



NEW YORK STATE  
DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES

Andrew M. Cuomo, Governor

Jerome M. Hauer, Commissioner

**COMPETITIVE PROCUREMENT ENTITLED:**  
**New York Statewide Digital Orthoimagery Program**

**REFERENCE:**

**Request for Proposals Number DHSES (Orthos) 01-2013**

**CONTRACTING ENTITY:**

**NYS Division of Homeland Security and Emergency Services  
1220 Washington Ave, Bldg 7A, 4th Floor  
Albany, NY 12226**

**IMPORTANT NOTICE: A Restricted Period under the provisions of the State Finance Law relating to procurement lobbying is currently in effect for this Procurement, and will remain in effect until State Comptroller approval of the Contracts resulting from this Request for Proposals (RFP). During the Restricted Period of this Procurement ALL communications must solely be directed, in writing, to either of the following individuals and shall be in compliance with the provisions of the State Finance Law relating to procurement lobbying and all other RFP instructions. Attempts to influence the Procurement, as defined by the State Finance Law, may only be made to the Designated Agency Contact. Other communications relating to the Procurement may be directed to the Solicitation Contact (see State Finance Law, §139-j[3][a]).**

<b>Designated Agency Contact</b>	<b>Solicitation Contact</b>
Francis Winters 1220 Washington Avenue State Office Campus, Bldg. 7A Albany, New York 12226 Email: <a href="mailto:_francis.winters@its.ny.gov">_francis.winters@its.ny.gov</a>	Diane Morrone 1220 Washington Avenue State Office Campus, Bldg. 7A Albany, New York 12226 Email: <a href="mailto:ORTHORFP@dhses.ny.gov">ORTHORFP@dhses.ny.gov</a>

Any contacts and/or questions concerning this RFP must be directed in writing by e-mail or postal mail to  
[ORTHORFP@dhses.ny.gov](mailto:ORTHORFP@dhses.ny.gov)

or

New York State Division of Homeland Security and Emergency Services  
RE: RFP No. DHSES(Orthos) 01-2013  
1220 Washington Avenue, Building 7A, 4<sup>th</sup> Floor  
Albany, New York 12226

Please note, the Division of Homeland Security and Emergency Services reserves the right to change, or clarify any information or Key Dates in this Request for Proposal (RFP). Such notification will be made by posting an amendment on <http://www.dhses.ny.gov/rfp/ortho-rfp-2013.cfm>. It is the sole responsibility of Offerors to check periodically for any new information or amendments posted.

### **Key Points to Keep in Mind When Responding to this RFP**

- 1. Please read the *entire* RFP document thoroughly.** Note key items such as: dates, qualifying and mandatory requirements, services required and proposal packaging requirements.
- 2. Note the contact information of the Designated Contacts.** These are the only individuals with whom you are permitted to communicate regarding this RFP.
- 3. Take advantage of the “question and answer” period.** You may submit your questions to [ORTHORFP@dhSES.ny.gov](mailto:ORTHORFP@dhSES.ny.gov), by the question submission due date listed in the Key Dates section of this RFP. Any questions that concern confidential or proprietary information must be marked “Confidential.” If the sharing of the question and response with all Offerors will help to ensure fair competition, the question will be rephrased to eliminate information that would reveal the Offeror’s identity, as well as any confidential or proprietary information in the original question. All amendments, clarifications, and questions and answers will be periodically posted on the website at <http://www.dhSES.ny.gov/rfp/ortho-rfp-2013.cfm> and it is the Offeror’s responsibility to check periodically for any updates.
- 4. Take advantage of the Pre-Bid Webinar.** While this session is optional, as a part of the question and answer period the Pre-Bid Webinar will be an opportunity to receive a concise overview of key components of the Program and the RFP. The State will also present answers to some of the questions received before the webinar.
- 5. Completely address all qualifying and mandatory requirements and be sure to check back for any issued amendments.** To ensure you are not unnecessarily disqualified from Proposal evaluation, thoroughly read all proposal requirements and provide complete responses. The lack of clarity in a proposal will not be interpreted in the Offeror’s favor. All Contract requirements included in this RFP should be considered mandatory and all Offerors are cautioned that any such exception or objections may render their bid non-responsive at the sole option of the State. The State reserves the right to issue amendments in the form of addenda to this RFP prior to the date for proposal submissions. Make sure that all requirements are addressed and all copies are identical and complete. Make sure proper units are used when completing the Financial proposals. All amendments subsequently must be incorporated, as necessary, into the Offeror’s proposal. Failure to include this information in your proposal may result in disqualification or a reduced technical score.
- 6. Package your proposal as required in this RFP.** Make sure that your proposal conforms to the packaging requirements. Proposals not packaged accordingly may be deemed nonresponsive.
- 7. The State will notify all Offerors of the selected vendor.** Offerors whose proposals are not selected will receive written notification of the name of the Offeror selected by the State. The Offeror to whom a contract is ultimately awarded is referred to in this RFP as “Contractor.”

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## SECTION 1.

## PROJECT OVERVIEW

### **§ 1.01 BACKGROUND**

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The New York State Division of Homeland Security and Emergency Services (DHSES) is supported by the GIS Program Office (GPO) within the New York State Office of Information Technology Services (ITS), hereinafter the State. The GPO is charged with the following responsibilities:

- Leading and coordinating geographic information technologies, including the New York State Statewide Digital Orthoimagery Program (DOP);
- Coordinating the process by which critical infrastructure data is collected and maintained by the State; and
- Providing GIS support during emergencies.

The efforts of the GPO are built upon cooperation and input from a variety of entities, and focus on building strong relationships between and among the public (federal, state, and local) and the private sectors.

All Bidders are encouraged to review DHSES' web site at <http://www.dhSES.ny.gov>, ITS' website at <http://its.ny.gov/>, and the New York State Geographic Information Systems (NYS GIS) Clearinghouse website at <http://gis.ny.gov/>. For information on the orthoimagery program, Bidders are encouraged to review materials on the Clearinghouse's orthoimagery pages at <http://gis.ny.gov/gateway/mg/>.

### **§ 1.02 PROJECT SCOPE OF WORK – SUMMARY**

This project includes two (2) production years - or “annual lots” – and three (3) optional annual lots of ongoing DOP that provides complete statewide orthoimagery coverage on a phased cycle. At the time of awarding a Contract pursuant to this RFP, twelve (12) previous DOP annual lots will have been completed while a thirteenth (13th) annual lot will be underway. Accordingly, production year one (1) and two (2) of the Contract awarded pursuant to this RFP shall be referred to as the fourteenth (14<sup>th</sup>) and fifteenth (15<sup>th</sup>) annual lots, respectively. Each annual lot will be divided into several “sub-lots.”

The State requires at least four-bands (blue, green, red, and near-infrared) be captured during flight, with at least 12-bits per band. In general, the orthoimagery will vary in resolution from 2.0 Ft Ground Sample Distance (GSD) pixels in rural areas to 1.0 Ft GSD pixels for urban areas. Orthoimagery for New York City will be produced with 0.5 Ft GSD pixels. Alternate imagery types may be selected to increase the resolution.

As part of its coordination role, the State aims to coordinate DOP imagery and data capture with other imagery and data capture around the State. Toward this end, there is an option for obtaining LIDAR data. In addition, the State wishes to award a contract that will also allow the State to obtain emergency (short notice, very rapid turn-around) and on-demand (limited notice, and rapid turn-around) orthoimagery for small areas with short timelines for notification and completion.

Given the proximity of the estimated date for Contract Award and the start of the Spring 2014 flight season, the successful Bidder must be prepared to quickly complete project planning and resource allocation.

Bidders are advised that successful completion of the Contract does not guarantee nor preclude them from award of contracts for the subsequent ongoing DOP. Specifications for the services required (Contract Services) are set forth in Exhibit A “Project Scope of Work” of this RFP.

The optional extensions to this Contract will be exercised at the sole discretion of the State per RFP section 5.01 and will be subject to approval by the New York State Office of the Comptroller (OSC).

### **§ 1.03 DEFINITIONS**

Definitions for these and other terms in this document, its appendices and attachments, can be found in, Appendix J.

For the purposes of this RFP, the following terms may be used interchangeably: Bidder, Contractor, Consultant, Firm, Offeror, Proposer, and Vendor.

#### **§ 1.04 BIDDER ELIGIBILITY**

Bidders must meet all of the requirements of this Section in order to be eligible to respond to this RFP.

##### **1. Qualifications**

a. In order to be considered for evaluation/selection, a Bidder must attest using Appendix C – Verification of Minimum Qualifications that they meet the minimum qualifications set forth below and in Appendix C. Inability to meet the minimum qualifications set forth in this RFP will result in the rejection of a proposal as non-responsive.

b. A Bidder may meet the RFP requirements and the Minimum Qualifications set forth below through the Primary Bidder's qualifications or the qualifications of its subcontracting. The qualifications of all of the vendors composing the Bidder's team are applicable for the purposes of meeting the Minimum Qualifications described in this section, represented below as Minimum Requirements 1-3 unless otherwise stated. This experience must be with projects similar to the type, magnitude, and quality sought by this RFP.

###### Minimum Requirement 1

- *at least five (5) years softcopy photogrammetry production experience*

###### Minimum Requirement 2

- *at least three (3) years digital orthoimagery production experience*

###### Minimum Requirement 3

- *at least two (2) years digital camera experience*

c. Bidder, at time of bid submission and throughout the term of the Contract, must be authorized to conduct business in the State, or have filed an application for authority to do business in the State with the Secretary of State at time of bid submission. Such application must have been approved prior to Contract Award. (For details concerning this requirement, refer to: [http://www.dos.state.ny.us/cnsl/do\\_bus.html](http://www.dos.state.ny.us/cnsl/do_bus.html).) To register with the Secretary of State, contact: <http://www.dos.ny.gov/corps/index.html> . Contractor shall notify the State immediately in the event that there is any change in the above corporate status.

d. The Bidder must represent and warrant that it has completed, obtained or performed all registrations, filings, approvals, authorizations, consents and examinations required by any governmental authority for the provision of Services and that it will, in order to perform said Services during the term of the Contract, comply with any requirements imposed upon it by law.

##### **2. Sufficiency, Capacity, and Experience**

a. The Bidder must represent and warrant that it possesses adequate staffing resources, financial resources and organizational structure to perform the type, magnitude and quality of work specified in the RFP;

b. Bidder shall submit satisfactory evidence that, in the sole opinion of the State, the Bidder has the experience specified above. If the Bidder proposes that the work specified in the RFP be performed by the Bidder in combination with one or more subcontractors, the Bidder shall submit satisfactory evidence of experience working within such a multiple-firm environment. This information shall be submitted using the forms in Appendix C.

c. At least three (3) client references, as specified in Section 3.02, below, shall be provided to support the experience claims. This information shall be submitted using the forms in Appendix C.

d. Bidder shall submit the names and associated information of the employees who shall be responsible for this Contract; their function(s) in the company; title(s), and number of years of service with the Bidder's firm. This information shall be submitted using the forms in Appendix C.

- e. Bidder shall identify the employee who will be the Project Manager with overall responsibility for managing the Bidder's planning, production and delivery and who will be the single point of contact for communication with the State.
- f. At least three (3) client references shall be provided to demonstrate the requisite experience of the Bidder's Project Manager. These may be same references as supplied per item "c," above, if the Bidder's Project Manager filled the same role on those projects. This information shall be submitted using the forms in Appendix C.
- g. The individual designated to supervise the technical work of this project shall be an American Society of Photogrammetry and Remote Sensing (ASPRS) Certified Photogrammetrist. That person's certification number and date of certification must be included in the forms in Appendix C.
- h. Bidders are advised that the State's intent in having the foregoing requirements is to ensure that only qualified and reliable Bidders perform the required Contract Services. the State reserves the right to require additional information to enable it to make a determination of the Bidder's qualifications.

Failure to submit in whole or in part any of the above information regarding the Bidder's qualifications will be considered non-responsive and may result in a rejection of the Proposal of that Bidder.

**§ 1.05 BEST VALUE PROCUREMENT – TIERED EVALUATION/SELECTION**

Subject to the rights reserved under Section 4.02, below, the State will select a Bidder based on an evaluation of Proposals received in response to the RFP. As described in more detail in Section 4.02, below, the award will be made to the qualified Bidder whose Proposal is determined to provide the "Best Value" to the State, pursuant to Article XI of the State Finance Law. The award shall be based on the objective and quantifiable analysis as set out in Section 4 of the RFP with forty-percent (40%) of the overall award based on the Bidder's Financial Proposal and sixty-percent (60%) of the overall award based on the Bidder's Technical and Management Proposal.

**SECTION 2.****INSTRUCTIONS TO BIDDERS**

This Procurement is being conducted in accordance with, and is subject to, the competitive bidding laws of the State of New York (New York State Finance Law, Article XI) and the New York State ethics laws (New York State Public Officers Law, §§ 73 and 74).

**§ 2.01      PROCUREMENT TIMETABLE**

Following is the Timetable of Key Events for this RFP through Contract Award:

NOTE: This is a tentative timetable, which may be modified ONLY to address the State's needs.

<b>PROCUREMENT EVENT</b>	<b>DAY</b>	<b>DATE</b>
1. Release of RFP	Thursday	11/7/13
2. Optional Pre-Bid Webinar	1:00 p.m. ET Wednesday	11/20/13
3. Final Written Questions Due from Bidders	3:00 p.m. ET Friday	11/22/13
4. Official Response to Bidders' Questions	Wednesday	11/27/13
5. Closing Date for Receipt of Bids / Bid Opening Date	3:00 p.m. ET Thursday	12/12/13
6. Notify selected bidder and non-selected bidders	Wednesday	12/24/13
7. Contract Finalization with selected Bidder	Monday	1/6/14
8. Contract Award (Approval by the Office of the State Comptroller)	4-8 weeks from Event 7	

**§ 2.02 POST AWARD TENTATIVE TIMETABLE**

Following is the Timetable of Key Events for this Project following Contract Award:

<b>PROJECT EVENT</b>	<b>DAY</b>	<b>DATE</b>
1. Delivery of 1 <sup>st</sup> Sub-Lot of the 14 <sup>th</sup> Annual Lot of DOP	Thursday	9/11/14
2. Delivery of 2 <sup>nd</sup> Sub-Lot of the 14 <sup>th</sup> Annual Lot of DOP	Tuesday	10/14/14
3. Delivery of 3 <sup>rd</sup> Sub-Lot of the 14 <sup>th</sup> Annual Lot of DOP	Wednesday	11/12/14
4. Delivery of 14 <sup>th</sup> Annual Lot Optional Deliverables	Tuesday	02/17/15
5. Delivery of 1 <sup>st</sup> Sub-Lot of the 15th Annual Lot of DOP	Monday	9/14/15
6. Delivery of 2 <sup>nd</sup> Sub-Lot of the 15th Annual Lot of DOP	Wednesday	10/14/15
7. Delivery of 3 <sup>rd</sup> Sub-Lot of the 15th Annual Lot of DOP	Friday	11/13/15
8. Delivery of 15th Annual Lot Optional Deliverables	Tuesday	02/16/16

***NOTE: This is a tentative timetable, which may be modified ONLY to address the State’s needs.***

**§ 2.03 PROCUREMENT LOBBYING- STATE SOLICITATION CONTACT AND DESIGNATED AGENCY CONTACT**

All Bidders are required to comply with the provisions of sections 139-j and 139-k of the State Finance Law, as well as Article 1-A of the Legislative Law. For procurements within the scope of sections 139-j and 139-k of the State Finance Law, the State is required to establish a “Restricted Period” during which communications intended to influence the procurement, “contacts” as defined by section 139-j of the State Finance Law, may only be made to the GPO Designated Agency Contact, while certain other types of communications are permitted to be made to the State Solicitation Contact. Bidders and persons acting on their behalf should consult Advisory Council on Procurement Lobbying (see <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>) and the New York Temporary State Commission on Lobbying (see <http://www.jcope.ny.gov/advice/lobby.html>) for further guidance on the nature of the communications which may be made to the GPO Designated Agency Contact and the State Solicitation Contact. Additional information concerning these communications appears in Section 2.17, below.

**A. The State Solicitation Contact:**

The individual in the table on the cover page is designated as the State Solicitation Contact for this Procurement. Except for those communications that are required to be made to the Designated Agency Contact, all inquiries, questions, filings, and submission of Proposals must be directed to the State Solicitation Contact in writing. Proposals must be submitted in hard copy to the above address by First Class Mail, Hand Delivery, or Express Mail Courier Service, and may not be submitted by phone, e-mail, or facsimile.

The Solicitation Contact individual is the sole authorized contact person for the State for this RFP. Any inquiries, questions, filings, or submission of Proposals that are submitted to any other individual or physical address shall not be considered as official, binding or as having been received by the State.

**B. Designated Agency Contact:**

The individual in the table on the cover page is designated as the GPO Designated Agency Contact for this Procurement and all communications intended to influence the Procurement, “contacts” as defined by section 139-j of the State Finance Law, during the Restricted Period for this Procurement must be directed to the GPO Designated Agency Contact in writing.

**Any inquiries, questions, filings or submission of Proposals that are submitted to any other individual or physical address shall not be considered as official, binding or as having been received by the State.**

**§ 2.04 PRE-BID WEBINAR**

An optional PRE-BID WEBINAR will be held at 1:00 p.m. EST on Wednesday, November 20, 2013. The State will use the webinar to highlight key components of the Program and the RFP. The State may also answer some of the questions received before the webinar date (see Section 2.05.) The planned webinar format will include a visual presentation made through a web connection with audio provided through a phone connection.

Each prospective Bidder or prospective subcontractor must forward the names of individuals who will participate in the Pre-Bid Webinar to the State Solicitation Contact by 3:00 pm EST on Tuesday, November 19, 2013. Information on dialing into the Pre-Bid Webinar will be emailed directly to prospective Bidders who pre-register for the Pre-Bid Webinar.

**§ 2.05 SUBMISSION OF QUESTIONS**

All questions relating to the content of this RFP must be directed, in writing, to the State Solicitation Contact at the address set forth in the table on the cover page. Only those questions received prior to the Deadline for Submission of Bidder Questions as set forth in RFP, § 2.01 will be accepted. Each question must cite the particular RFP page number, section and sub-section to which it refers.

To expedite its responses, the State has provided a Question Template form (see RFP, Appendix F) which Bidders are requested to use in submitting questions regarding the RFP.

**§ 2.06 OFFICIAL RESPONSES TO QUESTIONS**

Written copies of questions accepted and answered will be sent to all potential Bidders who submitted questions, unless the potential Bidder submitting the question claims that the question is proprietary in nature and such claim is upheld by the State, on or before the **Official Written Response to Questions Release Date** as set forth in Section 2.01 of the RFP. the State will not respond to questions regarding proprietary processes of incumbent contractors, if any.

In addition, questions accepted and answered, as well as addendums to the RFP, will be posted on the DHSES website at <http://www.dhSES.ny.gov/rfp/ortho-rfp-2013.cfm>.

**§ 2.07 NOTICE OF INTEREST**

Firms are asked to return an optional Notice of Interest Form (Appendix L) by Friday, November 22, 2013. The form should indicate whether the Firm plans to submit a proposal and if not, include any reason(s) leading to the decision not to respond.

§ 2.08 SUBMISSION OF PROPOSALS

Bidder’s Proposal must satisfy all of the submission requirements of this RFP. In the event that a Bidder wishes to submit more than one proposal, each such proposal must be submitted separately and must satisfy all submission requirements of this RFP.

Bidders are solely responsible for timely delivery of their Proposal to the State prior to the stated **Closing Date for Receipt of Bids** as set forth in Section 2.01 of the RFP. Delays in United States Postal Service deliveries or any other means of transmittal, including couriers or agents of the State, shall not excuse late Proposal submissions. Phone, facsimile, and e-mail submission of Proposals will **not** be accepted for this RFP.

Proposals accepted in response to this RFP will be subject to separate administrative, technical, and financial evaluations and will not be opened publicly. Any Proposal received at the specified location, set forth on the RFP cover page, after the **Closing Date for Receipt of Bids**, as set forth in Section 2.01 of the RFP, will be considered a late Proposal. A late Proposal shall not be considered for award and may be returned, unopened to the sender. The State reserves, at its sole discretion, the right, at any time, to postpone or cancel the scheduled time for receipt of Proposals.

§ 2.09 FIRM OFFER (PROPOSAL EFFECTIVE PERIOD)

Each Bidder must hold its offer firm and binding for a period of at least three hundred sixty-five (365) days from the **Closing Date for Receipt of Bids** as set forth in Section 2.01 of the RFP. In the event that a contract is not approved by OSC within the three hundred sixty-five (365) day period, Bidder offers shall remain firm and binding until a contract is approved by OSC, unless the Bidder delivers to the State written notice of withdrawal of its Proposal.

§ 2.10 PROPOSAL PACKAGING

The Proposal should be sent in a single shipping carton, but must be organized in **three (3) parts**: (1) *Administrative Proposal*; (2) *Technical and Management Proposal* and (3) *Financial Proposal*. Therefore, each part must be bound and packaged in separate, sealed envelopes/containers. Electronic copies of the corresponding Bidder’s Administrative Proposal, Technical Proposal, and Financial Proposal (collectively, Submissions) must accompany each hard copy submission. **To facilitate the evaluation process, please submit four (4) original hard copies and one (1) electronic copy (Disk, DVD, or CD) of Technical and Management Proposal; two (2) original hard copies and one (1) electronic copy (Disk, DVD, or CD) of Financial Proposal; and three (3) original, two (2) hard copies and one (1) electronic copy (Disk, DVD, or CD) of the Administrative proposal.** Packages containing each Submission must be bound separately and clearly identified as to contents. Electronic submissions must be in Microsoft Word, Excel, Project and Visio 2000 and/or Adobe Acrobat, as applicable.

Each package (i.e., Administrative Proposal, Technical and Management Proposal, and Financial Proposal) must have a label on the outside of the package or shipping container outlining the following information:

<p><i>Proposal Address Label:</i>  <b>RFP – DHSES (Orthos) 01-2013</b>  <b>BIDDER NAME</b>  <b>BIDDER ADDRESS</b>          Indicate package contents, as applicable:  <b>ADMINISTRATIVE, TECHNICAL AND MANAGEMENT or FINANCIAL PROPOSAL</b></p>
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Bidder assumes all risk of late delivery associated with the Submissions not being identified, packaged or labeled in accordance with the foregoing requirements. In the event that the Bidder fails to provide such information on the cover of the sealed packages, the State reserves the right to open the package to determine its contents. Bidder shall have no claim against the State arising from such opening and such opening shall not affect the validity of the Procurement. Notwithstanding the State’s right to open the package to ascertain the contents, Bidder assumes all risk of late delivery associated with the Submissions not being identified, packaged or labeled in accordance with the foregoing requirements.

## § 2.11 PROPOSAL FORMAT

Submissions must be complete and legible. Information required by the RFP must be supplied by the Bidder on the forms or in the format specified in the RFP. Bidders are cautioned to verify their Proposals before submission, as amendments to Proposals or requests for withdrawal of Proposals received by the State after the Proposal Due Date and Time, may not, in the sole discretion of the State, be considered.

### A Language/Currency

All offers (tenders), and all Submissions provided in response to this RFP shall be written in the English language with quantities expressed using Arabic numerals. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$ US). Any Proposal received which does not meet the above criteria may be rejected.

### B Table of Contents

Each Submission must include a "Table of Contents" that follows the headers set forth in Section 3 of the RFP.

### C Index Tabs

Each major section of the Submission must be labeled with an index tab that identifies the title of the major section/part as it is named in the "Table of Contents."

### D Page Numbering

Each page of each Submission must be dated and numbered consecutively from the beginning of the Submission through all appended material.

## § 2.12 TAXES

Unless otherwise specified in the RFP, the quoted rates shall include all taxes applicable to the transaction. Purchases made by the State of New York are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, invoices issued by the Contractor pursuant to the Contract must reference the Contract in order to be considered sufficient evidence that the sale by Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Contractor.

## § 2.13 EXTRANEOUS TERMS

State law prohibits the State from awarding a contract based upon material deviations from the specifications, terms, and conditions set forth in this RFP. Therefore, extraneous terms and conditions are proposed solely at the Bidder's risk as they may be deemed material deviations by the State and may render the Proposal non-responsive, resulting in its rejection.

Proposed additional, supplemental, "or equal" or alternative terms (Extraneous Term[s]) may only be considered by the State to the extent that such Extraneous Term(s) constitute non-material deviations from the requirements set forth in the RFP. If the Bidder proposes to include Extraneous Terms in its official Proposal, the Bidder must meet all of the following requirements:

A Each proposed Extraneous Term must be specifically enumerated in a separate section of the applicable submission (Administrative, Technical and Management, or Financial) labeled "Additional/Extraneous Terms," using the format set forth in RFP, Appendix E;

B The "Extraneous Terms" section must be a writing prepared by Bidder and may not include any pre-printed literature or vendor forms;

C The writing must identify by part, section and title the particular RFP requirement (if any) affected by the Extraneous Term; and

D The Bidder shall specify the proposed Extraneous Term and the reasons therefore.

Only those terms meeting the above requirements (A) through (D) shall be considered as having been submitted as part of the Bidder's Proposal.

**Extraneous Term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, standard license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Proposal, or that, in the State's sole judgment, have not been submitted in compliance with the above requirements (A) through (D), will not be considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal, but rather will be deemed by the State to have been included by Bidder for informational or promotional purposes only.**

Absent the State's express written acceptance and incorporation of an Extraneous Term, acceptance and/or processing of the Proposal shall not constitute the State's acceptance of Extraneous Term(s) or be deemed a waiver of the State's rights set forth in this section.

#### **§ 2.14 TRADE SECRET MATERIALS AND CRITICAL INFRASTRUCTURE INFORMATION**

##### **NOTICE TO EACH BIDDER'S LEGAL COUNSEL:**

Proposals submitted to the State in response to this RFP are subject to the New York State Freedom of Information Law (Public Officers Law, Article 6; hereinafter FOIL). Pursuant to section 87(2)(d) of FOIL, records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise" may be exempt from disclosure. In addition, pursuant to section 89(5)(a)(1-a) of FOIL, records or portions thereof that contain critical infrastructure information may be exempt from disclosure ("Critical infrastructure" is defined in §86[5] of FOIL). **A Bidder must follow the procedures in Section 5.20(D) of the RFP, if it intends to seek an exemption from disclosure under FOIL of either or both types of material.** Where such claimed material is embedded in the Proposal, it shall be the responsibility of the Bidder, at its sole cost and expense, to submit redacted versions of the Proposal within ten (10) days of a request by the State.

#### **§ 2.15 COMMITMENT TO FAIR, OPEN, AND COMPETITIVE PROCESS**

the State strives to assure a fair, open and competitive process to all potential Bidders qualified to respond to this RFP. In the event that any prospective Bidder has a complaint or objection to the RFP requirements, the procurement process or any matter affecting the submission of a Proposal, the Bidder is encouraged to contact the Designated Agency Contact listed in the table on the cover of the RFP immediately to resolve the matter.

#### **§ 2.16 ETHICS COMPLIANCE**

Contractor, its officers, employees, agents and subcontractors (if any) shall comply with the requirements of Public Officers Law § 73 and § 74, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with these provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.

#### **§ 2.17 PROCUREMENT LOBBYING**

As noted in Section 2.03, above, sections 139-j and 139-k of the State Finance Law impose certain restrictions on communications between the State and a vendor during the procurement process. Vendors are restricted from making oral, written or electronic contacts with New York State employees other than the individuals identified in Section 2.03, above, until the Office of the State Comptroller (OSC) has approved the Contract. Statutory exceptions to vendor contact with other than the designated point of contact are listed below:

- Submission of a written proposal in response to this procurement;
- Submission of written questions prior to the proposal due date;
- Complaints filed by a vendor stating that the designated point of contact has failed to respond in a timely manner;
- Negotiations following Contract award;
- Debriefings to vendors that were not award recipients; and

- Filing of an appeal or protest.

New York State employees other than the designated point of contact who are contacted by a vendor are required to obtain and record certain information when contacted that could result in a finding of non-responsibility against the vendor. Such a finding can result in a rejection of a contract award, and in the event of two findings within a four (4) year period, the vendor would become debarred from obtaining New York State contracts. Further information about these requirements can be found at:

<http://www.ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html> .

