom of Information Law. Bidders should not propose a nondisclosure agreement for Department employees, for that would be legally ineffective to alter any legal responsibility under the Freedom of Information Law or the code of ethics.

In applying for protection under Section 87.2(d) of the Public Officers Law, it would be unacceptable for the Contractor to indiscriminately categorize the entire proposal as meeting the requirements of that Section.

In applying for trade secret protection, it would be unacceptable to indiscriminately categorize the entire proposal as such. The Bidder may wish to review with its legal counsel Restatement of Torts, Section 757, comment b., and the cases under the Federal Freedom of Information Act, 5 USC Section 552, as well as the Freedom of Information Act. The Department will review applications and grant protection under Section 87.2(d) of the Public Officers Law, if appropriate.

### e. Vendor Responsibility

Bidders, and the commercial bank acting as a subcontractor, if applicable, must complete a Vendor Responsibility Questionnaire. Bidders are invited to file the required Vendor Responsibility Questionnaire online via the OSC New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact one of the Department's designated contacts.

Bidders that have filed a Vendor Responsibility Questionnaire online that has been certified/updated within the last six months or Bidders opting to file online must complete Attachment C, Vendor Responsibility Form. If a Vendor Responsibility Questionnaire has been filed online and has not been certified within the last six months, the Bidder must either update/recertify the online questionnaire or submit a new paper Vendor Responsibility Questionnaire.

Bidders filing paper questionnaires must submit a copy of the completed questionnaire with its bid proposal.

Upon notification of award, the Contractor will be required to update/recertify the online questionnaire.

### f. Contractor Certification – Tax Law 5-A Amended April 26, 2006

## **SECTION VIII – PROPOSAL RESPONSE REQUIREMENTS**

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Exhibit C provides Contractor certification forms and instructions for completing the forms. ST-220-TD must be filed with and returned directly to the DTF address provided on the form. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF. Completion of the form at the time of bid submission is not required; however, Form ST-220-TD must be filed and returned to DTF upon notification of Contract award.

Form ST-220-CA must be provided to the DTF Office of Budget and Management Analysis upon notification of contract award certifying that the Contractor filed ST-220-TD. Proposed Contractors should complete and return the certification forms within two business days of request.

Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at 1-800-698-2931 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>.

### **g. Secrecy Provisions**

The Bidder is responsible for the completion and submission of Attachment D, Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code.

### **h. Procurement Lobbying Act Response Requirement**

Bidders must complete Attachment E, Offerer Disclosure of Prior Non-Responsibility Determination and Attachment F, Offerer's Certification of Compliance with State Finance Law 139-k(5).

### **i. Ethics Compliance**

Bidders must complete Attachment G, Public Officers Law.

## **3 Negotiable Contract Conditions Response Requirements**

### **Proposal Response Requirement**

Any objections to the terms and conditions set forth in Section VII. C must be provided with the Bidder's proposal.

Only those extraneous terms that meet all of the following requirements will be considered as having been submitted as part of the proposal:

- the extraneous term may only be submitted for those conditions outlined in Section VII. C of this RFP;
- each proposed extraneous term (addition, counter-offer, deviation or modification) must be specifically enumerated in writing which is not part of a pre-printed form;
- the writing must identify the particular term to which the Bidder objects or proposes to modify by inclusion of the extraneous term; and
- the Bidder shall enumerate the proposed addition, counter-offer, modification or deviation from the bid proposal, and the reasons therefore.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, Contracts or other documents), whether or not deemed "material", which are attached or referenced with submissions and which do not meet the above

## **SECTION VIII – PROPOSAL RESPONSE REQUIREMENTS**

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requirements will not be considered part of the bid or any resulting Contract, but rather will be deemed to have been included for informational or promotional purposes only.

Acceptance and/or processing of the bid proposal shall not constitute such written acceptance of Extraneous Term(s) or a waiver of the Department's rights set forth above. Failure to object to any terms set forth in **Section VII. C** of this RFP shall be deemed to constitute acceptance thereof by the Bidder.

## SECTION IX PROPOSAL SUBMISSION

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### IX PROPOSAL SUBMISSION

The Bidder must provide a response that clearly and precisely provides all required information. Emphasis should be placed on conformance with the RFP instructions, responsiveness to the RFP requirements and clarity of intent.

Proposals that do not comply with these instructions or do not meet the full intent of all of the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

#### A Proposal Content and Organization

To facilitate the evaluation process, the Bidder must organize its proposal into three distinct volumes, as follows:

- Volume 1: Qualifying and Performance Response Forms
- Volume 2: Cover Letter, Administrative Response Forms and any extraneous terms identified in response to Section VII. C: Negotiable Contract Conditions
- Volume 3: Financial Response Forms

##### 1 Qualifying and Performance Response Requirements

The Qualifying and Performance Response must include the following sections:

###### a. Section 1 - Executive Summary

The Bidder is required to provide an Executive Summary, directed to the Department's upper level management, which contains a summary of management considerations. Bidders should utilize this Section to demonstrate how their proposal, services, and/or products meet the Department's program objectives as outlined in Section I - Introduction.

The Executive Summary must address, at a minimum:

- i. The executive commitment of the Bidder, including the responsible executives and a description of their responsibilities in the organization and in this particular procurement;
  - ii. Plans for the acquisition, merger or other restructuring of the organization or that of any subcontractor;
  - iii. The Bidder's strategic direction, including current technology policies, ongoing commitment to research and development, and plans for future services and product lines which may affect the Program(s) and services required herein;
  - iv. Conceptual overview of the solution that is being proposed for the Program; and
  - v. A brief corporate history.
- b.** Section 2 - Response to Qualifying Requirements outlined in Section II of this RFP.
- c.** Section 3 - Response to the Performance Requirements outlined in Section III of this RFP.

## SECTION IX PROPOSAL SUBMISSION

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### 2 Administrative Response Requirements and Extraneous Terms

- a. The Bidder must submit the following in response to this Section:
- b. Administrative Cover Letter to include:

Transmittal Letter/Identification of Proprietary/Trade Secret Information  
The Bidder must provide a transmittal letter outlining the material requested in Section VIII.E.2.b.

Administrative Attachments as required in Section VII of this RFP:

- Attachment B: Designation of Prime Contact
- Attachment C: Vendor Responsibility Form
- Attachment D: DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law and Internal Revenue Code
- Attachment E: Procurement Lobbying Act - Offerer Disclosure of Prior Non-Responsibility Determinations
- Attachment F: Procurement Lobbying Act - Offerer's Certification of Compliance with State Finance Law 139-k(5).
- Attachment G – Public Officers Law
- Attachment H - MacBride Fair Employment Principles Form

- c. Extraneous terms for Negotiable Contract Conditions

### 3 Financial Response Requirements

As outlined in Section VI: Financial Requirements of this RFP, the Bidder must submit Attachment I for payment by direct fee and Attachment J for payment by compensating balance, as applicable.

The volumes identified in Exhibit 3 must be used by the Bidder to develop the Financial Proposal. (**Please note:** The volumes identified in Exhibit 3 are representative of the stated period and are to be used for the development of the Financial Tables to ensure consistent numbers. The Department does not guarantee the volumes will remain the same - payment will be based on the actual number of cigarette tax stamp rolls sold monthly).

The financial fees proposed must be inclusive of all services and/or products contained in the Bidder's Technical Proposal. All one-time Development and Operation Fees must be included to ensure the Department can accurately determine the full life cycle cost of the procurement and fairly evaluate financial proposals.

In addition to the tabular response, the financial proposal must include narrative responses required in Section VI - Financial Requirements.

## B Submission of Proposals

The Bidder must submit one (1) original and nine (9) copies of Volume 1, Volume 2, and Volume 3 identified above. All volumes must be bound separately, must be clearly identified and should include page numbers.

To facilitate requests for information under the Freedom of Information Law (FOIL), Contractors will be requested to provide two (2) copies of its complete proposal in a non-PDF format (e.g., MS Word, Excel, etc.) to allow for redaction of trade secret/proprietary information.

## SECTION IX PROPOSAL SUBMISSION

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Proposals must be received no later than the date and time identified in the Schedule of Events included with this RFP.

To facilitate the evaluation process, the proposals must be packaged and submitted as outlined in this Section. Faxed or electronically transmitted proposals *will not* be accepted.

Bidder proposals must be enclosed in sealed containers with the following visibly inscribed on the outside of all containers:

Ms. Catherine Golden, Assistant Director, Procurement  
New York State Department of Taxation & Finance  
Procurement Bureau  
W.A. Harriman Campus  
Building #9, Room 234  
Albany, NY 12227

All proposals must have a label on the outside of the package or shipping container outlining the following information:

**“BID ENCLOSED”**  
RFP # 08-32  
Cigarette Excise Tax and Prepaid Sales Tax Program  
Bid Submission date and time

**PLEASE NOTE: Mail deliveries requiring a signature of receipt should be addressed to the Department’s campus address however, the delivery service must be instructed to deliver bid documents to the following address:**

**90 Cohoes Avenue  
Green Island, NY 12183**

Only under circumstances identified in Section VII.B.18, will the Department consider any proposal received after the time and date specified in the RFP. In the event that a package is not labeled properly as described in this Section, the Department reserves the right to inspect the contents of the package(s) to determine the contents. The Bidder shall have no claim against the Department arising from such inspection and such inspection shall not affect the validity of the procurement. Notwithstanding, the Department’s right to inspect contents of the package(s), the Bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

## SECTION X – PROPOSAL EVALUATION

### X PROPOSAL EVALUATION

Pursuant to Article XI of the State Finance Law, the basis for contract award under this RFP will be “best value”, optimizing quality, cost and efficiency among responsive and responsible Bidders.

#### A Proposal Clarification

The Department reserves the right to require a Bidder to provide clarification and validation of its proposal through any means the Department deems necessary. Failure of a Bidder to cooperate with Department efforts to clarify or validate proposal information may result in the proposal being labeled as non-responsive and given no further consideration.

#### B Evaluation Process Overview

There will be two phases to the evaluation process. Proposals which pass the Phase One of the evaluation will be further evaluated in Phase Two of the evaluation process.

##### 1 Phase One Evaluation - Proposal Screening

All timely submitted proposals will be evaluated in Phase One. Proposals will be evaluated in the following areas:

###### a. Proposal Screening (pass/fail)

Each proposal will be screened for completeness and conformance with Department requirements for proposal submission as specified in this RFP. Proposals which do not meet the requirements may be labeled as non-responsive and may not be given further consideration.

###### b. Qualifying Requirements (pass/fail)

All proposals that pass Proposal Screening will be evaluated to determine the Bidder meets all qualifying requirements specified in Section II: Qualifying Requirements. If *all* qualifying requirements are not met, the Bidder’s proposal will be labeled non-responsive and will not be given further consideration.

**NOTE: The Bidder’s response to Sections VII.C will be reviewed in Phase Two of the evaluation process.**

All proposals that pass this stage of the evaluation process will be further evaluated in Phase Two. Bidders not meeting the above requirements will be deemed non-responsive and will not be further evaluated.

##### 2 Phase Two Evaluation - Technical and Financial Points

In this phase of the evaluation, proposal responses will receive technical and financial points as outlined in this Section. Evaluation teams comprised of Department personnel representing applicable programmatic and administrative functions will be organized into two separate teams – technical and financial.

The financial scoring will proceed concurrently and separately from the Technical evaluation.

On-site evaluation of the Bidder’s operations and proposed technology applications as applicable and/or interviews with and presentations by the Bidder’s proposed management team, including appropriate executives and technical specialists may be required in this Phase.



## SECTION X – PROPOSAL EVALUATION

### a. Technical Evaluation (50 points)

The Bidder's response to the Proposal Requirements will, at a minimum, be reviewed to determine the extent that the response supports expectations and requirements of the Cigarette Excise Tax and Prepaid Sales Tax Program, the estimated timeframes, and the efficiency and effectiveness of the proposal.

Technical scoring will be allocated as follows:

Bidder's response to Section III: Performance Requirements  
 Bidder's response to Section IV: Cash Requirements

### b. Financial Evaluation (50 points)

Financial proposals will be scored on Bidder's financial life cycle costs for the base term of the resultant contract (see Section I, E, Contract Duration, of this RFP for the base term for this Program), as reflected by the direct fees proposed for development and operations. The financial evaluation will utilize the volumes identified in Exhibit 3 of this RFP, in combination with the Bidder's financial proposals to compute the life cycle cost.

## C Final Ranking/Contract Award

Upon completion of Phase Two, the Technical and Financial points are combined. The contract will be awarded to the Bidder whose proposal obtains the highest aggregate score.

The table below summarizes the evaluation point distribution.

Evaluation Component	Points
Technical Evaluation	50 points
Financial Evaluation	50 points
TOTAL	100 points

**RFP Specific Exhibits****EXHIBIT 1****RFP GLOSSARY**

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Terms used in this RFP shall have the following meanings:

**Attorney General (AG)** - Attorney General of the State of New York

**Agent** - Any person authorized by the Tax Commissioner to purchase and affix stamps (or authorized indicia) and who is licensed as an Agent by the Commissioner under Article 20 of the New York State Tax Law. Agents may also be authorized under Chapter 13, Title 11 of the Administrative Code of the City of New York. An Agent may be authorized to purchase and apply State indicia, or joint State/City indicia, or both.

**Agent Number** - An identification number assigned to each Agent by the Department. This information is provided to the Contractor by the Department through written communication.

**Agreement** - The Contract which results from the award of this Request for Proposal.

**Bid or Bid Proposal** - An offer or proposal submitted by a Bidder to furnish a described product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid or proposal may be subject to modification through the solicitation by the Agency of best and final offers during the evaluation process prior to recommendation for award of the Contract.

**Bidder/Offerer** - Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, form or corporation) which submits a Bid in response to a Bid Solicitation or Request for Proposal.

**Bid Documents** - Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts) and the terms and conditions set forth in the negotiated Contract and associated documentation.

**Bond/Alternative Securities** - An instrument executed by a surety company which is authorized to transact business in this State; registered with and under the supervision of the State Insurance Department of New York State; and approved by the Superintendent of Insurance as to solvency and responsibility or other such acceptable securities.

**Business Day** - Monday through Friday, with the exception of legal bank Federally observed holidays.

**Cash Payment Account** - An account established for Agents that do not have a credit line. Payment is either a FedWire transfer (Agent initiates transfer of funds to pay for indicia) or, an ACH debit where the Contractor initiates the ACH debit for payment on the same day Agent orders are taken or certified check.

**Certification Date** - The Department's written certification that the Final Implementation deliverable is satisfactorily completed and performs in accordance with the Implementation Specifications.

**Cigarette** - Any roll for smoking made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

**Cigarette Tax** - Excise Tax imposed by Article 20 of the New York State Tax Law and Chapter 13 of Title 11 of the Administrative Code of the City of New York.

**City** - refers to the City of New York; and the city agency with administrative responsibility for the program described herein is the NYC Department of Finance.

**Commission** - The fee an Agent receives as compensation for affixing the indicia to the cigarette packs; also called a discount.

**Commissioner** - The Commissioner of the Department of Taxation and Finance

**RFP Specific Exhibits****EXHIBIT 1****RFP GLOSSARY**

**Contract** - The writing(s) which contain the agreement of the Department of Taxation and Finance Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by, but not limited to, applicable rules of law, bid documents and bid proposals.

**Comptroller** - The Comptroller of the State of New York.

**Contractor** - Any successful Bidder(s) to whom a Contract has been awarded by the Department.

**Credit Line** - The dollar amount established by the State and/or City as the maximum outstanding credit balance an Agent may have at any point in time.

**Defect** - Any failure by an Implementation Deliverable (or Final Implementation Deliverable) to perform in accordance with the specifications.

**Defect Correction Date** - The date set forth in a Notice of Defect by which a Defect is to be corrected.

**Department or DTF** - The New York State Department of Taxation and Finance.

**Discount** - The fee an Agent receives as compensation for affixing the indicia to the cigarette packs; also called a commission.

**Disaster Recovery Plan** - Contractor's plan to provide disaster recovery services.

**Distribution** - The act or process of dispensing and delivering cigarette tax indicia.

**Due Date** - The date that a payment for credit purchases is required. All due dates are not more than thirty days from the date of purchase. The date of purchase is considered day one of the transaction.

**Emergency** - An emergency is a Department approved instance where Contractors are notified and required to provide an Agent cigarette tax indicia immediately (i.e., within hours of notification). Emergencies may be due to non-delivery of properly ordered indicia or other reasons offered by the Agents.

**Enhancements (Enhance)** - Activities necessary to incorporate new business functionality other than Maintenance. Enhancement includes changes necessary to implement a new Performance Standard or a modified Performance Standard where the modified Performance Standard is initiated by the Department.

**Face Value** - The gross revenue value of the indicia (e.g., the current face value of the State tax indicia is \$3.12 per State 20/pack indicia which includes the current rates of \$2.75 for state cigarette tax and 37 cents for prepaid sales tax).

**Final Implementation Deliverable** - All the Implementation Deliverables integrated and performing together to constitute the Program which is to provide the services.

**Floor Tax** - All stamped cigarettes in the possession of cigarette Agents, wholesalers, or dealers as of a given date when the Excise Tax and/or Prepaid Sales Tax is increased, may be subject to a "floor tax." This "tax" is paid to cover the difference between the old (lower) tax rate and the new (higher) tax rate the product will be sold. Agents must pay a floor tax on their inventory of indicia marked cigarettes and of unaffixed cigarette tax indicia bearing the old rate at the time the new tax rate is implemented.

**Implementation Deliverable** - a component of the Final Implementation Deliverable as identified in the Implementation Plan.

**Implementation Plan** - is all the implementation activities to be performed by the Contractor prior to commencing processing of orders and supply of indicia. The implementation plan set forth in Exhibit B, CDRL, such implementation activities which Contractor shall perform at its own facilities. The Implementation Plan shall include, but not be limited to, a time schedule, management and staffing plan, communications and hardware requirements, software and programming requirements, remedial response and escalation procedures, testing and acceptance criteria and performance measurements.

**RFP Specific Exhibits****EXHIBIT 1****RFP GLOSSARY**

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**Indicia** - A distinctive mark which indicates taxes paid on cigarettes as sanctioned by the Department.

**Inventory** - A list of the quantity and type of indicia immediately available to fill Agent orders.

**Joint Indicia** - Stamps that satisfy both New York State and New York City Cigarette Tax criteria.

**Ledger Credit** – Deposits to a demand account prior to the Contractor's stated cut-off time.

**Liquidated Damages** –The damages set forth in Section V of this Request for Proposal for failure to meet the Performance Standards. For purposes of this Request For Proposal, the term "Liquidated Damages," shall include the Reimbursements specified in Section V.

**Lock** - A Department directive to the Contractor to stop processing indicia purchase requests for a specific Agent until further notification.

**Maintenance (Maintain)** - Ensuring the system performs and supports the Program, on an on-going basis, as originally certified for production by the Department. It shall also include changes necessary to achieve existing performance standards. Examples of Maintenance include (but are not limited to): changes required to programs, Job Control Language, etc., to fix production problems, and testing these fixes; legislative mandated; rate changes; and changes or upgrades to the system to support the Program; changes to proprietary or licensed software used by the Contractor in conducting its usual business; and changes in ACH or Federal Reserve rules and regulations.

**Notice of Defect** – A written notice issued by the Department which sets forth Defect(s) as determined by the Department.

**Order Form** – The form completed to obtain indicia. Such form includes: the Agent name, address, location, amount and type of indicia ordered. The form must include the amount due to the State or the City for Prepaid Sales Tax and State/City Cigarette Tax, the amount calculated.

**OSC** - The Office of the State Comptroller for New York State.

**Payment** - Monetary exchange of funds between the Agent and the Contractor to acquire tax indicia. Agent payment accounts can be made via FedWire transfers, ACH transactions, or other Department approved payment mechanism(s). An ACH account can be labeled either "cash or credit." The Department will determine if an Agent is eligible for credit and the extent to which credit may be extended and will advise the Contractor accordingly.

**Performance Standards** – means the Performance Standards set forth in Section V of this Request for Proposal.

**Prepaid Sales Tax** - A prepayment of the tax on the retail sale of cigarettes which is paid by the Agent via purchase of tax indicia. The prepaid sales tax is to be computed by multiplying the base retail price by a legislatively mandated tax rate, currently seven percent. This tax is governed by sections 1103 and 1111 of the Tax Law. Legislation may cause the Prepaid Sales Tax to change.

**Product** - Shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.

**Program** –The Cigarette Excise Tax and Prepaid Sales Tax requirements and/or services defined in this RFP and subsequently modified through the Change Procedure.

**Program Support Plans** - Documented plans which support the required Cigarette Tax services; including Business Continuity/Disaster Recovery Plan, Security & Confidentiality Plan, Internal Controls Plan, and Training Plan.

**RFP Specific Exhibits****EXHIBIT 1****RFP GLOSSARY**

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**Reimbursements** – means the payments, other than Ligated Damages, prescribed by Section V of Request for Proposal for failure to meet the Performance Standards.

**Replacement Value** - The actual cost to manufacture and replace the stamp. The replacement cost is currently about \$ .099 per thousand.

**Request For Proposals (RFP)** - A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is “best value,” as defined by the State Finance Law.

**Responsible Bidder** - A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

**Responsive Bidder** - A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the Department.

**Subcontractor** - Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

**Sale** - means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or any means whatever or any agreement thereof.

**Signature Form** - A combined NYS/NYC form completed by the Agent and maintained in the Bidder's cigarette tax file. The form includes signatures of Agent officials authorized to purchase and/or pick up indicia.

**Time** - All references to time contained in this RFP refer to the prevailing Eastern Time.

**Third Party Product** - Includes products manufactured or developed by a corporate entity independent from the Vendor and provided by Vendor on a non-exclusive licensing or other distributive Agreement with the third party manufacturer. “Third Party Product” does not include product where Vendor is: a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

**Transaction and Transfer Tax Bureau (TTTB)** This bureau within the Department is responsible for the day-to-day operation of the Cigarette Excise Tax and Prepaid Sales Tax Program.

**User Acceptance Testing (UAT)** - the process defined by the Department to determine whether an Implementation Deliverable or Final Implementation Deliverable performs in accordance with the Implementation Specifications.

**User Acceptance Testing (UAT) Delivery Date** - the date, as set forth in the Implementation Plan, upon which or prior to, an Implementation Deliverable (or Final Implementation Deliverable) is to be delivered to the Department for User Acceptance Testing.

**Vendor's Product** - shall include all Product delivered under this agreement by Vendor other than Third Party Product.

**RFP Specific Exhibits**  
**EXHIBIT 2**  
**OVERVIEW OF THE CIGARETTE EXCISE AND**  
**PREPAID SALES TAX PROGRAM**

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A Program Overview

In the current Cigarette Excise Tax and Prepaid Sales Tax Program, authorized Agents purchase a stamp which is the accepted indicia used to show proof of excise and prepaid sales taxes paid on cigarettes. Since the Program is sponsored by both the State of New York and the City of New York, stamps are classified as State Only or Joint (State and City) stamps.

The Department uses the Heat Transfer Stamps, which are also known as Fuson<sup>1</sup> stamps or Heat Fuson<sup>1</sup> stamps, which are packed in rolls. The number of stamps per roll varies by type: e.g., 20/pack cigarette stamps come 30,000 per roll with 25 rolls per case; 25/pack [long] cigarette stamps come 12,000 per roll with 36 rolls to a case; and 25/pack short cigarette stamps come 7,200 per roll, 49 rolls per case. A case measures roughly 13 inches cubed. The Heat Transfer Stamps come in Joint and State Only format for each quantity noted (e.g., 20's and 25's) and are priced and valued as indicated in Exhibit 4 of this RFP.

The Department orders all stamps needed for the Contractor to maintain adequate inventories. The Contractor is required to continually maintain approximately a one month supply of inventory (working inventory) on hand. New stamps are ordered and/or delivered as needed. The Department places orders for stamps (usually 100 cases of state 20's and 50 cases of joint 20's) approximately every 8-10 weeks.

Stamps are shipped from the manufacturer via a State approved transportation service to the Contractor. The working inventory of all types of Cigarette Tax stamps is contained in a secured storage and administration area to accommodate the sales and distribution system. Stamps are secured in vaults, one or more of which are off-site storage facilities, to accommodate disaster recovery and business continuity. Any subsequent movement of stamps is under the direction of the Contractor, except for the removal and controlled destruction of stamps, which is conducted by the Department. Controlled destruction of stamps occurs when a particular stamp is discontinued or changes in price/appearance.

The Program deploys an emergency supply system used for storing limited inventories of stamps at two downstate locations and four upstate locations (see Section III. D. for a complete listing of these locations). The Contractor monitors and maintains a set inventory (amount determined by the Department) at the emergency sites. Stamps are available for pick-up at these emergency sites by Agents meeting "emergency" criteria defined by the Department.

Authorized Agents call a toll-free number to place their order. Stamp orders received during the day are drawn from the Contractor's working inventory, securely packaged, identified as to destination, placed in an approved shipping container and readied for pick-up by the U.S. Postal Service, who provides a secure, customized Express Mail System that guarantees next day delivery and tracking capabilities. A copy of the Cigarette Tax Stamp Packing Slip form is included in each package. Each roll purchased carries a distinct serial number which enables the Department to track and verify Agent purchase information. Stamps are available for pick-up at the Agents' Post Office or delivered directly to the Agent's place of business, as determined by the Agent. Any stamps ordered on the day before an official holiday are scheduled for delivery on the next regular business day.

If an Agent calls the Contractor with a claim of non-delivery, the Contractor contacts its nearest Post Office. The Post Office traces the shipment and notifies the Contractor of their findings. State and City Cigarette Tax stamp personnel are notified of the "emergency" and the results of the Post Office's trace (i.e., whether or not the shipment has been found, if it can be delivered, when, etc.).

Based on information furnished by the Contractor, the Department determines whether emergency supplies are to be provided. If not, the Department will notify both the Contractor and the Agent. If emergency procedures are to be implemented, the Department will notify the Contractor. In response to the directive

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**RFP Specific Exhibits**  
**EXHIBIT 2**  
**OVERVIEW OF THE CIGARETTE EXCISE AND**  
**PREPAID SALES TAX PROGRAM**

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to furnish an emergency supply of stamps, the Contractor contacts the Agent and determines which emergency facility is most convenient for pick-up and provides the address to the Agent.

The Contractor replenishes all emergency inventories within 24 hours of use. Movement of stamps to the emergency sites is under the responsibility of the Contractor.

1. Registration and Authorization of Agent Accounts

The process for cigarette indicia sales and distribution begins with the creation of a Cigarette Tax Agent's account. A license application is filed and a license fee is paid to the Department's Transaction and Transfer Tax Bureau (TTTB). The TTTB registration process sets up the parameters of this authority and specifies the type of purchasing each authorized Agent will have. If an Agent wishes to sell cigarettes in New York City, the Agent must also register and gain approval from the New York City Department of Finance (in addition to State authorization).

Once a Cigarette Tax Agent is approved by the Department (and New York City if applicable), the Contractor is notified, in writing, by New York State/City of the following information:

- The name of the Agent;
- Individuals authorized to transact business;
- Purchasing method (cash or credit);
- If credit is authorized, the document will include the credit limit;
- Agent bank account information;
- Address;
- Mailing address (if different);
- Agent number;
- Telephone number.

The Contractor is responsible for ensuring only authorized Agents make indicia purchases. The Contractor will be notified in writing by the Department/NYC when an Agent's authorization has been revoked.

2. Volumes, Patterns, and Types of Indicia

There are approximately 90 New York State authorized Cigarette Excise Tax Agents operating in 95 locations (approximately 50 of these are also authorized as NYC Agents who sell joint [State/City] indicia). The overall number of Agents remains relatively constant. Within current Program constraints, it is anticipated that new Agents will become authorized and some existing Agents may cease operations. Many Agents order indicia daily, while other Agents place orders less often (weekly, biweekly, etc.). For an analysis of Cigarette Tax sales activities, consult Exhibit 3.

3. Commissions for Tax Agents

a. Basis for Computation

Section 74.3(b) of the Cigarette Tax Regulations (20 N.Y.C.R.R. §74.3) mandate that the commission be computed on the basis of a percentage of cumulative calendar year purchase of all "New York State Only" and/or the New York State portion of "Joint" State/City tax indicia. In addition §4-16 of the Rules of the Board of Standards and Appeals (19 RCNY §4-16) governs NYC compensation of agents for the NYC portion of Joint Indicia.

**RFP Specific Exhibits**  
**EXHIBIT 2**  
**OVERVIEW OF THE CIGARETTE EXCISE AND**  
**PREPAID SALES TAX PROGRAM**

---

b. Commission Rates

The Contractor is responsible for crediting an Agent with the correct commission rate by using cumulative purchase totals which the Contractor maintains. There are two sets of commission rates in effect for each type of indicia sold. One set for State sales up to and including \$5,611,200 and another for sales exceeding that amount in a calendar year.

Current commission rates for 20's are as follows:

<u>Indicia Type</u>	<u>Accumulated Gross Sales</u>	<u>Rate of Commission</u>
Joint Indicia/NYS Portion:	At/Below \$5,611,200	.4071%
	Above \$5,611,200	.2893%
Joint Indicia/NYC Portion:	At/Below \$5,611,200	.2171%
	Above \$5,611,200*	.0992%
New York State Only:	At/Below \$5,611,200	.3696%
	Above \$5,611,200	.2625%

Exhibit 4 specifies the cost per roll, and the City/State commission rates for an Agent's purchase of tax indicia.

4. Payment on Agent's Accounts

When purchasing indicia, Agents must pay both Cigarette Tax(es) and Prepaid Sales Tax, less their commission. The Agents' accounts are classified upon authorization of each Agent as either: a cash payment; Fedwire; ACH debit or under a line of credit. A "cash payment account" is the term used for those Agents that do not have a credit limit. "Cash payment accounts" require payment for indicia either 1) prior to sale (approximately 5 Agents purchase via this method) or 2) concurrent with the sale of indicia (approximately 50 Agents purchase via this method). Agents authorized to use credit are prescribed by the Department. (Approximately 59 Agents purchase on credit.) During the licensing process, the Department will determine if an Agent is eligible for credit and the maximum credit line permitted. The Agent's bond must cover the value of both Cigarette Excise Tax(es) and the Prepaid Sales Tax. The Contractor is required to ensure that an Agent's orders will not exceed their credit limit.

Funds collected are transferred/deposited directly into designated New York City & New York State Cigarette Tax Accounts, and the New York State Prepaid Sales Tax Account on a daily basis. The Contractor immediately notifies a designated Department employee(s) of any problems associated with returned items for an Agent account. The Department will restrict future indicia purchases (issue a stop sale order on the Agent's account) until such problem is resolved. The Contractor must provide accurate current information to the Department including but not limited to: Agent's history for up to a year; credit used and credit available, and an explanation of the problem; and the entity and principals involved. Once an account is locked, it requires Department approval to unlock the account.

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\* Rate is in effect during a calendar year when cumulative gross sales reach \$5,611,200 on the NYS portion of the joint indicia or combined total state apportioned sales of joint and state indicia, whichever is first.



**RFP Specific Exhibits**  
**EXHIBIT 2**  
**OVERVIEW OF THE CIGARETTE EXCISE AND**  
**PREPAID SALES TAX PROGRAM**

---

5. Application of Prepaid Sales Tax

The Contractor calculates the amount of Prepaid Sales Tax that is collected and deposited to the Cigarette Indicia Tax Account and transfers the Prepaid Sales Tax amount to the Sales Tax Account on a daily basis. The Contractor must generate one consolidated Sales Tax (ST-810) return and process the ST-810 return data into Contractor's Sales Tax System. Transfers to the Sales Tax Account are reconciled to the ST-810 returns. The resulting ST-810 returns are forwarded to the Department. The Sales Tax Returns Processing System is updated in accordance with established procedures.

6. Inventory, Storage and Controlled Destruction

The Contractor must maintain a system that allows access to one month's worth of inventory for uninterrupted availability of indicia. The Contractor must maintain a secure environment to protect the Department from revenue loss by safeguarding the indicia from unauthorized access, which could result in theft, loss or destruction. Controlled destruction of indicia (occurs when a particular indicia is discontinued or changes in price/appearance) is performed by the Department.

7. Distribution and Delivery

The Contractor is responsible for ensuring that Agents receive indicia at a minimum of next day service. Under emergency situations, the Agents must be able to receive the indicia on a same day basis. Distribution and delivery are critical components of this Program, as Agents could go out of business as a result of not receiving their indicia timely.

8. Emergency Situations

If an Agent calls the Contractor with a claim of non-delivery, the Contractor will trace the shipment and notify State Cigarette Tax Department personnel of their findings (i.e., whether or not the shipment has been found, if it can be delivered, when, etc.). Based on information furnished by the Contractor, Department staff will determine whether or not emergency supplies are to be provided. If not, the Department will notify both the Contractor and the Agent. If an emergency situation is declared, the Department will notify the Contractor. In response to the directive to furnish an emergency supply of indicia, the Contractor will contact the Agent and determine the best course of action to employ while getting indicia to the Agent immediately.

Movement of indicia is the responsibility of the Contractor.

9. Accounting and Reporting

The Contractor provides reports and maintains records and files (information related to reports to be provided by the Contractor can be found in Exhibit B, CDRL). No files or records are to be destroyed without the consent of the Department. All accounting and Program records are to be maintained in a manner acceptable to the Department.

Individual Agent files are kept for the term of the contract and include documentation such as Agent Authorization & Signature forms, Agent Request for Delivery including location for pick-up or delivery, Agent's bank account numbers, Bond Adjustments (increase/decrease in bond limits), cancellation letter, NYC Authorization form, locked account dates, outstanding balance, account status, etc. At the conclusion of the contract, all Agent and tax related information is returned to the Department.

In addition, the Contractor must communicate daily ledger and available balance and deposit information to the New York State Office of the State Comptroller, New York State Department of Taxation and Finance and the New York City Finance Administration Cigarette Tax Unit.

**RFP Specific Exhibits**  
**EXHIBIT 2**  
**OVERVIEW OF THE CIGARETTE EXCISE AND**  
**PREPAID SALES TAX PROGRAM**

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10. Security

Physical/Logical Security will be maintained by the Contractor in accordance with the Department provisions as outlined in Sections V and VII of this RFP. The Contractor will perform system backup on a daily basis. Contractor staff will be expected to conform to Department's provisions for security and confidentiality in accordance with the secrecy provisions of the Tax Law and the Internal Revenue Code.