The State Finance Law also requires that every procurement over \$15,000 include a certification by the vendor that all information provided to the agency is complete, true, and accurate with regard to prior non-responsibility determinations within the past four years based on (i) impermissible contacts or other violations of State Finance Law Section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity. See the attachments for the certification form.

*The State reserves the right to terminate the award resulting from this procurement in the event it is found that the certification filed by the Bidder in accordance with section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the award recipient.*

## § 2.18 M/WBE UTILIZATION GOAL REQUIREMENTS FOR DHSES\GPO CONTRACTS

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 of Minority and Women's Business Development  
633 Third Avenue, 33<sup>rd</sup> Floor  
New York, NY 10017  
Phone: (212) 803-2414  
<http://www.esd.ny.gov/MWBE.html>

Offerors are required to submit a Utilization Plan with their proposal. The Utilization Plan shall list NYS Certified Minority and Women-owned business enterprises which the Contractor intends to use to perform the State contract and a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified Minority and Women-owned enterprises on the State contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority-or women-owned business. **Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the Division's Administration Unit.**

### a. Participation Levels

The Contractor agrees to make good faith efforts to promote and assist the participation of certified minority-business enterprises (MBE) as subcontractors and suppliers on this agreement for the provision of services and materials in the amount of 10% of the total dollar value of this agreement, and women-owned business enterprises (WBE) as subcontractors and suppliers on this agreement for provision of services and materials in the amount of 10% of the total dollar value of this agreement, for a total of 20%.

Any percentages established in a State Contract are subject to the requirements of Article 15-A of the Executive Law and the regulations published pursuant to thereto (which from time to time may be amended); and the parties

agree as a condition of the State Contract to be bound by the provisions of Section 316 of Article 15-A of the Executive Law.

Please address your ability to obtain participation levels in response to this RFP using **Appendix B Part-Five of this document in order to fully comply with Article 15-A of the New York State Executive Law and 5 NYCRR Part 143.**

a. Guidelines for Utilization

M/WBE participation in various types of subcontracts, supply, leasing and other activities may be considered by the Contractor.

b. Reports

The Contractor is required to complete and submit an M/WBE Schedule of Utilization listing participation of any certified M/WBEs on this contract if goals other than 20 % are established.

Any modification in M/WBE utilization should be forwarded on a revised M/WBE Schedule of Utilization. For purposes of this section, modification means those changes which reduce or increase the dollar amount to be actually performed by a M/WBE, a change in the type of work to be performed, or the addition of other M/WBEs.

**§ 2.19 USE OF BIDDER SUBMISSIONS**

All materials submitted by the Bidder become the property of the State and may be returned at its sole discretion. The State is not liable for any cost incurred by a Bidder in the preparation and production of any Proposal, or for any work performed prior to the execution and approval of the Contract. To the extent permitted by law, the contents of Proposals shall not be disclosed, except for purposes of evaluation, prior to approval of the Contract by OSC. Selection or rejection of any Proposal does not affect these rights.

**§ 2.20 AWARD OF CONTRACT**

The State expects to award one contract as a result of this RFP; however, the State reserves the right to not award any contracts, at its sole discretion.

The State anticipates making a final decision on the selection of Contractor(s) as indicated in Section 2.01. Notification of selection/non-selection will be provided to Bidders.

The Request for Proposals (including all attachments and appendices) and all amendments/clarifications thereto, and the proposal submitted by the successful Firm and any clarifications thereto, will serve as the basis for, and will be included as appendices to, the contract(s) with the State. Contract(s) defining all Deliverables and the specific responsibilities of the Contractor(s) will be drafted by the State.

In the event an agreement cannot be made with the highest rated qualified Bidder, the State has the right to negotiate with the next highest rated qualified Bidder.

The delivery of services based on an approved contract is expected to commence as set forth in Section 2.02. **Prospective bidders are advised to consider this date relative to the typical Spring leaf-off flight window in New York, which ranges from late March into early May.**

Contract award is subject to approval of the Office of the State Comptroller.

**§ 2.21 NOTIFICATION OF INTENT TO AWARD**

The successful Bidder will be advised of selection by State through the issuance of a formal written correspondence indicating proposed award. All Bidders shall be notified of the selection or rejection of their Proposals. After contract award, written requests for release of Procurement related materials should be directed to:

RFP – DHSES (Orthos) 01-2013 - NY Statewide Orthoimagery Program

New York State Division of Homeland Security and Emergency Services  
ATTENTION – Records Access Officer  
1220 Washington Ave, Bldg 7A, 4th Floor  
Albany, NY 12226

**§ 2.22 DEBRIEFING**

Unsuccessful Bidders shall be notified upon the State's selection of Contractor(s). Consistent with the New York State Procurement Guidelines, a Bidder not selected for award may request a debriefing to discuss the evaluation of its Proposal.

Each unsuccessful Bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing.

Within five (5) days of receiving notification that its Proposal was not selected, an unsuccessful Bidder may submit a written request for a debriefing to the State Solicitation Contact at the address set forth in the table on the cover of this RFP.

The debriefing shall be scheduled within ten (10) business days of receipt of written request by the State or as soon after that time as practicable under the circumstances.

**§ 2.23 PRESS RELEASES**

Press releases by Bidders relating to this RFP, selection, or rejection, or the Contract are subject to the provisions of Section 5.20(C), below.

## SECTION 3.

## MANDATORY SUBMISSIONS

### BIDDER NOTICE

Each Bidder is under an affirmative duty to inform itself by personal examination of the specifications and by such other means as it may select, of the character, quality, and extent of the work to be performed and the conditions under which the contract is to be executed.

Each Bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the work will be accepted by the State as an excuse for any failure or omission to fulfill every detail of all the requirements of the documents governing the work.

Any Bidder in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit to the State Solicitation Contact, a written request for an interpretation thereof. If a major change is involved on which all Bidders must be informed, such request for interpretation shall be delivered, in writing, by the **Deadline for Submission of Bidder's Questions** stated in Section 2.01 of the RFP. Any interpretation of the proposed documents will be made only by an addendum duly issued. A copy of such addendum will be made available on the RFP website. Any addendum issued during the time of competitive procurement shall be included in the RFP and in closing a contract will become a part thereof.

Any verbal information obtained from or statements made by representatives of the State at the time of examination of the documents or site shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued in writing to all Contractors shall become a part of the contract. The State shall not be responsible for verbal instructions.

This RFP is comprised of pages numbered sequentially. If it is determined that a page(s) is missing or otherwise defective, the Bidder must contact the State immediately so that a corrected copy can be issued to the Bidder. Incomplete Proposals which may be a result of a defective or incomplete RFP will be subject to disqualification. It is the Bidder's responsibility to ensure that all pages have been included in the RFP received.

### **THE SUBMISSIONS REQUIRED IN THIS SECTION 3 AS SET FORTH BELOW ARE MANDATORY.**

Proposals must be submitted in hard copy in accordance with the instructions in RFP and may not be submitted by phone, e-mail or facsimile. The Proposal must contain three (3) distinct submissions:

<i>Administrative Proposal</i>	(Section 3.01, below)
<i>Technical and Management Proposal</i>	(Section 3.02, below)
<i>Financial Proposal</i>	(Section 3.03, below)

#### **§ 3.01 ADMINISTRATIVE PROPOSAL**

**\*\*DO NOT INCLUDE ANY COST DATA IN THE ADMINISTRATIVE PROPOSAL\*\***

#### **SUBMISSION INSTRUCTIONS:**

The Bidder must respond to all mandatory sections of the Administrative Proposal in the specified format set forth in RFP, **Appendix B**. The Administrative Proposal must be furnished in hard copy, with electronic version in Microsoft Word and/or Adobe Acrobat, as applicable. In the event of a discrepancy, the hard copy shall govern.

The Administrative Proposal must contain the following information, in the order enumerated below:

#### **A Formal Offer Letter and Cover Sheet**

At this part of its Administrative Proposal, the Bidder must submit a formal offer in the form of the Formal Offer Letter as set forth in RFP, Appendix B, Part 1. The Formal Offer Letter must be signed and executed by an individual with the capacity and legal authority to bind the Bidder in its offer to the State. The Bidder must accept substantially the terms and conditions as set forth in Section 5 of the RFP, and Standard Clauses for New York State Contracts in RFP, Appendix A and agree to enter into a contractual agreement containing, at a minimum, the terms and conditions identified therein. (Note: Any exceptions to said terms and conditions must be identified as Extraneous Terms pursuant to Section 2.13 of the RFP) If a Bidder's Proposal includes the services of a subcontractor(s), the Bidder shall be required to assume responsibility for those services as "Prime Contractor." The State will consider only the Prime Contractor in regard to contractual matters.

**B Bidder Qualification Certification**

At this part of its Administrative Proposal, the Bidder must submit an executed Bidder Qualification Certification in the form set forth in RFP, Appendix B, Part 2, demonstrating that it meets or exceeds the criteria for eligibility to bid. A person legally authorized to bind the entity submitting the Proposal must execute this certification.

**C Bidder Responsibility Certification and Questionnaire**

At this part of its Administrative Proposal, the Bidder must submit an executed Bidder Responsibility Certification and Questionnaire in the form set forth in RFP, Appendix B, Part 3, demonstrating that it is a responsible bidder. A person legally authorized to bind the entity submitting the Proposal must execute this certification. Notwithstanding the fact that the Bidder remains responsible for the services to be provided by subcontractors, the Bidder must also submit an executed Bidder Responsibility Certification and Questionnaire for any subcontractor who will perform work on this project where the subcontract will equal or exceed \$100,000 over the life of the Contract.

**D Conflicts of Interest**

At this part of its Administrative Proposal, the Bidder shall include a Conflicts of Interest statement in the form set forth in RFP, Appendix B, Part 4, affirmatively stating that, at the time the Proposal is submitted, Bidder knows of no factors existing at time of Proposal submission or which are anticipated to arise thereafter, which would constitute a potential conflict of interest in successfully meeting the contractual obligations set forth herein, including but not limited to:

1. No potential for conflict of interest on the part of the Bidder due to prior, current, or proposed contracts, engagements, or affiliations; and
2. No potential conflicts in the sequence or timing of the proposed award under this RFP relative to the timeframe for service delivery, or personnel or financial resource commitments of Bidder to other projects.

**E Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and Certified Minority/Women-Owned Businesses**

At this part of its Administrative Proposal, the Bidder shall include the forms set forth in RFP, Appendix B, Part 5.

**F Annual Report - Each Offeror must provide a copy of its firm's most recent annual report and a recent copy of a financial statement prepared by an outside organization. In addition, each Offeror must demonstrate that it has sufficient working capital to front-end the funding needed to support projected contract expenses for a minimum of 3 months. Documentation to this effect must be submitted.**

§ 3.02 TECHNICAL AND MANAGEMENT PROPOSAL

**\*\*DO NOT INCLUDE ANY COST DATA IN THE TECHNICAL AND MANAGEMENT PROPOSAL \*\***

**SUBMISSION INSTRUCTIONS:**

The Bidder must respond to all mandatory sections of the Technical and Management Proposal in the specified format set forth in RFP, Appendix C. The Technical and Management Proposal must be furnished in hard copy, with electronic version in Microsoft Word, Excel, Project and Visio 2000 and/or Adobe Acrobat, as applicable. In the event of a discrepancy, the hard copy shall govern.

The Technical and Management Proposal must contain the following information, in the order enumerated below:

**A Organizational Overview**

At this part of its Technical and Management Proposal, Bidder must provide an Organizational Overview that contains the information solicited of Bidders as set forth below and in the form contained in RFP, Appendix C, Part 1.

The Organizational Overview should consist of a succinct statement outlining corporate/business history including a general mission statement, the overall number of employees per position, and other general information about the Bidder.

Specifically, the Bidder must

- Provide evidence that it has maintained an organization capable of providing the experienced technical personnel sought by this RFP.
- Provide evidence that the Bidder has been in continuous operation for at least the past three (3) years.
- Provide a statement of previous experience that qualifies the Bidder to provide the required Services.

Note: As noted in Section 3.01(A), above, the Contractor must assume responsibility as Prime Contractor for the performance of the work specified in this RFP. Proposed subcontractors must be identified at time of Proposal submission. All subcontracting is subject to the provisions of Section 5.30, below. Use of any subcontractors not identified in the Proposal is only allowed subject to the prior written approval of the State.

In addition, the Bidder must specify its agreement to and, as applicable, explain how it will:

- a. Maintain an adequate organizational structure and resources sufficient to discharge its contractual responsibilities including monitoring and completing deliverables, invoicing, and billing issues.
- b. Provide for normal day-to-day communications and maintain a Contractor Project Manager, as described in Section A.2.1 of Exhibit A, to maintain proper communication and coordinate the performance of all contractual responsibilities. This individual must be identified and his or her contact information provided upon Contract award.
- d. Attend or participate in meetings as needed relating to Contract performance.
- e. Cooperate fully with the State's staff, its advisors, and any other contractors and/or subcontractors who may be engaged by the State relative to the Services.
- f. Recognize and agree that any and all work performed outside the scope of the Services as set forth in the RFP, shall be deemed by the State to be gratuitous and not subject to charge by the Contractor.

**B Project Overview**

At this part of its Technical and Management Proposal, Bidder must provide a Project Overview that contains the information solicited of Bidders as set forth below and as contained in RFP, Appendix C, Part 2.

Services under the Contract will be those described in RFP, Exhibit A.

The Project Overview shall be in the form of a narrative description of the concise process that the Bidder proposes be used when providing Services to the State and must include:

- a. The Bidder's plans for Lot 14 production given the short period between anticipated Contract Award and the Spring 2014 flight season;
- b. Resource and time estimates for project production stages for the Lot 14 and Lot 15 proposed coverages.

### **C Verification of Minimum Qualification**

In this part of its Technical and Management Proposal, Bidder must certify that it has the minimum qualifications to perform the Services under the Contract as set forth and contained in RFP, Appendix C, Part 3.

### **D Bidder's Prior or Current Project and Project Manager References**

In this part of its Technical and Management Proposal, Bidder must provide information which demonstrates that Bidder can successfully undertake and support the timely provision of the Contract Services described in this RFP, in the Project Reference form contained in RFP, Appendix C, Part 4. The Bidder must provide a minimum of three (3) (maximum of five [5]) prior and/or current project experience(s) (Project Reference) in the specified format. Project References should reflect the Bidder's ability to provide services of similar scope, size, and complexity to that as set forth herein this RFP.

In addition, in this part of its Technical and Management Proposal, Bidder must provide information which demonstrates that its proposed Project Manager can successfully undertake and support the timely provision of the Contract Services described in this RFP, in the Project Manager form contained in RFP, Appendix C, Part 4. The Bidder must provide a minimum of three (3) (maximum of five [5]) prior and/or current project experience(s) (Project Management Reference) in the specified format. Project Management References should reflect the Bidder's Project Manager's ability to provide relevant services on projects of similar scope, size, and complexity to that as set forth herein this RFP.

The Bidder shall be solely responsible for providing contact names and phone numbers for each Reference **and ensuring that each Reference is readily available to be contacted by the State between the Bid Opening Date and the Notification of Selected Bidder.** If more than three (3) references are provided, the State will attempt to conduct reference checks with only three (3) of the references provided. It will be in the State's discretion as to which three (3) references are contacted in the event more than three (3) are provided. If the State is unsuccessful in contacting one or more of these three (3) references, the State will attempt to conduct a reference check of a fourth reference, and, if required, a fifth reference in an attempt to conduct at least three (3) reference checks of the Bidder. **If the State is unable to contact three (3) references, a Bidder's score will be negatively impacted.**

### **§ 3.03 FINANCIAL PROPOSAL**

**\*\*DO NOT INCLUDE ANY NARRATIVE DESCRIPTION OF THE SERVICES, CLARIFICATIONS, OR CAVEATS IN THE FINANCIAL PROPOSAL \*\***

#### **Submission Instructions:**

The Bidder must respond to all sections of the Financial Proposal in the format specified in the RFP, Appendix D. The Financial Proposal must be furnished in hard copy, with electronic version in Microsoft Excel. When completing the Financial Proposal, the Bidder should consult the RFP for descriptions of the deliverables and services, such as Exhibit A. In the event of a discrepancy between the hard copy and electronic copy, the hard copy shall govern.

## SECTION 4.

## **BID EVALUATION AND AWARD**

### **§ 4.01 BEST VALUE BASIS**

the State will evaluate Bidders' Proposals using the evaluation methods, procedures, and criteria contained in this section. Pursuant to Article XI of the State Finance Law, the basis for award shall be on a "Best Value" basis. As defined in section 163(1)(j) of the State Finance Law, "Best Value" means the basis for awarding Contracts to a responsible and responsive Bidder whose offer optimizes quality, cost, and efficiency, and which is consistent with the best interests of the State. The award of the contract resulting from this RFP will be made to the qualified Bidder whose Proposal is determined to provide the "Best Value" to the State as described in Section 4.02, below. The award shall be based on the objective and quantifiable analysis as described herein this Section 4 of the RFP, with forty percent (40%) of the overall award based on the Bidder's Financial Proposal and sixty percent (60%) of the overall award based on the Bidder's Technical and Management Proposal.

### **§ 4.02 EVALUATION/SELECTION PROCESS**

The State will use an evaluation process which separates Technical and Management Proposal evaluation from Financial Proposal evaluation. The separate evaluation teams will not have access to materials from the other proposal type. A third team will serve to coordinate the procurement and will have access to both sets of evaluation results.

#### **1st Level: Pass/Fail Screening**

Each Proposal will be screened on a pass/fail basis for completeness and conformance to the submission requirements stated in the RFP. Proposals that do not pass this 1<sup>st</sup> Level Pass/Fail Screening will be deemed non-responsive and removed from further consideration.

#### **2nd Level: Technical and Management Proposal Evaluation (60% of Overall Bid Score)**

The Technical and Management Proposals of those Bidders who pass the 1<sup>st</sup> Level Pass/Fail Screening will be evaluated by the State based on their content and responsiveness; references provided; and the Bidder's and its proposed staff's qualifications, experience, and ability, and scored based on a weighted scoring system.

#### **3rd Level: Financial Proposal Evaluation (40% of Overall Bid Score)**

The Financial Proposals of those Bidders who pass the 1<sup>st</sup> Level Pass/Fail screening will be evaluated by the State. the State will examine the Financial Proposal documents and review them for responsiveness to cost requirements. If a financial Proposal is found to be non-responsive, that proposal will not receive a cost score and will be eliminated from consideration.

The State shall calculate a "Total Projected Cost" for each responsive Bidder based upon the Bidder's rates quoted during the initial term of the Contract against predetermined estimated utilization factors. The financial score of each Bidder will be determined based on the total cost for the mandatory, alternate, and optional deliverables on the Cost Forms, and based on a formula determined by the State prior to the opening of bids.

#### **Final Proposal Ranking**

The results of the second and third level evaluations will be combined to calculate the Bidder's Final Total Combined Score. The Bidders will then be ranked from highest score to lowest score.

Contract award will be made to that responsive and responsible Bidder whose Proposal achieves the highest Total Combined Score. Should two (2) or more otherwise responsive and responsible Bidders achieve the highest Total Combined Score, the determining factor for purpose of selection will be Bidders' Financial Proposal scores and the Bidder with the lowest Financial Proposal will be selected.

## **State Rights and Prerogatives:**

The State reserves the right to:

- at any time prior to Contract execution, withdraw or award the RFP in whole or in part.
- at any time prior to Contract execution, accept or reject any and all Proposals, or separable portions of Proposals, and waive minor irregularities and/or omissions in Proposals if the State determines the best interests of the State will be served.
- in its sole discretion, accept or reject illegible, incomplete or vague Proposals and its decision shall be final.
- during the evaluation process, to seek clarification information from a Bidder for the purpose of assuring the State's full understanding of the Bidder's responsiveness to the RFP requirements. This clarification information, if required in writing by the State, must be submitted in writing in accordance with formats as prescribed by the State at the time said information is requested and, if received by the due date set forth in the State request for clarification, shall be included as a formal part of the Bidder's Proposal. Failure to provide required information by its associated due date may result in rejection of the Bidder's Proposal. Both oral and written clarifications, if any, will be considered in the Proposal evaluation process. Nothing in the foregoing shall mean or imply that the State is under any obligation to seek or allow clarifications as provided for herein.
- seek revisions from all Bidders determined to be susceptible of being selected for contract award.
- eliminate mandatory requirements unmet by all Bidders, or to negotiate additional terms and conditions in the Contract which are to the State's advantage.
- amend the RFP. If it becomes necessary to revise any part of the RFP, addenda will be posted to the RFP pages at <http://www.dhSES.ny.gov/rfp/ortho-rfp-2013.cfm>.
- conduct contract negotiations with the next Bidder(s) capable of receiving award should the State be unsuccessful in executing a contract with the selected Bidder(s) within the timeframe specified; such timeframe to be determined solely by the State based on the best interests of the State.
- for the purpose of ensuring the completeness and comparability of Proposals, to analyze submissions and make adjustments or normalize submissions in the Proposal(s), including the Bidder's technical assumptions, and underlying calculations and assumptions used to support the Bidder's computation of costs, or to apply such other methods, as it deems necessary to make level comparisons across Proposals.
- use the following in the course of evaluation and selection under this RFP: (i) Proposals; (ii) information obtained through the State's investigation of Bidder(s), including the Bidder's and its proposed staff's qualifications, experience and ability; (iii) Bidders' financial standing; (iv) any information pertinent to the bid evaluation which may be obtained or received by the State; and (v) any material or information submitted by the Bidder(s) in response to any the State requests for oral or written clarifying information.
- disqualify any Bidder whose conduct and or Proposal fails to conform to the requirements of the RFP.

## SECTION 5.

## TERMS AND CONDITIONS

The RFP, the Bidder's Proposal and the contract award that results from this RFP are subject to and incorporate the following terms and conditions. Additionally, the contract that results from the RFP (Contract) between the State and the selected Bidder (Contractor), collectively hereinafter referred to as the Parties, shall substantially contain the terms and conditions set forth in this Section 5 of the RFP:

### **§ 5.01 CONTRACT TERM**

The Contract shall commence upon approval by OSC. The initial term of the Contract shall end on August 31, 2016, with up to three (3) optional one (1) year extension periods. Said optional extensions are exercisable at the sole discretion of the State. Such extension options may be exercised by the State in any grouping(s) of annual renewals as the State desires, but may not be for less than one year at a time, and may not exceed three (3) years in aggregate. The State will provide the contractor with sixty (60) days' notice of the intent to exercise the option to extend the contract. Pricing during said extension(s) shall be in accordance with the rates provided in the Contract, or at lower rates as negotiated between the State and the Contractor.

### **§ 5.02 WAIVER, MODIFICATION, EXECUTION, OR SEVERABILITY OF CONTRACT**

No waiver or modification of the contract or any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the parties hereto, and no evidence of any waiver or modification shall be offered or received in evidence in any action between the parties hereto arising out of or affecting the contract, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of the paragraph may not be waived except as herein set forth.

The written contract shall contain the sole and entire agreement between the parties and shall supersede any and all other agreements between the parties.

The parties hereto shall execute such other further documents as may be required to effectuate the terms of the contract.

In the event that any provision of the Agreement shall be declared void, voidable, illegal or invalid for any reason, such provision shall be of no force and effect only to the extent that it is so declared void, voidable, illegal or invalid. All of the provisions of the Agreement not specifically found to be so deficient shall remain in full force and effect.

### **§ 5.03 EXECUTORY PROVISION/CONTRACT FORMATION**

Section 112 of the State Finance Law requires that any contract made by a State Agency which exceeds fifty thousand dollars (\$50,000) in amount be first approved by OSC before becoming effective. Execution by the successful Bidder shall not be deemed final execution of the Contract. The Parties recognize that the Contract is wholly executory until and unless approved by OSC. The Contract will be deemed executed upon, and will not be considered fully executed and binding until, receipt of approval by the AG and OSC. The State is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by OSC. Additionally, no cost will be incurred by the State for the Contractor's participation in any pre-contract award activity.

### **§ 5.04 GOVERNING LAW**

The laws of New York State shall govern the RFP and the Contract. Actions or proceedings arising there from shall be heard in a court of competent jurisdiction in New York State. The terms of Appendix A, Standard Clauses for New York State Contracts, are expressly incorporated in the RFP and the Contract.

#### **§ 5.05 INTEGRATION, MERGER AND ORDER OF PRECEDENCE**

The Contract shall be comprised solely of the following documents which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:

1. Appendix A: Standard Clauses for New York State Contracts;
2. Any Amendments to the Contract;
3. The Contract, including all exhibits, attachments, and appendices;
4. The RFP, including all appendices and attachments, and any and all modifications and clarifications thereto; and
5. The Contractor's Proposal and any clarifications thereto.

**Only documents expressly enumerated above shall be deemed a part of the Contract, and references contained in those documents to additional Contractor documents, including, but not limited to, standard licensing agreements, not enumerated above shall be of no force and effect.**

All prior agreements, representations, statements, negotiations and undertakings are superseded. All statements made by the State shall be deemed to be representations and not warranties.

#### **§ 5.06 CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS**

The Contractor is responsible for providing Services, in accordance with the Project Scope of Work, as set forth in RFP, Exhibit A, and for meeting all Contract obligations set forth in the Contract, including all exhibits and appendices, and any subsequent amendments mutually agreed to in writing between the Parties. Contractor acknowledges that the Contract is being entered into by the State in reliance on Contractor's representations concerning the particular qualifications, experience, financial standing, management expertise and technical expertise of the Contractor and its staff providing Services under the Contract.

Throughout the Term of the Contract, in addition to the requirements of the section 138 of the State Finance Law (requiring the State's approval of subcontractors), in the event that there is a substantial or material change, as defined below, in the ownership or financial viability of the Contractor, its corporate affiliates, subsidiaries or divisions, the Contractor is required to provide notice and details of any such change to the State in writing immediately when such is first known by Contractor, its corporate affiliates, subsidiaries or divisions, or subcontractors.

"Substantial" or "material" change shall be defined to include, but not be limited to, sale, acquisitions, mergers or takeovers involving the Contractor, its corporate affiliates, subsidiaries or divisions or partners which result in a change in the controlling ownership or assets of such entity after the submission of the Proposal; or entry of an order for relief under Title 11 of the United States Code; the making of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in bankruptcy of Contractor's, its corporate affiliates, subsidiaries or divisions, or partners' business or property; or action by Contractor, its corporate affiliates, subsidiaries or divisions, or partners under any state insolvency or similar law for the purposes of its bankruptcy, reorganization or liquidation; or court ordered liquidation against Contractor, its corporate affiliates, subsidiaries or divisions, or partners.

Upon the State's receipt of such notice, the State shall have thirty (30) business days from the date of notice to review the information. The Contractor may not transfer the Contract among corporate affiliates, subsidiaries or divisions or partners without the consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to prospectively cancel the Contract, in whole or in part for cause if it finds that such change materially and adversely affects the delivery of Services solely determined with reference to the best interests of the State.

**§ 5.07 REPORTING**

Except as otherwise provided in Section 5.18, below, all Status Reports and other documents produced for the State become the property of the State.

The Contractor agrees that it will not discuss such documents with a third party without the express authorization of the State.

**§ 5.08 COOPERATION WITH THIRD PARTIES**

The Contractor shall cooperate and work in accord with any other contractor(s) that may be engaged by the State.

**§ 5.09 INSURANCE**

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor must obtain and if requested by the State, furnish to the State, Certificates of Insurance evidencing compliance with all insurance requirements contained in the Contract. Such Certificates shall be in form and substance acceptable to the New York State Department of Insurance.

Receipt and/or acceptance of Certificates of Insurance by the State shall not diminish any of Contractor's obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing to any insurance or self-insurance maintained by the State and/or the State of New York. Contractor shall provide to the State within thirty (30) days of receipt by the Contractor a copy of the notice of the expiration, cancellation, renewal, material alteration/amendment, or reinstatement of such policy or policies, which notice, shall be sent to the State Project Manager. Nothing in the preceding sentence shall diminish the Contractor's obligation to maintain the insurance coverage required by this Section 5.09 in continuous force and effect throughout the term of the Contract and any extensions. The insurance policy(ies) shall name the State of New York, its officers, agents, and employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 26 11 85** or an equivalent form acceptable to the New York State Department of Insurance). The additional insured requirement does not apply to Workers' Compensation, Disability or Professional Liability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII," the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the State and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of the Contract and to remain in full force and effect throughout the term of the Contract and as further required by the Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply the State with updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of the Contract, or as otherwise required by the Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of the Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- Commercial General Liability Insurance with a limit of not less than \$3,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 0001, or a substitute form providing equivalent coverage's and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse and underground coverage.
- Workers' Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers' Compensation Act endorsement must be included. Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) require that the State shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the State, the successful Bidder shall be required to verify for the State, on forms authorized by the New York State Workers' Compensation Board, that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the New York State Workers' Compensation Board. Further instructions and identification of the forms to be used as proof of compliance with the WCL are included in RFP, Appendix H.
- Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

**Waiver of Subrogation.** Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the State, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against the State or (ii) any other form of permission for the release of the State.