11. Billing

The types of indicia will dictate how transaction fees must be split. For example, New York State should be billed for State Indicia, and for half of the invoice on Joint Indicia, with New York City receiving the bill for the other half of Joint Indicia. The Contractor will be responsible for generating appropriate bills, accepting payments and reconciling these accounts.

B. Program Administration

1 New York State Department of Taxation and Finance (Department)

The following Department organizations have functional responsibilities related to the administration of the Cigarette Excise Tax and Prepaid Sales Tax distribution process:

a. Transaction and Transfer Tax Bureau (TTTB), Audit Division

- Register/Authorize Agents and approve bonds or alternate security instruments;
- Notify Contractor of authorized Agent's and their credit limits;
- Arrangement of purchase and delivery of indicia to the Contractor on an as needed basis. Provide annual projections of indicia revenue, and order projections of Cigarette Excise Tax and Prepaid Sales Tax indicia sales;
- Monitor Agent balances to credit limits;
- Monitor tax indicia inventory and Agent purchases daily;
- Provide problem resolution (i.e., late/lost indicia, insufficient funds, emergency orders);
- Process refunds to Agents for damaged/unsold indicia, recalled product, stale product or otherwise unsalable;
- Receive and transmit Cigarette Tax Registration remittances and Miscellaneous Cigarette Sales remittances;
- Conduct periodic audits of indicia inventories, conduct inventory and witness controlled destruction of refunded/obsolete tax indicia; and
- Support day-to-day administration of the Program.

b. Accounting, Office of Tax Policy Analysis

- Receive and reconcile daily account information;
- Review Contractor reports for tax indicia revenues (Excise Tax and Prepaid Sales Tax);
- Receive ST-810 (Sales Tax) returns; and
- Create statistical reports for in-house use regarding the number of indicia sold, number of cigarettes sold, total revenue, and comparative analysis of current conditions as compared to prior year, and year-to-date, etc.

**RFP Specific Exhibits**  
**EXHIBIT 2**  
**OVERVIEW OF THE CIGARETTE EXCISE AND**  
**PREPAID SALES TAX PROGRAM**

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- c. Office of Budget and Management Analysis (OBMA)/Transaction and Transfer Tax Bureau (TTTB)
    - Conduct competitive bidding, contract negotiation and contract administration for services;
    - Coordinate bank and Department activities;
    - Work with service provider to develop new technology and processing alternatives for third-party service provider; and
    - Provide ongoing monitoring and periodic audit of bank processing to ensure conformance with requirements.
  
  - d. Tax Enforcement
    - Participate in inventory process prior to controlled destruction of old cigarette indicia;
    - Participate in the supervision of controlled destruction of obsolete tax indicia; and
    - Monitor Agent activity and location of assigned indicia serial numbers.
2. New York City Department of Finance (City); Cigarette Tax Department
- Provide cooperative efforts to collect money, audit, and administer the sale of Joint State/City indicia with the Department;
  - Assist with the approval process for Agents authorized and licensed to purchase and affix Joint State/City Cigarette Tax indicia within the City limits;
  - Issue Certificate of Authority to Contractor notifying the Contractor of authorized Agents detailing the payment abilities (cash or credit) of Joint State/City Agents; and
  - Receive and reconcile daily account information for City revenues.

**RFP Specific Exhibits**  
**EXHIBIT 3**  
**ANALYSIS OF HEAT TRANSFER STAMPS**

2005												
Types of Stamps	State Tax Value	City Tax Value	Total Cig. Tax	Prepaid Sales Tax *	Value per Stamp	Number of Stamps per Roll	Value per Roll	Number of Rolls per Case	Number of Stamps per Case	Number of Rolls sold in 2005	Stamp Dollar Value	Number Cases sold in 2005
NYS 20/pack	\$1.5000	\$0.0000	\$1.5000	\$0.3600	\$1.8600	30,000	\$55,800.00	25	750,000	15,712	\$876,729,600.00	628.48
NYS 25/pack Short	\$1.8750	\$0.0000	\$1.8750	\$0.4500	\$2.3250	7,200	\$16,740.00	49	352,800	11	\$184,140.00	0.22
NYS 25/pack Long	\$1.8750	\$0.0000	\$1.8750	\$0.4500	\$2.3250	12,000	\$27,900.00	36	432,000	1	\$27,900.00	0.03
Joint 20/pack	\$1.5000	\$1.5000	\$3.0000	\$0.3600	\$3.3600	30,000	\$100,800.00	25	750,000	5,128	\$516,902,400.00	205.12
Joint 25/pack Short	\$1.8750	\$1.8800	\$3.7550	\$0.4500	\$4.2050	7,200	\$30,276.00	49	352,800	4	\$121,104.00	0.08
Joint 25/pack Long	\$1.8750	\$1.8800	\$3.7550	\$0.4500	\$4.2050	12,000	\$50,460.00	36	432,000	1	\$50,460.00	0.03
<b>Total</b>										20,857	\$1,394,015,604.00	833.96

A Case of Stamps measures 13" x 13" x 13"

\* June 1, 2005, saw the Prepaid Sales tax rate change. Value per stamp is calculated using the POST June 1st rates,

	Pre June 1st	Post June 1st
State 20	\$0.37	\$0.36
State 25 Long & Short	\$0.47	\$0.45
Joint 20	\$0.37	\$0.36
Joint 25 Long & Short	\$0.47	\$0.45

**RFP Specific Exhibits**  
**EXHIBIT 3**  
**ANALYSIS OF HEAT TRANSFER STAMPS**

2006												
Types of Stamps	State Tax Value	City Tax Value	Total Cig. Tax	Prepaid Sales Tax *	Value per Stamp	Number of Stamps per Roll	Value per Roll	Number of Rolls per Case	Number of Stamps per Case	Number of Rolls sold in 2006	Stamp Dollar Value*	Number Cases sold in 2006
NYS 20/pack	\$1.5000	\$0.0000	\$1.5000	\$0.3600	\$1.8600	30,000	\$55,800.00	25	750,000	15,787	\$880,914,600.00	631.48
NYS 25/pack Short	\$1.8750	\$0.0000	\$1.8750	\$0.4500	\$2.3250	7,200	\$16,740.00	49	352,800	11	\$184,140.00	0.22
NYS 25/pack Long	\$1.8750	\$0.0000	\$1.8750	\$0.4500	\$2.3250	12,000	\$27,900.00	36	432,000	1	\$27,900.00	0.03
Joint 20/pack	\$1.5000	\$1.5000	\$3.0000	\$0.3600	\$3.3600	30,000	\$100,800.00	25	750,000	5,064	\$510,451,200.00	202.56
Joint 25/pack Short	\$1.8750	\$1.8800	\$3.7550	\$0.4500	\$4.2050	7,200	\$30,276.00	49	352,800	1	\$30,276.00	0.02
Joint 25/pack Long	\$1.8750	\$1.8800	\$3.7550	\$0.4500	\$4.2050	12,000	\$50,460.00	36	432,000	5	\$252,300.00	0.14
<b>Total</b>										20,869	\$1,391,860,416.00	834.45

A Case of Stamps measures 13" x 13" x 13"

**RFP Specific Exhibits**  
**EXHIBIT 3**  
**ANALYSIS OF HEAT TRANSFER STAMPS**

2007												
Types of Stamps	State Tax Value	City Tax Value	Total Cig. Tax	Prepaid Sales Tax *	Value per Stamp	Number of Stamps per Roll	Value per Roll	Number of Rolls per Case	Number of Stamps per Case	Number of Rolls sold in 2007	Stamp Dollar Value*	Number Cases sold in 2007
NYS 20/pack	\$1.5000	\$0.0000	\$1.5000	\$0.3600	\$1.8600	30,000	\$55,800.00	25	750,000	15,669	\$874,330,200.00	626.76
NYS 25/pack Short	\$1.8750	\$0.0000	\$1.8750	\$0.4500	\$2.3250	7,200	\$16,740.00	49	352,800	13	\$217,620.00	0.27
NYS 25/pack Long	\$1.8750	\$0.0000	\$1.8750	\$0.4500	\$2.3250	12,000	\$27,900.00	36	432,000	0	\$0.00	0.00
Joint 20/pack	\$1.5000	\$1.5000	\$3.0000	\$0.3600	\$3.3600	30,000	\$100,800.00	25	750,000	5054	\$509,443,200.00	202.16
Joint 25/pack Short	\$1.8750	\$1.8800	\$3.7550	\$0.4500	\$4.2050	7,200	\$30,276.00	49	352,800	3	\$90,808.00	0.06
Joint 25/pack Long	\$1.8750	\$1.8800	\$3.7550	\$0.4500	\$4.2050	12,000	\$50,460.00	36	432,000	1	\$50,460.00	0.03
<b>Total</b>										20,740	\$1,384,132,308.00	829.28

A Case of Stamps measures 13" x 13" x 13"

**RFP Specific Exhibits**  
**EXHIBIT 4**  
**COMMISSION RATES FOR CIGARETTE TAX AGENTS**  
**State**

FUSON STAMP	20's				25's Long (2x4)				25's Short (1x10)			
	State Tax Rate \$2.75 per Stamp 30,000 Stamps per Roll				State Tax Rate \$3.4375 per Stamp 12,000 Stamps per Roll				State Tax Rate \$3.4375 per Stamp 7,200 Stamps per Roll			
	State Only		Joint		State Only		Joint		State Only		Joint	
Breaking Point(*) \$5,611,200 Sales (equal to approximately 125 rolls of State 20's)	Before	After	Before	After	Before	After	Before	After	Before	After	Before	After
State Commission Rate %	0.3696%	0.2625%	0.4071%	0.2893%	0.3696%	0.2625%	0.4071%	0.2893%	0.3696%	0.2625%	0.4071%	0.2893%
Total Gross Per Roll \$	\$82,500.00	\$82,500.00	\$82,500.00	\$82,500.00	\$41,250.00	\$41,250.00	\$41,250.00	\$41,250.00	\$24,750.00	\$24,750.00	\$24,750.00	\$24,750.00
Less Commission	\$304.92	\$216.56	\$335.86	\$238.67	\$152.46	\$108.28	\$167.93	\$119.34	\$91.48	\$64.97	\$100.76	\$71.60
Net Amount	\$82,195.08	\$82,283.44	\$82,164.14	\$82,261.33	\$41,097.54	\$41,141.72	\$41,082.07	\$41,130.66	\$24,658.52	\$24,685.03	\$24,649.24	\$24,678.40
Prepaid Sales Tax	\$11,100.00	\$11,100.00	\$11,100.00	\$11,100.00	\$5,640.00	\$5,640.00	\$5,640.00	\$5,640.00	\$3,384.00	\$3,384.00	\$3,384.00	\$3,384.00
Amount Due	\$93,295.08	\$93,383.44	\$93,264.14	\$93,361.33	\$46,737.54	\$46,781.72	\$46,722.07	\$46,770.66	\$28,042.52	\$28,069.03	\$28,033.24	\$28,062.40

(\*) Breaking point refers to the change in State Commission Rate as indicated in the Before and After columns above.

**RFP Specific Exhibits**  
**EXHIBIT 4**  
**COMMISSION RATES FOR CIGARETTE TAX AGENTS**  
**State and City**

FUSON STAMP	20's				25's Long (2x4)				25's Short (1x10)			
	NYC Tax Rate \$1.50 per Stamp 30,000 Stamps per Roll				NYC Tax Rate \$1.8875 per Stamp 12,000 Stamps per Roll				NYC Tax Rate \$1.8875 per Stamp 7,200 Stamps per Roll			
			Joint				Joint				Joint	
Breaking Point(*) \$5,611,200 Sales (equal to approximately 125 rolls of State 20's)			Before	After			Before	After			Before	After
State Commission %			0.2171%	.0992%			0.2171%	.0992%			0.2171%	0.0992%
Total Gross Per Roll \$			\$45,000.00	\$45,000.00			\$22,560.00	\$22,560.00			\$13,536.00	\$13,536.00
Less Commission			\$97.70	\$44.64			\$48.98	\$22.38			\$29.39	\$13.43
Net Amount			\$44,902.30	\$44,955.36			\$22,511.02	\$22,537.62			\$13,506.61	\$13,522.57
Prepaid Sales Tax			\$0.00	\$0.00			\$0.00	\$0.00			\$0.00	\$0.00
Amount Due			\$44,902.30	\$44,955.36			\$22,511.02	\$22,537.62			\$13,506.61	\$13,522.57



**RFP Specific Exhibits**  
**EXHIBIT 5**  
**CIGARETTE STAMP TAX TRANSMISSION FILE LAYOUT**

Cigarette Stamp Tax File Layout for Vendor Transmission  
to NYS Dept. of Tax & Finance

- Header record must be the first record on the file and the Trailer record must be the last record. No records after Trailer.
- Record types other than the Header and Trailer may occur in any order on the file.
- File transmission should occur monthly on the first business day of each calendar month.
- An "empty" file consisting of a Header record and a Trailer record should be transmitted when there are no transactions for the month. DTF reserves the right to specify the format of the data (i.e. sequential flat file, XML formatted file, etc.)

**Header****Record**

Field #	Field Name	Data Type	Length	Comments
1	Record Identifier	Character	1	Constant Value "1" (Header record)
2	File Create Name	"	6	Format MMDDYY; leading zero when requested
3	File Name	"	20	Constant value "DTF CIGEXTR"
4	File Source	"	20	Constant value (Contractor name) TBD

**Order****Record**

Field #	Field Name	Data Type	Length	Comments
1	Record Identifier	Character	1	Constant value "5" (Order record)
2	Order ID	"	7	
3	Agent ID	"	5	
4	Agent ID Suffix	"	1	
5	Order Date	"	6	Format MMDDYY; leading zeros when required
6	Payment Method Type	"	2	
7	NYS Payment Due Date	"	6	Format MMDDYY; leading zeros when required
8	NYC Payment Due Date	"	6	Format MMDDYY; leading zeros when required
9	NYS Order Adjustment Amount	Numeric	12	Dollars & cents; implied decimal
10	NYS Sales Tax Adjustment Amount	"	12	Dollars & cents; implied decimal
11	NYS Adjustment Type	Character	2	
12	NYS Order Adjustment Amount	Numeric	12	Dollars & cents; implied decimal

**RFP Specific Exhibits**  
**EXHIBIT 5**  
**CIGARETTE STAMP TAX TRANSMISSION FILE LAYOUT**

Field #	Field Name	Data Type	Length	Comments
13	NYC Adjustment Type	Character	26	
14	Deleted Date	"	6	Format MMDDYY; leading zeros when required
15	Credit Brought Forward Indicator	"	1	
16	Order Last Updated Date	"	6	Format MMDDYY; leading zeros when required
17	NYS Payment Type	"	2	
18	NYC Payment Type	"	2	
19	Total City Amount	Numeric	12	Dollars & cents; implied decimal
20	Total State Amount	"	12	Dollars & cents; implied decimal

**Line Item Record**

Field #	Field Name	Data Type	Length	Comments
1	Record Identifier	Character	1	Constant value "6" (Line Item record)
2	Order ID	"	7	
3	Agent ID	"	5	
4	Agent ID Suffix	"	1	
5	Line Item Number	"	7	
6	Cigarette Tax Type	"	4	
7	Effective Date	"	6	Format MMDDYY; leading zeros when required
8	Stamp Purchase Quantity	Numeric	5	
9	Line Last Update Date	Character	6	Format MMDDYY; leading zeros when required

**RFP Specific Exhibits**  
**EXHIBIT 5**  
**CIGARETTE TAX TRANSMISSION FILE LAYOUT INFORMATION**

**Serial Number Record**

Field #	Field Name	Data Type	Length	Comments
1	Record Identifier	Character	1	Constant value "7" (Serial Number record)
2	Order ID	"	7	
3	Agent ID	"	5	
4	Agent ID Suffix	"	1	
5	Line Item Number	"	7	
6	Sequence Number	"	5	
7	Serial Number	"	6	
8	NYS Commission Amount	Numeric	12	Dollars & cents; implied decimal
9	NYC Commission Amount	"	12	Dollars & cents; implied decimal
10	Serial Number Last Update Date	Character	6	Format MMDDYY; leading zeros when required
11	NYS Commission Rate	Numeric	7	Numeric; one character to left of implied decimal
12	NYC Commission Rate	"	7	Numeric; one character to left of implied decimal

**Agent Record**

Field #	Field Name	Data Type	Length	Comments
1	Record Identifier	Character	1	Constant value "3" (Agent record)
2	Agent ID	"	5	
3	Agent ID Suffix	"	1	
4	Agent Name	"	25	
5	Credit Indicator	"	2	
6	Shipping Method Code	"	2	
7	Business Phone Number	"	10	
8	Daytime Phone Number	"	10	
9	Line 1 Address	"	30	
10	Line 2 Address	"	30	
11	City Name	"	30	
12	State Code	"	2	
13	Zip Code	"	10	
14	Bank ABA Routing Code	"	9	
15	Notes/Description	"	254	

**RFP Specific Exhibits**  
**EXHIBIT 5**  
**CIGARETTE TAX TRANSMISSION FILE LAYOUT INFORMATION**

Field #	Field Name	Data Type	Length	Comments
16	Account Type	"	1	
17	Account Number	"	17	
18	Facsimile Line Phone Number	"	10	
19	Contact Name	"	25	
20	Contact Phone Number	"	10	
21	Contact Fax Number	"	10	
22	Contact Email Address	"	30	
23	Status Code	"	1	
24	NYC Bond Amount	Numeric	12	Dollars & cents; implied decimal
25	NYS Bond Amount	"	12	Dollars & cents; implied decimal
26	Pre-Note Indicator	Character	1	
27	Account Utilized Date	"	6	Format MMDDYY; leading zero when required
28	Agent Last Update Date	"	6	Format MMDDYY; leading zero when required
29	Cash Indicator	"	1	
30	Stamp Type Code	"	1	

**Agent History Record**

Field #	Field Name	Data Type	Length	Comments
1	Record Identifier	Character	1	Constant value "4" (Agent History record)
2	Agent ID	"	5	
3	Agent ID Suffix	"	1	
4	Agent Name	"	25	
5	Credit Indicator	"	2	
6	Shipping Method Code	"	2	
7	Business Phone Number	"	10	
8	Daytime Phone Number	"	10	
9	Line 1 Address	"	30	
10	Line 2 Address	"	30	

**RFP Specific Exhibits**  
**EXHIBIT 5**  
**CIGARETTE TAX TRANSMISSION FILE LAYOUT INFORMATION**

Field #	Field Name	Data Type	Length	Comments
11	City Name	"	30	
12	State Code	"	2	
13	Zip Code	"	10	
14	Bank ABA Routing Code	"	9	
15	Notes/Description	"	254	
16	Account Type	"	1	
17	Account Number	"	17	
18	Facsimile Line Phone Number	"	10	
19	Contact Name	"	25	
20	Contact Phone Number	"	10	
21	Contact Fax Number	"	10	
22	Contact Email Address	"	30	
23	Status Code	"	1	
24	NYC Bond Amount	Numeric	12	Dollars & cents; implied decimal
25	NYS Bond Amount	"	12	Dollars & cents; implied decimal
26	Pre-Note Indicator	Character	1	
27	Account Utilized Date	"	6	Format MMDDYY; leading zero when required
28	Agent Last Update Date	"	6	Format MMDDYY; leading zero when required
29	Cash Indicator	"	1	
30	Stamp Type Code	"	1	
31	Action Indicator	"	1	

**Parameter Record**

Field #	Field Name	Data Type	Length	Comments
1	Record Identifier	Character	1	Constant value "2" (Parameter record)
2	Cigarette Tax Type	"	4	
3	Cigarette Tax Type Description	"	20	

**RFP Specific Exhibits**  
**EXHIBIT 5**  
**CIGARETTE TAX TRANSMISSION FILE LAYOUT INFORMATION**

4	NYS Unit Price	Numeric	12	Dollars & cents; implied decimal
5	NYC Unit Price	"	12	Dollars & cents; implied decimal
6	NYS Sales Tax Account	"	12	Dollars & cents
7	NYS Joint High Commission Percent	"	5	Numeric; one character to left of implied decimal
8	NYS Joint Low Commission Percent	"	5	Numeric; one character to left of implied decimal
9	NYS High Commission Percent	"	5	Numeric; one character to left of implied decimal
10	NYS Low Commission Percent	"	5	Numeric; one character to left of implied decimal
11	NYC High Commission Percent	"	5	Numeric; one character to left of implied decimal
12	NYC Low Commission Percent	"	5	Numeric; one character to left of implied decimal
13	Effective Date	Character	6	Format MMDDYY; leading zeros when required
14	Stamps per Roll Quantity	Numeric	5	
15	Last Update Date of Parameter	Character	6	Format MMDDYY; leading zeros when required

**Trailer Record**

Field #	Field Name	Data Type	Length	Comments
1	Record Identifier	Character	1	Constant value "2" (Parameter record)
2	Total Order (Type "5") Records on File	Numeric	4	Leading zeros
3	Total of All Records on File	"	20	Leading zeros; exclusive of Header and Trailer type records

**RFP Specific Exhibits**  
**EXHIBIT 6**  
**CHANGE CONTROL PROCEDURE**

**A. Change Category**

			<b>Maintenance</b>	<b>Enhancement</b>
Information Services (1) (components include: computer and end-user hardware, Proprietary Software, Licensed Software, data communications, etc.)	Transaction, Report, etc., (2)	N/A	Changes necessary to achieve existing Performance Standards.	Change impacts captured data elements for Program transactions, returns/payment document and file formats or new transaction or report.
	Standards and Requirements (2)	Existing	Changes necessary to achieve existing Performance Standard.	N/A
		Modified	Changes necessary to implement modified Performance Standard where modification is initiated by Contractor and approved by the Department.	Changes necessary to implement modified Performance Standard initiated by the Department.
		New	N/A	Changes necessary to implement new Performance Standard.
	Program Software (2)		All changes to Program software necessary to achieve existing Performance Standards or modifications initiated by Contractor and approved by the Department.  Changes necessitated by modifications to Licensed Software.	All changes to Program software to support the capture of new data fields or new business functionality.
	Reporting (2)	Existing Reports	Development and implementation of modifications to existing reports when initiated by Contractor with Department approval.	Significant changes to existing reports initiated by the Department.
		New Reports	N/A	Development and implementation of a new report or inquiry created from either existing or newly captured data elements.
Business Functionality (2)	New	N/A	New business functionality.	
Program Support Plans (includes Program Support Plans and execution of those Plans)	Standards	Existing	Changes necessary to achieve an existing Performance Standard.	N/A
		Modified	Changes necessary to implement a modified Performance Standard where the modification is initiated by the Department, or by Contractor and approved by the Department.	N/A
		New	N/A	Changes necessary to implement a new Performance Standard to existing Contractor Program Support Plans used in support of the Program.
	Information Services		Program Support Plan changes driven by Information Services maintenance activities.	N/A
Business	Existing	Changes necessary to achieve an	N/A	

## RFP Specific Exhibits

### EXHIBIT 6

# CHANGE CONTROL PROCEDURE

	Functionality		existing Performance Standard to existing Contractor Program Support Plans used in support of the Program.	
		New	N/A	Changes necessary to implement a new Performance Standard.

### B. Change Control Procedure

	Maintenance	Enhancement
Change Request (CR) (Exhibit 6.2, contains CR form)	<p>Department Change Control Representative (CCR) submits CR (form included in Exhibit 6.2), including the following:</p> <ul style="list-style-type: none"> <li>▪ Program</li> <li>▪ Change environment (Information Services, Program Support)</li> <li>▪ Preliminary determination of change category (Maintenance or Enhancement) and supporting information (i.e. number of data fields)</li> <li>▪ Priority of change, within outstanding change requests</li> <li>▪ Description of current process/ system(s) affected</li> <li>▪ System(s)/plan(s) affected</li> <li>▪ Description of required change</li> <li>▪ Condition necessitating change (e.g., legislative mandate, production problem, audit/monitoring results, etc.)</li> <li>▪ Suggested implementation strategy/ approach</li> <li>▪ required implementation date</li> <li>▪ date by which change analysis required (2 weeks from the date CR is sent to Contractor, if Contractor requires more than 2 weeks to prepare CA, the Contractor and the Department will negotiate a mutually agreed upon date)</li> <li>▪ list of attachments</li> <li>▪ primary Department contact, if different from CCR</li> </ul> <p>Source documents are appended to CR as needed and provided to the Office of Budget and Management Analysis.</p> <p><i>NOTE:</i> Department prepares Change Request for all changes. Where Contractor desired to initiate a change, Contractor contacts appropriate Department CCR for information discussion and, upon agreement, Department CCR prepares and submits CR. If the Department does not agree with a proposed change it will provide in writing the basis for the decision, Contractor shall not proceed with the change. Any preliminary analysis completed as part of these information discussions shall be included in the Change Request documentation.</p>	(Same as Maintenance.)



**RFP Specific Exhibits**  
**EXHIBIT 6**  
**CHANGE CONTROL PROCEDURE**

Analysis of Implementation Alternatives	N/A	Upon receipt of CR, Contractor initiates discussion with Department CCR to identify alternatives and determine suggested implementation approach.
Change Analysis (CA) (Exhibit 6.1, contains CA form)	<p>Contractor completes CA, (form included in Exhibit 6.1) including:</p> <ul style="list-style-type: none"> <li>▪ Indication of agreement with Department's preliminary determination of change category. If not in agreement, initiate negotiation with Department CCR.</li> <li>▪ Recommend implementation approach</li> <li>▪ Development and implementation time frames</li> <li>▪ Impact on other systems/plans</li> <li>▪ Department dependencies</li> <li>▪ Impact on fees, if any (all proposed fees subject to Fee Change Procedure)</li> </ul> <p>Change analysis sent to Department CCR on or before the CA required date.</p>	<p>Contractor completes CA, (form included in Exhibit 6.1) including:</p> <ul style="list-style-type: none"> <li>▪ Program</li> <li>▪ Change environment (Information Services, Program Support)</li> <li>▪ Indication of agreement with Department's preliminary determination of change category <ul style="list-style-type: none"> <li>○ If not in agreement, initiate negotiation with Department CCR</li> </ul> </li> <li>▪ Recommended implementation approach</li> <li>▪ Development and implementation time frames</li> <li>▪ Impacts on other systems/plans</li> <li>▪ Resource requirements (staff, by staff category, equipment, facilities) (required for enhancement but not required for maintenance)</li> <li>▪ Additional required enhancement information</li> <li>▪ Department dependencies</li> <li>▪ Proposed fees (development and operations, if any) (all proposed fees subject to Fee Change Procedure)</li> </ul> <p>Change Analysis sent to: Office of Budget and Management Analysis on or before the CA required date.</p>
Technical Terms Negotiation	<p>Department and Contractor CCR's (3) negotiate and document technical details;</p> <p>CCR's sign off</p>	<p>Department and Contractor CCR's (3) negotiate and document technical details;</p> <ul style="list-style-type: none"> <li>▪ All CCR's sign off;</li> <li>▪ Copy of approved CA to Office of Budget and Management Analysis; and</li> <li>▪ Department and Contractor sign off on CA</li> </ul>
Approvals	The Department has final approval for all changes to the Program, regardless of the party initiating the change. The Department has final approval for all changes to the Program defined herein.	(Same as Maintenance.)
Fee Negotiation	N/A	Office of Budget and Management Analysis negotiates final development and/or operations fees per Fee Change Procedure (see Section C below).
Development/Implementation	<p>Upon sign off of Change Analysis, development and implementation commences in accordance with an accepted system development methodology.</p> <p>PRIOR TO IMPLEMENTATION, Contractor updates all related documentation in accordance with the Performance Standards.</p> <p>Department may require that development/implementation of legislatively mandated enhancements proceed prior to agreement of fee change or agreement to any other Agreement element subject to renegotiation.</p>	(Same as Maintenance.)
Update Administrative Documentation	CCR's maintain files of Change Plans (CR, CA and all related documents).	Office of Budget and Management Analysis and CCR's maintain files of Change Plans (CR, CA and all related documents).

## RFP Specific Exhibits

### EXHIBIT 6

# CHANGE CONTROL PROCEDURE

	CR, CA and any attachments and other related documents become official documentation.	CR, CA and any attachments and other related documents become official documentation.
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**C. Fee Change Procedure**

	Maintenance	Enhancement
Contractor Submits Fee Request Package to Assistant Director, Office of Budget and Management Analysis	Change request package must include: <ul style="list-style-type: none"> <li>▪ Identification of factor(s) necessitating fee change, including, as applicable, Change Control number, and/or statement of change in cost of providing Services or extraordinary circumstances.</li> <li>▪ For development fees (for Enhancement, as applicable):                             <ul style="list-style-type: none"> <li>○ Development/Implementation functions/tasks, including systems development, testing, etc.</li> <li>○ For each function/task, estimated resource requirements (staff, equipment, facilities, etc). (Resources will correspond with resource requirements in Change Analysis.)</li> <li>○ Cost of required resources by function/task and total cost.</li> </ul> </li> <li>▪ For changes to existing operations fees, as applicable:                             <ul style="list-style-type: none"> <li>○ Current transaction fee for relevant Transaction or Report</li> <li>○ Proposed change to current fee, by function(s) and total</li> <li>○ How proposed fee is justified</li> </ul> </li> <li>▪ The analysis must indicate the current and new level of resources and the current and new workload volumes supported by those resources.</li> <li>▪ CPI-U Index for relevant period.</li> <li>▪ Requested effective date, guaranteed duration of proposed fee, and guarantee of CPI-U cap percentage increases.</li> </ul>	(Same as Maintenance.)
	For new operations fees the change request package must also include: <ul style="list-style-type: none"> <li>▪ Proposed transaction fee; both total and by function</li> <li>▪ All documentation and cost analysis as stated above</li> <li>▪ Requested effective date, guaranteed duration of proposed fee schedule, and guarantee of CPI-U cap</li> </ul> <p>For proposed changes to operations fees to be accepted for review by the Department, the analysis must indicate a material change in the cost of providing Services. The Department reserves the right to require from Contractor information needed to validate any changed costs subsequent to fee approval.</p>	(Same as Maintenance.)
Department	Department (Office of Budget and	(Same as Maintenance.)

**RFP Specific Exhibits**  
**EXHIBIT 6**  
**CHANGE CONTROL PROCEDURE**

Reviews Request	Management Analysis) reviews fee request, distributes internally as needed, makes recommendation to approval/disapprove.  Department may request additional information from Contractor and negotiate modifications, as needed.	
Control Agency Approval	N/A	Department obtains approval from OSC, and DOB as necessary.
Notify Contractor	Department notifies Contractor in writing of final fee approval.	(Same as Maintenance.)
Department Initiates Agreement Amendment (see Section D below)	N/A	Agreement Amendment required when fee exceeds 10% of annual operating costs.
Implement New Fee Structure	OSC implements new fee structure. <b>(4)</b>	Department obtains approval from OSC.

**D. Agreement Amendment**

	Maintenance	Enhancement
Amend Agreement	N/A	Agreement amendment required to amend Program requirements <u>and</u> fee changes associated with Program Enhancements. <b>(4)</b>  Office of Budget and Management Analysis shall review Enhancement process and documentation and initiate Agreement amendments, if required.
Control Agency Approval	N/A	OSC Contract Unit and Attorney General approval contract amendment, if required.

**NOTES:**

- (1) **Maintenance and Enhancements for Information Services will be defined in the subsequent contract.**
- (2) **Changes to Standards, Program Software, Program Management and business functionality may impact any component of Information Services.**
- (3) **Communications Matrix will be defined in the subsequent contract and will identify the CCR for the Department. Appropriate CCR(s) involved in process, including sign-off, as dictated by nature of enhancement. For an Enhancement, all CCR's must sign off on final technical details.**
- (4) **If fee change implemented after approved effective date, compensation shall be retroactive to approved effective date.**

## RFP Specific Exhibits EXHIBIT 6.1 CHANGE CONTROL ANALYSIS FORM

**New York State Department of Taxation and Finance  
Change Analyses**

CHANGE ENVIRONMENT:  <input type="checkbox"/> Information Systems; <input type="checkbox"/> Operations; or, <input type="checkbox"/> Other	CHANGE CATEGORY:  <input type="checkbox"/> Maintenance <input type="checkbox"/> Enhancement; or <input type="checkbox"/> Fee	CONTRACT:  Number: Tax Type: Fiscal Year: Lifetime Number:                      Sequence	PRIORITY:  <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low
--	--	---	---

I. RECOMMENDED IMPLEMENTATION APPROACH:

II. DEVELOPMENT/IMPLEMENTATION TIMEFRAMES:

III. IMPACTS ON OTHER SYSTEMS/PLANS:

IV. RESOURCE REQUIREMENTS (NOT REQUIRED for Maintenance Change)

V. ADDITIONAL INFORMATION REQUIRED FOR ENHANCEMENT , attach following required information:

For Information Services Change: <input type="checkbox"/> Design Specifications <input type="checkbox"/> Schedule of Deliverables	For Operations Change: <input type="checkbox"/> Workflow
--	---

VI. DEPARTMENT DEPENDENCIES:

VII. APPLICABLE CONTRACT REFERENCE:

VIII. PROPOSED FEES (Attach additional documentation, if necessary):

One-Time Development:  
 Task Breakdown

- Project Management/Analysis/Design      0 hours
- Development    0 hours
- Testing    0 hours
- Total Hours    0 hours

Operational/On Going Cost:

IX. APPROVALS/CONTACTS:

A. Selected Bidder CHANGE CONTROL REPRESENTATIVE (CCR) NAME:

SIGNATURE:	DATE
OFFICE:	PHONE:                      FAX:

B. DTF APPROVAL OF ANALYSIS: -

CHANGE CONTROL REPRESENTATIVE (CCR) NAME:

SIGNATURE:	DATE:
OFFICE:	PHONE:                      FAX:

PROGRAM AREA APPROVAL - NAME:

SIGNATURE:	DATE:
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**RFP Specific Exhibits**