#### **§ 5.10 CONSIDERATION/PRICING AND PAYMENT PROVISIONS**

OSC shall render payment for invoices under the Contract in accordance with ordinary State procedures and practices. The State will make best efforts to process all acceptable invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law.

Submission of an invoice and payment thereof shall not preclude the State from reimbursement or demanding a price adjustment in any case where the Services, as delivered, are found to deviate from the terms and conditions of the Contract.

#### **A. Manner of Payment**

The Contractor shall provide complete and accurate billing invoices to the State in order to receive payment. Billing invoices submitted to the State must contain all information and supporting documentation required by the Contract, the State and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Director of the Budget, in his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at <http://www.osc.state.ny.us/epay/index.htm>, or by email at [epayments@osc.state.ny.us](mailto:epayments@osc.state.ny.us), or by telephone at 518-486-1255. The Contractor acknowledges in the resulting Contract that it will not receive payment on any invoices submitted under the Contract if it does not comply with the State Comptroller's electronic payment procedures.

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

The Contractor shall submit Payment Invoice(s) for review and approval, together with other documentation as may be required by the State, including but not limited to the formal sign-off from the State Project Manager that the Deliverable has been accepted. Receipt of the invoice shall start the invoice review and payment process.

Invoices must include a reference to the Contract Number assigned to this Contract. Invoices must be remitted to the following address:

ITS-GPO -OR- [accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov)  
C/O OFFICE OF GENERAL SERVICES  
DIVISION OF FINANCIAL ADMINISTRATION  
EMPIRE STATE PLAZA STATION  
P.O. BOX 2117  
ALBANY, NEW YORK 12220-0117

Note: A duplicative invoice should be sent to the GPO Project Manager at:

New York State Division of Homeland Security and Emergency Services  
NYS ITS – GIS Program Office  
1220 Washington Avenue, Building 7A, 4th Floor  
Albany, New York 12226

Attention: Project Manager - RFP DHSES (Orthos) 01-2013

All Payment Invoices submitted for payment to the State must provide the following detail in accordance with the Deliverables, titles and rates provided in the Contractor's proposal response:

- a. Payment Invoice on Contractor's official letterhead;
- b. Name, Address, and Remittance Address of the Contractor;
- c. Contract Number (as assigned by the State for the Agreement);
- d. Description of the Deliverable/services for which the Contractor requests payment;
- e. Total payment invoice amount to be paid to the Contractor for the services provided; and
- f. Instructions for electronic payment.

All costs are inclusive of all support services, travel, supplies, meals, lodging, and any other administrative or overhead costs.

## **B. Mandatory Deliverables**

Separate payments shall be made for mandatory DOP Contract Services for each annual sub-lot. Sub-lot payment shall be computed by multiplying the Contractor's bid cost per square mile for the total annual lot multiplied by the number of square miles in the sub-lot as determined by the State. Within each sub-lot, partial interim payments for the mandatory Contract Services shall be made according to the following milestones:

- fifteen percent (15%) of the sub-lot total fee shall be paid upon delivery and acceptance of all products for the imagery collection phase of the Contract Services.
- fifteen percent (15%) of the sub-lot total fee shall be paid upon delivery and acceptance of all products for the orientation to ground control phase of the Contract Services.
- fifteen percent (15%) of the sub-lot total fee shall be paid upon delivery and acceptance of all products for the Digital Terrain Models (DTM) phase of the Contract Services.
- forty-five percent (45%) of the sub-lot total fee shall be paid upon delivery and acceptance of products for the orthoimagery phase of the Contract Services. The State may approve partial payments equal to the value of accepted orthoimagery deliverables.

- four percent (4%) of the sub-lot total will be paid upon final delivery and acceptance of all mandatory Contract Services for the entire annual lot. [See Retainage, 5.11 (G) below]
- six percent (6%) of the sub-lot total will be paid upon final delivery and acceptance of all Contract Services for the entire annual lot, including optional deliverables. This six percent (6%) amount shall be adjusted by the final total amount of bonuses and/or liquidated damages, if any. [See Retainage, 5.11 (G) below]

No partial interim payment shall be approved until the deliverables for the preceding deliverable milestone(s) in the sub-lot have been received and accepted. If Contract Services are not completed for an Annual Lot, the State may elect to withhold payments on the following Annual Lot until the Contractor either makes acceptable progress on the earlier Annual Lot or addresses all deficiencies.

A bonus shall be made for early delivery and/or liquidated damages shall be assessed for late delivery of mandatory Contract Services deliverables for each annual sub-lot. The bonus shall be paid and/or liquidated damages assessed upon completion and acceptance of all Contract Services deliverables for the annual lot. See Sections 5.11 (D) and 5.11 (E) below.

### **C. Optional Deliverables**

The Contractor shall be paid a separate flat fee for **optional Contract Services** for the DOP, if any optional Contract Services are contracted by the State. This separate fee for these optional Contract Services will be paid upon completion of all optional Contract Services to the satisfaction of the State and acceptance by the State. If optional Contract Services are contracted for by the State then delivery and acceptance of the optional deliverables are required to complete the services within this contract. Neither liquidated damages will be assessed for failure to deliver these optional deliverables on-time, nor will bonuses be paid for early delivery.

### **D. Bonuses for Early Delivery**

Criteria:

Separate bonuses may be earned for early delivery of specific final products: the raw imagery deliverable and the mandatory orthoimagery deliverables. The bonus for the raw imagery deliverable, if earned, will not be paid until all Contract Services for that deliverable are completed to the satisfaction of the State and accepted. Raw imagery deliverables will be considered early if they are delivered no more than thirty (30) days after imagery capture, thus, there will be multiple due dates for raw imagery in a typical Annual Lot.

The bonuses, if earned, will not be paid unless all of the following criteria are met:

- All relevant deliverables for a DOP annual lot are complete.
- All mandatory deliverables for a DOP sub-lot are delivered early.
- The following initial delivery quality levels are met for a Unit Area to be included in the calculations:
  - All raw imagery deliverables for the Unit Area must be received with eighty-five percent (85%) or more of the materials judged acceptable.
  - Orthoimagery deliverables for non-NYC Unit Areas must be received with eighty-five percent (85%) or more of the materials judged acceptable.
- Deficiencies identified during initial review of the mandatory deliverables meeting the State's minimum criteria which the Contractor corrects and returns within ten (10) business days of the issuance of written notification of the deficiencies by the State shall not affect the determination of early delivery.
  - After the first round of corrections, orthoimagery deliverables for NYC Unit Areas must be received with eighty-five percent (85%) or more of the Unit Area materials judged acceptable by the State.
- The State is satisfied with the overall Contract Services for the DOP annual lot and has accepted them.

Calculating Bonuses:

The bonus for the raw imagery deliverable, if earned, will be determined based on the following:

- Maximum bonus is three percent (3%) of the dollar value of the sub-lot
- Bonus is decreased incrementally:
  - Based on the value of unit areas that do not meet the State's Quality Assurance evaluation criteria of at least eighty-five percent (85%) acceptability described above, then
  - Two tenths of one percent (0.20%) per business day for every business day over ten (10) business days that the Contractor fails to correct all deficiencies identified in the initial evaluation of the sub-lot. This decrease applies to the entire value of the sub-lot qualifying for a bonus in the initial delivery.

The bonus for the mandatory orthoimagery deliverable, if earned, will be determined based on the following:

- Maximum bonus is seven percent (7%) of the dollar value of the sub-lot
- Maximum bonus is paid for early delivery of twenty (20) business days or more on an entire sub-lot (no bonus is paid unless the entire sub-lot is submitted early)
- Bonus is decreased incrementally:
  - thirty-five one hundredths of one percent (0.35%) per business day for every early delivery business day less than twenty (20), then
  - Based on the value of unit areas that do not meet the State's Quality Assurance evaluation criteria of at least eight-five percent (85%) acceptability described above, then
  - Thirty-five one hundredths of one percent (0.35%) per business day for every business day over ten (10) business days that the Contractor fails to correct all deficiencies identified in the initial evaluation of the sub-lot. This decrease applies to the entire value of the sub-lot qualifying for a bonus in the initial delivery.

#### **E. Liquidated Damages for Late Delivery**

Liquidated damages may be assessed on sub-lots that are not delivered in their entirety on or before the designated delivery date. Liquidated damages, if assessed, will be determined based on the following:

- Maximum liquidated damages are six percent (6%) of the total dollar value of the sub-lot.
- Maximum liquidated damages are assessed on deliveries of sub-lots twenty (20) business days or more past the designated delivery date for the sub-lot. Pro-rated liquidated damages for deliveries less than twenty (20) business days late will be assessed based on the number of business days late.
- Based on the total value of the sub-lot. (Liquidated damages will be incurred on the total value of the sub-lot and will not be discounted by any partial deliveries.)
- Liquidated damages are assessed:
  - three tenths of one percent (0.30%) per business day for every business day after the due date for the sub-lot up through twenty (20) business days that the sub-lot is late.
  - Three tenths of one percent (0.30%) for every business day over ten (10) business days that the Contractor fails to correct all deficiencies identified in the initial evaluation of the sub-lot. This decrease applies to the entire value of the sub-lot.

#### **F. Accelerated Delivery**

The State may choose to select one (1) or more unit areas for accelerated deliveries. These portions of an Annual Lot typically will be identified during the Pre-Flying Meeting. The deliverables for these areas will be due no later than the first business day in July following the flight season. A premium, as bid by the Bidder and included in the Cost Proposal, will be paid over and above the unit cost for the imagery type(s) in the accelerated unit area(s). The Bidder will submit a percentage cost increase on Appendix D, Sheet 3 and Sheet 4 for these accelerated deliveries. Failure to deliver a designated Unit Area on or before the accelerated due date will eliminate the premium for that Unit Area. Deliverables for Unit Areas received with less than eighty-five percent (85%) of the materials judged acceptable fall below the State's minimum criteria and are not eligible for the accelerated delivery premium. Deliverables with deficiencies which are not corrected within ten (10) business days of the issuance of written notification of the deficiencies by the State shall not be eligible for the accelerated delivery premium. Unit Areas

which are not delivered by the accelerated due date are eligible for bonuses for early delivery and subject to liquidated damages for late delivery based upon the original time schedule.

### **G. Retainage**

the State shall retain ten percent (10%) of the Contract amount for each Statewide Digital Orthoimagery Program (DOP) annual lot until such time that the deliverable milestones described in item 5.10 (B) for each annual lot have been completed and accepted. Retainage shall be held, for the safety and protection of the State, for no longer than six (6) months following the final Contract delivery date. If the Contractor cannot or will not reasonably conform any deficient or unsatisfactory deliverables to the satisfaction of the State, the retainage funds may be used to offset damages and/or used to re-contract for satisfactory deliverables, at the option of the State.

### **H. Vendor File**

Prior to being awarded a Contract pursuant to this RFP, the Bidder(s) must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller. This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and Vendor IDs will be assigned to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York. If the Bidder is already registered in the Vendor File, the Bidder must enter its ten-digit Vendor ID on the first page of its Proposal.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID number from the State. Complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)) and submit the form to the State with your Proposal.

The State will initiate the vendor registration process for the Bidder(s) recommended for award.

Once the process is initiated, Bidders will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File please visit the following website: [http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

## **§ 5.11 WARRANTIES**

Where Contractor generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to the State. Contractor hereby warrants and represents:

### **A Representations and Warranties**

The Services rendered by the Contractor shall be performed in accordance with all the terms and conditions, covenants, statements and representations contained in the Contract, including all appendices.

### **B Ownership**

Contractor warrants that it has acquired, or will acquire, the necessary property rights to provide the State with the rights and license described in Section 5.18.

### **C Workmanship Warranty**

Contractor warrants that it performs each Service using a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Contract, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

#### **D Contractor Compliance**

To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the State that it meets or exceeds all requirements of the Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workers' compensation, and shall provide such proof as required by the State. Failure to do so may constitute grounds for the State to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the State.

#### **E Latent Defects Warranty**

The Contractor warrants that upon notification by the State of a latent defect in design, material or workmanship, or a latent nonconformity of the services, material, or equipment to the specifications, which would have constituted a basis for rejection if discovered prior to acceptance, it will repair or replace or otherwise correct the defect to the level of performance specified in the Agreement.

#### **F Virus Warranty**

The Contractor warrants that services relating to the integration, development, and implementation of any software by means of the Contractor's configuration, modification, and/or enhancement of such software shall be performed in a manner so as not to result in introducing a virus or other malware to the software. The Contractor will utilize commercially reasonable virus detection and vulnerability scanning software on its equipment to ensure that any configuration, modification, and/or enhancement it creates and provides to the State shall not contain any virus or vulnerability.

#### **G Date/Time Warranty**

The Contractor warrants that Product(s) furnished pursuant to the resulting Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where the Contractor is providing ongoing services, including but not limited to: (i) consulting, integration, code or data conversion, (ii) maintenance or support services, (iii) data entry or processing, or (iv) contract administration services (e.g., billing, invoicing, claim processing), the Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of the resulting contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under the resulting Contract for breach of warranty.

#### **H Breach Warranty**

In the event of any breach of the above warranties, the Contractor shall, as applicable: (i) correct errors and defects that caused the breach of warranty, or (ii) re-perform the deficient services. If the Contractor does not correct the program errors or re-perform the service in a commercially reasonable time and manner, the State may pursue other remedies as described in Section 5.1.4.

#### **I Survival of Warranties**

All warranties contained in the Contract shall survive the termination of the Contract.

**J Limitations: THE WARRANTIES SET FORTH IN THIS CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Misuse, accident, unsuitable physical or operating environment, modification or operation inconsistent with standard industry practice, or failure caused by a product for which Contractor is not responsible may void the warranties.**

#### **§ 5.12 INDEMNIFICATION AND LIMITATION OF LIABILITY**

Neither Party shall be liable for any delay or failure in performance resulting from a Force Majeure Event, as defined in Section 5.17 of the RFP. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors, if any, and shall fully indemnify and save harmless the State and GPO 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 Contractor, its agents, employees, partners or subcontractors, if any, 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 negligent failure to act of the State.

Contractor shall indemnify, defend and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Deliverables furnished, or of any copyright, trademark, trade secret or other third party proprietary right in relation to the Products furnished or utilized, provided that the State shall give 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 Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the GPO Director shall require. Notwithstanding the foregoing, Contractor will have no liability for any infringement claim based on: (i) modification of any Deliverable other than by Contractor; (ii) the use or combination of any Deliverable with materials not supplied by Contractor; (iii) information supplied by the State to Contractor that is included in any Service or Deliverable; or (iv) the State's use of a superseded version of the Deliverable if the infringement could have been avoided by using the latest version of the Deliverable provided by Contractor to the State at no additional expense to the State.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation," and regardless of the basis on which the claim is made, Contractor's liability under the Contract for direct damages shall be the greater of the following: (i) one million dollars (\$1,000,000), (ii) the estimated dollar amount of the Contract, or (iii) two (2) times the charges rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein, neither Party shall be liable to the other for special, indirect or consequential damages of any kind which may result directly or indirectly from the performance of the Contract, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others.

The State does not agree to any indemnification provisions that require the State to indemnify or save harmless Contractor or third parties.

#### **§ 5.13 COMPLIANCE WITH LAWS**

The Contractor shall comply with all present and future applicable laws, codes, ordinances, statutes, rules and regulations with respect to any of the duties or responsibilities of the Contractor arising from the Contract, including but not limited to the Americans with Disabilities Act (42 USC Section 1202, et seq).

To the extent that the State is the recipient of any federally funded monies relating to the procurement of services or products under the RFP and Contract, Contractor agrees to comply with all applicable federal laws, rules and regulations including but not limited to the following areas as further set forth at Chapters II and XXX of 7 CFR and 45 CFR Parts 74 and 95 relating to:

- A** Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84 and 90, and 7 CFR Parts 15, 15b and 15d.
- B** Copeland "Anti-Kickback Act" (18 USC 874 and 40 USC 276c) which provides that all contracts/subgrants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 USC 874 as supplemented by 29 CFR Part 3, which prohibit contractors or subrecipients from inducing by any means any person employed in construction, completion or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the Federal awarding agency.
- C** Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) which requires all construction contracts awarded by recipients of more than \$2000 to comply with the Act as supplemented by USDOL Regulations 29 CFR Part 5 requiring all contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the "prevailing wage") in each solicitation and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the Federal awarding agency.
- D** Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers require compliance with 40 U.S.C. 327-333 as supplemented by USDOL Regulations 29 CFR 5 when said contracts exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- E** Rights to Inventions Made under a Contract or Agreement- Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by USDHHS or USDA.
- F** Ownership Rights in Software of Modifications Thereof – The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation, provided, however, that this sentence shall not apply to 'proprietary operating/vendor software packages' within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii).
- G** Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.), which require Contracts and subgrants in excess of \$100,000 shall require the recipient to comply with the Acts recited herein and that violations must be reported to USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.
- H** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- which requires that every contractor under a contract for more than \$100,000 and every tier of contractors or subcontractors thereunder shall file certification, as required, that said contractor will not and has not used any Federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or award covered by such Amendment. A contractor or subcontractor from any tier shall also disclose any lobbying

with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93)

- I** Debarment and Suspension. (Federal E.O.s 12549 and 12689)- Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with E.O.s 12549 and 12689. (See 45 CFR 76.) Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- J** Contractor shall insure that the contract provisions specified in 45 CFR 74.48 are included. The State reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State or GPO. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as the State issues a formal written notice authorizing a resumption of work.

#### **§ 5.14 TERMINATION**

##### **A For Convenience**

The State may terminate this Agreement without cause by ninety (90) days prior written notice. In the event of such termination, the parties will adjust the accounts due and the contractor will undertake no additional expenditures not already required. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder.

This provision should not be understood as waiving the State's right to terminate the Contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. In the event of cancellation without cause by the State, the State agrees to negotiate a payment based on the portion of accepted Deliverables.

##### **B For Cause**

For any material breach or failure of performance of the Contract by the Contractor, the State may provide written notice of such breach or failure. The State may terminate the Contract if the Contractor does not cure such breach or failure within thirty (30) days after the giving of written notice to cure.

If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Contract in accordance with the Contract or exercise such other remedies as shall be available under the Contract, at law and/or equity.

No delay or omission to exercise any right, power or remedy accruing to the State or GPO upon breach or default by the Contractor under the Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under the Contract, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Contract, Contractor shall be liable for the payment of any cost differential that the State incurs as a result of having to employ such third party to cure or resolve the issue.

In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in the Contract, the State may pursue all legal and equitable remedies for breach. In addition to pursuing any other legal or equitable remedies, the State shall have the right to take one or more of the following actions:

- 1) terminate the Contract in whole or in part;
- 2) suspend, in whole or in part, payments due Contractor under the Contract;
- 3) pursue equitable remedies to compel Contractor to perform.

The Contractor shall be liable for any and all excess costs for remedies pursued by the State, and for costs incurred by the State in procuring alternate Services.

**C For Violation of Procurement Lobbying Law**

The State reserves the right to terminate the Contract in the event it is determined by the State in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the State may, at its sole option, exercise its termination right by providing ten (10) days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Contract.

**D For Violation of Section 5-a of the Tax Law**

the State reserves the right to terminate this Contract in the event that the Contractor fails to file a certification pursuant to section 5-a of the Tax Law or the Tax Department or the State discovers that the certifications filed by the Contractor pursuant to section 5-a of the Tax Law were false. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor.

**E Termination Notice**

Notices required by this section shall be delivered to the other party in writing, by certified mail, return receipt requested. The date of notice shall be deemed the date of delivery set forth on the return receipt ("date of return receipt notice").

**F Termination Date**

Contract termination dates shall be determined as follows: (1) In the event a notice of termination is issued for convenience, the Contract termination date shall be deemed thirty (30) days from the date of delivery set forth on the return receipt notice. (2) Subject to the State's right to shorten the thirty (30) day period pursuant to paragraph (A), above, in the event a notice of termination is issued for cause, the Contract termination date shall be thirty (30) days from the date of the return receipt notice, or such other extended period of time as has been mutually agreed in writing by the Parties.

**G Mitigation of Costs**

The Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice without the prior written approval of the State. On or after the date of return receipt notice and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

**§ 5.15 TRANSITION**

The State may require the Contractor to provide uninterrupted Services after Contract termination/expiration as the State deems reasonable and necessary and/or as necessary for the State to comply with all legal requirements for establishing a new contract to continue the provision of Services (Transition Period). Transition Services, as defined below, shall be governed as follows:

**A Transition Period**

Unless otherwise agreed to by the Parties, the Transition Period shall not exceed one hundred eighty (180) days beyond the termination/expiration of the Contract.

**B No Interruption in Service**

At all times during the Transition Period and unless directed otherwise in writing by the State, the Contractor shall continue all contractual obligations set forth in the Contract until such time as the State (i) has approved the Contractor’s proposed Transition Plan, and (ii) an orderly transition to the State, a third party, or the successor contractor has been completed pursuant to the approved Transition Plan. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

**C Transition Plan**

Within fifteen (15) days of receipt of a notice of termination as set forth in Section 5.14, above, or three (3) months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall provide for approval by the State a detailed written plan for Transition (Transition Plan) which outlines, at a minimum, the tasks, milestones and deliverables associated with the smooth transition of Services to the State, a third party or the successor contractor. Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the State.

**D Contractor Transition Services**

“Transition Services” shall be deemed to include Contractor’s responsibility for all tasks and services outlined in the Contract, and for transferring in a planned manner specified in the Transition Plan all tasks and services to the State, a third party or the successor contractor. It is expressly agreed between the Parties that the level of service during the Transition Period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where, during the Transition Period, tasks or services are transitioned to or assumed by the State, a third party or the successor contractor, Contractor shall not be held responsible for the negligent acts or negligent omissions of the State, a third party or the successor contractor or for service degradation resulting from the negligent acts or negligent omissions of the State, a third party or the successor contractor.

**E Compensation for Transition Services**

Contractor shall be reimbursed for Transition Services performed during the Transition Period at the rates set forth in the Contract

**F State Responsibilities for Transition**

The State shall assume responsibility for Transition project management. A project manager responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed. Weekly project review meetings shall be held with representatives of the Contractor, the State, and the third party or the successor contractor.

**§ 5.16 DISPUTE RESOLUTION**

The first step of dispute resolution will be through conference between the State and the Contractor. Unresolved disputes will be arbitrated by the GPO Director or his or her designee, whose decision will be final and binding.

The Parties will endeavor, in good faith, to resolve any disagreement between the Parties with respect to the interpretation of any provision of the Contract or the performance of a Party, and to that end will gather and furnish each other all information relevant to the matter in issue. The Contractor and the State may agree to use the following procedure to review their performance or to resolve disputes:

1. Problems which cannot be solved by staff within five (5) business days from the date on which the problem arose will be set down in writing and submitted to the State’s Project Manager and Contractor's Project Manager;
2. If a problem cannot be resolved by the State’s Project Manager and Contractor's Project Manager within fifteen (15) business days from the date on which the problem arose, either or both may appeal to the DHSES Commissioner or his or her designee;

3. If the Contractor does not agree with the findings of the DHSES Commissioner, or his or her designee, it may pursue any legal or equitable remedies it may have; and
4. During the course of any disagreement, or if the Contractor pursues any legal or equitable remedy outside the State, Contractor shall continue to provide Services according to the Contract until such proceeding is concluded, or an injunction is issued.

#### **§ 5.17 FORCE MAJEURE**

In the event that either Party is unable to perform any of its obligations under the Contract because of natural disaster, any act of God, war, civil disturbance, court order, or labor dispute, (Force Majeure Event), or any other acts beyond the reasonable control of either Party, the Party that has been so affected shall immediately give notice to the other Party, and shall exercise every commercially reasonable effort to resume performance, and an extension of the time for performance shall be granted for a period to be agreed to in writing by the State and Contractor. Any delay in performance by either Party resulting from a Force Majeure Event shall not be considered a breach or default under the Contract.

#### **§ 5.18 OWNERSHIP/TITLE TO CONTRACT DELIVERABLES**

Unless otherwise specified in the Contract, all materials developed pursuant to the terms of the Contract without limitation, including materials developed as a result of Task Orders, contract documentation, software coding or modifications and all other contract Deliverables of whatever description, custom program code developed or prepared for the State by the Contractor under the Contract, whether or not the Contract is completed, is confidential information and the property of the State and all title and interest therein shall vest in the State and shall be deemed to be a "work made for hire" and made in the course of the services rendered hereunder. To the extent that title to any such works may not, by operation of law, vest in the State, or such works may not be considered works made for hire, all rights, title and interest therein are hereby irrevocably assigned to the State. All such materials shall belong exclusively to the State, with the State having the right to obtain and to hold in its own name copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The Contractor agrees to give the State, and any person designated by the State, reasonable assistance, at the State's expense, required to perfect the rights defined in this Paragraph.

Notwithstanding the foregoing, the Contractor or third parties shall retain all right, title and interest in any of their respective pre-existing software products. The State acknowledges that the successful Contractor or its licensors shall retain all ownership and intellectual property rights to the proprietary code offered to the State under a licensing agreement. Any property or material furnished or provided by the State to the Contractor hereunder is and will remain the property of the State.

The State shall be given first right of refusal of ownership of any data collected by the Contractor as part of DOP aerial data collection but collected for purposes other than those specified in the Contract. Should the State exercise this right, the State's ownership will be non-exclusive

Nothing herein shall preclude the State from entering into an agreement with the Contractor to jointly own a specific work developed under the Agreement.

#### **§ 5.19 USE OF OFFSHORE PRODUCTION**

No imagery, including, but not limited to, original photos and final orthoimagery tiles, shall be sent outside of the United States of America or Canada. Use of production outside of the United States of America or Canada for other purposes must be approved in writing by the State in advance.

#### **§ 5.20 SECURITY, NON-DISCLOSURE, CONFIDENTIALITY AND PRESS RELEASES**

The Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under the Contract. Contractor shall ensure that its personnel, agents, officers and subcontractors, if any are fully aware of the obligations arising under this section and shall take all commercially reasonable steps to ensure compliance. The Contract may be terminated by the State for cause for a material breach of this section.

## **A Security Procedures and Employee Dishonesty:**

Contractor will comply fully with all security procedures of the State communicated to it in the performance of this Contract, including, but not limited to,

New York State Cyber Security Policy P03-002: <http://www.dhSES.ny.gov/ocs/resources/documents/Cyber-Security-Policy-P03-002-V3.4.pdf>) and associated standards found in:

Monitoring System Access and Use Standard: <http://www.dhSES.ny.gov/ocs/resources/documents/Cyber-Security-Standard-S10-005-V1.1-Monitor-System-Access.pdf>

Contractor shall adhere to generally accepted best practices for passwords.

Contractor shall hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any, of such security procedures or policies or resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, while providing Services under the Contract.

The State may terminate the Contract if it determines that Contractor has violated a material term of this section. The terms of this section shall apply equally to Contractor, officers, agents, employees, and subcontractors, if any. Contractor agrees that all officers, agents, employees, and subcontractors, if any, shall be made aware of and shall agree to the terms of this section.

## **B Nondisclosure and Confidentiality**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors, if any have access. This representation shall survive termination of the Contract. For purposes of the Contract, all State information of which Contractor, its officers, agents, employees, and subcontractors, if any becomes aware during the course of performing Services for the State shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

1. information that is previously rightfully known to the receiving party without restriction on disclosure;
2. information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and
3. information that is independently developed by Contractor without use of Confidential Information of the State.

Contractor shall hold the State harmless, without limitation, from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such Confidential Information.