**EXHIBIT 6.2**

**CHANGE CONTROL PROCEDURE – CHANGE CONTROL REQUEST FORM**

New York State Department of Taxation and Finance  
Change Request

<b>Change Environment:</b> <input type="radio"/> Information Services; <input type="radio"/> Program Support; or, <input type="radio"/> Other	<b>Change Category:</b> <input type="radio"/> Maintenance; <input type="checkbox"/> Minor <input type="checkbox"/> Major <input type="radio"/> Enhancement; or, <input type="radio"/> Fee	Contract #: <input style="width:50px;" type="text"/> Tax Type: <input style="width:50px;" type="text"/> Fiscal Year: <input style="width:50px;" type="text" value="05-06"/> Change Control #: <input style="width:50px;" type="text"/>	<b>Priority:</b> <input type="radio"/> High <input type="radio"/> Medium <input type="radio"/> Low
For Information Services Change	<input type="radio"/> Existing Return <input type="radio"/> New Return or Form <input type="radio"/> New Report or Report Change <input type="radio"/> New Method of Filing Option <input type="radio"/> New Method of Data Delivery <input type="radio"/> Other		
<b>I. Description of Current Process:</b> <div style="border: 1px dashed black; height: 30px;"></div>			
System(s)/Plan(s) Affected: <input style="width:80%;" type="text"/>			
<b>II. Description of Change Requested:</b> <div style="border: 1px dashed black; height: 60px;"></div>			
<b>III. Why Needed:</b> <div style="border: 1px dashed black; height: 30px;"></div>			
<b>IV. Suggested Implementation Approach:</b> <div style="border: 1px dashed black; height: 30px;"></div>			
<b>V. Required Implementation Date:</b> <input style="width:20px;" type="text"/> / <input style="width:20px;" type="text"/> / <input style="width:20px;" type="text"/>		<b>VI. Date Change Analysis Due:</b> <input style="width:20px;" type="text"/> / <input style="width:20px;" type="text"/> / <input style="width:20px;" type="text"/>	
<b>VII. Attachments</b> <input style="width:80%;" type="text"/>			
<b>VIII. Approvals/Contacts</b>			
<b>A. Change Control Manager:</b> _____			
Signature: _____		Signature Date: <input style="width:20px;" type="text"/> / <input style="width:20px;" type="text"/> / <input style="width:20px;" type="text"/>	
<b>Office:</b> <input style="width:80%;" type="text"/>		Phone: ( <input style="width:20px;" type="text"/> ) <input style="width:20px;" type="text"/> - <input style="width:20px;" type="text"/> Fax: ( <input style="width:20px;" type="text"/> ) <input style="width:20px;" type="text"/> - <input style="width:20px;" type="text"/>	
<b>Contact Person:</b> <input style="width:80%;" type="text"/>		Phone: ( <input style="width:20px;" type="text"/> ) <input style="width:20px;" type="text"/> - <input style="width:20px;" type="text"/> Fax: ( <input style="width:20px;" type="text"/> ) <input style="width:20px;" type="text"/> - <input style="width:20px;" type="text"/>	
<b>B. Program Area Manager:</b> _____			
Signature: _____		Signature Date: <input style="width:20px;" type="text"/> / <input style="width:20px;" type="text"/> / <input style="width:20px;" type="text"/>	
<b>Office:</b> <input style="width:80%;" type="text"/>		Phone: ( <input style="width:20px;" type="text"/> ) <input style="width:20px;" type="text"/> - <input style="width:20px;" type="text"/> Fax: ( <input style="width:20px;" type="text"/> ) <input style="width:20px;" type="text"/> - <input style="width:20px;" type="text"/>	
<b>Program Area Contact Person:</b> <input style="width:80%;" type="text"/>		Phone: ( <input style="width:20px;" type="text"/> ) <input style="width:20px;" type="text"/> - <input style="width:20px;" type="text"/> Fax: ( <input style="width:20px;" type="text"/> ) <input style="width:20px;" type="text"/> - <input style="width:20px;" type="text"/>	

**RFP Specific Exhibits**  
**EXHIBIT 7**  
**FUNDS TRANSFER AGREEMENT**

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As used herein the words “you”, “your” and “yours” refer to the customer named below (“Customer”). The words “we”, “us” and “our” refer to the bank indicated above. We operate a funds transfer service (“Service”) which enables depositors to transfer available funds from deposit accounts maintained with us to other accounts maintained with us or elsewhere. You have requested access to the Service. By signing this agreement (“Agreement”) you agree to all of the terms and conditions contained herein.

## **1. TRANSFER INSTRUCTIONS**

### **A. Initiating Transfers**

Any of your authorized representatives (“Authorized Representative”) may instruct us to transfer funds from any of your designated accounts with us (an “Account”) to any other account with us or to an account at another bank through the Federal Reserve’s wire transfer system known as Fedwire or such other funds transfer system as we may reasonably select (“Funds Transfer System”) in accordance with the terms and conditions of this Agreement. Each Authorized Representative and Account is listed in Exhibit A attached hereto and hereby made a part hereof. Such an instruction (a “payment order” or “order”) may be received from you by telephone, in writing and, if you utilize our Customer Terminal Access Service, by means of a terminal connection with us.

### **B. Executing Orders**

#### **(i) General**

We will execute a payment order received from you only if it is received at the location designated by us from time to time and during our normal business hours on a day we are open. For purposes of this Agreement, we shall be deemed to have executed a payment order by and at the time of transmitting it to a Funds Transfer System or, in the case of an order to be credited to an account with us, upon crediting such account.

Except as provided in Section 1B(iii) below, each payment order must include the following information in addition to any information required by us for Authorized Representative identification and security purposes: (a) the account number of the Account from which funds are to be withdrawn, (b) the amount and type of currency to be transferred, (c) the name of the beneficiary bank, and (d) the name and the account number of the beneficiary of the order and (e) the name and routing information of any intermediary bank through which funds are to be processed or transferred. You acknowledge and agree that, if your payment order describes the payee inconsistently by name and account number, payment of the order transmitted by us to the payee’s bank might be made by that bank on the basis of the account number even if it identifies a person different from the named beneficiary, and that your obligation to pay the amount of the order to us is not excused in such circumstances. We are not responsible for detecting any errors that may be contained in any payment order you send.

We and you will comply with the security procedures referred to in and hereby made a part hereof. In addition to the security procedures, we may also, but shall not be obligated to, call back an Authorized Representative (other than the Authorized Representative from whom we purportedly received a payment order) in order to authenticate any order received. If we exercise that right, we shall have no obligation to execute the payment order received until such time as we are able to secure an authorization from such other Authorized Representatives. You understand and agree and you shall advise each authorized Representative that we may, at our option, record telephone conversations between an Authorized Representative and us.

Except as otherwise provided in the Account Agreement we are not obligated to execute, and shall reject, any payment order (a) which is not in accordance with any condition required by you and agreed to in writing by us, or (b) which is not in accordance with any other requirement of this Agreement.

**RFP Specific Exhibits**  
**EXHIBIT 7**  
**FUNDS TRANSFER AGREEMENT**

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**(ii) Time of Execution**

Subject to the terms and conditions contained in this Agreement, unless the payment order specifies a later date, we will use reasonable efforts to execute a payment order received from you on the date the order is received, providing it is received before our wire transfer cut-off hour on a day we are open, and that day is also a day on which both the Federal Reserve Bank to which the order is to be transmitted by us and the payee bank are open for business. Subject to such terms and conditions, we will execute a payment order on a later day than the day of receipt of the order if (a) the payment order specifies such later day, (b) we, the applicable Federal Reserve Bank, and the payee bank are open for business on the specified later day, and (c) the later day selected is no more than five 5 business days after the payment order is received by us. If any of the foregoing requirements set forth in clauses (a) or (b) is not met, we will transmit the order on the next day on which all of those requirements can be met. We may handle payment orders received from you in any order convenient to us regardless of the order in which they are received.

For purposes of determining if receipt is prior to our wire transfer cut-off hour, a payment order shall be deemed received by us when the transmission to us and compliance with any related security procedure is completed.

**(iii) Repetitive Orders**

We will provide you with a repeat code for each repetitive payment order (i.e., a payment order made on a recurring basis to the same payee and to the same account at the same payee bank) to be made to a payee, account and payee's bank identified in the attached hereto and hereby made a part hereof. A repetitive payment order must include the following information in addition to any information required by us for Authorized Representative identification and security purposes: (a) a repeat code and (b) the amount to be transferred. If a payment order does not contain a repeat code, we will treat the order as a non-repetitive transfer, and require the information set forth in Section 1B(i) above before executing the order. If you use a wrong repeat code, we are not obligated to execute the payment order, but if we execute such a payment order, you shall be obligated to pay the amount of the order as provided herein.

**(iv) Cancellation and Amendment**

You may request that we attempt to cancel or amend a payment order previously received from you. Any such request shall comply with the security procedures applicable to the related payment order.

We shall use reasonable efforts to act on a request for cancellation or amendment received prior to execution of the related payment order by us. We will transmit to the payee's bank a request for cancellation or amendment of a payment order received after execution of the related payment order by us, but shall have no liability for failure to effect such cancellation or amendment.

Notwithstanding any provision to the contrary contained herein, cancellation of an order upon your request will relieve us of any further obligation to act with respect to such order.

**(v.) Notice of Rejection or Return**

We will notify you promptly of any rejection of a payment order by us and of any return of a payment order transmitted by us under this Agreement. Upon such notification, we shall have no further obligation to act with respect to such order provided, in the case of rejection of an order, we have acted in accordance with the terms of this Agreement.

**RFP Specific Exhibits**  
**EXHIBIT 7**  
**FUNDS TRANSFER AGREEMENT**

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**C. Payment; Authorization to Charge Account; No Extension of Credit**

You agree to pay us the amount of each payment order on the day we execute that order. We may, without prior notice or demand, debit the Account designated in the order as the Account from which funds are to be withdrawn, or the appropriate Account in the case of repetitive orders. We will credit the Account previously debited in the amount of any final settlement received by us by reason of return, cancellation or amendment of a payment order executed by us. Such credit shall be made as of the day of such receipt by us.

You will at all times use best efforts to maintain a balance of available funds in the Account sufficient to cover your payment obligations under this agreement.

Except as otherwise provided in Account Agreement, nothing in this Agreement nor any course of dealing between you and us constitutes a commitment or obligation on our part to lend money to you or to extend any credit or make a loan to you or to otherwise advance funds to you to pay for any payment order.

**D. Confirmation; Account Reconciliation**

At your request, we will send you a written confirmation advice of each payment order executed by us to the address indicated on Exhibit A. We will assign a reference number to each executed payment order. This number will appear on the confirmation advice or periodic account statement. If you utilize our Customer Terminal Access Service option, you may elect to print out of your terminal a record of the payment order. Payment orders executed by us will be reflected on your periodic account statement issued by us. You agree to notify us immediately of any discrepancy between your records and any confirmation advice or periodic account statement.

**E. Authorization**

Access to the Service, including any option feature(s) you determine to utilize, will be permitted after you sign this Agreement and return it to us at the address set forth in Exhibit A, together with the applicable Exhibits.

**F. Security Codes**

If a Personal Identification Number ("PIN") is a part of the security procedures referred to in Exhibit C, we will assign a unique PIN for each Authorized Representative designated in Exhibit A and advise you of each such PIN assigned.

You shall be responsible for the security of each such PIN and any other code used under this Agreement and for their unauthorized use. You agree to keep each such PIN and code confidential and to disclose them only to such individuals who are required to know them. Each PIN shall be disclosed by you only to the Authorized Representative to whom it is issued. You shall instruct each Authorized Representative that such PINs and codes shall not be disclosed to anyone else, and shall establish and maintain procedures reasonably adapted to assure the confidentiality of such PINs and codes. If at any time you believe that any such PIN or code has become known by some unauthorized person (whether or not employed by you), you shall notify us immediately by telephone and confirm that notification in writing. Upon receipt of such telephone notice we shall issue a new PIN and code in substitution and we shall no longer act on instructions containing the PIN(s) and/or code(s) identified in such notice. We reserve the right to change any PIN or code at any time upon notice to you. You shall notify us immediately by telephone and confirm to us in writing, if you terminate the authority of any Authorized Representative. Upon receipt of your telephone notification, we shall no longer act on instructions received from the person identified in such notice.



**RFP Specific Exhibits**  
**EXHIBIT 7**  
**FUNDS TRANSFER AGREEMENT**

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**2. COMPENSATION**

To the extent provided by law, if you suffer any loss of interest resulting from our error in executing a payment order, or from our failure to execute a payment order, in accordance with the terms of this Agreement, we will reimburse you for such loss to the extent provided herein, provided that you have complied with the terms and conditions of this Agreement, and provided further, that such error or failure was due to causes within our control. Such compensation shall be limited to the interest lost for a period not to exceed ninety (90) days following the receipt by you of the confirmation advice, terminal print-out, or periodic account statement (whichever occurs first), and shall be calculated by using a rate equal to the effective Federal funds rate at the Federal Reserve Bank of New York for the period involved. At our option, compensation will be paid either by credit to an Account or by check. No such compensation shall be paid if the payment order was received from an agent or employee of New York State purporting to be to be an Authorized Representative and we executed the order in good faith and in compliance with our security procedures.

**3. CHANGES**

From time to time you may change (a) accounts from which payment orders may be made, (b) Authorized Representatives and (c) any other information contained in any exhibit to this Agreement by notice to us signed by an authorized signer on the applicable Account(s). Such changes shall be made promptly after we receive notice of a change from you or such later date as may be stated in your notice to us.

From time to time we may change any of the terms and conditions contained in this Agreement, including without limitation, our business hours or any cut-off hour, provided herein. Non-material changes will become effective on the second business day after the day upon which you receive notice or such later date as may be stated in our notice to you. It is understood that no material change, including but not limited to any change in prospective liability of either party for any action governed by this Agreement or any change that purports to modify in any respect the application of Article 4A of the Uniform Commercial Code to this Agreement or to actions taken pursuant to this Agreement, shall take effect without your prior written consent.

**4. LIABILITY; LIMITATIONS ON LIABILITY; INDEMNITY**

We shall be responsible only for performing the Service as expressly provided in this Agreement, and shall be liable only for our negligence or lack of good faith in performing the Service. We shall not be responsible for your acts or omissions (including the amount, accuracy, timeliness of transmittal, or due authorization with respect to any payment order received from you), those of any other person, including without limitation, any Federal Reserve Bank or transmission or communications facility, any payee or payee bank (including without limitation the rejection of a payment order by such payee or payee bank), or any other bank, and no such person shall be deemed our agent. Except as otherwise expressly provided herein, we shall not be required to act upon any instruction received from you to any other person, or to provide any notice or advice to you or any other person with respect to any matter.

We shall be entitled to rely on any notice or other writing reasonably believed by us in good faith to be genuine and correct and to have been signed by the person purporting to have signed such notice or other writing.

If a payment order received by us was sent by an Authorized Representative or an agent or employee of New York State purporting to be an Authorized Representative, it will be deemed effective as your order and you shall be obligated to pay the amount of the order as provided herein whether or not the order was authorized by you if we executed the order in good faith and in compliance with the security procedures you selected. If a payment order received by us was authorized by you, you shall be obligated to pay the amount of the order as provided herein.

**RFP Specific Exhibits**  
**EXHIBIT 7**  
**FUNDS TRANSFER AGREEMENT**

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**5. ADDITIONAL TERMS AND CONDITIONS**

**A. Fees**

Fees for the Service shall be in accordance with the schedules agreed to between the bank and the State.

**B. No Waiver**

Except for changes made in accordance with this Agreement, no deviation, whether intentional or unintentional, shall constitute a change hereto, and no such deviation shall constitute a waiver of any right or duty of either party hereto.

**C. Account Agreements**

The terms and conditions of your applicable Account agreement(s) are hereby incorporated by reference into this Agreement. If any inconsistency exists between such agreement(s) and this Agreement, this Agreement shall control to the extent of such inconsistency.

**D. Incoming Transfers**

If you so request, we will use reasonable efforts to notify you of incoming funds transfers within a reasonable time following receipt thereof. However, we shall have no liability for failure to give such notice.

**E. Notices**

Unless otherwise stated in this Agreement, all notices and advices sent by you in connection with this Agreement shall be in writing, signed by duly authorized signer(s) on the applicable Account(s) and sent by register or certified U.S. mail, hand delivery, or an express carrier. Notices or advices to you will be sent, by first class mail or any other means, to your address as indicated unless another address is substituted by notice delivered or sent as provided herein. Notices or advices to us will be sent to our address as indicated on.

**F. Termination**

You may terminate your use of the Service and this Agreement at any time. Such termination shall be effective on the second day on which we are open following the day of our receipt of such notice. We reserve the right to terminate the Service, or any part thereof, of this Agreement upon notice to you. Any termination shall not affect any of our obligation or your obligations arising prior to such termination.

**G. Entire Agreement**

This Agreement is the complete and exclusive statement of the agreement between us and you with respect to the subject matter hereof and supersedes any prior agreement(s) between us and you with respect to such subject matter. There are no promises, agreements, conditions, undertakings, warranties or representations, either oral or written, express or implied, between us and you other than set forth in this Agreement. In the event any statute, regulation or government policy, to which we are subject, and which governs or affects the transactions contemplated by this Agreement including without limitation the Federal Reserve's large-dollar risk control policy, would invalidate or modify any portion of this Agreement, then the Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and we shall incur no liability to you as a result of our having to comply with such statute or regulation.

**RFP Specific Exhibits**  
**EXHIBIT 7**  
**FUNDS TRANSFER AGREEMENT**

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**H. Severability of Provisions**

If any part of this Agreement shall be held to be void or unenforceable, such part shall be treated as severable, leaving valid the remainder of this Agreement, notwithstanding the part found to be void or unenforceable.

**I. Non-Assignment**

This Agreement constitutes a contract for personal services between you and us. Neither party may assign this Agreement or any of the rights or duties hereunder to any person without prior written consent from both parties except the Bank may assign any of its rights or delegate any of its duties in whole or in part to any Affiliate.

**J. Binding Agreement**

This Agreement is and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

**K. Governing Law**

This Agreement shall be governed by the laws of the State of New York.

**L. Miscellaneous**

Notwithstanding anything in this Agreement, including any document referred to herein or attached hereto, to the contrary:

- (i) all transactions shall be governed by Article 4-A of the New York Uniform Commercial Code (hereinafter "Article 4-A") and to the extent that there is any inconsistency between Article 4-A and this Agreement, the provisions of Article 4-A shall govern;
- (ii) you accept no liability for negligence or willful misconduct on our part or for the unexplained loss of funds by us, and you will neither indemnify us for losses arising out of our negligence or willful misconduct nor agree not to seek compensation for damages resulting from our negligence or willful misconduct;
- (iii) We may not debit any account maintained by you for any purpose without specific written or electronic authorization from you;
- (iv) we and our officers, employees and agents shall act reasonably and in good faith with respect to all transactions; and
- (v) We acknowledge that you are not in a position to determine whether the security procedures offered by us are "commercially reasonable" within the meaning of Section 4 A 202 of the New York Uniform Commercial Code and any determination regarding the reasonableness of such procedures shall be made pursuant to that Section and the effectiveness of any unauthorized payment orders shall be governed by the provisions of Article 4 A..
- (vi) The State agrees that it shall be solely responsible for ensuring that all security procedures are followed and that the Bank shall have no liability for any losses sustained by the State as a result of a breach of security procedures if the Bank has adhered to its security procedures. If such procedures are violated, the State agrees to promptly notify the Bank of any such breach. The State

**RFP Specific Exhibits**  
**EXHIBIT 7**  
**FUNDS TRANSFER AGREEMENT**

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acknowledges that it has reviewed the applicable security procedures and agrees with the security procedures and any security procedures it may select in the future.

**FOR US**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FOR YOU**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Bank: \_\_\_\_\_

**RFP Specific Exhibits**  
**EXHIBIT 8**  
**UNDERTAKING FOR BANK DEPOSITS AND ASSIGNMENT OF SECURITIES**

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Ms. Catherine Golden  
 NYS Department of Taxation and Finance  
 Procurement Bureau  
 W.A. Harriman Campus – Bldg. 9, Room 234  
 Albany, New York 12227

Phone/fax and email:  
 (518) 457-0954 / (518) 435-8413  
[bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us)

**WHEREAS, THE** \_\_\_\_\_ **of** \_\_\_\_\_, New York (hereinafter “Bank”) has been duly designated in accordance with the provisions of law to receive and keep on deposit: such moneys received by the Commissioner of Taxation and Finance that are required by Section 106 of the State Finance Law to be deposited by the Commissioner to the credit of the State Comptroller; any other moneys received by the Commissioner of Taxation and Finance, except as provided in Section 105 of State Finance Law, and deposited in the Bank by the Commissioner to the credit of the State Comptroller; all moneys received by any other State officer or other person receiving moneys belonging to the State of New York or for which such officer or other person may be responsible in an official capacity and which moneys are deposited in the Bank to the credit of such officer or other person; all moneys received by any State institution and deposited in its name in the Bank; all moneys received from the State by any charitable or benevolent institution supported in whole or in part by the State which moneys are deposited in the Bank to the credit of such charitable or benevolent institution; and all moneys including but not limited to moneys of any municipality, commission, authority or public corporation deposited by the State Comptroller in the Bank in the name of the State Comptroller or as an agent of the State Comptroller, and

**WHEREAS**, the Bank is required by statute to execute and file in the Office of the State Comptroller its undertaking for the safekeeping and prompt payment of any moneys on deposit, with interest, if any.

**WHEREAS**, the Bank hereby executes and delivers such an undertaking to the people of the State of New York in the penal sum of an amount equal to the total of all moneys hereinabove described which are now or shall hereafter be on deposit in or held by the Bank to the credit of such public entities, which undertaking is secured, pursuant to the provisions of the Uniform Commercial Code, and any other applicable State law or federal law, by the deposit of the outstanding securities with the State Comptroller or any party designated by the State Comptroller.

**NOW THEREFORE**, the Bank in consideration of such deposits made or to be made therein, and for value received, does hereby undertake, covenant and agree to and with the People of the State of New York, to safely keep and well and faithfully account for all moneys, which are now or shall hereafter be on deposit in or held by the Bank, and will pay the same promptly at any and all times on legal demand therefore with interest on agreed balances at an agreed rate per annum, to be credited as applicable.

To secure its performance of this Undertaking, the Bank, pursuant to the Uniform Commercial Code and other applicable State law or federal law, does hereby pledge, transfer and assign securities to the State Comptroller for the purpose of granting a security interest in such securities to save harmless and indemnify the People of the State of New York and the depositor from and against all loss, both principal and interest, costs, damages, or expense of any kind or nature, that may be incurred for or on account of said funds and moneys heretofore or hereafter deposited in or held by the bank and for which security is required by or pursuant to the provisions of law or for which the Bank shall in any way become liable to the State or the depositor;

**RFP Specific Exhibits**

**EXHIBIT 8**

**UNDERTAKING FOR BANK DEPOSITS AND ASSIGNMENT OF SECURITIES**

The securities pledged, transferred and assigned pursuant to this undertaking and assignment shall be transferred to the State Comptroller or a party designated by him for this purpose, and the State Comptroller or such party shall confirm the receipt of such securities in writing to the Bank.

In the event that the Bank shall either (1) fail to pay to the State or other depositor any funds which the State or depositor has on deposit with the Bank in accordance with the terms of such deposit; or (2) suspend active operations or be determined insolvent by Federal or State officials having authority over the Bank, the Bank shall be in default and the State Comptroller may, in addition to any other remedies provided by law, sell any or all of the securities pledged pursuant to this undertaking and assignment.

And the Bank does hereby irrevocably constitute and appoint the Comptroller of the State of New York its lawful attorney to transfer said securities on the records of the transfer officer, at the transfer office, with full power of substitution in the premises.

On the withdrawal of all moneys so secured and closing and settlement of the account thereof, the State Comptroller will return said securities to the Bank.

**WITNESS** the seal of the said bank and the signature of the \_\_\_\_\_ thereof, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_  
For the State Comptroller

STATE OF NEW YORK )  
County of \_\_\_\_\_ ) ss.:  
)

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose \_\_\_\_\_ and say that (s)he \_\_\_\_\_ resides in \_\_\_\_\_ (include the street and street number, if any, thereof); that (s)he is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the above instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument in such corporate seal; that it was affixed by order of the board of directors of said corporation, and that (s)he signed the above instrument by like order.

\_\_\_\_\_  
**Notary Public**

## **EXHIBIT A**

### **BID PROTEST POLICY**

It is the policy of the Department of Taxation and Finance contracting program (hereafter "DTF") to provide all bidders with an opportunity to administratively resolve complaints or inquiries related to bid solicitations or pending contract awards. DTF encourages bidders to seek resolution of complaints concerning the contract award process through consultation with the program. All such matters will be accorded impartial and timely consideration.

#### **Informal Complaints/Protests**

It is strongly recommended that staff encourage, be receptive to and resolve issues, inquiries, questions and complaints on an informal basis, whenever possible. Information provided informally by any interested party should be fully reviewed by Program Team Leaders, the contract administrator of the Contract Management Unit and/or the Assistant Director, Procurement of the Office of Budget and Management Analysis. In addition, matters that are perceived to contain, or are potentially confidential or trade secret information should be shared with the Chief Financial Officer of the Office of Budget and Management Analysis for possible direction. Staff should document the subject matter and results of informal inquiries. As appropriate, DTF responses to the inquirer should indicate the existence of a formal protest policy available to them should the informal process fail to resolve the matter.

In addition to informal inquiries, bidders may also file formal written protests according to the procedures specified below. Final agency determinations or recommendations for award generally may only be reconsidered in the context of a formal written protest.

#### **Formal Written Protests**

Any potential bidder who believes that there are errors or omissions in the procurement process, or that the bidder has been aggrieved in the drafting or issuance of a bid solicitation or pending contract award, may present to a formal complaint to DTF and request administrative relief concerning such action ("formal protest").

#### **Submission of Bid or Award Protests**

##### **Deadline for Submission**

- a) Concerning Errors, Omissions or Prejudice in the Bid Specifications or Documents - Formal protests which concern the drafting of bid specifications must be received by DTF at least twenty (20) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than twenty (20) business days from the date of issue, formal protests concerning the specifications must be received by DTF at least seventy-two (72) hours before the time designated for receipt of bids.
- b) Concerning Proposed Contract Award - Formal protests concerning a pending contract award must be received within five (5) business days after the protesting party ("protester") knows or should have known of the facts which form the basis of the protest, and, where § 112 approval is required, prior to final approval of the recommendation by the State Comptroller.

##### **Transmittal**

A formal protest must be submitted in writing to DTF, by ground mail, or, where permitted in the solicitation, facsimile or e-mail transmission. The following statement must be clearly and prominently displayed on the envelope or package or header of electronic or facsimile transmittal: "Bid Protest of DTF Solicitation (Reference Number)."

## **EXHIBIT A**

### **BID PROTEST POLICY**

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#### **Contents**

A formal protest must include:

- (a) a statement of all legal and/or factual grounds for disagreement with a specification or a procurement determination;
- (b) a description of all remedies or relief requested; and
- (c) copies of all applicable supporting documentation.

Protests should be delivered to the Contact named in the RFP.

#### **Review and Final Determination**

Copies of all protests will be provided to the Assistant Director, Procurement of the Office of Budget and Management Analysis and appropriate program staff.

Protests shall be resolved through written correspondence, however, either the protester or DTF may request a meeting to discuss a formal protest, at which time the participants may present their concerns. Where further formal resolution is required, the Assistant Director, Procurement of the Office of Budget and Management Analysis may designate an alternate (“designee”) to determine and undertake the initial resolution or settlement of any protest.

The Program staff in conjunction with Contract Management Unit staff will conduct a review of the records involved in the protest, consult with the Assistant Director, Procurement of the Office of Budget and Management Analysis, and provide a memorandum to the Chief Financial Officer of the Office of Budget and Management Analysis summarizing the results of the review and recommendation. The Chief Financial Officer of the Office of Budget and Management Analysis will evaluate the recommendation, the material presented by the protester, and, if necessary, consult with appropriate senior level program staff, Counsel, and the Executive Deputy Commissioner, and prepare a written response to the protest.

A copy of the decision, stating the reason(s) upon which it is based shall be sent to the protester or its agent within thirty (30) business days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest determination should be recorded and included in the Procurement Record, or otherwise forwarded to OSC upon issue. The decision of the Chief Financial Officer of the Office of Budget and Management Analysis will be final.

#### **Reservation of Rights and Responsibilities of DTF**

DTF reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and DTF.

If DTF determines that there are compelling circumstances, including the need to proceed immediately with contract award in the best interest of the State, then these protest procedures may be suspended and such determination shall be documented in the procurement record.

DTF will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

If a formal bid protest is received by DTF, a final determination on the protest must be made prior to OSC approval of the award under SFL § 112. However, during the pendency of the protest, bid evaluation by DTF and subsequent OSC review of the recommended award may continue to progress at the discretion of the Chief Financial Officer of the Office of Budget and Management Analysis.



## **EXHIBIT A**

### **BID PROTEST POLICY**

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If a formal protest is received prior to a determination by DTF on a recommended award, notice of receipt of the protest must be given in the procurement record forwarded to OSC. If a final protest determination has been reached prior to transmittal to OSC, a copy of the final determination should be included in the Procurement Record and forwarded with the recommendation for award.

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

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

## EXHIBIT B

### CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
A001	Systems Requirement Documentation	Delivered during program development and again prior to implementation.			Including, but not limited to, requirement documents, system design specifications, general and detailed workflows and custom reporting.
A002	Test Result Documentation	Delivered during program development and again prior to implementation.			Business cases tested.
A003	System Architecture Documentation	Delivered during program development and again prior to implementation.			System Architecture Diagrams
A004	Processing Site Documentation	Delivered during program development and again prior to implementation.			Including, but not limited to, facility floor plan diagrams, security procedures and plans, organization and management plans, and disaster recovery/fail safe plans.
A005	Operational Procedures Documentation	Delivered during program development, prior to implementation, and updated annually or upon DTF request.			Including, but not limited to, processing procedures, staffing plans, training tools, sample transmission notices and logs, transmission schedules and report descriptions, schedules and samples.
A006	Implementation Plan	Initial plan due with proposal, weekly			Demonstrate how personnel, materials and

## EXHIBIT B CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
		<p>dashboard reports after contract award.</p>			<p>equipment will be utilized through the orientation period and a method to ensure performance and to include phase-in timelines.</p> <p>On a weekly basis, from project award through implementation and initial operations, the Contractor must produce a Weekly Project Implementation Dashboard Report. The Report must present, in both summary and detail slide basis, a progress report, with a meaningful color coded scheme and with reliable quantitative measures of progress, as follows:</p> <ul style="list-style-type: none"> <li>• Contract negotiation</li> <li>• Requirements definition</li> <li>• Change orders</li> <li>• Platform development</li> <li>• Internal systems testing</li> <li>• Processing site development (facility acquisition and development, staffing and training)</li> <li>• DTF user acceptance training</li> </ul>

## EXHIBIT B CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
					Summary report for contract, requirements definition, change orders, platform development, forms, internal systems testing, facility, staffing, training, and user acceptance testing.
A007	Cigarette Stamp Order (a.k.a. Purchase Order/Packing Slip)	Required for each stamp order.	Hard Copy	Agent	<p>Required data includes:</p> <ul style="list-style-type: none"> <li>- Account Number</li> <li>- Account Name</li> <li>- Date</li> <li>- Debit or Credit Amount*</li> <li>- Approver name and/or ID Number</li> </ul> <p>* Amount of Debit or Credit must match corresponding bank statement.</p>
A008	Debit/Credit Memos (Debit and Credit Memo adjustments refer to the monies received with an order which is initially wired to Cigarette Tax and be transferred to the Prepaid Sales Tax.)	Daily (issued as wire orders are obtained.) This report is due by the next business day.	<p>Online</p> <p>Contractor must have the ability to produce a hard copy report when the online system is unavailable.</p>	<p>DTF:</p> <ul style="list-style-type: none"> <li>-Office of Tax Policy Analysis (OTPA), Accounting</li> <li>-Office of the State Comptroller.</li> </ul>	<p>Required data includes Cigarette Tax, Sales Tax, &amp; Total:</p> <ul style="list-style-type: none"> <li>- Cash Statement</li> <li>- Opening Balance</li> <li>- Cash Sales</li> <li>- Accounts Receivable Collected</li> <li>- Total</li> <li>- Total Deposits</li> <li>- Ending Balance</li> </ul> <ul style="list-style-type: none"> <li>- Accounts Receivable</li> <li>- Opening Balance</li> <li>- Credit Sales</li> <li>- Total</li> <li>- Accounts Receivable Collected</li> <li>- Ending Balance</li> </ul>

## EXHIBIT B

### CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
					NOTE: NYS and NYC reports contain only respective data specific for each jurisdiction (i.e., NYC reports do not contain NYS data or Sales Tax information and vice versa.). Previous day balance reporting for OSC must be in a bai2 format.
A009	Daily Cash Report for NYS /NYC	Daily. This report is due by the next business day.	Online.  Contractor must have the ability to produce a hard copy when the online system is unavailable.	DTF: -Office of Tax Policy Analysis (OTPA), Accounting  NYC Department of Finance: Audit Division/Cigarette Tax Unit	Required data includes:  - Stamp Type - Roll/Sheet Quantity - Total Quantity Sold - Total Orders Placed
A010	Daily Inventory Sold	Daily	Hard Copy (optional online access)	DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division	Required data includes:  - Stamp Type - Roll/Sheet Quantity - Total Quantity Sold - Total Orders Placed
A011	Tax Stamp Serial Numbers	Daily	Hard Copy (optional online access)	DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division	Required data includes:  - Order Date - Agent Number - Stamp Type - Serial Numbers (May need multiple fields per stamp type)
A012	NYS and Local Sales and Use Tax Return (ST-810)	Daily. This report is due by 10:00 a.m. the	Electronic	DTF: -DTF Sales Tax Contractor -Office of Tax	Required data includes:  Summary of

## EXHIBIT B

### CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
		next business day.		Policy Analysis, Accounting -Office of the State Comptroller	Business Activity: - Gross Sales and Services - Taxable Sales and Services - Sales and Use Taxes and Special Taxes - Total Taxes Due - Amount Due - % Rate - Dummy Account for Prepaid Sales Tax on Cigarette Account - Sales Tax Vendor Identification Number (Dummy Number) - Jurisdiction Code
A013	Advice of Deposit (Daily Account Reconciliation)	Daily.  This report is due by 9:00 a.m. the next business day.	Online.  Contractor must have the ability to produce a hard copy report when the online system is unavailable.	DTF: -Office of Tax Policy Analysis (OTPA), Accounting	Required data includes: - Advice Number  - Cigarette Stamp Tax Deposits (CREDITS) - ACH Debits (a.m.) - ACH Debits (p.m.) - ACH Total  - Agent Wires - Wire Total - Sales Tax - Cigarette Tax - Total Cigarette Tax Deposit - Other Deposits - Sales Tax Wires - Package Sales - Registrations - Agent Wire - Other Deposits Total - Total Deposits  - Withdrawals (DEBITS) - Amount Transfer