## **C Press Releases**

Contractor agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding the Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract without the prior written approval by the DHSES Commissioner or his or her designee, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any State or Federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

#### **D. Public Information**

Disclosure of information related to this Procurement and the Contract(s) shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Article 6 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this Procurement that are exempt from disclosure. Information constituting trade secrets or critical infrastructure information for purposes of FOIL, must be clearly marked and identified as such by the Contractor upon submission. If the Contractor intends to seek an exemption from disclosure of claimed trade secret materials or claimed critical infrastructure information under FOIL, the Contractor shall at the time of submission, request the exemption in writing and provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor, or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of the Public Officers Law. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State.

#### **E. Federal or State Requirements**

In the event that it becomes necessary for Contractor to receive Confidential Information, which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees not to retain any Confidential Information which Federal or State statute or regulation prohibits from disclosure after termination of the Contract.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the State accordingly. Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which Federal or State statute or regulation prohibits from disclosure.

Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information of any New York State agency information directly to that New York State agency. The State may terminate the Contract if it determines that Contractor has violated a material term of this section. The terms of this section shall apply equally to Contractor, its officers, agents, employees, and subcontractors, if any. Contractor agrees that all officers, agents, employees, and subcontractors, if any, shall be made aware of and shall agree to the terms of this section.

#### **§ 5.21 INDEPENDENT CONTRACTOR**

It is understood and agreed that the legal status of the Contractor, its agents, officers, and employees under the Contract is that of an independent contractor, and in no manner shall they be deemed employees of the State, or GPO or DHSES, and therefore they are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of the Contract, 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 workers' compensation, disability and unemployment insurance, and to provide the State with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

#### **§ 5.22 TRANSFER OF CONTRACT**

The State may transfer/assign the Contract to another State Agency or entity at its sole discretion by informing Contractor in writing of such a transfer. Contractor shall execute any documents required to accomplish the transfer/assignment of the Contract. Contractor shall comply with any instructions from the State to accomplish the transfer/assignment of the Contract at no additional cost to the State.

### § 5.23 TAXES

All outstanding tax liabilities, if any, against the Contractor in favor of the State of New York must be satisfied prior to Contract execution or a payment schedule arranged for their speedy satisfaction.

Except as otherwise provided by applicable Federal and State law and regulations, the State shall not be liable for the payment of any taxes under the Contract however designated, levied or imposed. Purchases made by the State are exempt from New York State local sales and use taxes and, with certain exceptions, Federal excise taxes. To satisfy the requirements of the New York State Sales and Use Tax Law, invoices issued by the Contractor pursuant to the Contract must reference the Contract in order to be considered sufficient evidence that the sale by Contractor was made to the State. The State is an exempt organization under Section 1116(a)(1) of the Tax Law. However, no person, firm or corporation is exempt from paying the State Truck Mileage and Unemployment Insurance taxes and other Federal, State and local taxes to which Contractor is subject. For purposes of tax free transactions under the Internal Revenue Code, the New York State Registration Number is 14740026K.

Nothing in this section shall be construed to limit the obligation of the State to reimburse Contractor for approved expenses, including valid State and local taxes, under the Contract.

### **Sales tax registration certification requirement for businesses seeking to contract with New York State agencies:**

The Tax Law was amended to require contractors with State agencies to certify to the Department of Taxation and Finance (DTF) that they, their affiliates, their subcontractors and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. Tax Law Section 5-a applies to all contracts in excess of **\$100,000** for the purchase by a covered agency of commodities or services, awarded pursuant to Article XI of the State Finance Law.

The successful Contractor must complete Contractor Certification Form ST-220-CA within 3 business days of notification of selection by the State. This certification to the procuring agency, also made under penalty of perjury, states that the requisite (ST-220-TD) certification has been made to DTF and, to the best of the Contractor's knowledge, that the requisite (ST-220-TD) certification is correct and complete.

If Contractor has any questions regarding either forms, ST-220-CA or ST-220-TD, the New York State Comptroller G-Bulletin will provide background information and the necessary forms:

<http://www.osc.state.ny.us/agencies/gbull/g222a.htm>.

Contractors can refer to the Department of Taxation and Finance website, or the NYS Tax Law, Section 5-a, *Contractor Affiliate, Subcontractor, and SubContractor Affiliate Sales and Compensating Use Tax Registration* for additional information and guidance.

### § 5.24 ASSIGNMENT OF CLAIM

Contractor hereby assigns to the State any and all of its claims for overcharges associated with the Contract which may arise under the antitrust laws of the United States, 15 U.S.C. Section 1, et seq. and the antitrust laws of the State of New York, G.B.L. Section 340, et seq.

### § 5.25 NOTIFICATION

Any notice required by or pertaining to the Contract, except notification regarding termination which shall be governed by section 5.14(E) , shall be delivered to the other Party in writing, by overnight mail or by certified mail, return receipt requested. The date of notice shall be deemed the date of delivery set forth on the return receipt or by the overnight mail service.

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

- (a) via certified or registered United States mail, return receipt requested;

- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail with acknowledgement of receipt.

Such notices shall be addressed as follows or to such different addresses as the Parties may from time-to-time designate:

**State**

Name: Francis M. Winters  
Title: Director, GIS Program Office  
  
Address: 1220 Washington Avenue  
State Office Campus, Building 7A  
Albany, New York 12242  
  
Telephone Number: 518-242-5200  
Facsimile Number: 518-322-4976  
E-Mail Address: francis.winters@its.ny.gov

**Contractor**

Name:  
Title:  
Address:  
  
Telephone Number:  
Facsimile Number:  
E-Mail Address:

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Contract by giving fifteen (15) business days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Contract. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

**§ 5.26 NOTICE TO STATE**

The Contractor shall immediately notify the State upon learning of any situation that can reasonably be expected to adversely affect the delivery of Services under the Contract. If such notification is verbal, the Contractor shall submit to the State a written description of the situation and a recommendation for its resolution within seven (7) business days of learning of the situation.

**§ 5.27 WORK OUTSIDE THE SCOPE OF THE CONTRACT**

The Contractor shall refrain from performing work outside the scope of the Contract unless such work is authorized by a properly executed, written amendment to the Contract approved by OSC. Any work not so authorized will not be compensated.

**§ 5.28 COOPERATION WITH INVESTIGATIONS AND AUDITS**

The Contractor shall cooperate with the State, any other authorized State or Federal Agency, and any law enforcement authority, in the investigation, documentation and litigation of any alleged illegal act, misconduct or unethical behavior related to the RFP and Contract, or in connection with any audit.

### **§ 5.29      SUSPENSION OF WORK**

The State reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as the State issues a formal written notice authorizing a resumption of work.

### **§ 5.30      SUBCONTRACTORS**

Contractor may subcontract Services provided under the Contract, or any part of it, to subcontractors selected by Contractor and identified in the Proposal. The use of replacement subcontractors or additional subcontractors is subject to the State's prior written approval.

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. All agreements between the Contractor and its subcontractors shall be by bona fide written contract.

Contractor shall include in all subcontracts, the purpose of which is of the delivery of Services, in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions consistent with those found in the Contract, including, but not limited to:

- That the work performed by the subcontractor must be in accordance with the terms of the Contract including, but not limited to Appendix A;
- That subcontractor shall comply with the provisions of section 5-a of the Tax Law;
- That nothing contained in such subcontract shall impair the rights of the State;
- That nothing contained herein shall create any contractual relation between any subcontractor and the State;
- That subcontractor shall maintain all records with respect to work performed by the subcontractor in the same manner as required of the Contractor; and
- That the State shall have the same authority to audit the records of all subcontractors as it does those of the Contractor.

Contractor shall be fully responsible to the State 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 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 programmatic or financial responsibility under the Contract by its agreement with any subcontractor or by the State's approval of such an agreement with a subcontractor.

The State reserves the right to reject any proposed subcontractor for bona fide business reasons, which may include, but are not limited to: (i) that the proposed subcontractor is on the Department of Labor's list of companies with which New York State cannot do business; or (ii) the State determines that the proposed subcontractor is not qualified or has previously provided unsatisfactory contract performance or service; or (iii) the State determines the proposed subcontractor poses a possible security risk. The State reserves the right to request additional information in writing from the Contractor regarding any subcontractor prior to or after contract award.

### **§ 5.31      CONTRACTOR OBLIGATIONS IN THE EVENT OF A DISASTER OR OTHER EMERGENCY**

For purposes of this section, the following definitions shall apply: "state disaster emergency" shall have the same meaning as set forth in section 20(2)(b) of the Executive Law and "other emergency situation" shall refer to a situation or occurrence which the DHSES Commissioner or his or her designee, in his or her sole discretion, has determined poses a risk to health and public safety or the conservation of public resources.

In the event of a state disaster emergency or other emergency situation, the Contractor shall be notified that the State is invoking this provision. Notwithstanding any other provision in the Contract, during a state disaster

emergency or other emergency situation, the State may, at its discretion, elect to provide and receive notice by means, such as e-mail, facsimile, or hand delivery.

Unless the Contractor's performance would be excused pursuant to the Force Majeure provisions of the Contract, the following terms and conditions shall apply during a state disaster emergency or other emergency situation: The Contractor shall provide the necessary Services to the State on a time is of the essence basis, working on a twenty-four (24) hour a day, seven (7) day a week basis, to restore and/or recover State operations and services, which are critical to the health, safety and welfare of the State, to be determined at the sole discretion of the State.

Except as provided in this section, all other provisions of the RFP and Contract remain in full force and effect during a state disaster emergency or other emergency situation.

### **§ 5.32 TIME IS OF THE ESSENCE**

Time is of the essence for the Contractor's performance under the Contract.

### **§ 5.33 GENERAL PROVISION AS TO REMEDIES**

The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Contract.

### **§ 5.34 EMPLOYMENT REPORTING**

- (i) Contractor agrees that it will comply with the reporting requirements of section 163(4)(g) of the State Finance Law throughout the term of the Contract. The Contractor shall file with the State, the Department of Civil Service, and the Office of the State Comptroller reports using forms provided in RFP, Appendix G, attached hereto, or such successor forms as are identified by the State.
- (ii) Contractor shall include in any subcontract authorized under this Contract a provision requiring the subcontractor to comply with the reporting requirements of section 163(4)(g) of the State Finance Law in the same manner as the Contractor.
- (iii) Contractor acknowledges that the reports filed pursuant to this Section shall be available for public inspection and copying under the provisions of FOIL.

### **§ 5.35 INFORMATION SECURITY BREACH AND NOTIFICATION ACT**

In accordance with the Information Security Breach and Notification Act (ISBNA) (General Business Law, §889-aa; State Technology Law, §208), Contractor shall be responsible for complying with the provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by Contractor under this Project (Private Information) that is within the control of the Contractor either on the State's information security systems or the Contractor's information security systems (System). In the event of a breach of the security of the System (as defined by ISBNA) Contractor shall immediately commence an investigation, in cooperation with the State, to determine the scope of the breach and restore the security of the System to prevent any further breaches. Contractor shall also notify the State of any breach of the security of the System immediately following discovery of such breach. Except as otherwise instructed by the State, Contractor shall, to the fullest extent possible, first consult with and receive authorization from DHSES and the Office for Information Technology Services prior to notifying any individuals, the Division of State Police (NYSP), Department of State (DOS), the Office of the Attorney General (OAG) or any consumer reporting agencies of a breach of the security of the System or concerning any determination to delay notification due to law enforcement investigations. Contractor shall be responsible for providing the notice to all such required recipients and for all costs associated with providing such notice. Nothing herein, shall in any way impair the authority of the OAG to bring an action against Contractor to enforce the provisions of ISBNA or limit Contractor's liability for any violations of the ISBNA. In the event that the Contractor is advised by a law enforcement agency pursuant to GBL §899-aa(4) to delay the notice under GBL §899-aa(3), the Contractor shall provide the notice under GBL §899-aa(3) to the State

not more than twenty-four hours after the Contractor has been advised by the law enforcement agency that notice under GBL §899-aa(3) can be provided.

Additional information relative to the law and the notification process is available at: <http://www.dhSES.ny.gov/ocs/breach-notification/index.cfm>.

### **§ 5.36 IRAN DIVESTMENT ACT**

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act’s effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the State may approve a request for Assignment of Contract

During the term of the Contract, should the State receive information that a person is in violation of the above-referenced certification, the State will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the State shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The State reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

### **§ 5.37 CONTRACTOR STAFF**

The word ‘Contractor’ is understood to refer to the Vendors executing any agreement resulting from this RFP. All employees of the Contractor, or of its subcontractors, who shall perform services under this resulting contract(s), shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform services under the Contract on behalf of Contractor shall, in performing the services, comply with all applicable Federal and State laws concerning employment in the United States.

### **Staffing Changes**

#### **Key Project Staff**

Except as otherwise provided for herein, the Contractor agrees that the Key Project Staff (project manager, flight planning manager, aerotriangulation manager, orthoimagery production manager, and quality control and assurance manager) will continue their assignment to completion of said assignment.

a. Contractor acknowledges that the skill, experience, and continuity of the Project Manager identified in the Proposal are critical to the successful performance of the Services to be rendered by the Contractor. Consequently, in order to insure timely and cohesive provision of those Services, both Parties intend that the Project Manager identified in the Proposal continue through term of the Contract.

Contractor agrees that the Project Manager will not thereafter be removed or reassigned by Contractor while the Services are in progress and for so long as there has been no voluntary suspension of Services due to force majeure lasting for a period of longer than ten (10) business days.

Circumstances may arise, however, which necessitate the replacement of the Project Manager during the provision of Services due to suspensions for force majeure of longer than ten (10) business days or lack of funding, or due to termination, sickness, or other similar material change in the employment circumstance of the Project Manager, at which time a replacement of comparable background and experience must be provided by the Contractor within ten (10) business days, subject to approval of the State.

b. The Contractor understands that the State's selection of the Contractor to perform the work under the resulting Agreement will be based in part upon the State's confidence in the abilities of the Key Project Staff. Therefore, if the Contractor wishes to remove any of the Key Project Staff from the Project prior to commencement of his or her assignment or during his or her assignment period, the Contractor shall first, before proceeding with such removal, consult with and seek the advice and opinion of the State Project Manager. If, after said consultation, it is mutually agreed that such removal shall take place, the Contractor must immediately provide the resumes of three or more potential replacements with similar or better qualifications for the State Project Manager's review and approval. If the State Project Manager does not approve one of these candidates, the Contractor must immediately provide additional candidates for the State Project Manager's review. If the State Project Manager still cannot agree to a replacement, it reserves the right to either (a) have Key Project Staff remain on the Project, or (b) terminate the resulting Agreement for cause pursuant to RFP Section 7.3.12 Agreement Termination Provisions. Upon the State Project Manager's approval, the replacement will become Key Project Staff and will be subject to the terms and conditions of the resulting Agreement. If the Key Project Staff member's work has already commenced, the Contractor will ensure that there is a smooth transition, including, having the Contractor staff who is leaving train the replacement Contractor staff at the State's facilities (see Staff Transition Period, below).

b. If the State Project Manager does not agree to the replacement of Key Project Staff and does not wish to terminate the Agreement, the Key Project Staff member must remain on the Project and must continue to work with the same degree of professionalism he or she provided prior to the Contractor's request for removal. If the Key Project Staff fails to do so, or if the Contractor removes the Key Project Staff without the State Project Manager's consent, the State has the right to terminate the resulting Agreement for cause pursuant to RFP Section 5.14 Contract Termination Provisions.

### **Other Contractor Staff**

The parties hereto understand that staff turnover is detrimental to Project progress, the quality of the Deliverables and Services to be provided hereunder, and the skills transfer process. The State believes, therefore, that it is in its best interest to maintain the continuity of work assignments for all levels of Employees. The State also recognizes that it can be difficult, or in some cases impractical, to maintain said continuity. The Contractor agrees, therefore, to make a good faith effort to minimize turnover of Employees it assigns to the Project. The Contractor further agrees that if the Contractor removes an Employee who is not Key Project Staff prior to completion of his or her assignment, the Contractor will so notify the State's Project Manager, in writing, five (5) business days prior to said Employee's leave date. The Contractor will provide a replacement with similar or better qualifications. The Contractor will ensure that there is a smooth transition.

### **Cessation of Work by Employees for Reasons beyond Contractor's Control**

a. Reasons beyond the control of the Contractor shall be defined as: (i) death of the Employee; (ii) new disability or illness; (iii) Employee resigns his or her position; (iv) termination for cause by the Contractor; or (v) any other reason deemed acceptable by the State's Project Manager.

b. In the event that any Employee ceases work for the reasons specified in (i) through (v), written notification must be forwarded to the State's Project Manager.

c. The provisions of this section do not preclude any Employee from reasonable sick leave or annual leave.

## **Staff Transition Period**

In the event the Contractor initiates a staffing change of either a Contractor employee or a subcontractor employee who is identified as key personnel under the Agreement, and received the State Project Manager's approval as described herein, the Contractor will offer the State a mutually agreed upon transition period up to two (2) weeks. In such event the Contractor, at no cost to State, shall furnish State with the services of another employee possessing the skills required for performance of the Services that would otherwise have been performed by the employee being replaced. Replacement staff must have comparable or greater documented skills than the documented skills of the staff member being replaced. During the transition period, the departing staff and the new staff will work together to develop a transition plan to transition the responsibilities. The State reserves the right to approve this transition plan in writing.

### **§ 5.38 VENDOR RESPONSIBILITY**

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

**Suspension of Work (for Non-Responsibility):** The Commissioner of DHSES or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of DHSES or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

**Termination (for Non-Responsibility):** Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate DHSES officials or staff, the Contract may be terminated by the Commissioner of DHSES or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of DHSES or his or her designee to be non-responsible. In such event, the Commissioner of DHSES or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

## EXHIBIT A – PROJECT SCOPE OF WORK

### A.1 STATEWIDE DIGITAL ORTHOIMAGERY PROGRAM (DOP)

The DOP expects to produce digital orthoimagery for significant portions of the State of New York each year. The overall goal is to maintain orthoimagery coverage of major urban areas which is no more than three (3) years old, while the remainder of the State is no more than five (5) years old. Orthoimagery coverage of New York City (NYC) will be updated every two years. Information on the first thirteen (13) years of the DOP is available on the New York State GIS Clearinghouse at [gis.ny.gov/gateway/mg/](http://gis.ny.gov/gateway/mg/). The State intends to use this Contract to expand upon the past success of the DOP, both with updates as described above as well as improvements in resolution and/or recorded bands. To meet these goals, the State will emphasize efficient and cost effective procedures for meeting the DOP goals. Targeted updates and improvements based on specific needs may result in a less systematic cycle than that followed previously.

The State owns the stereo-imagery, photo orientations, ground control, and digital terrain model data from the previously completed cycles of the DOP. In addition, the State owns or has access to LIDAR datasets for many areas (see [gis.ny.gov/elevation/](http://gis.ny.gov/elevation/).) These datasets will be available to support work on this Contract. The State believes these datasets offer a very significant opportunity to ensure quality deliverables and to reduce costs. Over thirteen (13) years, the DOP has successfully delivered orthoimagery meeting essentially the same requirements as those included in this RFP. The most likely areas of effective re-use of data are described in the relevant sections below.

In addition to continued improvement in producing the core orthoimagery deliverables of the Program, the State is interested in coordinating the Program's data capture efforts with other data capture efforts around the State of New York. Each year, a significant amount of LIDAR-derived terrain data is collected to support various projects, such as FEMA Flood Hazard map updates. In areas where the data collection and processing are completed prior to DOP production, these terrain datasets, mostly from LIDAR missions, can be combined with existing DOP DTM data to support production of orthoimagery with increased resolution and spatial accuracy. Where DOP and flood map requirements have similar project schedules, the State will work to coordinate the efforts. An option to acquire a LIDAR point cloud and processed elevation data is included in this RFP.

In addition, the State has similar goals for coordination between DOP imagery collection for orthoimagery and planned collection of oblique imagery. The State believes there are benefits to be gained through coordinating schedules and data collection.

Figures A-1 and A-2 summarize the areas, or Annual Lots, expected to be covered during the first two (2) years of this Contract. The entire Annual Lot area will be divided into Unit Areas. Unit areas may be based on county limits, urban area limits, and/or other extents and needs determined by the State. The actual number of Unit Areas or size of the area designated during each year will depend upon the costs per square mile bid by the successful Bidder, the budget available for this project, and the imagery needs identified by the State. The individual Unit Areas selected for each annual lot shall be determined by the State.

Typically, approximately one-third of the Unit Areas in each annual lot will be delivered in sub-lots according to Section 2.02, Schedule Events 1-3 and 5-7. The final designation of the Unit Areas to be delivered in each sub-lot will be determined by the State following the Post-Flying Evaluation Meeting discussed in Section A.2.2.3 below. This designation will consider such factors as the State's priorities, effective data flow and processing, and the aggregate size of the imagery in each proposed sub-lot. The State wishes to purchase complete orthoimagery coverage of Unit Areas. However, the State reserves the right to accept and pay for orthoimagery production for Unit Areas with only partial imagery coverage.

The State requires digital capture of at least four-bands (blue, green, red, and near-infrared) during flight, with at least 12-bits per band. For DOP planning purposes, the State has identified default orthoimagery types for urban and rural areas. All orthoimagery must have four-bands (blue, green, red, and near-infrared), with at least 8-bits per band. Urban areas, as designated for the DOP by the State, will be covered by 1.0 Ft Ground Sample Distance

(GSD) or better resolution orthoimagery. The remaining areas will be covered by 2.0 Ft GSD or better resolution orthoimagery.

The five (5) counties of NYC will be covered by 0.5 Ft GSD orthoimagery. A second set of orthoimagery which has been re-sampled to a reduced GSD of 2-Ft from the accepted 0.5 Ft GSD orthoimagery of NYC is also required. Orthoimagery of New York County will be scheduled in the second sub-lot of Annual Lot 14. The four (4) remaining counties of NYC will be scheduled in the first and second sub-lots of Annual Lot 14. Additional key requirements specific to NYC orthoimagery are detailed in the relevant sections below.

In acknowledgement of the increased demand for higher resolution imagery and the technological improvements which make collection and production more efficient, the State is requesting a separate cost proposal for Annual Lot production with most or all non-NYC areas covered by 1.0 Ft GSD 4-band orthoimagery as the base product. This option envisions production of 2,000 square miles or more of continuous 1.0 Ft GSD orthoimagery rather than the split between urban and non-urban areas, and would be exercised based on final costs, the Program budget, and the imagery needs identified by the State. A similar option is proposed for continuous areas of 0.5-ft GSD 4-band orthoimagery for areas of 1,500 square miles or more.

Other options for final deliverables may be exercised should the State, in cooperation with individual local, county, or federal governments, identify the need. Portions of the orthoimagery may be required at finer GSD pixel sizes from lower flying height imagery. Options for resolution will be contracted for no less than an entire unit area. Addition of separate Color Infrared (CIR) orthoimagery and production of “true” orthoimagery may be selected for a portion of a unit area.

In addition to the products described above, which constitute parts of the DOP, the State is also interested in having the ability to obtain orthoimagery on short notice. Two options are included in this RFP. Emergency orthoimagery would be requested in response to a natural disaster or similar event, and the entire process will need to be completed on very compressed schedules. On-demand orthoimagery may be requested in response to or in preparation for an event, and more advance notice and longer production schedules will be possible. The State expects that use of either option would be limited.

Bidders must provide cost proposals for these various band and resolution combinations based upon the criteria in Appendix D – Financial Proposal. Most pricing is by square mile, with cost breaks as the total area of an image type exceeds specified ranges. For an image type, the total area is calculated for all neighboring unit areas with the same image type. For purposes of this RFP and Contract, the State has defined neighboring as within 50 miles as measured in a straight line between nearest boundary points.

Potential bidders may download ESRI Shapefiles for the proposed imagery coverage shown in figures A-1 and A-2 from the RFP website.

The basic datum and projection of the DOP digital orthoimagery will be NAD83 and New York State Plane Coordinate System, respectively.

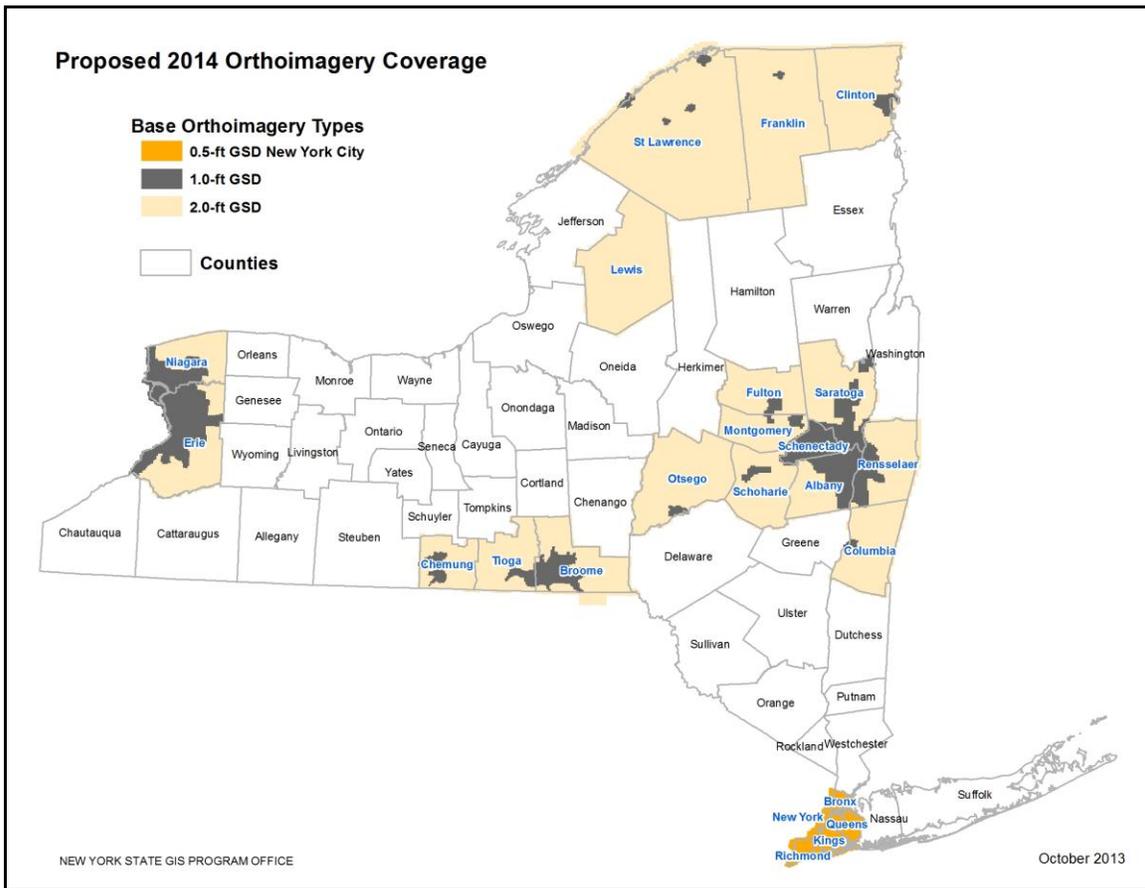


Figure A-1 Proposed NYSDOP Coverage for 2014 (Annual Lot 14)

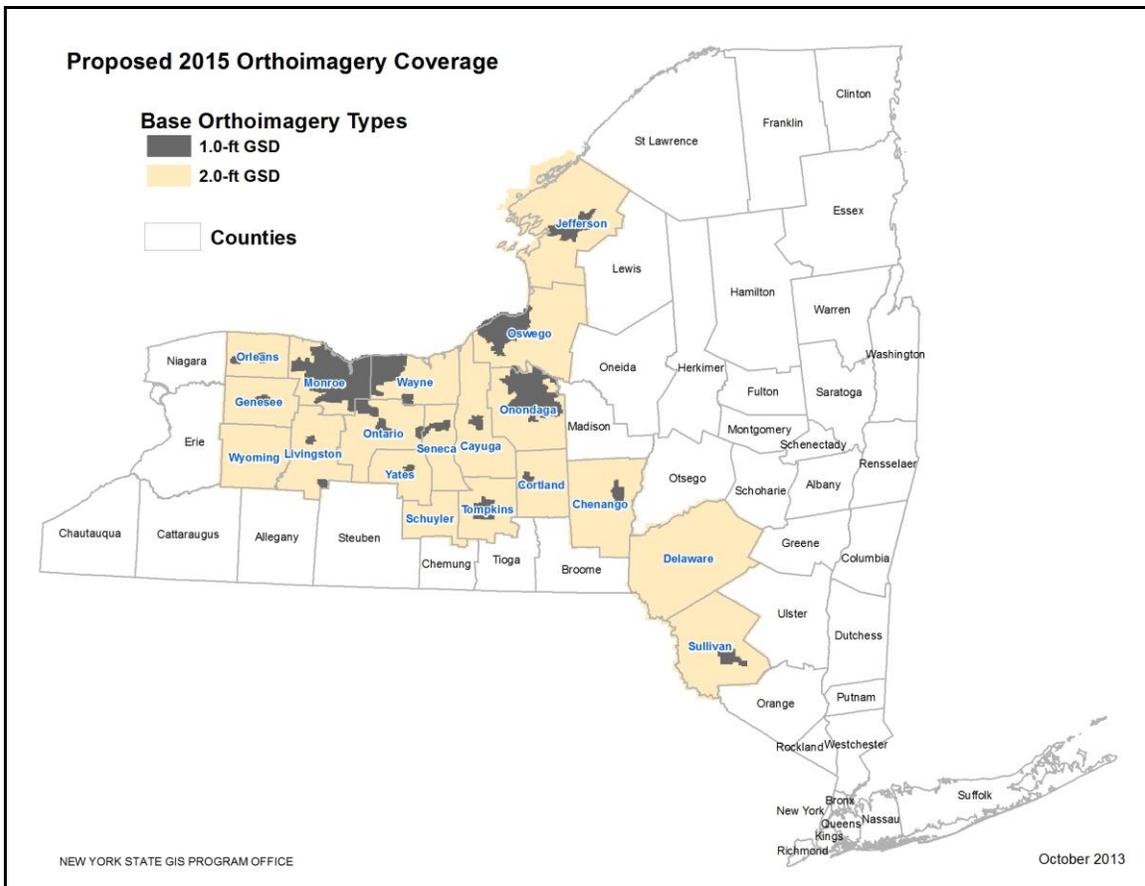


Figure A-2 Proposed NYSDOP Coverage for 2015 (Annual Lot 15)

## A.2 SUMMARY OF SERVICES

Bidders are encouraged to submit innovative proposals using the latest proven technology with which they are experienced. Bidders are also encouraged to consider re-using data from previous cycles of the DOP to ensure quality, increase efficiency, and reduce costs. While the delivered products must rigorously meet the requirements set forth below, the State recognizes that there will most likely be multiple technologies and processes proposed for generating those products. Therefore, the following services are generally - but not necessarily exactly - descriptive of those that may be required to complete this project:

- Overall Project Management
- Conduct coordination meetings
- Capture imagery
- Orient imagery to ground control
- Generate Digital Terrain Model (DTM)
- Generate digital orthoimagery
- Radiometrically balance, edge-match and smooth orthoimages
- Tile and compress orthoimages
- Process final deliverables

Bidders shall describe in the Bidder's Proposal their project plan for addressing all of the steps in the above process, including proposed equipment, software, techniques, staff, and quality control. Specific requirements are contained in the discussion of the services below. While Bidders are strongly encouraged to describe their quality assurance and quality control processes and the related standards, Bidders may not impose acceptance standards for any deliverable without the specific written acknowledgement of the State.