## EXHIBIT B CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
					to Sales Tax - Account Number - Amount Wired - Total Withdrawals - Approval Signature
A014	Statement of Accounts	Daily	Online	OSC: -Investments and Cash Management Team  DTF: -Office of Tax Policy Analysis (OTPA), Accounting  NYC Department of Finance: -Audit Division/Cigarette Tax Unit	Sample of standard account analysis.  NOTE: NYS and NYC reports contain only respective data specific for each jurisdiction (i.e., NYC reports do not contain NYS data or Sales Tax information and vice versa).
A015	Daily Exception Report	Daily	Hard Copy  (optional online access)	DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division  NYC Department of Finance: -Audit Division/Cigarette Tax Unit	Required data includes:  - Duplicate Serial Numbers Issued - Non-consecutive Serial Numbers Issued - Accounts Receivable Over 30 Days - Agent Exceeded Credit Limit - Returns items by Agent still Outstanding
A016	Semi-Monthly Cash Report for NYS / NYC	Semi-Monthly  This report is due by the next business day following the 15 <sup>th</sup> and 30 <sup>th</sup> of the month.	Online  Contractor must have the ability to produce a hard copy report when the online system is unavailable.	DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division -Office of Tax Policy Analysis (OTPA), Accounting  NYC Department of	Required data includes Cigarette Tax, Sales Tax, & Total:  - Cash Statement - Opening Balance - Cash Sales - Plus Accounts Receivable Collected

## EXHIBIT B

### CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
				Finance: -Audit Division/Cigarette Tax Unit	<ul style="list-style-type: none"> <li>- Total</li> <li>- Less Total Deposits Transferred</li> <li>- Ending Balance</li> <li>- Accounts Receivable</li> <li>- Opening Balance</li> <li>- A/R Adjustments</li> <li>- Plus Credit Sales</li> <li>- Total</li> <li>- Less Accounts Receivable Collected</li> <li>- Ending Balance</li> </ul> <p>NOTE: NYS and NYC reports contain only respective data specific for each jurisdiction (i.e., NYC reports do not contain NYS data or Sales Tax information and vice versa).</p>
A017	Trial Balance for NYS / NYC	<p>Semi-Monthly</p> <p>This report is due by the next business day following the 15<sup>th</sup> and 30<sup>th</sup> of the month.</p>	<p>Online</p> <p>Contractor must have the ability to produce a hard copy report when the online system is unavailable.</p>	<p>DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division -Office of Tax Policy Analysis (OTPA), Accounting</p> <p>NYC Department of Finance: -Audit Division/Cigarette Tax Unit</p>	<p>Required Data includes:</p> <ul style="list-style-type: none"> <li>- Agent Number</li> <li>- Agent's Bond/Credit Limit (NYS)</li> <li>- Credit Line Balance</li> <li>- Total Owed for Cigarette Tax</li> <li>- Total Owed for Prepaid Sales Tax</li> <li>- Total Owed</li> </ul> <p>NOTE: NYS and NYC reports contain only respective data specific for each jurisdiction (i.e., NYC reports do not contain NYS data or Sales Tax</p>



## EXHIBIT B CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
					information and vice versa).
A018	Summary Order Detail for NYS / NYC	<p>Semi-Monthly</p> <p>This report is due by the next business day following the 15<sup>th</sup> and 30<sup>th</sup> of the month.</p>	<p>Hard Copy</p> <p>(optional online access)</p>	<p>DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division -Office of Tax Policy Analysis (OTPA), Accounting</p> <p>NYC Department of Finance: -Audit Division/Cigarette Tax Unit</p>	<p>Required Data includes bi-weekly cumulative total sales by stamp type broken out by Cash Sales, Credit Sales and Commission Rate:</p> <ul style="list-style-type: none"> <li>- Stamp Type</li> <li>- Roll/Box Quantity</li> <li>- NYS/NYC Gross</li> <li>- NYS/NYC Rate (Before/After)</li> <li>- NYS/NYC Commission (\$ amount)</li> <li>- NYS/NYC Net</li> <li>- NYS/NYC Sales Tax</li> <li>- NYS/NYC Total Due</li> <li>- Grand Total</li> </ul> <p>NOTE: NYS and NYC reports contain only respective data specific for each jurisdiction (i.e., NYC reports do not contain NYS data or Sales Tax information and vice versa).</p>
A019	Semi-monthly Taxes Collected	<p>Semi-Monthly</p> <p>This report is due by the next business day following the 15<sup>th</sup> and 30<sup>th</sup> of the month.</p>	<p>Hard Copy</p> <p>(optional online access)</p>	<p>DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division -Office of Tax Policy Analysis (OTPA), Accounting</p> <p>NYC Department of Finance: -Audit</p>	<p>Required Data includes daily total sales (cumulated into bi-weekly report) by each tax account for state Cigarette Tax, city Cigarette Tax and Prepaid Sales Tax:</p> <p>Cash Statement - Cash Sales</p>

## EXHIBIT B

### CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
				Division/Cigarette Tax Unit	<ul style="list-style-type: none"> <li>- A/R Collected</li> <li>- Total</li> </ul> <ul style="list-style-type: none"> <li>Accounts Receivable</li> <li>- Opening Balance</li> <li>- A/R Adjustments</li> <li>- Credit Sales</li> <li>- Total</li> <li>- A/R Collected</li> <li>- Closing Balance</li> </ul> NOTE: NYS and NYC reports contain only respective data specific for each jurisdiction (i.e., NYC reports do not contain NYS data or Sales Tax information and vice versa).
A020	Semi-monthly Stamp Inventory Report	Semi-Monthly  This report is due by the next business day following the 15 <sup>th</sup> and 30 <sup>th</sup> of the month.	Hard Copy  (optional online access)	DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division -Office of Tax Policy Analysis (OTPA), Accounting  NYC Department of Finance: -Audit Division/Cigarette Tax Unit	Required Data includes:  Inventory of Heat Transfer Stamps (Rolls) by type of stamp (State or Joint; 20, 25L, 25S)  Amount: - On Hand At Beginning of Reporting Period - Received Direct from Printer - Received from Other Sources - Total - Amount Sent Elsewhere - Sold - On Hand at End of Reporting Period - Total (must agree with total above)

## EXHIBIT B CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
					<p>NOTE: NYS and NYC reports contain only respective data specific for each jurisdiction (i.e., NYC reports do not contain NYS data or Sales Tax information and vice versa).</p>
A021	<p>Roll-up Summary of Sales by Commission Rates and Stamp Type</p>	<p>Semi-Monthly  This report is due by the next business day following the 15<sup>th</sup> and 30<sup>th</sup> of the month.</p>	<p>Hard Copy  (optional online access)</p>	<p>DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division -Office of Tax Policy Analysis (OTPA), Accounting  NYC Department of Finance: -Audit Division/Cigarette Tax Unit</p>	<p>Required data includes a summary of cash and credit sales by:</p> <ul style="list-style-type: none"> <li>- Stamp type</li> <li>- Roll/Box Quantity</li> <li>- NYS Gross</li> <li>- NYC Gross</li> <li>- Commission Rate (ALL)</li> <li>- NYS Commission</li> <li>- NYC Commission</li> <li>- NYS Net Tax</li> <li>- NYC Net Tax</li> <li>- Prepaid Sales Tax Total</li> <li>- NYS Sales Tax</li> <li>- NYS Total Due</li> <li>- NYC Total Due</li> <li>- Grand Total of the period for Each Column above</li> </ul> <p>NOTE: NYS and NYC reports contain only respective data specific for each jurisdiction (i.e., NYC reports do not contain NYS data or Sales Tax information and vice versa).</p>

## EXHIBIT B

### CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
A022	Breakdown Cash and Credit Sales Summary by Commission Rates	<p style="text-align: center;">Semi-Monthly</p> <p>This report is due by the next business day following the 15<sup>th</sup> and 30<sup>th</sup> of the month.</p>	<p>Hard Copy</p> <p>(optional online access)</p>	<p>DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division -Office of Tax Policy Analysis (OTPA), Accounting</p> <p>NYC Department of Finance: -Audit Division/Cigarette Tax Unit</p>	<p>Required data includes a detailed listing of cash and credit sales by commission rate:</p> <ul style="list-style-type: none"> <li>- Stamp type</li> <li>- Roll/Box</li> <li>Quantity</li> <li>- NYS Gross</li> <li>- NYC Gross</li> <li>- Commission Rate (ALL)</li> <li>- NYS Commission</li> <li>- NYC Commission</li> <li>- NYS Net Tax</li> <li>- NYC Net Tax</li> <li>- NYS Sales Tax</li> <li>- NYS Total Due</li> <li>- NYC Total Due</li> <li>- Subtotals for each Commission Rate</li> <li>- Grand Total of the period for Each Column above</li> </ul> <p>NOTE: NYS and NYC reports contain only respective data specific for each jurisdiction (i.e., NYC reports do not contain NYS data or Sales Tax information and vice versa.)</p>
A023	<p>Agent Activity Report</p> <p>(Reports generated for each agent.)</p>	<p>Monthly, Annually</p> <p>Monthly reports are due by the 2<sup>nd</sup> of the following month.</p>	<p>Hard Copy</p> <p>(optional online access)</p>	<p>DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division</p>	<p>Required data includes:</p> <ul style="list-style-type: none"> <li>- Agent Name</li> <li>- Agent Number</li> <li>- Order Date</li> <li>- Stamp Payment Due Date</li> <li>- Type of Payment</li> <li>- Order Number</li> <li>- Stamp Type</li> </ul>

## EXHIBIT B CONTRACTOR DATA REQUIREMENT LISTING (CDRL)

CDRL	Task	Timeliness Standard	Delivery Method	Report Recipients	Required Data
					<ul style="list-style-type: none"> <li>- Roll/Sheet Quantity</li> <li>- NYS Gross</li> <li>- NYS Commission</li> <li>- NYS Net</li> <li>- NYS Prepaid Sales Tax Total</li> <li>- NYS Total Net</li> <li>- Sub-Totals</li> <li>- Grand Totals</li>   <li>Total Annual Prepaid Sales Tax, NYS Cigarette Excise Tax and NYC Cigarette Tax Total.</li> </ul>
A024	Cigarette Tax NYS YTD Gross Sales Report	For Specific Period	Hard Copy  (optional online access)	DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division	Required data includes: <ul style="list-style-type: none"> <li>- Agent Number</li> <li>- Agent Type</li> <li>- YTD Accumulations:</li> <li>NYS Gross</li> <li>NYS Commission</li> <li>NYS Net</li> <li>- Rolls Accumulations by Types of Indicia</li> </ul>
A025	Daily Order Detail Report	Daily.  This report is due by the next business day.	Online.  Contractor must have the ability to produce a hard copy report when the online system is unavailable.	DTF: -Transaction and Transfer Tax Bureau (TTTB), Audit Division	Required data includes: <ul style="list-style-type: none"> <li>- Order Date</li> <li>- Stamp Payment Due Date</li> <li>- Agent Type</li> <li>- Agent Number</li> <li>- Order Number</li> <li>- Type of Payment</li> <li>- Stamp Type</li> <li>- Roll/Sheet Quantity</li> <li>- NYS Gross</li> <li>- NYC Gross</li> <li>- Total Gross</li> </ul>

## EXHIBIT C

### ST-220 CONTRACTOR CERTIFICATION FORMS



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

(6/06)

**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</i> Contract number or description
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. This publication is available on our Web site, by fax, or by mail. (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.

If you have questions, please call our information center at 1 800 698-2931.

**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).

## EXHIBIT C

### ST-220 CONTRACTOR CERTIFICATION FORMS

Page 2 of 2 ST-220-CA (6/06)

#### 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 Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

#### Need help?

	<b>Internet access:</b> <a href="http://www.nystax.gov">www.nystax.gov</a> (for information, forms, and publications)	
	<b>Fax-on-demand forms:</b>	1 800 748-3676
	<b>Telephone assistance</b> is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.	1 800 698-2931
	To order forms and publications:	1 800 462-8100
	From areas outside the U.S. and outside Canada:	(518) 485-6800
	<b>Hearing and speech impaired</b> (telecommunications device for the deaf (TDD) callers only):	1 800 634-2110
	<b>Persons with disabilities:</b> 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, please call 1 800 972-1233.	

## EXHIBIT C

### ST-220 CONTRACTOR CERTIFICATION FORMS



New York State Department of Taxation and Finance

### Contractor Certification

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

## ST-220-TD

(6/06)

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
Contractor's mailing address (if different than above)			
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	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$
Covered agency address			Covered agency telephone number

#### General information

Section 5-a of the Tax Law, 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 a Form ST-220-CA, 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.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at [www.nystax.gov](http://www.nystax.gov). Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

**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

#### 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 Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

#### Need help?

 **Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)

 **Fax-on-demand forms:** 1 800 748-3676


 **Telephone assistance** is available from 8:00 A.M. to 5:00 P.M.  
(eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

**Hearing and speech impaired** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

 **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, please call 1 800 972-1233.



## EXHIBIT C

### ST-220 CONTRACTOR CERTIFICATION FORMS

Page 2 of 4 ST-220-TD (6/06)

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.

Make only one entry in each section below.

#### 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 sections 1134 and 1253 of the Tax Law, 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 sections 1134 and 1253 of the Tax Law. 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 sections 1134 and 1253 of the Tax Law. 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)



# EXHIBIT C ST-220 CONTRACTOR CERTIFICATION FORMS

Page 4 of 4 ST-220-TD (6/06)

### 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. \_\_\_\_\_

**APPENDICES****TABLE OF CONTENTS**

- 1. Executory Clause**
- 2. Non-Assignment Clause**
- 3. Comptroller's Approval**
- 4. Workers' Compensation Benefits**
- 5. Non-Discrimination Requirements**
- 6. Wage and Hours Provisions**
- 7. Non-Collusive Bidding Certification**
- 8. International Boycott Prohibition**
- 9. Set-Off Rights**
- 10. Records**
- 11. Identifying Information and Privacy Notification**
- 12. Equal Employment Opportunities For Minorities and Women**
- 13. Conflicting Terms**
- 14. Governing Law**
- 15. Late Payment**
- 16. No Arbitration**
- 17. Service of Process**
- 18. Prohibition on Purchase of Tropical Hardwoods**
- 19. MacBride Fair Employment Principles**
- 20. Omnibus Procurement Act of 1992**
- 21. Reciprocity and Sanctions Provisions**
- 22. Purchases of Apparel**

June 2006

**APPENDICES****STANDARD CLAUSES FOR NYS CONTRACTS****APPENDIX A****STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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

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

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing

**APPENDICES****STANDARD CLAUSES FOR NYS CONTRACTS****APPENDIX A**

prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, 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:

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

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

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

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

**APPENDICES****STANDARD CLAUSES FOR NYS CONTRACTS****APPENDIX A**

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

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

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

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

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of 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 §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

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

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

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

**APPENDICES****STANDARD CLAUSES FOR NYS CONTRACTS****APPENDIX A**

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

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

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

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

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.



## **ATTACHMENT 1 - BIDDER'S CHECKLIST**

### **Volume 1- Qualifying and Performance Response Requirements**

#### **Section 1**

- Executive Summary

#### **Section 2 Qualifying Requirements**

- Attachment 3, Qualifier Response Form

#### **Section 3 Performance Response Requirements**

- Attachment 4, Systems Response Form
- Attachment 5, Order Processing Response Form
- Attachment 6, Payment Processing Response Form
- Attachment 7, Inventory Response Form
- Attachment 8, Program Management Response Form
- Attachment 9, Cash Management Reporting Response Form
- Attachment 10, Funds Process and Availability Response Form
- Attachment 11, Collateral Response Form
- Attachment 12, Wire Transfer Response Form

### **Volume 2 – Administrative Response Requirements**

- Proposal Transmittal Letter
- Attachment B, Designation of Prime Contact
- Attachment C, Vendor Responsibility Form
- Attachment D, DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code
- Attachment E, Procurement Lobbying Act, Offerer Disclosure of Prior Non-Responsibility Determinations
- Attachment F, Procurement Lobbying Act, Offerer's Certification of Compliance with State Finance Law 139-k(5)
- Attachment G, Agreement to adhere to Public Officers Law Sections 73 and 74
- Attachment H, MacBride Fair Employment Principles Certification

### **Volume 3- Cost Proposal Requirements**

- Attachment I, Financial Response Form-Direct Fees
- Attachment J, Financial Response Form-Compensating Balances

## ATTACHMENT 2 NOTIFICATION OF INTENT TO BID

**Please indicate your interest in submitting a proposal for this acquisition by completing and returning this form by the date indicated on the Schedule of Events. The form can be e-mailed to [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us) (preferred) or mailed to:**

Ms. Catherine Golden, Assistant Director, Procurement  
New York State Department of Taxation and Finance  
Office of Budget and Management Analysis, Procurement RFP 08-32  
Building 9, Room 234  
W.A. Harriman Campus  
Albany, NY 12207

Date: \_\_\_\_\_

Bidder's Legal Business Name: \_\_\_\_\_  
Bidder's Doing Business as Name: \_\_\_\_\_  
Bidder's Federal or Taxpayer Identification Number: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
\_\_\_\_\_

Name of Authorized Representative: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_  
\_\_\_\_\_  
Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Please check the appropriate box(es):**

- We **are** interested in submitting a proposal.
- We **are** a certified minority or women-owned business.
- We **are not** interested in submitting a proposal for this for this solicitation for the following reason(s): \_\_\_\_\_

## ATTACHMENT 3 QUALIFIER RESPONSE FORM

**BIDDER'S NAME:** \_\_\_\_\_

**The Bidder must complete this form in response to the Qualifying Requirements, as requested in Section II. Qualifying Requirements – A. Firm Experience, B. Financial Stability.**

### **Part 1:**

In response to the Firm Experience section of this RFP, please provide:

- i. A description of the project(s). Such description should include, but is not limited to the client services were provided for, the application, daily volumes, and the duration of the project.
- ii. The names and telephone numbers of client staff who administered the project(s) described and/or supervised the project (references). Staff may be contacted to confirm entity experience. **The Bidder is solely responsible for providing contacts that are readily available to be contacted by the DTF and who will respond to DTF questions;** and
- iii. A description of any activities in which the Bidder is engaged which may constitute a conflict of interest to this program and an explanation as to how conflicts will be handled to ensure the DTF program is not impacted.
- iv. A statement of capacity and willingness of the Bidder to perform the work set forth in Section III – Performance Requirements, regardless of any contingencies which may occur.

### **Part 2:**

**As Attachment 3, Part 2, please provide the required financial statements and other documentation as requested in Section II.B.**

## **ATTACHMENT 4 SYSTEMS RESPONSE FORM**

**BIDDER'S NAME:** \_\_\_\_\_

**As Attachment 4**, the Bidder must provide a detailed description of how each of the critical system requirements will be met including, but not limited, to the development, implementation and maintenance of the Agent Master File, Payment Processing, Order Tracking, Inventory Tracking and Systems Security. The response must address each of the associated Contractor Data Requirements (CDRL – See Exhibit B) identified for this section

## **ATTACHMENT 5 ORDER PROCESSING RESPONSE FORM**

**BIDDER'S NAME:** \_\_\_\_\_

**As Attachment 5**, the Bidder must provide a detailed description of how each of the critical order processing requirements will be met including, but not limited to, the provision, implementation operation and maintaining of the Order Processing, The response must address each of the associated Contractor Data Requirements (CDRL – See Exhibit B) identified for this section.

## **ATTACHMENT 6 PAYMENT PROCESSING RESPONSE FORM**

**BIDDER'S NAME:** \_\_\_\_\_

**As Attachment 6**, the Bidder must provide a detailed description of how each of the critical payment processing requirements will be met including, but not limited to, the development, implementation and maintenance of the Payment Processing, Receipt of Payments, Accounting Reports and Funds Transfer. The response must address each of the associated Contractor Data Requirements (CDRL – See Exhibit B) identified for this section.

## **ATTACHMENT 7 INVENTORY RESPONSE FORM**

**BIDDER'S NAME:** \_\_\_\_\_

**As Attachment 7**, the Bidder must provide a detailed description of how each of the critical Inventory requirements will be met to maintain adequate inventories including, but not limited to, Storage/Facilities, Inventory Levels and Security. The response must address each of the associated Contractor Data Requirements (CDRL – See Exhibit B) identified for this section.

## **ATTACHMENT 8 PROGRAM MANAGEMENT RESPONSE FORM**

**BIDDER'S NAME:** \_\_\_\_\_

**As Attachment 8**, the Bidder must provide a detailed description of how each of the critical Program Management Requirements will be met including, but not limited to, the Reports, Resources, Invoicing, Change Orders, Business Continuity, Implementation Phase, Data Protection and Phase out Period. The response must address each of the associated Contractor Data Requirements (CDRL – See Exhibit B) identified for this section.



## ATTACHMENT 9 CASH MANAGEMENT REPORTING RESPONSE FORM

**BIDDER'S NAME:** \_\_\_\_\_

**As Attachment 9**, the Contractor, and the Commercial Bank acting as a subcontractor, if applicable, must agree and sign (subsequent to award and prior to implementation) the Undertaking of Bank Deposits and Assignment of Securities agreement (Exhibit 8 of this RFP).

The Bidder agrees to sign the Undertaking of Bank Deposits and Assignment of Securities subsequent to award and prior to implementation.

yes       no

The commercial bank acting as a subcontractor, if applicable, agrees to sign the Undertaking of Bank Deposits and Assignment of Securities subsequent to award and prior to implementation.

yes       no

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## **ATTACHMENT 10**

### **FUNDS PROCESSING AND AVAILABILITY RESPONSE FORM**

**BIDDER'S NAME:** \_\_\_\_\_

**As Attachment 10, the Bidder must provide the following:**

- a. A description of how the funds availability, which is passed to the DTF, will be computed. The description must include, but is not limited to, a description of the following as it relates to funds availability:
  - availability for check deposits
  - actual float calculated on each check
  - float including fractional availability
  - float factor assigned to each account and, if based on a sample or a periodic experience, with each customer deposit
  - float factor used and how often it is re-evaluated
  - float factor assigned to all of the commercial bank, or customers based on a bank average.
  
- b. A description of how unauthorized debits, including paper remittance and EFT, presented against a DTF tax receipt account, will be prevented and reported.
  
- c. For informational purposes, the Bidder must provide a copy of their standard banking agreement(s) which it (or a commercial bank subcontractor) will seek to have DTF or OSC agree to. Submission of such agreements is for informational purposes only, and DTF and OSC may not be bound by the terms of any such agreement(s) in any subsequent contract for services in this RFP.
  
- d. The Bidder must address other issues affecting availability, including, but not limited to the following issues/questions:
  - i. If availability is determined by individual check endpoint, provide latest availability schedule that will apply to OSC and DTF (include a separate weekend schedule, if applicable). If this schedule does not pertain to checks of all dollar sizes, explain. Specify any charge for this service.
  
  - ii. Is availability assignment made continuously as the Department's checks are released for collection, or is assignment made at specific times during the day? If at specific times, state these times.
  
  - iii. List the transit deadlines for availability assignment to the DTF accounts. Include both weekday and weekend deadlines.

**ATTACHMENT 10**  
**FUNDS PROCESSING AND AVAILABILITY RESPONSE FORM cont'd**

- iv. State the willingness and capacity to provide Saturday availability.
- v. State the level of willingness to negotiate funds availability.
- vi. Quantify the direct send program for a normal weekday, as follows:
  - direct sends to Correspondents;
  - direct sends to Federal Reserve Bank; and
  - direct sends to Regional Check Processing Centers.
- vii. State how frequently updated availability schedules are published and confirm willingness to provide revised availability schedules to OSC and DTF in a timely manner.

## ATTACHMENT 11 COLLATERAL RESPONSE FORM

**BIDDER'S NAME:** \_\_\_\_\_

**As Attachment 11**, the contractor must confirm its willingness to pledge securities as outlined in Section 105 of State Finance Law or to obtain a surety bond by an insurance company with AAA rating to secure the State's interest in and depository account and any pass-through accounts to the extent deemed appropriate by OSC.

I, \_\_\_\_\_, confirm my willingness to pledge securities as outlined in section 105 of the State Finance Law or to obtain a surety bond by an insurance company with AAA rating to secure the State's interest in and depository account and any pass-through accounts to the extent deemed appropriate by OSC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## ATTACHMENT 12 WIRE TRANSFERS RESPONSE FORM

**BIDDER'S NAME:** \_\_\_\_\_

**As Attachment 12**, the Contractor, and the Commercial bank acting as a subcontractor, if applicable, must agree to sign the OSC Funds Transfer Agreement (subsequent to award and prior to implementation). Any modifications to this agreement should be identified in the proposal response. It is the sole discretion of OSC to approve any modification.

The Contractor and the Commercial bank acting as a subcontractor, if applicable, must affirm agreement to wire transfer funds from any account associated with the program to an OSC designated account.

The Contractor and the Commercial bank acting as a subcontractor, if applicable, must also describe the system for OSC to initiate/release wire transfers to the NYS General Account.

I, \_\_\_\_\_, affirm my agreement to wire transfer funds from any account associated with the program to an OSC designated account.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**ATTACHMENT A**  
**PROCUREMENT LOBBYING ACT**  
**Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines**

New York State Finance Law 139-j(6)(b) requires the DTF seek written affirmation from all Offerers as to the Offerer's understanding of, and agreement to comply with, the DTF procedures relating to permissible contacts during a Government Procurement pursuant to subdivision three of this section.

Procurement Description, Contract or Bid Number: \_\_\_\_\_

Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

e-Mail Address: \_\_\_\_\_

Offerer affirms it has read, understands and agrees to comply with the Guidelines of the New York State Department of Taxation and Finance relative to permissible contacts as required by the State Finance Law 139-j(3) and 139-j(6)(b).

By (*signature*): \_\_\_\_\_

Name (*please print*): \_\_\_\_\_

Title (*please print*): \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT B DESIGNATION OF PRIME CONTACT

The bidder designates the following individual as the prime contact for this proposal and acknowledges that this individual is authorized to respond on behalf of the bidder. This designation will last for the entire evaluation process and contract negotiations. Any request for change in the designated contact must be submitted in writing to the issuing officer designation on the cover of this RFP and must be accompanied by an updated form.

Bidder's Legal Business Name: \_\_\_\_\_

Bidder's Doing Business as Name: \_\_\_\_\_

Bidder's Federal or Taxpayer Identification Number: \_\_\_\_\_

Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Prime Contact: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

=====  
Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

=====

## ATTACHMENT C VENDOR RESPONSIBILITY FORM

**BIDDER'S NAME:** \_\_\_\_\_

Bidders must complete a Vendor Responsibility Questionnaire in response to this RFP. Bidders are invited to file the required Vendor Responsibility Questionnaire online via the OSC New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact one of the Department's designated contacts.

Please check one of the following:

- A Vendor Responsibility Questionnaire has been filed online and has been certified/updated within the last six months.
- A Vendor Responsibility Questionnaire is attached to this bid proposal.

NOTE: If a Vendor Responsibility Questionnaire has been filed online and has not been certified within the last six months, the bidder must either update/recertify the online questionnaire or submit a new paper Vendor Responsibility Questionnaire. Upon notification of award, the Contractor will be required to update/recertify the online questionnaire.



## ATTACHMENT D

### DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code

**DTF-202 (3/00)**

The New York State Tax Law and the Department of Taxation and Finance impose secrecy restrictions on:

- all officers, employees, and agents of the Department of Taxation and Finance;
- any person engaged or retained by this department on an independent contract basis;
- any depository, its officers and employees, to which a return may be delivered;
- any person who is permitted to inspect any report or return;
- contractors and workmen hired by the department to work on its equipment, buildings, or premises, or to process returns or other papers; and
- visitors to the Department's buildings or premises.

Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for anyone to divulge or make known in any manner the contents or any particulars set forth or disclosed in any report or return required under the Tax Law. Computer files and their contents are covered by the same standards and secrecy provisions of the Tax Law and Internal Revenue Code that apply to physical documents.

Any unlawful disclosure of information is punishable by a fine not exceeding \$10,000, imprisonment not exceeding one year, or both. State officers and employees making unlawful disclosures are subject to dismissal from public office for a period of five years.

Unauthorized disclosure of automated tax systems information developed by the department is strictly prohibited. Examples of confidential systems information include: functional, technical, and detailed systems design; systems architecture; automated analysis techniques; systems analysis and development methodology; audit selection methodologies; and proprietary vendor products such as software packages.

The Internal Revenue Code contains secrecy provisions which apply to federal tax reports and returns. Pursuant to sections 6103 and 7213 of the Internal Revenue Code, penalties similar to those in the New York State law are imposed on any person making an unauthorized disclosure of federal tax information. In addition, section 7213A of the Internal Revenue Code was enacted to prohibit the unauthorized inspection of returns or return information (also known as "browsing"). The unauthorized inspection of returns or return information by state employees is punishable by a fine not exceeding \$1000 for each access, or by imprisonment of not more than one (1) year, or both, together with the cost of prosecution.

I certify that I have read the above document and that I have been advised of the statutory and Department of Taxation and Finance secrecy requirements; I certify that I will adhere thereto, even after my relationship with the department is terminated.

Contractor Name: \_\_\_\_\_

Federal or Taxpayer Identification Number: \_\_\_\_\_

Address - Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP code: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name (*please print*): \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT E**  
**PROCUREMENT LOBBYING ACT**  
**Offerer Disclosure of Prior Non-Responsibility Determinations**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10) (b) and 139-k(3).

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

**ATTACHMENT E cont'd  
PROCUREMENT LOBBYING ACT  
Offerer Disclosure of Prior Non-Responsibility Determinations**

Procurement Description, Contract or Bid Number: \_\_\_\_\_

Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

e-Mail Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

1. Has any New York State agency or authority made a finding of non-responsibility regarding the Offerer in the last four years? (Please circle):

No                      Yes

**If yes, please answer the following questions:**

2. Was the basis for the finding of the Offerer's non-responsibility due to a violation of State Finance Law 139-j? (Please circle):

No                      Yes

3. Was the basis for the finding of the Offerer's non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No                      Yes

4. If you responded yes to Questions 1, 2 or 3 , please provide details regarding the finding of non-responsibility below:

Government Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Facts Underlying Finding of Non-Responsibility (Add additional pages as necessary)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT E cont'd  
PROCUREMENT LOBBYING ACT  
Offerer Disclosure of Prior Non-Responsibility Determinations**

5. Has any New York State agency or authority terminated a procurement contract with the Offerer due to the intentional provision of false or incomplete information? (Please circle):

No                      Yes

If you responded yes to the above question, please provide details regarding the termination below:

Government Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Facts Underlying Finding of Non-Responsibility: (Add additional pages as necessary)

\_\_\_\_\_  
\_\_\_\_\_

**Offerer certifies that all information provided to the DTF with respect to State Finance Law 139-k is complete, true and accurate.**

By: *(Signature)* \_\_\_\_\_

Name: *(Please print)* \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT F**  
**PROCUREMENT LOBBYING ACT**  
**Offerer's Certification of Compliance with State Finance Law 139-k(5)**

New York State Finance Law 139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law 139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Government Entity with respect to State Finance Law 139-k is complete, true and accurate.

**Offerer Certification**

I certify that all information provided to the DTF with respect to State Finance Law 139-k is complete, true and accurate.

By: *(signature)* \_\_\_\_\_

Date: \_\_\_\_\_

Procurement Description, Contract or Bid Number:  
\_\_\_\_\_

Name *(Please print)*: \_\_\_\_\_

Title: \_\_\_\_\_

Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_



# ATTACHMENT H MACBRIDE FAIR EMPLOYMENT PRINCIPLES FORM

**BIDDER’S NAME:** \_\_\_\_\_

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:  
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992, New York State, the Contractor, by submission of this bid, certifies that it and any individual or legal entity in which the bidder holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:

**(Answer Yes to one of the following, as applicable):**

Have no business operations in Northern Ireland: \_\_\_\_\_ Yes

**or**

Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity, and shall permit independent monitoring of their compliance with such Principles.

\_\_\_\_\_ Yes

## ATTACHMENT I FINANCIAL RESPONSE FORM

### Direct Fees

**BIDDER'S NAME:** \_\_\_\_\_

	Base Years		Extension Years	
	Years 1 – 3	Year 4	Year 5	Year 6
<b>Operations Fees * (Requirement VI.A):</b>		CPI-U	CPI-U	CPI-U
Fully Loaded Transaction Fee Per Roll		CPI-U	CPI-U	CPI-U
<b>Development Fees (Requirement VI.B):</b>		CPI-U	CPI-U	CPI-U
One-time development fee		CPI-U	CPI-U	CPI-U
Enhancement Fees:				
1 UAT Hourly Rate:		CPI-U	CPI-U	CPI-U
2 Programming Hourly Rate:		CPI-U	CPI-U	CPI-U
<b>Other Fees (Requirement VI.C):</b>		CPI-U	CPI-U	CPI-U
FDIC:		CPI-U	CPI-U	CPI-U

\* Fees incurred for United States Postal Service will be considered a pass-through cost and will not include any add-ons or profit.



## ATTACHMENT J FINANCIAL RESPONSE FORM

### Compensating Balances

**BIDDER'S NAME:** \_\_\_\_\_

	Base Years		Extension Years	
	Years 1 – 3	Year 4	Year 5	Year 6
<b>Operations Fees * (Requirement VI.A):</b>		CPI-U	CPI-U	CPI-U
Fully Loaded Transaction Fee Per Roll		CPI-U	CPI-U	CPI-U
<b>Development Fees (Requirement VI.B):</b>		CPI-U	CPI-U	CPI-U
One-time development fee		CPI-U	CPI-U	CPI-U
Enhancement Fees:				
1 UAT Hourly Rate:		CPI-U	CPI-U	CPI-U
2 Programming Hourly Rate:		CPI-U	CPI-U	CPI-U
<b>Other Fees (Requirement VI.C):</b>		CPI-U	CPI-U	CPI-U
FDIC:		CPI-U	CPI-U	CPI-U

\* Fees incurred for United States Postal Service will be considered a pass-through cost and will not include any add-ons or profit.