The Bidder's attention is directed to the importance of the Contractor's Project Manager in successful completion of the DOP.

In addition to media used for final deliverables, the Contractor will be responsible for supplying access to a password protected FTP (File Transfer Protocol) site, or equivalent, for distribution of data between the Contractor and the State. Bidders who plan to use web services or hosted applications for sharing data and information should describe these solutions in detail. The data security requirements specified in Section 5.21(A), above, will apply as directed by the State. Web services, web applications, FTP sites, and similar solutions are not deliverables.

The Contractor will be responsible for maintaining copies of standard and supported desktop GIS software throughout the term of the Contract.

The State has provided specific requirements in this RFP; however, it is likely that over the life of the Contract changes to some requirements will be considered beneficial. The following specifications are among those where this may occur, and where the State may approve a change.

- Horizontal and vertical datums
- GEOID model and software
- GIS file formats (reference and image support files like j2w, etc.)
- Imagery file formats
- LIDAR point cloud formats and class designations
- CADD file formats
- GPS system or CORS system

- Compression formats
- Delivery media
- Specifications for related programs

### A.2.1 Overall Project Management

The Contractor will be supplying one (1) employee to serve as Project Manager. This individual must be identified in the Proposal. The Contractor’s Project Manager has overall responsibility for coordinating and tracking work performed by the Contractor and any subcontractors, and must communicate status and schedule information to the State. The Contractor’s Project Manager will be the single, consistent point of contact for the State’s communication with the Contractor, and is responsible for ensuring that all Contract services and specifications are fulfilled in a timely and consistent manner. The State expects all deliverables to be consistent regardless of Contractor and subcontractor assignments.

The State expects the Contractor’s Project Manager to be responsible for successful completion of tasks including, but not limited to, the following.

<b>Task Description</b>	<b>Typical Timing</b>
Meeting planning, facilitation, and notes	As described in the following section
Production Assignment Documentation	At Pre-flight and post-flight meetings, and as needed at other times
Production schedules and status	At least weekly
Flight resource and operation reporting	Daily during flight season
File version tracking report	As needed, could be daily
Issue resolution	As needed and as specified by the State
Invoice and payment tracking	As needed

Before shipping final deliverables, the Contractor is expected to make a good faith attempt to ensure all deficiencies have been identified and corrected. Upon receipt of deliverables, the State will make a good faith effort to identify any deficiencies in a specific and timely fashion. The Contractor must review this communication and identify any disagreements within two business days of receipt. Deliverables re-submitted by the Contractor in response to communication from the State and/or identification of deficiencies by the Contractor must be accompanied by a detailed description of which portion(s) of the deliverable were changed and a detailed description of the changes. Any deliverables with deficiencies identified by the State and which the Contractor believes cannot be fixed must be identified promptly and the reason must be described in writing. The Contractor shall be responsible for ensuring that any deliverable corrections are coordinated with other production efforts and that the corrections do not introduce inconsistencies within the entire deliverable.

### A.2.2 Conduct Coordination Meetings

All meetings will be at State-designated locations. At the State’s discretion, web-based meetings may be used to supplement or replace in-person meetings. If necessitated by questions or concerns regarding the Contractor’s procedures, the State may agree to meeting at the Contractor’s production facility.

#### A.2.2.1 Project Initiation Meeting

The Contractor will meet with the State within one (1) week subsequent to Contract award and approval by OSC to review the project plan and deliverables for the project. Clarification and finalization of said items as required will be made at that time. A preliminary schedule for the project shall be submitted by the Contractor at this meeting. Given the estimated timing for Contract award and its proximity to the Spring 2014 flight season, this meeting will be critical for success in the first year.

#### A.2.2.2 Pre-Flying Meeting

In the initial and subsequent contract years, this meeting will be scheduled in January or February for the purpose

of planning for the Spring imagery acquisition. The Contractor shall come to this meeting prepared to present all materials and information necessary for flight planning and scheduling. The Contractor shall submit notes summarizing the key points addressed in the meeting no later than one (1) week thereafter for review and approval by the State.

#### A.2.2.3 Post-Flying Evaluation Meeting

The Contractor and relevant subcontractors shall meet with the State immediately following the Spring flying season, but no later than May 21, of each annual lot year. In years when late-Spring or Summer flights are required, a second Post-Flying meeting may be required immediately following the flights, but no later than July 31 of that year. The purpose of these meetings is to evaluate the coverage of the imagery that has been captured to date, identify the unit areas to be delivered in each of the annual lot sub-lots (see Section 2.02, Schedule Events 1-3 and 5-7), and discuss possible additional requirements. The State and the Contractor will reach agreement on the due dates for raw imagery delivery. The Contractor shall submit notes summarizing the key points addressed in the meeting no later than one (1) week thereafter for review and approval by the State.

#### A.2.2.4 Production Meeting

In the initial contract year, this meeting will be scheduled for July for the purpose of reviewing production status and identifying issues. The meeting will be scheduled in subsequent contract years if deemed necessary by the State. When a second Post-Flying meeting is required as discussed in the previous section, the two meetings may coincide if feasible. The Contractor and relevant subcontractors shall attend the meeting and shall be prepared to provide detailed production updates and plans to the State. The Contractor shall submit notes summarizing the key points addressed in the meeting no later than one (1) week thereafter for review and approval by the State.

### A.2.3 Capture Imagery

Aerial imagery shall be collected to serve as the basic source for generating the digital orthoimagery required for the DOP. The primary solution for imagery collection must employ a digital sensor to collect the blue, green, red, and near-infrared bands with at least 12-bits per band radiometric resolution.

The imagery must be collected to support the generation of 1.0 Ft Ground Sample Distance (GSD) four-band imagery for urban areas and 2.0 Ft GSD four-band orthoimagery for non-urban areas. Urban areas are as designated by the State for purposes of the DOP. Imagery must be collected to support the generation of 0.5 Ft GSD four-band orthoimagery for NYC. The effective GSD of the original digital imagery shall be smaller than the planned final GSD of the orthoimagery. If any of the alternate or optional deliverables described below are chosen by the State, the imagery collection must support producing those deliverables. Where dense groups of tall buildings are to be depicted in either 1.0-ft GSD or 0.5-ft GSD orthoimagery, the Contractor will be expected to plan imagery capture to minimize the impacts of building lean. In the past, this has been accomplished by careful location of photo centers and by adding short flight strips over small areas. The State will identify these locations as part of flight planning with the Contractor.

In general, Bidders must demonstrate preparations for potential flight access issues throughout the project area. Special flight requirements exist for the NYC area. In general, air traffic control issues are more common due to the number of active airports. The Bidder shall describe how this issue will be addressed. It will be the Contractor's responsibility to coordinate their flight plans with air traffic control. Any problems gaining flight approval must be documented and promptly communicated to the State. Since the digital imagery captured to produce orthoimagery of NYC for alternating years will be used for planimetric mapping through other contracts, the Contractor must limit any deviations from flight plans and must gain approval from the State for any such deviation.

Because of the requirements for true orthorectification in NYC (section below), Bidders proposing to use frame cameras are encouraged to capture imagery with overlap between photos exceeding usual amounts. In past coverage of NYC, flight lines with endlap of 80% and sidelap of 60% were used successfully.

In the NYC area, New York County must be flown in the month of June with an optimal sun angle of sixty (60)

degrees to minimize shadows. Because of this later flight window, New York County will be deemed to be a separate Annual Sub-Lot for the purposes related to payments for imagery collection and the orientation to ground control phases, and to determining bonuses for early delivery of the raw imagery deliverables (see Section 5.10, Parts B and D). The remaining counties of NYC should be flown during leaf-off conditions with optimal sun angle under clear atmospheric conditions. Additionally to minimize shadows in all NYC counties, flights must be during a time window of 9:30 am to 2:30 pm to minimize the shadow prevalence. To minimize distortions, mosaic seams, and other artifacts on bridges, flight lines along key bridges in NYC must be flown. These bridges are identified in Figure A-3. Separate flight lines over the water at a higher elevation are also required for NYC to minimize the inherent problems of ortho production for these areas.

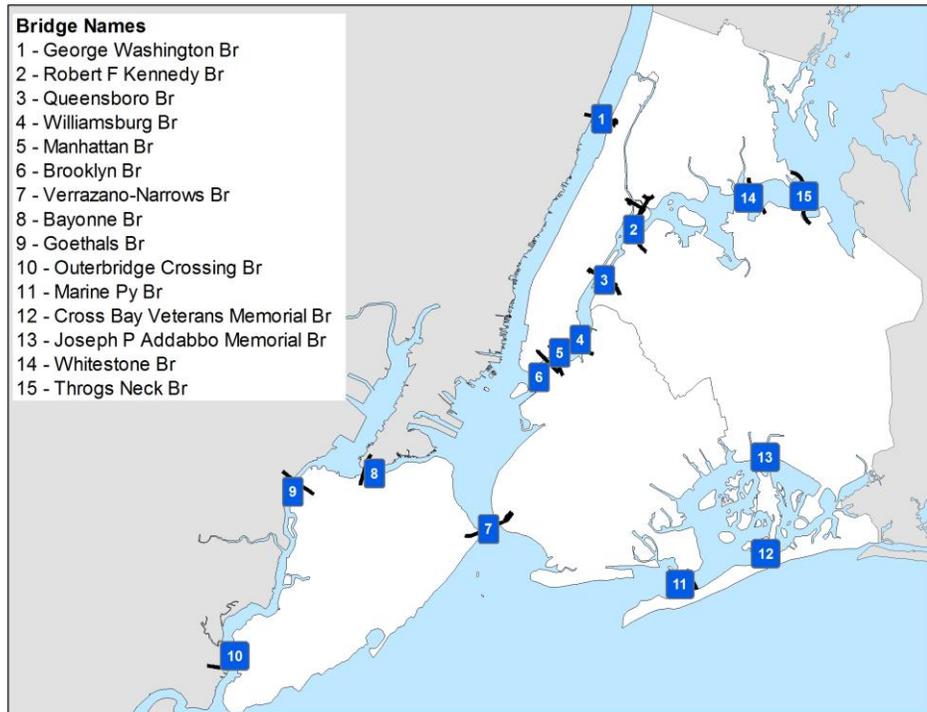


Figure A-3: Key NYC Bridges

The Bidder shall describe in its Proposal how the imagery will be captured and processed, including:

- Type(s) of aerial sensor, including detailed specifications
- Method and frequency of sensor calibration
- Flying height of sensor for each GSD resolution
- Original GSD of the resulting digital imagery
- Estimated absolute and relative accuracy of the sensor at the assumed flying heights
- Endlap, side lap, allowable tip, allowable tilt, allowable crab of imagery
- Procedures for processing the captured imagery to produce digital imagery
- Method of maximizing the imagery’s effective ground coverage between obstructions in urban canyons

Unless otherwise stipulated, it is the State’s strong desire that bare-earth imagery be captured during leaf-off conditions with optimal sun angle under clear atmospheric conditions. The Bidder must describe in its Proposal how it plans to review the imagery in a timely manner for overall quality and for any radiometry issues which could cause problems during mosaicing. In addition, the Bidder must describe the criteria it intends to use to avoid snow cover and leaf-on conditions relative to image capture. General criteria for allowable snow cover and leaf-on conditions will be discussed and determined at the Project Initiation meeting. If a unit area requires flights outside of the generally accepted windows for sun angle, leaf cover, and/or snow cover, the State shall identify the unit area and will discuss flight windows as part of the Pre-Flying Meeting.

In addition to image quality and acceptable ground conditions, the State believes image capture of complete unit areas is critical to an effective Program.

The Contractor shall submit final planned flight lines with planned exposure centers to the State for review at least two (2) weeks prior to scheduled image capture. The State expects the Contractor to be prepared for imagery acquisition by the time ground conditions permit in portions of the Annual Lot area. Flight plans shall be in ESRI, point shapefile format in the coordinate system and datum of the planned orthoimagery for the corresponding area. Flying height above Mean-Sea-Level shall either be an attribute of the proposed aerial sensor exposure points or the point shapefile must be a 3D version with points at the flying height.

A flight resource plan must be submitted prior to scheduled image capture. The plan shall identify the number of aircraft allocated and their areas of assignment, airports to be used, and any airspace access issues. Since the weather and resulting ground conditions are variable, the State expects a plan which is flexible while allocating sufficient resources and priority needed to take advantage of the limited flying windows. The plan must also be coordinated with the Contractor's progress on targeting ground control.

For the purpose of this Contract, flight season shall be considered the time period starting with acceptable ground conditions in a portion of the project area and ending with either the confirmation of successful image acquisition or the determination of unacceptable leaf-out conditions. During the flight season, the Contractor will be responsible for daily status reports on imagery acquisition. By 10:00 am each day, the Contractor's project manager must send an e-mail to the State's project manager to state whether any imagery acquisition was accomplished during the preceding day. The e-mail must also supply a brief description of the areas captured and/or an explanation for areas where imagery was not collected. By 5:00 pm, the Contractor's Project Manager must deliver an updated version of the flight plan shapefile(s) indicating which frames were captured on the preceding day.

The Contractor shall deliver raw imagery as part of the project. This shall mean the source imagery in non-proprietary format and with stereo coverage. Imagery shall be delivered with its original spectral and spatial resolutions intact. Each image shall be delivered as one image file containing four bands. Raw imagery captured as twelve (12) bit per band spectral resolution shall be delivered as 12-bit per band imagery. The raw imagery shall be delivered as geo-referenced JPEG 2000 format files (.jp2). Geo-referencing shall be based on the GPS and orientation data recorded during flight, and shall be supplied in the header of each image file and as a world file (.j2w) for each image.

Specific deliverables and formats for other sensor-types shall be determined by the State during the Pre-Flight Planning Meeting. The Bidder should discuss these parameters in its Proposal, if applicable.

An index identifying each image, corresponding digital file name, and image acquisition date and time must be submitted in ESRI shapefile format. The airborne-GPS photo center locations (X,Y,Z) and the inertial measurement unit rotation values ( $\omega, \phi, \kappa$ ) must also be delivered. Units for all parameters must be documented.

Raw imagery deliverables are expected within thirty (30) days of image capture. Failure to meet this deadline will result in forfeiture of the available bonus for the raw imagery deliverable.

#### **A.2.4 Orient Imagery to Ground Control**

The Bidder shall describe in detail in its Proposal how horizontal and vertical ground control will be established, and how the imagery will be referenced to both horizontal and vertical ground control. Ground control shall be required minimally for verification, regardless of the orientation sensors on board the aerial platform used for capture of the digital imagery. Ground control points established in the first thirteen (13) years of the Program are described in Figure A-4. The Bidder is encouraged to consider using these points as a means to reduce costs and to help ensure spatial alignment with previous generations of NYS DOP orthoimagery.

As part of reviewing the Contractor's control plan, the State may identify specific New York State High Accuracy Reference Network (NYHARN) points within the annual lot which the Contractor must target so that those points are clearly photo-identifiable and measurable in the delivered orthoimagery. Such points will be chosen to be

optimized for control and checkpoint purposes. An ESRI ArcView shape file of the current NYSHARN (“NYHARN.shp”) may be downloaded by going to the RFP web site. The Contractor will be required to obtain the most recent NYSHARN file prior to each flight season and this file must be used in that season’s targeting and survey planning.

In addition, the NY State Department of Transportation (NYSDOT) maintains a network of continuously observing reference stations (CORS). The CORS observation data will be available to the Contractor for use on the project. These CORS datasets may be used for providing reference points during ground survey or aerotriangulation. Potential Bidders can obtain more information on the NYSDOT CORS network through the NYS Spatial Reference Network site at <http://cors.dot.ny.gov/spiderweb/firmIndex.aspx>.

The Contractor shall remove all temporary targeting materials (plastic sheeting, staples, etc.) in a timely fashion once the State has stated in writing that the flight season is completed.

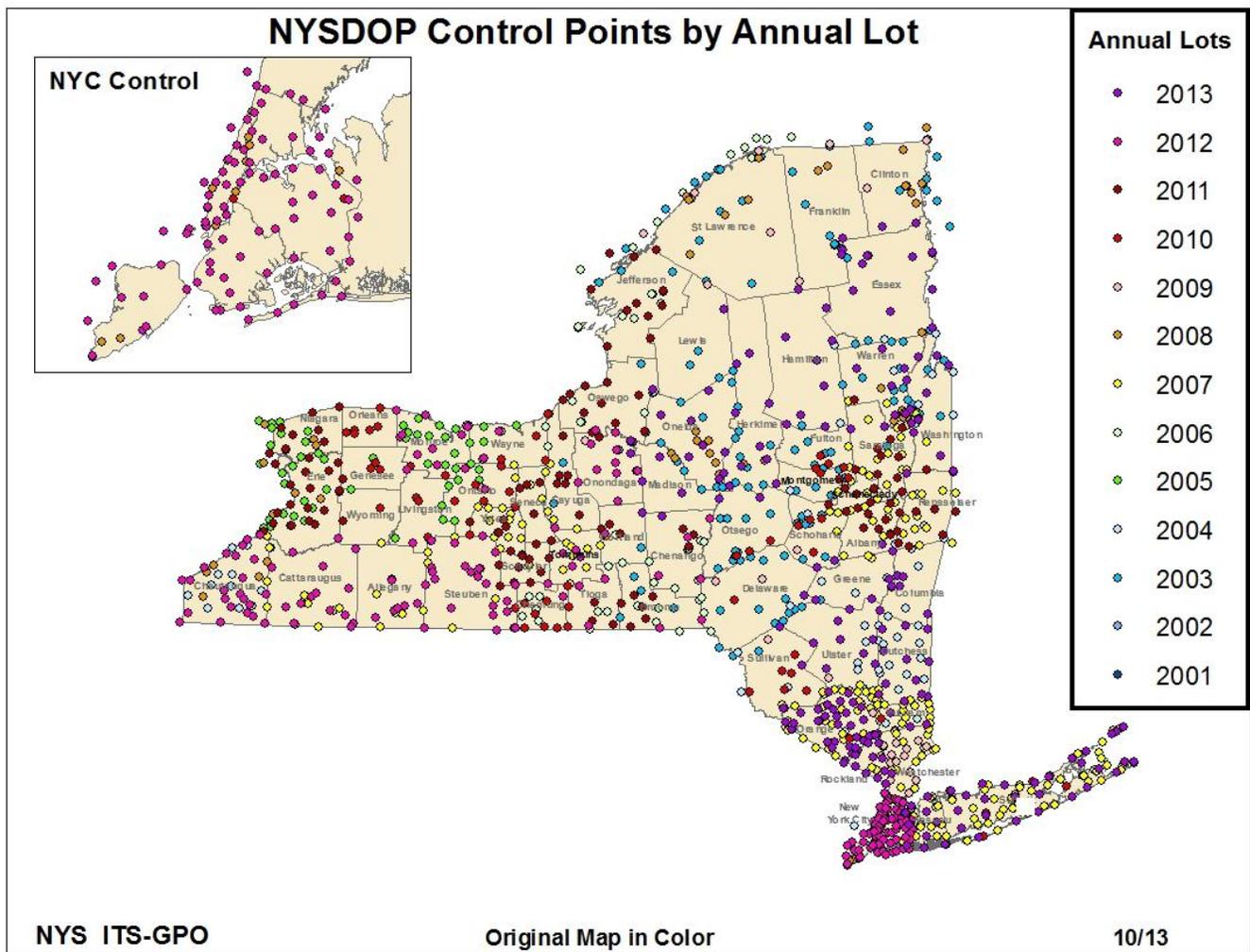


Figure A-4 Previous NYSDOP Control Points

#### A.2.4.1 Horizontal Ground Control

All horizontal control points surveyed for this project must be tied to the NYSDOT CORS for horizontal control and reported on the NAD 83(2011) datum in New York State Plane Coordinate System (SPCS) U.S. Survey Feet.

Surveys to establish these horizontal control points must use differential dual-frequency Global Positioning System (GPS) receivers. All GPS surveys shall meet the accuracy standards of at least order C-2-II as defined in “Geometric Geodetic Accuracy Standards And Specifications For Using GPS Relative Positioning Techniques”,

Federal Geodetic Control Subcommittee, August, 1989. (If a Contractor uses observations from the Russian GLONASS system, the Contractor must account for this in the control report and data files.)

GPS surveys shall be performed using accepted procedures, such as post-processed static differential survey techniques or real-time kinematic (RTK) surveys. Bidders considering RTK surveys are advised to consult the requirements described in Chapter 10 of the “NYSDOT Land Surveying Standards and Procedures Manual” at (<https://www.dot.ny.gov/divisions/engineering/design/design-services/land-survey/standards-procedures>).

Reference stations shall have coordinates of an accuracy exceeding the accuracy required for control points. Each new control point shall have two or more independent station occupations. Independent occupations require that the tripod or stand be reset and re-plumbed between sessions. Any network or sub-network for each survey shall consist solely of independent, non-trivial baselines. Only processed baselines that have fixed ambiguity resolutions shall be included in the network.

The Contractor shall report accuracy of the horizontal control points according to the “GEOSPATIAL POSITIONING ACCURACY STANDARDS Part 2: Standards for Geodetic Networks developed by the Federal Geodetic Control Subcommittee (FGCS) and the Federal Geographic Data Committee (FGDC)”, 1998.

Proposed GPS observations procedures shall specify acceptable standards for the following parameters as well as any other relevant conditions or techniques:

- Minimum baseline observation times
- Minimum number of satellites observed and maximum PDOP
- Minimum epoch rate or frequency

The following shall be Contract deliverables as part of a final survey report and adjustment, with variations depending on the survey method(s) used. The State and Contractor will develop a final format for the report during control planning at the Pre-Flight Meeting.

- All GPS Observation Data in proprietary format and RINEX2 data format written to CD or DVD.
- A network diagram showing all points and indicating which independent vectors were observed
- A schedule (in table form) showing the dates, occupation times, and sessions for each station in the survey
- Observation form for each independent station occupation that shall include at least the following information:
  - o Project Name
  - o Operator’s Name
  - o Date
  - o Julian Day
  - o Receiver Serial #
  - o Antenna Serial #
  - o Brand and name of receiver / antenna
  - o Station Name
  - o Session #
  - o Antenna H.I. and indication for type of measurement
  - o File Name
  - o Actual start time and actual end time for the occupation
- Photos of the new control point established
- Visibility skyplots for each station observed in the network
- Printed graphical plot indicating the number of satellites above fifteen (15) degrees and the PDOP for each session of field observation
- Data showing the quality of processed vectors
- Loop closure results for all baselines (Valid loop closures must contain vectors from a minimum of two (2) different independent observing sessions following FGDC guidelines)
- Results of a minimally constrained least squares network adjustment report including (@ ninety-five percent [95%] confidence region):

- Statistical results clearly showing which control point is held fixed, and clearly indicating standard errors applied and weighting scheme used
- Station coordinate standard deviations (x,y,z)
- Station coordinate error ellipses (semi-major axis, semi-minor axis, azimuth of semi-major axis, height)
- Results of the fully constrained adjustment, clearly showing all values held fixed, and clearly indicating standard errors applied and weighting scheme used.

The Contractor must submit a control plan prior to fieldwork showing the location of stations to be observed and indicating the procedures to be used to locate each new point. The Contractor shall be required to permanently monument and document to the State additional control points where permanent monumentation does not exist. Tie-diagram and “to Reach” descriptions will be needed for each new point.

All new and existing horizontal control points, targeted or photo-identifiable, planned for use in an annual lot shall be submitted in ESRI ArcView point feature shape files. A separate set of shape files shall be submitted for SPCS and NAD 83(2011) UTM Zone 18 versions of the horizontal control points, each point attributed with X-Y coordinates in SPCS U.S. Survey Feet or UTM meters and a brief description of each point in sufficient detail to identify the point for future use.

#### A.2.4.2 Vertical Ground Control

All control points used as horizontal control for the annual lot shall be used as vertical control as well. The Geoid12A model for New York State offered by the National Geodetic Survey (NGS) shall be used to reduce ellipsoid heights to orthometric heights (NAVD 88) in both U.S. Survey Feet and meters ([www.ngs.noaa.gov/GEOID/GEOID12/](http://www.ngs.noaa.gov/GEOID/GEOID12/)). The Contractor must document offsets between paneled targets and the ground elevation of the vertical control point if such offsets exist.

Any additional vertical control required for the annual lot shall be derived from GPS surveys as prescribed in 2.4.1 above using Geoid12A to determine orthometric heights in both U.S. Survey Feet and meters.

Vertical control points shall be included in the ESRI ArcView point feature shape files of horizontal control points specified in 2.3.1 above, with additional fields to record their elevations in feet and meters.

#### A.2.4.3 Analytical Aerotriangulation

If analytical aerotriangulation is used for the DOP, it shall be accomplished at least unit area-wide for the entire block of flights covering that unit area and tied to surrounding adjustments. Bundle block adjustments shall be used. At a minimum, the fit to horizontal and vertical ground control of the analytical aerotriangulation solution shall meet the following criteria:

- Root Mean Square Error (RMSE) of all horizontal control points used for each final block adjustment shall not exceed 0.5 ft in X and 0.5 ft in Y for imagery supporting 1.0 Ft GSD pixels and 1.0 ft in X and 1.0 ft in Y for imagery supporting 2.0 Ft GSD pixels.
- The maximum allowable horizontal error of any horizontal control point shall not exceed plus or minus 1.5 ft in X and 1.5 ft in Y for imagery supporting 1.0 Ft GSD pixels and plus or minus 3.0 ft in X and 3.0 ft in Y for imagery supporting 2.0 Ft GSD pixels.
- The maximum allowable vertical error of any vertical control point shall not exceed plus or minus 1.5 ft for imagery supporting 1.0 Ft GSD pixels and plus or minus 3.0 ft for imagery supporting 2.0 Ft GSD pixels.
- Root Mean Square Error (RMSE) of all image coordinates shall not exceed 6.0 microns (combined x,y).

- The use of additional parameters is recommended.

The Bidder shall describe in the Bidder's proposal the photogrammetric equipment, software, and procedures to be used to accomplish the analytical aerotriangulation. A sample Aerotriangulation Adjustment report shall be submitted as part of the proposal.

The Contractor shall submit ASCII-format digital Aerotriangulation Summary file(s) as a deliverable that shall include, at a minimum:

- Listing of ground control points with coordinates
- Raw measured fiducial coordinates for each photo image in the photo coordinate system
- Raw measured control points and pass points in the photo coordinate system
- Adjusted control points, pass points, photo centers and residuals in the NAD 83(2011) SPCS coordinate system with NAVD88 elevations
- Standard deviation of the adjusted control point, pass point measurements, and airborne GPS photo center coordinates
- Photo orientation parameters (X,Y,Z, omega, phi, kappa) for each photo image
- Camera focal length used in adjustment
- Documentation of the weighting strategy used for ground control points and airborne GPS coordinates

The report must include a statement of units for all measurements and parameters. The report must also clearly indicate all ground control points used in the adjustment, whether each point was used as 3D, horizontal-only, or vertical-only control, and the coordinates used for each point. An ESRI shapefile of all ground control points used in an aerotriangulation adjustment must be delivered with the report and adjustment data files.

The specific data format of these files shall be discussed as part of the Post-Flying Evaluation Meeting.

If the Bidder's aerotriangulation process does not produce the data referenced above, the alternative must be identified in the Bidder's proposal. If analytical aerotriangulation is not proposed as part of the project plan for the DOP, the alternative proposed process to orient imagery to ground control must be described in detail in the Bidder's proposal, including how the alternative process will allow the required accuracies for the delivered orthoimagery to be met. The results of the alternative process must be documented similar to the documentation described above for analytical aerotriangulation.

## **A.2.5 Generate Digital Terrain Models (DTM)**

Digital Terrain Models (DTM), or equivalent, must be used to support the orthorectification process, with building elevation data used to support true orthorectification of buildings wherever required. (Additional requirements for an optional point cloud and terrain data deliverable are described below in section A.2.8.2 - "Point Cloud and Terrain Data Deliverable").

### **A.2.5.1 Use of Existing DTM Data**

DTM data in CAD format which was used successfully for previous Annual Lots of the NYSDOP exist statewide and will be made available to the Contractor by the State at no charge. The Contractor will also receive the building elevation data used for true orthorectification purposes in NYC. The Bidder is encouraged to consider using these data sets as a means to reduce costs and to help ensure spatial alignment with previous generations of NYSDOP orthoimagery. Samples of DTM data from previous years of the DOP will be made available to potential Bidders through the RFP web site. Where upgrades in final orthoimagery resolution have required increased DTM quality in past years of the NYSDOP, the State expects to realize savings on the costs of future upgrades since much of the required DTM work has been completed. An overview of these areas is provided in figure A-5. The State also recommends Bidders consider the use of existing stereo-imagery and photo orientations from previous years of the DOP to expedite any required data compilation.

In addition, the State wishes to incorporate existing DTM or other elevation data into the Program to reduce

production costs. The most likely source of these datasets is LIDAR data collection in support of other projects. The State will identify such datasets during the early stages of planning for each Annual Lot. During planning for an Annual Lot, the State and Contractor will review potentially relevant data jointly in order to reach consensus on applicability. Considerations for sub-lot assignments, and thus delivery deadlines, may be made by the State where existing or concurrent data sets are being incorporated. Such decisions typically will be made before or during the Post-Flight meeting.

The DTM's used for orthorectification must be at a density level and accuracy necessary to support the required horizontal accuracy of the final orthoimagery, regardless of the location of photo centers (see A.2.6.1 below). Wherever existing DTM's or other terrain or elevation datasources are used, the Contractor is responsible for updating, densifying, and correcting these data as needed. The Contractor shall submit as a deliverable an estimate of the accuracy of the DTMs expressed as Root Mean Square Error (RMSE), as well as a brief description of the procedure used to determine RMSE.

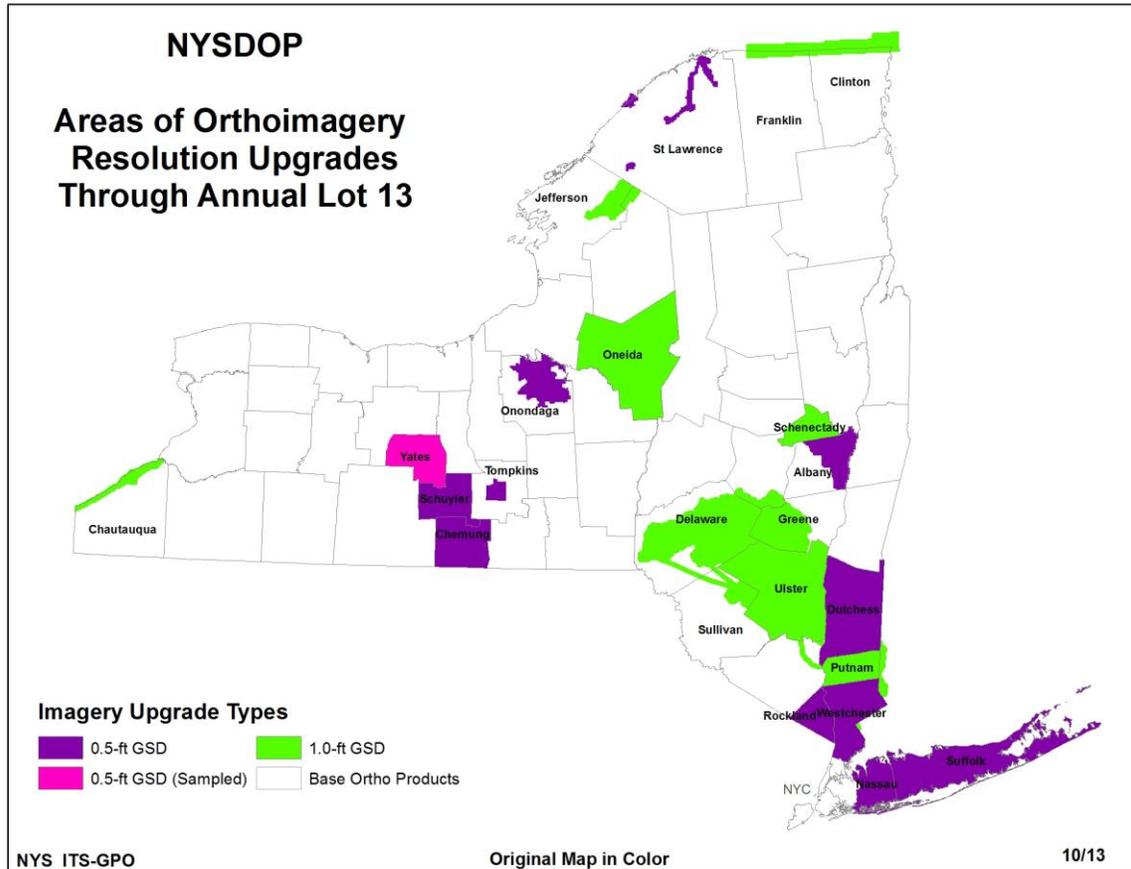


Figure A-5 Upgraded NYSDOP Imagery Locations

### A.2.5.2 True Orthorectification

In NYC there are mandatory requirements for true orthorectification of buildings. True orthorectification of the imagery is required for all buildings and structures in New York County. For the remaining counties of New York City (Bronx, Richmond, Kings, and Queens), selective or partial true orthorectification shall be utilized. At a minimum for the counties outside of New York County, buildings above five stories or an elevation of 60 feet exclusive of roof structures (e.g., water tower, antenna) whichever is lesser shall be modeled and orthorectified in the same manner as New York County. the State shall provide to the selected vendor a georeferenced ESRI shapefile of all tax parcels reported to contain structures over five stories. The tax parcels are meant to be a guide and shall not limit the extent of buildings to be modeled in Bronx, Richmond, Kings, and Queens Counties. The Contractor shall be responsible for confirming building heights during DTM compilation and shall also be responsible for edits and updates to DTM and building elevation data supplied by the State. Waterfront areas for the entire city must be orthorectified in the same manner. In summary, relief displacement shall not be evident in

New York County and for buildings above five stories or 60 feet whichever is less for the remaining counties. To the extent possible, distortions due to elevated surfaces in all remaining areas should be minimized by maximizing flight endlap and sidelap.

If the True Orthorectification option for the all or parts of the DOP area outside of NYC is selected, the requirements described above for the selective true orthorectification will apply. In this case, the State and the Contractor will review the requested area to reach consensus on the final square mileage for increased costs due to the true orthorectification option.

#### A.2.5.3 DTM Deliverables

The Bidder shall describe in the Bidder's proposal the approach to be used in generating the DTMs, including the technology to be used, how the data is tied to the vertical datum and to the horizontal datum, the spacing of grid points or mass points, delineation of breaklines (if used), methods of handling linear features with vertical or near-vertical sides displacements (overpasses, escarpments, cliffs, breakwalls, etc.), and methods of handling water body surfaces. It is expected that data in the DTM will represent the elevation of part of an actual feature, and each vertex on breaklines will have unique elevations. The Bidder shall describe where this condition is not met and how this data can be identified in the DTM.

The Contractor shall deliver digital files of the data that comprised the DTMs used for orthorectification. These must be either 3-D CAD files (i.e. - .dgn or .dxf files) or 3-D GIS files (i.e. - .shp or geodatabase). The specific data extent, format and attributes of these files shall be determined at the Project Initiation meeting. Consistent formats are required regardless of subcontractor assignments. Metadata files detailing the DTM production methods, symbology, and formats shall also be delivered.

### A.2.6 Generate Digital Orthoimagery

#### A.2.6.1 Accuracy

The delivered digital orthoimagery shall meet the horizontal accuracy requirements described below. Horizontal accuracy of the delivered digital orthoimagery will be tested by the State using National Standard for Spatial Data Accuracy (NSSDA) methodology and computed with reference to well-defined, photo-identifiable verification points having geodetic coordinates measured to a level of accuracy significantly higher than the horizontal accuracy specified for the delivered digital orthoimagery. A minimum of sixty (60) well-distributed points within the annual lot will be used to verify accuracy for each GSD resolution. Accuracy will be determined and reported consistent with the NSSDA:

Horizontal Accuracy for Orthoimagery Generated at 0.5 Ft GSD in New York City

- Points shall be within 2.0 feet of the coordinate location of the reference at the 95% confidence level.

Horizontal Accuracy for Orthoimagery Generated at 1.0 Ft GSD

- Points shall be within 4.0 feet of the coordinate location of the reference at the 95% confidence level.

Horizontal Accuracy for Orthoimagery Generated at 2.0 Ft GSD

- Points shall be within 8.0 feet of the coordinate location of the reference at the 95% confidence level.

Note that the 95% confidence level is defined according to the NSSDA for horizontal accuracy, i.e.,  $1.7308 \times \text{RMSE}$ .

Should a unit area fail to meet the accuracy criteria as indicated from the State's analysis of the verification points and the digital orthoimagery, it shall be resubmitted by the Contractor until the required accuracy is met.

#### A.2.6.2 Resampling

The final orthoimagery deliverables shall be resampled to the specified final GSD resolution from the original digital images using a cubic convolution algorithm. The original image resolution must be greater than the GSD (e.g., pixel size of the original imagery for the 1.0 Ft. GSD must be smaller than 1.0 Ft), except for areas approved in advance and in writing by the State.

#### A.2.6.3 Tiling Structure

The completed digital orthoimagery data sets shall be delivered as individual tiles that join adjacent tiles seamlessly with no overlap. The State will define grid extents and tile sizes as part of the initial planning process for each Annual Lot. The Bidder is also encouraged to suggest tiling schemes which will increase efficiency while decreasing costs. In past years, the extents of the tiles for each delivered orthoimage were as follows:

Final GSD	Tile Size (HxW)
0.5 (NYC)	2,500 ft x 2,500 ft
1.0 Ft	3,000 ft x 2,000 ft
2.0 Ft	6,000 ft x 4,000 ft

Tiles shall be aligned with the New York State Plane Coordinate System grid, at whole 5000-ft intervals of the tiling dimensions.

A georeferenced vector file in ESRI shapefile (.shp) and MapInfo “.tab” file format of the tile boundaries must be submitted as a deliverable. Each tile polygon shall have attribute fields coded with the X-Y georeferenced coordinates of the lower left corner of the tile, the photo date(s), the file name, the current date of the uncompressed image, the current date of the compressed image, the unit area assignment, and media assignment(s) for both uncompressed and compressed versions. The complete, fully attributed, other than file dates, version of the tiling structure shall be submitted no later than ten (10) calendar days before the scheduled delivery of the first sub-lot mandatory deliverables. The tile reference files shall be re-issued with each delivery of orthoimagery, with relevant image file dates updated.

A proposed version of these georeferenced tile boundaries files, without attributes, shall be submitted as early as possible, but no later than the delivery of the analytical aerotriangulation results, for review and possible adjustment by the State.

#### A.2.6.4 Extent

Complete tiles fully populated with actual imagery must be produced along the boundaries of each unit area. These tiles shall include at least 200 feet beyond the boundaries, where the boundaries will include, but are not limited to, changes in image type and State Plane Coordinate System zone.

#### A.2.6.5 Image Radiometry

The radiometry characteristics shall be determined jointly through consultations between the Contractor and the State by processing small prototype signature areas. Areas shall be chosen to represent different combinations of sensors, imagery type, land cover, and processes. These sample areas shall be submitted to the State for review. Once the optimal characteristics have been approved by the State, all other images shall have their contrast and brightness values adjusted to that of the prototype signatures.

The goal is to produce digital imagery of consistent tone and contrast throughout each unit area, as well as within single images. Particular attention must be paid to creating a smooth appearance between adjacent tiles such that each unit area will appear as a radiometrically seamless mosaic.

While visible seams on water bodies should be avoided in general, they are of special concern on the waters surrounding NYC. The Contractor must minimize visible water seams when producing orthoimagery of NYC, through means such as utilizing the higher-elevations flight lines specified previously for water coverage.

#### A.2.6.6 Image Mosaicing

Some level of internal image mosaicing may be necessary within individual tiles. Mosaic lines shall not cross through buildings, bridges, or other man-made structures. Join lines between overlapping images shall be interactively selected so as to minimize tonal variations and visible join lines. The final mosaics must reflect consistent tone and contrast across the entire project area. Where imagery with dramatically different radiometry must be mosaiced, the Contractor should notify the State in advance of final production to facilitate joint decisions on the best solution.

#### A.2.6.7 Image Quality

The Contractor shall be responsible for enhancing the orthoimagery quality in areas of high distortion. Techniques including image selection, DTM adjustment and image processing to prevent creation of distortion zones shall be used to correct or remove excessive distortions resulting from elevated linear surfaces (e.g., bridge overpasses). As discussed in section A.2.3 Capture Imagery, several urban areas in the State have small areas of tall buildings where building lean can be minimized with careful use of imagery. The Bidder must describe in their proposal the planned procedures for addressing these issues.

#### A.2.6.8 Visual Verification

Visual verification shall be performed by the Contractor before submittal to ensure image completeness, integrity of tiling, and proper extent. This includes verification that no gaps, inconsistencies in quality, or image misplacements exist within each image, between tiles or over the entire image area.

The Contractor shall verify that the digital orthoimagery has the same or better overall visual quality in comparison with the original unrectified imagery.

The Contractor shall ensure that all features are continuous within orthoimagery of the same type. The Contractor shall also minimize misalignment between features depicted on overlapping or adjoining orthoimagery of different resolutions. Roadways, bridges, and railroads must align within 4-feet when compared on orthoimagery of different resolutions. Extending DTM breaklines from the higher resolution orthoimagery area into the lower resolution area has been used to produce consistent results in past Annual Lots.

#### A.2.6.9 Formats, Compression, File Naming Conventions, and Media

The four-band digital orthoimagery shall be delivered in 32-bit (8 bits per band) color digital image format. Color infrared (CIR) imagery, if contracted for, shall be delivered in 24-bit color digital image format. Final orthoimagery shall be generated after orthorectification, resampling and radiometric balancing, and tiling.

The final digital orthoimagery shall be delivered in uncompressed GeoTIFF format. One complete set of the uncompressed final digital orthoimagery shall be delivered on media jointly agreed to by the State and the Contractor, in consideration of the efficiency and reliability of the media as well as the security requirements of the State.

The final digital orthoimagery shall also be delivered in JPEG 2000 file format in addition to the uncompressed format specified above. Images shall be compressed at a target compression ratio that strikes the best balance between preserving image quality and efficient file size. A sample of the proposed final product shall be delivered prior to the compression of the final delivery orthoimagery for review and possible adjustment of the compression requirements by the State. A complete set of the compressed final digital orthoimagery shall be delivered on media jointly agreed to by the State and the Contractor, in consideration of the efficiency and reliability of the media as well as the security requirements of the State.

For both file formats, the Contractor will deliver accurate projection information in the file header. The Contractor will also ensure there is no extraneous information in the file header that would possibly cause difficulty with GIS and image processing software.

Each file must also be georeferenced by a corresponding ESRI “.j2w” world file, ESRI “.aux” auxiliary file, and a

MapInfo “.tab” table file.

A set of file naming standards will be provided to the Contractor prior to the start of work.

#### A.2.6.10 Metadata

Metadata shall be submitted for each unit area. The formats for submission shall be both HTML and XML. The State shall supply a metadata template describing the types of information to be reported.

### **A.2.7 Alternate Deliverables**

The following items are to be bid as alternatives to the default orthoimagery deliverables described above. The State will have the sole discretion of including one or more of these alternatives as a contracted deliverable. The cost of these alternatives will be included in the cost evaluation of the Bidder’s bid. Except where noted, these alternate deliverables will completely replace the default deliverable for the affected area. Also, if any or all of the alternatives below are exercised by the State, all deliverables resulting from exercising these options become mandatory deliverables subject to Section 2.02 (Schedule Events 11-13 and 15-17) and Section 5.10 of the RFP.

#### A.2.7.1 Continuous 1.0 Ft GSD Pixel Size Four-band Orthoimagery

The Bidder shall submit unit costs for the area ranges listed on Appendix D, Sheet 2 for producing continuous 1.0 Ft GSD Four-band orthoimagery. These unit costs will be used when continuous areas 2000 square miles and greater will be covered with 1.0 Ft GSD orthoimagery. The State may exercise this option for entire unit areas or for combinations of adjacent unit areas.

#### A.2.7.2 Continuous 0.5 Ft GSD Pixel Size Four-band Orthoimagery

The Bidder shall submit unit costs for the area ranges listed on Appendix D, Sheet 2 for producing continuous 0.5 Ft GSD Four-band orthoimagery. These unit costs will be used when continuous areas 1500 square miles and greater will be covered with 0.5 Ft GSD orthoimagery. The State may exercise this option for entire unit areas or for combinations of adjacent unit areas.

#### A.2.7.3 Dual Coverage Color Infrared (CIR) and Four-band Orthoimagery

The Bidder shall submit a percentage cost increase on Appendix D, Sheet 3 and Sheet 4 for producing CIR orthoimagery in addition to color orthoimagery. The percentage cost increase will be applied to the original color unit cost to calculate the increased unit cost of producing the dual coverage. The State may exercise this option for entire unit areas or for portions of unit areas.

#### A.2.7.4 0.5 Ft GSD Pixel Size Color Orthoimagery

The Bidder shall submit cost per square mile on Appendix D, Sheet 1 for producing 0.5 Ft GSD four-band orthoimagery. All other specifications are the same as those specified for 1.0-Ft GSD imagery.

#### A.2.7.5 True Orthorectification of 1.0 Ft GSD or 0.5 Ft GSD Pixel Size

The Bidder shall submit a percentage cost increase on Appendix D, Sheet 4 for producing true orthorectified imagery where the perspective lean of buildings and other elevated structures has been removed. Actual imagery shall be used to complete the orthoimagery where perspective lean had obscured features. The Bidder’s Proposal shall describe the process to be used to accomplish true orthorectification. This option will only be exercised where 1.0 Ft GSD and 0.5 Ft GSD orthoimagery is planned, and the option may be exercised for a portion of that unit area. The percentage cost increase will be applied to the original unit cost to calculate a new, increased unit cost for producing true orthoimagery in the designated area. This new unit cost will only be applied to the area where true orthorectification is completed. Areas requiring true orthorectification will be identified in the Pre-Flying Meeting, with final, detailed area designations being made in the Post-Flying meeting.

## A.2.8 Optional Deliverables

The following items are to be bid as options. The State will have the sole discretion of including one or more of these options as a contracted deliverable in an Annual Lot. The cost of these options will be included in the cost evaluation of the Bidder's bid. Delivery and acceptance of the optional deliverables are required to complete the services within this contract. Unless otherwise stated, delivery of optional deliveries is subject to Section 2.02 (Schedule Events 14 and 18) and Section 5.10

### A.2.8.1 Orthoimagery Mosaic

The Bidder shall submit a cost on Appendix D, Sheet 5 for delivering orthoimagery mosaics covering areas defined by the State. The mosaics will be made from the final, accepted orthoimagery mandatory deliverable. Creation of the mosaics may involve reprojecting the orthoimagery to a different coordinate system than the one used for the mandatory deliverable. The bid shall include the cost of one complete set of the final digital orthoimagery mosaics delivered on media jointly agreed to by the State and the Contractor, in consideration of the efficiency and reliability of the media as well as the security requirements of the State.

### A.2.8.2 LIDAR Point Cloud and Terrain Data

The Bidder shall submit a cost on Appendix D, Sheet 5 for delivering a three-dimensional classified point cloud and terrain data derived from LIDAR. The deliverables shall meet the requirements of "U.S. Geological Survey National Geospatial Program LIDAR Guidelines and Base Specification Version 13 – ILMF 2010", except as specifically described below. The State is interested in returns from both above ground features (trees, buildings, etc.) and the returns from bare earth. The point cloud must be stored in a non-proprietary format following published standards for format and content, such as the LAS format for LIDAR point clouds. The point cloud should include all returns from the sensor. Points must be classified to differentiate between bare earth and other return sources using the following classes: unclassified, ground, low points, water, and overlap.

Bidders are encouraged to use NYSDOT CORS and existing NYSDOP control when orienting the LIDAR data to ground. Final LIDAR coordinates shall reference NAD83(2011) and NAVD88, using GEOID 12A. The coordinate system shall be UTM, NAD83 meters in Zone 18 North extended for all of NY State. Tiling of the dataset (point cloud and final DEM) shall be as agreed upon between the State and the Contractor during project planning. In the past, the State has used tile extents similar in size to those used for orthoimagery.

Bidders must describe the proposed sensor(s) and data processing procedures to be used, including but not limited to flight parameters, ground control requirements, sensor calibration, classification process, quality assurance and control, and DEM generation. The point cloud extent must completely cover the specified area of interest (AOI), with coverage that ensures sufficient density of points meeting required accuracy specifications. The final, classified bare-earth points must be sufficient for production of a digital elevation model (DEM) with 2-meter or finer spacing, based on the LIDAR Quality Level chosen by the State. Point classification shall be completed so that any mis-classification does not affect the accuracy of the ground surface and does not represent consistent mis-classification throughout large areas or in clumps.

	<b>Quality A</b>	<b>Quality B</b>
<b>Nominal Point Spacing (m)</b>	1.5	0.7
<b>Vertical Accuracy (cm)</b>	18.5	9.25
<b>Final DEM Spacing (m)</b>	2.0	1.0

Bidders will propose unit costs for each LIDAR Quality Level as part of their Financial Proposal.

The State may choose to have the point cloud classified to an additional level of detail. If so, the classes mentioned above will be supplemented by separately classifying points as low vegetation, medium vegetation, high vegetation, and buildings. The State may apply this option for the entire LIDAR coverage or a subset of that coverage. Bidders shall indicate the cost increase for additional classification in their Financial Proposal.

Requests for LIDAR collection may follow the same schedule as orthoimagery requests, with Spring flights. In this RFP – DHSES (Orthos) 01-2013- NY Statewide Orthoimagery Program

case, LIDAR project planning will be discussed during the meetings scheduled for orthoimagery. However, if the State's schedule makes use of a Fall flying season desirable, the LIDAR planning process may be separate from planning for orthoimagery.

The State expects the Contractor to deliver plans and datasets as work progresses. Deliverables and payment milestones are described below.

Data Collection (25% upon acceptance)

- Flight and ground control plan (shapefile)
- Data swath polygons (shapefile)
- Flight report
- Checkpoints with survey summary statistics

Processed Point Cloud (35% upon acceptance for extent and format)

- Tiled, classified point cloud for bare earth model
- Positional accuracy (horizontal and vertical) validation report
- LIDAR metadata

Final Data Delivery and All Related Contract Services

(40% upon full acceptance, though up to 20% may be approved by the State as blocks of final data are accepted)

- Final tiled, classified point cloud, with classification to level specified
- Bare-earth DEM
- DEM metadata
- Project Report – from planning, through collection, processing, and quality checks

### **A.3 SUMMARY OF CONTRACT DELIVERABLES**

All deliverables must be accompanied by a packing list identifying the media and a transmittal letter identifying the deliverable and bearing the approval signatures of both the Contractor's Project Manager and the ASPRS Certified Photogrammetrist supervising the technical work (see Section 1.04, Part 2). Mandatory deliverables must be delivered according to the requirements in Section 2.02, Tentative Timetable and are subject to early delivery bonuses and late delivery liquidated damages. Alternate deliverables, when contracted at the sole option of the State, become mandatory deliverables. Optional deliverables are contracted at the sole option of the State, must be delivered, if contracted, according to the requirements in Section 2.02, Tentative Timetable, and are not subject to early delivery bonuses or late delivery liquidated damages.

Orthoimagery deliverables for NYC will require two (2) shipments – one to the State and one to a representative of NYC. Similar, dual deliveries may be needed on a limited basis for other unit areas.

Shipments will be subject to the security requirements specified in Section 5.20(A), above, as directed by the State.

The following lists are provided as a quick reference. Deliverables must meet the specific requirements described above.

#### **A.3.1 Mandatory deliverables for the DOP**

##### **A.3.1.1 Imagery Collection**

- Sensor calibration or characteristics report
- 12-bit per band (minimum), R,G,B, Near-IR Georeferenced digital equivalent of stereo imagery
- Indexes to imagery sets (ESRI Shapefile format)

##### **A.3.1.2 Ground Control and Aerotriangulation**

- Control location and baseline observation plan

- GPS observation data and associated observation information
- GPS adjustment results
- Targeted and Photo-identifiable horizontal and vertical control points in ESRI ArcView shape files (SPCS and UTM)
- Aerotriangulation Summary file(s) (if aerotriangulation used)

#### A.3.1.3 Digital Terrain Models (DTM)

- Accuracy estimates
- Digital point and breakline (if used) files
- Metadata for DTM
- Accuracy assessment for DTM

#### A.3.1.4 Digital Orthoimagery

- Samples of 32-bit (8 bits per band) four-band images in proposed radiometric balance for review prior to final balancing of images
- Samples of 32-bit color images in proposed JPG2000 compression ratio for review prior to final compression of images
- 0.5 Ft GSD, 32-bit four-band NAD 83(2011), SPCS, JPG2000 format at agreed-upon compression ratio for NYC written to two complete sets of agreed-upon media
- 1.0 Ft GSD, 32-bit four-band NAD 83(2011), SPCS, JPG2000 format at agreed-upon compression ratio for the urban areas in each unit area written to agreed-upon media
- 2.0 Ft GSD, 32-bit four-band NAD 83(2011), SPCS, JPG2000 format at agreed-upon compression ratio for the non-urban areas in each unit area written to agreed-upon media
- 1.0 Ft GSD, 32-bit four-band uncompressed NAD 83(2011), SPCS, GeoTIFF format for the urban areas in each unit area written to agreed-upon media
- 2.0 Ft GSD, 32-bit four-band uncompressed NAD 83(2011), SPCS, GeoTIFF format for the non-urban areas in each unit area written to agreed-upon media
- 2.0 Ft GSD, 32-bit four-band uncompressed NAD 83(2011), SPCS, GeoTIFF format for NYC, produced from accepted 0.5-ft GSD orthoimagery, written to two complete sets of agreed-upon media
- Georeferencing files in “.tfw”, “.j2w”, “.aux”, and “.tab” format for each digital orthoimagery tile
- Preliminary vector polygon files in ESRI Shape File format for the tile boundaries, without specified attributes
- Vector polygon files in both ESRI Shape File and MapInfo “.tab” format for the tile boundaries, with specified attributes
- Metadata for each unit area

#### A.3.2 Alternates to Default Deliverables

- Continuous 1.0 Ft GSD four-band orthoimagery for areas of 2,000 square miles and greater
- Continuous 0.5 Ft GSD four-band orthoimagery for areas of 1,500 square miles and greater
- Dual color and CIR orthoimagery coverage of the same Unit Area.
- 0.5 Ft GSD orthoimagery
- True Orthorectified imagery of select portions of 1.0 Ft GSD and 0.5 Ft GSD areas
- Metadata for all orthoimagery deliverables

#### A.3.3 Optional Deliverables

- Orthoimagery Mosaic for area(s) defined by the State
- LIDAR point cloud and terrain data, plus planning data and reports.
- Georeferencing files in “.tfw”, “.j2w”, “.aux”, and “.tab” format for each digital orthoimagery mosaic
- Metadata for all optional deliverables

### A.4 EMERGENCY ORTHOIMAGERY

As described in the introduction to Exhibit A, the State also wishes to contract for orthoimagery production on an emergency basis. The imagery would be used to capture a situational overview after a short duration event such as a bridge collapse or during an event with extended duration such as a flood. These requests are expected to

typically involve limited areas, have very short notice, and require very rapid and phased delivery of the deliverables. The State's goal is to have flights occur within 24-hours of tasking or as soon as adequate flight conditions and clearances are achieved, whichever is sooner. Given the importance of getting the imagery into the hands of emergency management officials, the State will prioritize sub-areas for capture and delivery. Bidders are encouraged to describe how they will deal with the very compressed schedules.

Specifications for orthoimagery produced and delivered under an **emergency basis** are as follow.

- 1-ft GSD Four-band
- May use existing DTM data for orthorectification
- Deliver in relevant NY SPCS zone
- Horizontal accuracy of +/- 8-ft
- Tile/mosaic extents to be determined at assignment for maximum efficiency
- GeoTIFF with world file only
- Deliver raw imagery within one (1) day of flight or sooner
- Deliver initial, priority orthoimagery within 36 hours of flight or sooner
- Deliver initial, overall orthoimagery set within three (3) days of flight or sooner
- Deliver final, overall orthoimagery within one (1) week of flight or sooner, if adjustments to the initial orthoimagery are needed.

Potential Bidders are encouraged to provide details to describe their plans for meeting these requirements and any relevant experience in their Technical Proposal. A commitment in the proposal to deliver products in less time than described above are encouraged and will be evaluated. The Bidder should indicate associated costs and maximum production volume on Appendix D, Sheet 6 as part of the Financial Proposal.

#### **A.5 ON-DEMAND ORTHOIMAGERY**

As described in the introduction to Exhibit A, the State also wishes to contract for orthoimagery production on an on-demand basis. These requests are expected to typically involve limited areas, have short notice, and require rapid delivery of the deliverables. This on-demand option will not be used more than twice (2X) a year. The State will not request more than twenty-five (25) square miles of on-demand orthoimagery per request.

Specifications for orthoimagery produced and delivered under an **on-demand basis** are as follow.

- 1-ft GSD Four-band
- Use existing DTM data for orthorectification
- Deliver in relevant NY SPCS zone
- Horizontal accuracy of +/- 8-ft
- Tile/mosaic extents to be determined at assignment for maximum efficiency
- GeoTIFF with world file only
- Deliver raw imagery within one (1) day of flight
- Deliver orthoimagery within one (1) week of flight
- Deliver orthoimagery within two (2) weeks of request

The Bidder should indicate associated costs on Appendix D, Sheet 6.

**APPENDIX A - STANDARD CLAUSES FOR NYS CONTRACTS**

**Revised December 2011**

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

**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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from

disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to

be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the

extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

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

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

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

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the

subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

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

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development

Division for Small Business

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;

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in

such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.**

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

## APPENDIX B - ADMINISTRATIVE PROPOSAL

### ADMINISTRATIVE PROPOSAL

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#### INSTRUCTIONS FOR SUBMISSION

**\* DO NOT INCLUDE ANY COST DATA  
IN THE ADMINISTRATIVE PROPOSAL \***

The Bidder's *Administrative Proposal* must contain completed and executed copies of all of the documents contained in this Appendix B, including the information, in the below designated Parts in the order enumerated below.

In addition, each Bidder must provide a copy of its firm's most recent annual report and a recent copy of a financial statement prepared by an outside organization. Each Offeror must demonstrate that it has sufficient working capital to front-end the funding needed to support projected contract expenses for a minimum of 3 months. Documentation to this effect must be submitted.

<b>APPENDIX B – ADMINISTRATIVE PROPOSAL</b>	
<b>APPENDIX - PART</b>	<b>CONTENTS</b>
<b>Appendix B – Part 1</b>	<b>Formal Offer Letter and Cover Sheet</b>
<b>Appendix B – Part 2</b>	<b>Bidder Qualification Certification</b>
<b>Appendix B – Part 3</b>	<b>Bidder Responsibility Certification and Questionnaire</b>
<b>Appendix B – Part 4</b>	<b>Conflicts of Interest</b>
<b>Appendix B – Part 5</b>	<b>Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and Certified Minority/Women-Owned Businesses on OGS Contracts</b>

# APPENDIX B - PART 1— FORMAL OFFER LETTER

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[TO BE COMPLETED ON BIDDER'S LETTERHEAD]

Date

New York State Division of Homeland Security and Emergency Services  
Attn: <Solicitation Contact>  
1220 Washington Ave, Bldg 7A, 4th Floor  
Albany, NY 12226

RE: <Project and Project #>  
**Firm Offer to the State of New York**

Dear Mr. <Name>:

[INSERT BIDDER NAME] hereby submits this firm and binding offer to the State of New York in response to New York State Request for Proposals (RFP) No. \_\_\_\_\_, issued by the NYS Division of Homeland Security and Emergency Services entitled “\_\_\_\_\_.”

The Proposal hereby submitted meets or exceeds all terms, conditions, and requirements set forth in the above-referenced RFP. The Bidder substantially accepts the terms and conditions as set forth in Section 5 of the RFP, and Standard Clauses for New York State Contracts in RFP, Appendix A and agrees to enter into a contractual agreement that shall substantially contain the terms and conditions set forth therein. This formal offer will remain firm and non-revocable for a minimum period of 365 days from the Proposal Due Date and Time as set forth in RFP, § 2.01. In the event that a contract is not approved by the Office of the State Comptroller (OSC) within the 365 day period, this offer shall remain firm and binding beyond the 365 day period and until a contract is approved by OSC, unless [INSERT BIDDER NAME] delivers to the State written notice of withdrawal of its Proposal.

[INSERT BIDDER NAME]'s complete offer is set forth as follows:

Administrative Proposal:

Total of three (3) originals and two (2) hard copies, with one (1) electronic copy in (disk, DVD, CD Rom) format.

Technical and Management Proposal:

Total of four (4) hard copy volumes, with one (1) electronic copy in (disk, DVD, CD Rom) format.

Financial Proposal:

Total of two (2) hard copy volumes, with one (1) electronic copy in (disk, DVD, CD Rom) format.

The undersigned affirms and swears s/he has the legal authority and capacity to sign and make this offer on behalf of, [INSERT BIDDER NAME] and possesses the legal authority and capacity to act on behalf of Bidder to execute a contract with the State of New York. The undersigned affirms and swears as to the truth and veracity of all documents included in this offer.

---

Signature  
[INSERT BIDDER NAME]  
[INSERT TITLE]  
[INSERT COMPANY NAME]



**PLEASE SUBMIT WITH ADMINISTRATIVE PROPOSAL**

Please Note: A “No” response may be grounds for disqualification from this procurement.

<b>RFP Name:</b> _____ <b>Proposal Date:</b> _____					
<b>1</b>	<b>Information Regarding the Proposer’s Firm:</b>  <b>Firm:</b> _____ <b>Address:</b> _____ <b>City, State, Zip Code:</b> _____ <b>Telephone Number:</b> _____				
<b>2</b>	<b>Primary Contact Concerning this Proposal:</b>  <b>Name:</b> _____ <b>Title:</b> _____ <b>Address:</b> _____ <b>City, State, Zip Code:</b> _____ <b>Telephone Number:</b> _____ <b>Email address:</b> _____				
<b>3</b>	<b>Irrevocable Offer:</b> The rates quoted are an irrevocable offer that is good through the execution of a contract. <table style="float: right; border: none;"> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">Yes</td> <td style="text-align: center;">No</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	Yes	No
<input type="checkbox"/>	<input type="checkbox"/>				
Yes	No				
<b>4</b>	<b>Willingness to Perform All Services:</b> The Proposer is willing to, and capable of performing and providing all of the Deliverables, products and services described in this RFP. <table style="float: right; border: none;"> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">Yes</td> <td style="text-align: center;">No</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	Yes	No
<input type="checkbox"/>	<input type="checkbox"/>				
Yes	No				
<b>5</b>	<b>Appendix A:</b> The Proposer has read, understands, and accepts the provisions of Appendix A, Standard Clauses for New York State Contracts, which will be incorporated, without change or amendment, into the contract entered into between the State and the selected Proposer. <table style="float: right; border: none;"> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">Yes</td> <td style="text-align: center;">No</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	Yes	No
<input type="checkbox"/>	<input type="checkbox"/>				
Yes	No				
<b>6</b>	<b>Vendor Responsibility Questionnaire Requirement:</b>  The Proposer has (Please check the appropriate box.): <input type="checkbox"/> Certified and filed the Vendor Responsibility Questionnaire on-line via the New York State VendRep System.  <p style="text-align: center;"><b>OR</b></p> <input type="checkbox"/> Included a properly executed paper copy of the Vendor Responsibility Questionnaire with the Administrative Proposal.				
<b>7</b>	<b>The Firm’s Taxpayer Identification Number is:</b> _____ <b>DUNS #:</b> _____ <div style="text-align: right;">(if applicable)</div>				

**By my signature on this Cover Page, I certify that I am authorized to bind the Firm contractually.**

**Typed or Printed Name of Authorized Representative of the Firm**

**Title/Position of Authorized Representative of the Firm**

**Signature**

**Date**

# APPENDIX B - PART 2 - BIDDER QUALIFICATION CERTIFICATION

An authorized representative of the Bidder who is legally authorized to certify the information requested in the name of and on behalf of the Bidder is required to complete and sign the Bidder Qualification Certification and provide all requested information. Bidder's authorized representative must certify as to the truth of the representations made by signing where indicated, below.

## CERTIFICATION:

The Bidder: (1) recognizes that the following representations are submitted for the express purpose of assisting the State in making a determination to award a contract; (2) acknowledges and agrees by submitting the Certification, that the State may in its discretion, verify the truth and accuracy of all statements made herein; (3) certifies that the information submitted in this certification and any attached documentation is true, accurate and complete.

### Appendix B – Part 2 – Bidder Qualification Certification

Name of Business Entity Submitting Bid:		
Entity's Legal Form:		<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other _____
No.	RFP Ref.	<input type="radio"/> RFP Requirement:
1.	§ 1.04 (1)c	At time of bid submission, Bidder represents and warrants that it: <input type="checkbox"/> is <input type="checkbox"/> is not duly organized, validly existing, and authorized to conduct business in NYS. If not authorized to do business in NYS, at time of bid, the Bidder represents and warrants that it: <input type="checkbox"/> has <input type="checkbox"/> has not filed an application for authority to do business in NYS with the NYS Secretary of State.
No.	RFP Ref.	<input type="radio"/> RFP Requirement:
2.	§ 1.04 (1)d	At time of bid submission, Bidder represents and warrants that it: <input type="checkbox"/> has <input type="checkbox"/> has not completed, obtained or performed all registrations, filings, approvals, authorizations, consents and examinations required by any governmental authority for the provision of Services and that it will, in order to perform said Services during the term of the Contract, comply with any requirements imposed upon it by law.
No.	RFP Ref.	<input type="radio"/> RFP Requirement:
3.	§ 1.04 (2)a	At time of bid submission, Bidder represents and warrants that it: <input type="checkbox"/> possesses <input type="checkbox"/> does not possess adequate staffing resources, financial resources and organizational structure to perform the type, magnitude and quality of work specified in the RFP.
4.	§ 1.04 (2)b	At time of bid submission, Bidder represents and warrants that it: <input type="checkbox"/> possesses <input type="checkbox"/> does not possess the experience specified in the RFP. If the Bidder proposes that the work specified in the RFP be performed by the Bidder in combination with one or more subcontractors, the Bidder also possesses experience working within such a multiple-firm environment.  <i>(Note: Evidence that Bidder has maintained an organization capable of performing the work, in continuous operation for at least the indicated minimum periods is to be provided in the Bidder's Organizational Overview section of the Bidder's Technical and Management Proposal.)</i>

\_\_\_\_\_  
 Signature  
 [INSERT BIDDER NAME]  
 [INSERT TITLE]  
 [INSERT COMPANY NAME]



## **APPENDIX B - PART 3 – BIDDER RESPONSIBILITY CERTIFICATION AND QUESTIONNAIRE**

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Bidder is required to submit an executed Bidder Responsibility Certification and Questionnaire in the form set forth in this Part 3. The certification must be executed by a person duly authorized to bind the Bidder. The executed certification must be included as part of the Bidder's *Administrative Proposal* at this section.

Any subcontractors included in the proposal with its subcontract expected to equal or exceed \$100,000 over the life of the contract must complete the Questionnaire. These completed forms must be submitted as part of the Bidder's *Administrative Proposal* at this section.

### **BIDDER RESPONSIBILITY CERTIFICATION AND QUESTIONNAIRE**

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*An authorized representative of the Bidder who is legally authorized to certify the information requested in the name of and on behalf of the Bidder is required to complete and sign the Bidder Responsibility Certification and Questionnaire and provide all requested information. Bidder's authorized representative must certify as to the truth of the representations made by signing where indicated, below.*

A contracting agency is required to conduct a review of a prospective Contractor to provide reasonable assurances that the Vendor is responsible. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. This questionnaire is designed to provide information to assist a contracting agency in assessing a Vendor's responsibility prior to entering into a contract with the Vendor. Vendor responsibility is determined by a review of each Bidder or Proposer's authorization to do business in New York, business integrity, financial and organizational capacity, and performance history.

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).

Vendors who file the Vendor Responsibility Questionnaire online, prior to the proposal due date do not need to submit a paper copy as part of their Administrative Proposal. **However, please indicate on Cover Page that a completed questionnaire is available on the VendRep System.**

If the Vendor Responsibility Questionnaire is not completed online the bidder must submit a fully completed and certified paper copy as part of the Administrative Proposal. The **Non-Construction Vendor Responsibility Questionnaire** can be downloaded from: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

**Prospective contractors must answer every question in the questionnaire and where appropriate additional information may be required for the questionnaire to be complete and accurate.** The completed questionnaire and responses will become part of the procurement record.

It is imperative that the person completing the Vendor Responsibility Questionnaire be knowledgeable about the proposing Contractor's business and operations as the questionnaire information must be attested to by an owner or officer of the Vendor.

**NEW YORK STATE  
NON-COLLUSIVE BIDDING CERTIFICATION**

In accordance with New York State Finance Law, Section 139-d, by submitting its bid, each bidder and each person signing on behalf of any other 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 or her knowledge and belief:

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

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND  
[MACBRIDE FAIR EMPLOYMENT PRINCIPLES]**

In accordance with New York State Finance Law, Section 165, the Contractor/Bidder certifies that it or any individual or legal entity in which the Contractor/Bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Contractor/Bidder, either (answer yes or no to one or both of the following, as applicable):

- (1) have business operations in Northern Ireland,  
No \_\_\_\_\_ Yes \_\_\_\_\_, and if yes:
- (2) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.  
No \_\_\_\_\_ Yes \_\_\_\_\_

\_\_\_\_\_  
Signature  
[INSERT BIDDER NAME] \_\_\_\_\_  
[INSERT TITLE] \_\_\_\_\_  
[INSERT COMPANY NAME] \_\_\_\_\_

Dated: \_\_\_\_\_





## **APPENDIX B - PART 5 – Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and Certified Minority/Women-Owned Businesses on OGS Contracts**

In accordance with Article 15-A of the 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 Offeror/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 OGS contracts.

### **Equal Employment Opportunity (EEO) Requirements**

By submission of a bid or proposal in response to this solicitation, the Offeror agrees with all of the terms and conditions of Appendix A 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.

The following forms are required to ensure offeror compliance with the Equal Employment Opportunity requirements:

#### **1. Staffing Plan (Form EEO 100)**

To ensure compliance with the foregoing section, the Offeror shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this contract broken down by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Offerors shall complete the Staffing Plan form and submit it as part of their bid or proposal or within a reasonable time thereafter, but no later than the time of award of the contract.

**A contractor's failure to submit a Staffing Plan prior to the time required shall result in the rejection of the bid or proposal.**

#### **2. Workforce Employment Utilization/Compliance Report (Form EEO 101).**

Once a contract has been awarded, the Contractor is responsible to update OGS on any changes to the Staffing Plan submitted. This information is to be submitted on a quarterly basis during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Employment Utilization/Compliance Report (Utilization/Compliance Report) must be submitted to report this information. Separate forms are to be completed for the contractor and any subcontractor performing work on the contract. Please note that in all instances, the Contractor may not be able to separate out the workforce utilized in the performance of the contract from the Contractor's and/or sub contractor's total workforce. When a separation can be made, the Contractor shall submit the Utilization/Compliance Report and indicate that the information provided relates to the actual workforce utilized on the subject contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or subcontractor's total workforce, the Contractor shall submit the Utilization/Compliance Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

The Utilization/Compliance Report is to be completed for the quarters ending on 3/31, 6/30, 9/30 and 12/31 and submitted to the OGS Office of Minority/Women-owned Business Enterprise Program Operations (OM/WBEO) within 15 days of the end of each quarter. If there are no changes to the workforce utilized on the contract during

the reporting period, the Contractor can submit a copy of the previously submitted report with the date and reporting period updated, indicating no change.

## **Requirements and Procedures Regarding Business Participation Opportunities for Certified Minorities and Women on OGS Contracts**

In accordance with Article 15-A of the Executive Law and regulations adopted pursuant thereto, the following forms are required to ensure compliance with the Minority and Women-owned Business participation requirements. In accordance with these requirements, the Offeror agrees to make every good faith effort to promote and assist the participation of Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. The directory of Certified Businesses can be viewed at: <http://www.empire.state.ny.us/MWBE.html>. In addition, the Offeror agrees to submit the following documents as evidence of compliance with the foregoing:

### **1. M/WBE Utilization Plan (Form M/WBE 100).**

A. Offerors are required to submit a Utilization Plan on **Form M/WBE 100** with this bid or proposal. The Utilization Plan shall list certified minority- and women-owned business enterprises which the contractor intends to use to perform the State contract and a description of the contract scope of work which the contractor intends to structure to increase the participation by certified minority- and women-owned enterprises on the State contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the contractor intends to be performed by a certified minority- or woman-owned business. Any modifications or changes to the agreed participation by Certified M/WBEs after the Contract Award and during the term of the contract must be reported on a revised M/WBE Utilization Plan and submitted to the OGS M/WBEPO.

B. The OGS OM/WBEPO will review the M/WBE Utilization Plan and will issue to the Offeror a written notice of acceptance or deficiency within twenty (20) days of its receipt. A notice of deficiency shall include (i) the name of any M/WBE which is not acceptable for the purpose of complying with the M/WBE participation goals and the reasons why it is not acceptable; (ii) elements of the Contract scope of work which OGS has determined can be reasonably structured by the Offeror to increase the likelihood of participation in the Contract by M/WBEs; and (iii) other information which OGS determines to be relevant to the M/WBE Utilization Plan.

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

D. OGS may disqualify an Offeror as being non-responsive under the following circumstances:

- a) If an Offeror fails to submit a M/WBE Utilization Plan;
- b) If an Offeror fails to submit a written remedy to a notice of deficiency in a M/WBE Utilization Plan;
- c) If an Offeror fails to submit a request for waiver; or
- d) If the OGS OM/WBEPO determines that the Offeror has failed to document good faith efforts.

### **2. Request for Waiver Form (if applicable) (Form M/WBE 101).**

An Offeror who documents good faith efforts to meet the goal requirements may submit a request for a partial or total waiver at the same time it submits its M/WBE Utilization Plan. If a request for waiver is submitted with the M/WBE Utilization plan and is not accepted by the OGS OM/WBEPO at that time, the provisions of clauses 1 (B & C), regarding the notice of deficiency and written remedy will apply.

The Awarded Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its

M/WBE Utilization Plan, during the performance of the contract. Requests for a partial or total waiver of established goal requirements made subsequent to award of a Contract may be made at any time during the term of the Contract to the OGS OM/WBEPO but prior to the submission of a request for final payment on the Contract.

**3. Monthly M/WBE Contractor Compliance Report (Form M/WBE 102).**

Contractors are required to submit a Monthly M/WBE Contractor Compliance Report to OGS OM/WBEPO by the 10th day of each month over the term of the contract documenting the progress made towards achievement of the M/WBE goals of the Contract.

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

**Copies of all referenced forms can be found on the OGS Website at:**

If you have any questions regarding the foregoing requirements or the requirements of Article 15-A of the Executive Law and 5 NYCRR Parts 140-144, please contact the OM/WBEPO office at: 518-486-9284. All Bid related questions should be directed to the Designated Contact(s) identified for this solicitation.



**EQUAL EMPLOYMENT OPPORTUNITY  
STAFFING PLAN**  
Submit with Bid or Proposal – Instructions on page 2

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

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

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

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		<b>Submit completed with bid or proposal EEO 100 (Rev 10/07)</b>

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

**Instructions for completing:**

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

**RACE/ETHNIC IDENTIFICATION**

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

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER**



**EQUAL EMPLOYMENT OPPORTUNITY  
WORK FORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT**

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Offeror's Name:</b>		<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Offeror's Address:</b>		

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

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

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		<b>Submit completed form to:</b> <b>NYS Office of General Services</b> <b>Office of Minority/Woman-owned Business Enterprise Program Operations</b> <b>Corning Tower, 41<sup>ST</sup> Floor</b> <b>Empire State Plaza, Albany NY, 12242</b> <p align="right">EEO 101 (Revised 10.07)</p>

**General Instructions:** The work force utilization/compliance report (**EEO 101**) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's or subcontractor's total work force, the contractor or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's or subcontractor's total work force, information on the contractor's total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to OGS within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a written statement of no change or submit a copy of the previously submitted report with the date and reporting period updated.

**Instructions for completing:**

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OGS Office of Minority/Woman-Owned Business Enterprise Programs at (518) 473-5212 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

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

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER**



**OFFICE OF MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM OPERATIONS  
M/WBE UTILIZATION PLAN**

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name: \_\_\_\_\_ Federal Identification Number: \_\_\_\_\_  
 Address: \_\_\_\_\_ Solicitation Number: \_\_\_\_\_  
 City, State, Zip Code: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
 Region/Location of Work: \_\_\_\_\_ M/WBE Goals in the Contract: MBE % WBE %

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
A.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
<b>PREPARED BY:</b> <b>Signature:</b> _____ <b>DATE:</b> <b>TELEPHONE NO:</b> <b>EMAIL ADDRESS:</b> <b>NAME AND TITLE OF PREPARER (Print or Type):</b>  SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION.			<b>FOR OGS USE ONLY</b> <b>REVIEWED BY:</b> _____ <b>DATE:</b> _____ <b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO <b>Date:</b> _____ <b>Contract No:</b> <b>Contract Award Date:</b> <b>Estimated Date of Completion:</b> <b>Amount Obligated Under the Contract:</b> <b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO <b>Date:</b> _____ <b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO <b>Date:</b> _____	

M/WBE 100 (Revised 10/31)



## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

**Note:**

**Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by OGS, to determine M/WBE compliance.**

M/WBE 101 Instructions (10/07)



**OFFICE OF MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM OPERATIONS  
MONTHLY M/WBE CONTRACTOR COMPLIANCE REPORT**

**INSTRUCTIONS: BEGINNING THIRTY (30) DAYS AFTER A CONTRACT IS AWARDED; MONTHLY COMPLIANCE REPORTS ARE DUE ON THE TENTH DAY OF EACH MONTH FOR THE PRECEDING MONTH'S ACTIVITY.**

Contractor's Name: \_\_\_\_\_ Federal Identification No.: \_\_\_\_\_  
 Address: \_\_\_\_\_ Contract No.: \_\_\_\_\_  
 City, State, Zip Code: \_\_\_\_\_ Telephone No: \_\_\_\_\_

**AS EVIDENCE OF THE PROGRESS MADE TOWARDS ACHIEVEMENT OF THE MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) GOAL(S), CONTRACTOR IS REQUIRED TO COMPLETE AND SUBMIT THE FOLLOWING FOR EACH MBE OR WBE (PLEASE USE A SEPARATE FORM FOR EACH MBE OR WBE):**

1. Copy (ies) of the written agreement with certified M/WBEs (submit with first monthly report).
2. List below the name, address and telephone number(s) of the certified M/WBE(s) utilized during the preceding month.
 

NAME	TELEPHONE NO.
ADDRESS	LOCATION OF WORK PERFORMED
CITY, STATE, ZIP	
3. Description of the work to be performed by the certified M/WBE (attach separate sheet if needed)
4. Scheduled dates for performance of the work by the certified M/WBE
5. Actual total cost of the contract work to be performed by the certified M/WBE \$
6. Actual total amount(s) of any payments made over the life of the contract by the Contractor to the certified M/WBE as of the date the compliance report is being submitted \$

<b>PREPARED BY (Signature):</b> <b>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT</b>	<b>DATE:</b> _____						
<b>NAME AND TITLE OF PREPARER (Print or Type):</b> _____	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"><b>TELEPHONE NO.:</b> _____</td> <td style="width: 70%;"><b>EMAIL ADDRESS:</b> _____</td> </tr> </table>	<b>TELEPHONE NO.:</b> _____	<b>EMAIL ADDRESS:</b> _____				
<b>TELEPHONE NO.:</b> _____	<b>EMAIL ADDRESS:</b> _____						
Monthly reports should be submitted by the 10 <sup>th</sup> day of each month to: Office of Minority/Women-Owned Business Enterprise Program Operations New York State - Office of General Services 41 <sup>ST</sup> Floor, Mayor Erastus Corning 2 <sup>nd</sup> Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, NY 12242	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td align="center" colspan="2"><b>FOR OGS USE ONLY</b></td> </tr> <tr> <td style="width: 70%;"><b>REVIEWED BY:</b> _____</td> <td style="width: 30%;"><b>DATE:</b> _____</td> </tr> <tr> <td colspan="2" style="height: 50px;"> </td> </tr> </table>	<b>FOR OGS USE ONLY</b>		<b>REVIEWED BY:</b> _____	<b>DATE:</b> _____		
<b>FOR OGS USE ONLY</b>							
<b>REVIEWED BY:</b> _____	<b>DATE:</b> _____						

M/WBE 102 (rev 10/07)

## APPENDIX C - TECHNICAL AND MANAGEMENT PROPOSAL

### TECHNICAL AND MANAGEMENT PROPOSAL

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#### INSTRUCTIONS FOR SUBMISSION

**\* DO NOT INCLUDE ANY COST DATA  
IN THE TECHNICAL AND MANAGEMENT PROPOSAL \***

The Bidder's *Technical and Management Proposal* must contain the following information, in the order enumerated below:

APPENDIX C – TECHNICAL AND MANAGEMENT PROPOSAL	
APPENDIX - PART	CONTENTS
Appendix C – Part 1	Organizational Overview
Appendix C – Part 2	Project Overview
Appendix C – Part 3	Verification of Minimum Qualifications
Appendix C – Part 4	Project and Project Manager References

## **APPENDIX C - PART 1 - ORGANIZATIONAL OVERVIEW**

At this part of its *Technical and Management Proposal*, Bidder must provide an Organizational Overview that contains the information solicited of Bidders as set forth below and in the form contained in RFP, Appendix C, Part 1 and which addresses all of the following requirements:

The Organizational Overview should consist of a succinct statement outlining corporate/business history including a general mission statement, the overall number of employees per position, and other general information about the Bidder. (This includes the Bidder acting as a Prime Contractor as well as any and all subcontractors.)

Specifically, the Bidder must:

- Provide evidence that it has maintained an organization capable of providing the experienced technical personnel sought by this RFP.
- Provide evidence that the Bidder has been in continuous operation for at least the past three (3) years.
- Provide a statement of previous experience that qualifies the Bidder to provide the required Services

Note: The Contractor must assume responsibility as Prime Contractor for the performance of the work specified in this RFP. Proposed subcontractors must be identified at time of Proposal submission. All subcontracting is subject to the provisions of Section 5.31, below. Use of any subcontractors not identified in the Proposal is only allowed subject to the prior written approval of the State.

In addition, the Bidder must specify its agreement to and, as applicable, explain how it will:

- a. Maintain an adequate organizational structure and resources sufficient to discharge its contractual responsibilities including monitoring and completing deliverables, invoicing, and billing issues.
- b. Provide for normal day-to-day communications and maintain a Contractor Project Manager to maintain proper communication and coordinate the performance of all contractual responsibilities. This individual must be identified and his or her contact information provided upon Contract award.
- c. Attend or participate in meetings as needed relating to Contract performance.
- d. Cooperate fully with the State's staff, its advisors and any other contractors and/or subcontractors who may be engaged by the State relative to the Services.
- e. Recognize and agree that any and all work performed outside the scope of the Services as set forth in the RFP, shall be deemed by the State to be gratuitous and not subject to charge by the Contractor.

The Bidder must complete the following form:

**Bidder and Subcontractors**

**Firm Name:**

1.a. Bidder Name and Address: Name, Title, Telephone, Email of Contact: Address of Contact (if different from 1.a)

1.b. Subcontractor Name and Address: Name, Title, Telephone, Email of Contact: Address of Contact (if different from 1.b)

1.c. Subcontractor Name and Address: Name, Title, Telephone, Email of Contact: Address of Contact (if different from 1.c)

1.d. Subcontractor Name and Address: Name, Title, Telephone, Email of Contact: Address of Contact (if different from 1.d)

1.e. Subcontractor Name and Address: Name, Title, Telephone, Email of Contact: Address of Contact (if different from 1.e)

1.f. Subcontractor Name and Address: Name, Title, Telephone, Email of Contact: Address of Contact (if different from 1.f)

**[USE ADDITIONAL SHEETS IF NECESSARY]**

## **APPENDIX C - PART 2 - PROJECT OVERVIEW**

At this part of its Technical and Management Proposal, Bidder must provide a Project Overview that contains the information solicited of Bidders as set forth below and as contained in RFP, Appendix C, Part 2. In general, the Bidder should follow the structure of Exhibit A when providing the Project Overview.

The Bidder must describe how it will deliver the Services described in Exhibit A “Project Scope of Work” of this RFP. The Project Overview shall be in the form of a narrative description of the concise process that the Bidder proposes be used when providing Services to the State.

# APPENDIX C – PART 3 - VERIFICATION OF MINIMUM QUALIFICATIONS

**Bidder Instructions:** Please complete, sign, and notarize this form. Submit the completed form with the Technical Proposal. Bidders must supply a “Yes” or “No” response for each requirement. Please Note: A “No” response is grounds for disqualification from this procurement.

In the space provided under each Requirement, Bidders should list engagements demonstrating the experience specified by the Requirement. All experience listed below should also appear in the “Description of Company Experience” section of the Bidder’s proposal.

The undersigned, being duly sworn, attests to whether or not the Firm possesses the following experience:

<b>Minimum Qualifying Requirement 1:</b>	<b>YES</b>	<b>NO</b>
[List relevant experience with start and end dates (month/year) here.]*		
<b>Minimum Qualifying Requirement 2:</b>	<b>YES</b>	<b>NO</b>
[List relevant experience with start and end dates (month/year) here.]*		
<b>Minimum Qualifying Requirement 3:</b>	<b>YES</b>	<b>NO</b>
[Describe engagement(s) with start and end dates (month/year) here.]*		
<b>Minimum Qualifying Requirement 4:</b>	<b>YES</b>	<b>NO</b>
[List relevant experience with start and end dates (month/year) here.]*		

\*Please attach additional sheets if needed.

Name of Bidder (firm name): \_\_\_\_\_

Name of Representative: \_\_\_\_\_

Title of Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX C - PART 4 –PROJECT AND PROJECT MANAGER REFERENCES**

At this part of its Technical and Management Proposal, Bidder must provide information which demonstrates that Bidder can successfully undertake and support the timely provision of the Contract Services as set forth in this RFP, in the form contained in RFP, Appendix C, Part 4. The Bidder must provide a minimum of three (3) (maximum of five [5]) prior and/or current project experience(s) (Project Reference) in the specified format provided in the following Project References Table. Fill out one form for each reference.

Bidder also must provide information that the identified Project Manager can successfully manage the work described in this RFP. The Bidder must provide a minimum of three (3) (maximum of five [5]) prior and/or current project experience(s) (Project Manager Reference) in the specified format provided in the following Project Manager References Table. Fill out one form for each reference.

While the same Reference may be used as for Project Reference and for Project Manager Reference, Bidders should submit a separate form for each type of Reference.

The Bidder shall be solely responsible for providing contact names and phone numbers for each Reference that is readily available to be contacted by the State. the State will contact the references as described in RFP, Section 3.02.

(Bidders are reminded that the State intends to perform reference checks of those References provided by the Bidder **between the Bid Opening Date and the Notification of the Selected Bidder**. As previously stated, Bidders shall be solely responsible for providing contact names and phone numbers for each Project Reference **that is readily available to be contacted by the State.**)

<b>Project Reference # _____</b>	
<b>Item</b>	<b>Proposer Response</b>
Proposed Firm:	
Client for whom services were performed:	
Contact Name:	
Contact Title:	
Phone Number:	
E-Mail:	
Nature of client's project:	
Dates during which services were provided to client:	
Approximate value of project and value of proposer's portion:	
Was the proposer the primary contractor or a sub-contractor for this engagement?	
Names of proposed staff that worked on this project:	

**Project Manager Reference # \_\_\_\_\_**

<b>Item</b>	<b>Proposer Response</b>
Proposed Firm:	
Client for whom services were performed:	
Contact Name:	
Contact Title:	
Phone Number:	
EMail:	
Nature of client's project:	
Dates during which services were provided to client:	
Approximate value of project and value of proposer's portion:	
Was the proposer the primary contractor or a sub-contractor for this engagement?	
Names of proposed staff that worked on this project:	

## APPENDIX D - FINANCIAL PROPOSAL

### FINANCIAL PROPOSAL

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#### INSTRUCTIONS FOR SUBMISSION

**\*\*DO NOT INCLUDE ANY NARRATIVE DESCRIPTION OF THE SERVICES  
IN THE FINANCIAL PROPOSAL \*\***

The Bidder's *Financial Proposal* must contain the following information, in the order enumerated below. The tables below are provided within this RFP for reference. The same tables will be supplied in Excel format. In the case of differences between the tables in the RFP and those provided separately in Excel format, Bidders should reference the Excel versions.

APPENDIX D – FINANCIAL PROPOSAL	
APPENDIX - PART	CONTENTS
Sheet 1	Non-NYC Base Cost Matrix
Sheet 2	Continuous 1-ft Cost Matrix
Sheet 3	NYC Cost Matrix
Sheet 4	Cost Increase Factors
Sheet 5	Options Cost Matrix
Sheet 6	Emergency & On-Demand Imagery

**APPENDIX D, FINANCIAL PROPOSAL, SHEET 1**  
**NYS DHSES / NYS ITS - GPO**  
**RFP DHSES (Orthos) 01-2013**  
**TITLE: Statewide Digital Orthoimagery Program**  
**BID PROPOSAL COST FORM**

Bidder: \_\_\_\_\_ agrees to perform the requested services for the Statewide Digital Orthoimagery Program for the amounts summarized below. Actual annual lots will include some combination of these costs. These costs only apply to Unit Areas exclusive of the five (5) counties of the city of New York.

Range of Sq. Miles for each Cost Break	Cost Per Square Mile		
	0.5 ft. GSD (SPCS, JP2 & GeoTIFF) RFP, Sec. A.2.7.4	1 Ft. GSD (SPCS, JP2 & GeoTIFF)	2 Ft. GSD (SPCS, JP2 & GeoTIFF)
10-500			
501-1500			
1501-5000			
5001-10000			
10000 +			

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

**APPENDIX D, FINANCIAL PROPOSAL, SHEET 2**  
**NYS DHSES / NYS ITS - GPO**  
**RFP DHSES (Orthos) 01-2013**  
**TITLE: Statewide Digital Orthoimagery Program**  
**BID PROPOSAL COST FORM**

Bidder: \_\_\_\_\_ agrees to perform the requested services for the Statewide Digital Orthoimagery Program for the amounts summarized below. Actual annual lots may include some combination of these costs. These costs only apply to Unit Areas exclusive of the five (5) counties of the city of New York.

Cost Per Square Mile	
Range of Sq. Miles for each Cost Break	Continuous 1 Ft GSD (SPCS, JP2 & GeoTIFF) RFP, Sec. A.2.7.1
2000-4000	
4001-8000	
8001-12000	
12001+	

Cost Per Square Mile	
Range of Sq. Miles for each Cost Break	Continuous 0.5 Ft GSD (SPCS, JP2 & GeoTIFF) RFP, Sec. A.2.7.2
1500-3000	
3001-6000	
6001-12000	
12001+	

Authorized Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX D, FINANCIAL PROPOSAL, SHEET 3**  
**NYS DHSES / NYS ITS - GPO**  
**RFP DHSES (Orthos) 01-2013**  
**TITLE: Statewide Digital Orthoimager Program**  
**BID PROPOSAL COST FORM**

Bidder: \_\_\_\_\_ agrees to perform the requested services for the Statewide Digital Orthoimager Program for the amounts summarized below. Actual annual lots will include some combination of these costs. These costs only apply to the five (5) counties of the city of New York.

Range of Sq. Miles for each Cost Break	Cost Per Square Mile		
	0.5 ft GSD All True Orthorectification (SPCS, JP2 & GeoTIFF)	0.5 ft GSD Selective True Orthorectification (SPCS, JP2 & GeoTIFF)	2 Ft GSD (SPCS, JP2 & GeoTIFF)
10-50			
51-150			
151-350			
351 +			

<b>Accelerated Delivery</b> RFP, Sec. 5.10, F % Cost Increase
---

<b>Dual Coverage Color and CIR</b> Exhibit A, Sec. A.2.7.2 % Cost Increase
--

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**APPENDIX D, FINANCIAL PROPOSAL, SHEET 4**  
**NYS DHSES / NYS ITS - GPO**  
**RFP DHSES (Orthos) 01-2013**  
**TITLE: Statewide Digital Orthoimager Program**  
**BID PROPOSAL COST FORM**

Bidder: \_\_\_\_\_ agrees to perform the requested services for the Statewide Digital Orthoimager Program for the amounts summarized below. Actual annual lots may include some combination of these costs. **These costs only apply to Unit Areas exclusive of the five (5) counties of the city of New York.**

**Accelerated Delivery**  
RFP, Sec. 5.10. F

% Cost Increase

**Dual Coverage Color and CIR**  
Exhibit A, Sec. A.2.7.3

% Cost Increase

**True Orthorectification**  
Exhibit A, Sec. A.2.7.5

% Cost Increase

**Note:**  
 Cost increases should be entered as percentages (i.e., - 10%, 20%, etc.), so that the increased unit cost for the specified service or deliverable will be calculated as follows:  
 Original unit cost = \$100/mi<sup>2</sup>  
 Cost Increase = 20%  
 Increased unit cost = 1.2 \* \$100 = \$120/mi<sup>2</sup>

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

**APPENDIX D, FINANCIAL PROPOSAL, SHEET 5**  
**NYS DHSES / NYS ITS - GPO**  
**RFP DHSES (Orthos) 01-2013**  
**TITLE: Statewide Digital Orthoimagery Program**  
**BID PROPOSAL COST FORM**

**Bidder:** \_\_\_\_\_ **agrees to perform the requested services for the Statewide Digital Orthoimagery Program for the amounts summarized below. Actual annual lots may include some combination of these costs.**

**Orthoimagery Mosaic** This cost applies to all parts of New York State, including the 5 counties of the city of New York.  
 RFP, Sec. A.2.8.1

Cost per GB

**LIDAR Point Cloud and DEM** These costs only apply to Unit Areas exclusive of the five (5) counties of the city of New York.

Range of Sq. Miles for each Cost Break	Quality Level A (1.5-m NPS)	Quality Level B (0.7-m NPS)
50-500		
501-1500		
1501+		

RFP, Sec. A.2.8.2

**Vegetation & Building Classification**  
 % Cost Increase

Cost increases should be entered as percentages (i.e. - 10%, 20%, etc.), so that the increased unit cost for the specified service or deliverable will be calculated as follows:

Original unit cost = \$100/mi<sup>2</sup>  
 Cost Increase = 20%  
 Increased unit cost = 1.2 \* \$100 = \$120/mi<sup>2</sup>

Authorized Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX D, FINANCIAL PROPOSAL, SHEET 6  
 NYS DHSES / NYS ITS - GPO  
 RFP DHSES (Orthos) 01-2013  
 TITLE: Statewide Digital Orthoimagery Program  
 BID PROPOSAL COST FORM**

Bidder: \_\_\_\_\_ agrees to perform the requested services for the Statewide Digital Orthoimagery Program for the amounts summarized below.

**These costs apply to all parts of New York State, including the 5 counties of the city of New York.**

**Emergency Orthoimagery** (RFP, Section A.4)

Cost Per Square Mile	Maximum Area (mi <sup>2</sup> ) Which Can Be Delivered At Indicated Cost
1.0 ft GSD 4-Band (SPCS, GeoTIFF)	

**On-Demand Orthoimagery** (RFP, Section A.5)

Cost Per Square Mile	The State will not request On-Demand Orthoimagery more than twice a year, and may choose to make no requests. Requests will be for no more than 25 square miles.
1.0 ft GSD 4-Band (SPCS, GeoTIFF)	

Authorized Signature

Title

Date

## **Extraneous Terms (Instructions for Documentation and Submission)**

**In compliance with RFP, Section 2.11, *Extraneous Terms*, the Bidder shall identify all extraneous terms in the attached table, and shall adhere to all instructions below for preparing the table.**

### **INSTRUCTIONS:**

#### **RFP Volume, Part and Section Reference:**

The Bidder must insert the exact RFP part, section, and paragraph number of the requirement(s) that the Bidder is proposing to modify. The Bidder must insert the nature of the proposed change and its impact on the Requirement.

#### **RFP Requirement:**

The Bidder must insert a concise description of the requirement(s) that the Bidder is proposing to modify.

#### **Proposed Extraneous Term Type:**

The Bidder must insert a one-word description, of the type of modification permitted by Section 2.11 of the RFP, to each of the requirement(s) that the Bidder is proposing to modify, selected from the following list:

- Additional;
- Supplemental;
- “Or Equal”; or
- Alternative

#### **Proposed Extraneous Term(s):**

The Bidder must insert the proposed alternate wording of the requirement(s).

#### **Impact on RFP Requirement:**

The Bidder must provide comments that describe the impact of the alternate wording. The comments should explain how the modification(s) would benefit the State and provide best value. If there is a corresponding impact on the Administrative, Technical or Financial Proposal(s), that impact should be explained here with reference(s) to the parts of the volume(s) that are affected. However, **DO NOT INCLUDE ANY COST DATA IN THE ADMINISTRATIVE OR TECHNICAL AND MANAGEMENT PROPOSALS.**

**The Bidder must use the table format described above and detailed on the following page to summarize its Proposals for extraneous terms. Each Extraneous Term should be consecutively enumerated in the table. The Bidder may refer to more voluminous narratives, tables, figures and appendices that more fully describe aspects of the extraneous terms, provided that the additional material is fully cross-referenced by this required table.**

EXTRANEOUS TERM(S)			
No.	RFP Volume, Part and Section Reference	RFP Requirement	Proposed Extraneous Term Type
1.		.	<input type="checkbox"/> Additional; <input type="checkbox"/> Supplemental; <input type="checkbox"/> "Or Equal"; or <input type="checkbox"/> Alternative
<u>Proposed Extraneous Term(s):</u>			
<u>Impact on RFP Requirement:</u>			

**APPENDIX F - QUESTION TEMPLATE**

**RFP**  
**Questions Template**

Question Number	RFP Page #	Section and Sub-Section Reference	Question

## **APPENDIX G - CONSULANT DISCLOSURE FORMS**

As stated in Section 5.34 of the RFP, Contractor agrees that it will comply with the reporting requirements of section 163(4)(g) of the State Finance Law throughout the term of the Contract. Within ten (10) days of the notice of award, the Contractor shall file with the State for inclusion in the procurement record a report using Form A attached hereto, or such successor forms as are identified by the State. In addition, the Contractor shall file with State, the Department of Civil Service, and the Office of the State Comptroller reports using Form B attached hereto, or such successor forms as are identified by the State. Contractor shall include in any subcontract authorized under this Contract a provision requiring the subcontractor to comply with the reporting requirements of section 163(4)(g) of the State Finance Law in the same manner as the Contractor. Contractor acknowledges that the reports filed pursuant to Section 5.36 of the RFP shall be available for public inspection and copying under the provisions of FOIL.

<b>OSC Use Only:</b> Reporting Code: Category Code: Date Contract Approved:
--

**FORM A**

<b>State Consultant Services - Contractor's Planned Employment          From Contract Start Date Through The End Of The Contract Term</b>
---

State Agency Name:	Agency Code:
Contractor Name:	Contract Number:
Contract Start Date:    /    /	Contract End Date:    /    /

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report: \_\_\_\_\_

Title: \_\_\_\_\_ Phone #: \_\_\_\_\_

Preparer's Signature: \_\_\_\_\_

Date Prepared:    /    /

(Use additional pages, if necessary) \_\_\_\_\_ Page    of



## APPENDIX H - COMPLIANCE WITH NYS WORKERS' COMPENSATION LAW

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the State shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the State, successful Bidders will be required to verify, on forms authorized by the New York State Workers' Compensation Board, that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms used to demonstrate compliance with the WCL are indicated below.

***Please Note: The successful Contractor must submit this insurance verification information within three (3) business days of notification of selection by the State. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to comply with the requirements of this appendix will be grounds for disqualification of an otherwise successful bid.***

### **Workers' Compensation Requirements under WCL § 57:**

To comply with coverage provisions of the WCL, Contractor must:

- A) Be legally exempt from obtaining workers' compensation insurance coverage; OR
- B) Obtain such coverage from insurance carriers; OR
- C) Be a Board-approved self-insured employee or participate in an authorized group self-insurance plan.

To verify compliance with the above, the State must receive one of the following properly executed Workers' Compensation Board forms from the Contractor, the Contractor's insurance carrier or the Workers' Compensation Board, depending on which form is appropriate:

- 1) CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage. This form is completed electronically on the Board's website and printed out, [http://www.wcb.state.ny.us/content/ebiz/wc\\_db\\_exemptions/wc\\_db\\_exemptions.jsp](http://www.wcb.state.ny.us/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp); OR
- 2) C-105.2 – Certificate of Workers' Compensation Insurance. The Contractor's insurance carrier sends this form to the State. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
- 3) SI-12 – Certificate of Workers' Compensation Self-Insurance. The Contractor contacts the Board's Self-Insurance Office at 518-402-0247 to obtain this form; OR
- 4) GSI-105.2 – Certificate of Participation in Worker's Compensation Group Self-Insurance. Contractor's Group Self-Insurance Administrator sends this form to the State.

### **Disability Benefits Requirements under WCL § 220(8):**

To comply with the coverage provisions of the WCL regarding disability benefits, Contractor may:

- A) Be legally exempt from obtaining disability benefits insurance coverage; OR
- B) Obtain such coverage from insurance carriers; OR
- C) Be a Board-approved self-insured employer.

To verify compliance with the above, the State must receive one of the following properly executed Workers' Compensation Board forms from the Contractor, the Contractor's insurance carrier or the Workers' Compensation Board, depending on which form is appropriate:

- 1) CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage. This form is completed electronically on the Board's website and printed out, [http://www.wcb.state.ny.us/content/ebiz/wc\\_db\\_exemptions/wc\\_db\\_exemptions.jsp](http://www.wcb.state.ny.us/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp); **OR**

2) DB-120.1 – Certificate of Disability Benefits Insurance. The business’s insurance carrier sends this form to the State; **OR**

DB-155 – Certificate of Disability Benefits Self-Insurance. The Contractor contacts the Board’s Self-Insurance Office at 518-402-0247 to obtain this form.

## APPENDIX I - LISTING OF OTHER RFP MATERIALS

The following materials are provided separate from this document, but are considered part of the RFP package. Potential bidders are responsible for making sure they have obtained the latest versions of each file.

<b>Item</b>
Solicitation Letter
Appendix D - Financial Proposal Spreadsheets in Excel Format
Lot 14 & 15 Orthoimagery Tile Grid shapefiles
Sample 1-ft DTM + metadata
Sample 2-ft DTM + metadata
Sample NYC DTM + metadata

Additional files, including any amendments and/or addendums to the RFP, will be made available separately from this document.

## APPENDIX J - DEFINITIONS

Acceptance	shall mean that GPO's Digital Orthoimagery Program Manager has certified that all Deficiencies, if any, noted in the State's Acceptance Review(s) have been corrected by the Contractor to the satisfaction of the State, as evidence by issuance of an approval letter to the Contractor by GPO' Digital Orthoimagery Program Manager.
Acceptance Reviews	shall mean the State's evaluation and assessment as to whether the Deliverables are Accepted to the satisfaction of the State.
Accepted	shall mean that the State has provided its Acceptance of the Deliverables.
Alternate Deliverable	Deliverables with a change in image type and/or resolution which typically will replace the default deliverable.
Annual Lot	shall mean unit areas designated by the State to be flown and processed each year.
Annual Sub-Lot	shall mean a portion of each Annual Lot, consisting of approximately one-third (1/3) of the Annual Lot.
Best Value	The basis for awarding a contract for services to a responsible and responsive Bidder, who can best <i>optimize quality, cost and efficiency</i> .
Bidder	Any individual, organization, or company that is external to the State of New York and submits a bid for this procurement opportunity. It shall be understood that references in the RFP to "Bidder" shall include said entity's proposed subcontractor, if any.
Business Day	shall mean each Monday, Tuesday, Wednesday, Thursday, or Friday, unless such day falls on the date of any of the NYS holidays
Consultant	Those Contractor personnel selected to perform Services under the Contracts.
Contract	The agreement entered into between the Parties resultant from this RFP.
Contract Effective Date	The date that the Contract is approved by the New York State Comptroller.
Contract Services, Products or Deliverables	shall mean deliverables under this agreement, which may include commodities, services and/or technology.
Contractor	The successful Bidder selected as a result of the evaluation of Bidders' Proposals submitted in response to this RFP and who execute a contract with the State for Services.
Deficiency	shall mean any discrepancy, as reasonably determined by the State, by Contractor in the performance of the Contract Service or Deliverables from the terms of the Agreement, described in writing by GPO' Digital Orthoimagery Program Manager.
Director	The head of the New York State Office of Cyber Security
EST	Eastern Standard Time with the understanding that, during that time of the year when Daylight Savings Time (DST) is in effect, EST shall be replaced by DST.
GPO	The New York State GIS Program Office within the Office of Information Technology Services.
NYC	New York City, consisting of Bronx County, Kings County, New York County, Queens County, and Richmond County.
NYS Business Hours	8:30 am - 5:00 pm Eastern Time

NYS Holidays	Means: <ul style="list-style-type: none"> <li>• New Year’s Day;</li> <li>• Labor Day;</li> <li>• Martin Luther King Day;</li> <li>• Columbus Day;</li> <li>• Lincoln's Birthday;</li> <li>• Election Day;</li> <li>• President’s Day;</li> <li>• Veteran’s Day;</li> <li>• Memorial Day;</li> <li>• Thanksgiving Day;</li> <li>• Independence Day; and</li> <li>• Christmas Day</li> </ul>
Neighboring	shall mean connected area(s) that may be enclosed by a single continuous boundary; or, a group of discontinuous areas separated by a maximum of 50 miles as measured in a straight line between nearest boundary points. All areas meeting these criteria may be designated as unit areas as defined in this Request for Proposals.
Optional Deliverable	Deliverables with a change in format and/or coordinate system which will be delivered in addition to the default deliverable.
Proposal	means the Bidder’s <i>Administrative, Technical and Financial Proposals</i> , submitted in response to this RFP.
Request for Proposals (RFP) or Procurement	This request for proposals entitled New York Statewide Digital Orthoimagery Program
Services	Those services to be provided by Contractor(s) personnel pursuant to the resulting Contract and any Personnel Request Document.
State	The State of New York (including the Division of Homeland Security and Emergency Services, and the GIS Program Office).
Term	shall mean the periods during which this Agreement shall be effective, as specified in Section 5 of this Agreement.
Tile	Base unit for orthoimagery. Either 3000'x2000' or 6000'x4000' in SPCS versions.
True Orthorectification	Orthorectification where elevated structures, especially buildings, are modeled in the terrain data to remove apparent lean due to the features' height above the ground surface.
Unit Area	The smallest contiguous deliverable area of an Annual Sub-Lot.
§	Section

## APPENDIX K - PROPOSAL CHECKLIST

\_\_\_\_\_

Date

\_\_\_\_\_

Firm Name

\_\_\_\_\_

Reviewer's Name

### **Technical Proposal (four original hard copies, and one CD).**

1. Does the proposal contain all requested components of the Technical Proposal?

- |   |     |     |    |     |
|---|-----|-----|----|-----|
| a. Table of Contents                                  | Yes | ___ | No | ___ |
| b. Organizational Overview                            | Yes | ___ | No | ___ |
| c. Project Overview                                   | Yes | ___ | No | ___ |
| d. Verification of Minimum Qualifications             | Yes | ___ | No | ___ |
| e. Company Experience and Staff Qualifications        | Yes | ___ | No | ___ |
| 1) Description of Company Experience (RFP Appendix C) | Yes | ___ | No | ___ |
| 2) Firm References (RFP Appendix C)                   | Yes | ___ | No | ___ |
| 3) Staff Qualifications (RFP Appendix C)              | Yes | ___ | No | ___ |
| 4) Project Manager References (RFP Appendix C)        | Yes | ___ | No | ___ |

### **Cost Proposal (two original hard copies, and one CD)**

2. Did the Firm(s) fully complete and sign the Financial Proposal, Appendix D?

Yes \_\_\_ No \_\_\_

## Administrative Proposal

**Bidder should submit the required administrative documentation specified in the RFP (three originals, two hard copies, and one CD).**

3. Did the Firm submit executed copies of:
- a. Formal Offer Letter and Cover Page Yes \_\_\_ No \_\_\_
  - b. Bidder Qualification Certification Yes \_\_\_ No \_\_\_
  - c. Bidder Responsibility Certification and Questionnaire Yes \_\_\_ No \_\_\_
  - d. Conflict of Interest Statement Yes \_\_\_ No \_\_\_
  - e. M/WBE and Equal Employment Requirements Yes \_\_\_ No \_\_\_
4. Did the Firm submit a Freedom of Information Law Redaction Requests Letter (if applicable)? Yes \_\_\_ No \_\_\_

## **APPENDIX L - NOTICE OF INTEREST**

Return form(s) to:    ORTHORFP@dhses.ny.gov

**Name of Interested**

**Firm:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

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

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

### **INTENT TO BID:**

\_\_\_\_\_ OUR FIRM **INTENDS** TO SUBMIT A PROPOSAL \_\_\_\_\_ as  
set forth in the RFP dated \_\_\_\_\_.

\_\_\_\_\_ OUR FIRM **DOES NOT INTEND** TO SUBMIT A PROPOSAL for  
\_\_\_\_\_ as set forth in the RFP dated \_\_\_\_\_, for the  
following reasons:

\_\_\_\_\_  
\_\_\_\_\_