



# **TOWN OF ULYSSES**

Request for Proposals  
Information Technology  
Assessment

Town of Ulysses, New York

Request for Proposals:  
Information Technology Assessment,  
Strategic Plan Development and  
Implementation

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Issue date: September 15, 2022



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### Contents

Contents .....	2
I. Introduction .....	3
II. Background & Current Status .....	3
III. Purpose .....	4
IV. RFP Deliverables .....	4
V. Project Management Expectations .....	5
VI. Response Instructions.....	6
VII. Proposal Content .....	7
VIII. Contact with Town Employees / Written Questions.....	8
IX. Review and Evaluation.....	8
X. Right of Refusal .....	10
XI. Procurement Schedule .....	11
XII. Expense of Preparing Responses to This Proposal .....	11
XIII. Tax Exemption .....	12
XIV. Contract Terms .....	12
XV. Proposal Response Form .....	16
XVI. Attachment: OSC Audit.....	17
XVII. Attachment: NYS Standard Clauses.....	32



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### **I. INTRODUCTION**

Located in the heart of the Finger Lakes of New York State, the Town of Ulysses is renowned for its abundant farmlands, distinctive natural resources, and a strong, vibrant business and arts community. Ulysses' population is just under 5,000 residents and includes several historic hamlets as well as Trumansburg, a charming village that serves as the Town's commercial and social center. Ulysses is only a short drive from the City of Ithaca, Cornell University, and Ithaca College, allowing residents and visitors a unique blend of rural, agricultural, intellectual, and cultural opportunities.

### **II. BACKGROUND & CURRENT STATUS**

The Town of Ulysses employs approximately eleven full time and thirteen part-time year-round staff and elected officials, as well as about six volunteer boards or committees.

Town employees, elected officials, and volunteers are accustomed to hybrid work and meeting settings.

The Town's IT needs have historically been met by a handful of local independent contractors who have provided IT support, maintained the Town's server, hardware, software, and website.

The Town of Ulysses primarily uses Microsoft Windows operating system 10 Pro and Microsoft software. IT systems are utilized primarily at the Town Hall where there is a shared peer-to-peer server network. Other components of the Town's current IT system include specialized uses in all Town departments: the Supervisor's Office, Clerk's Office, Court, Highway, Water District (including a water storage tank with remote monitoring and alarm systems), Code & Zoning, Recreation and a number of regulatory and advisory Boards. Remote access to the shared server was established for most staff as a result of the pandemic.

Email service is provided in a non-uniform method and for the most part delivered to Gmail from the current email server. As of the release of this RFP, the Town's website and email is transitioning to a new domain and server.

There are approximately 10 laptops and 5 desktop PC's currently in active use by Town Staff and Elected Officials.



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

The Town has formed an IT Committee which is comprised of Elected Officials and Town Staff involved in day-to-day operations, as well as a Town Board representative and a knowledgeable Volunteer constituent.

Please find other relevant information regarding current status in the IT audit report developed by the New York State Office of the Comptroller as an attachment to this document.

The Town is open to contracting with respondents who require virtual meetings and/or remote work to accomplish the project described within.

### III. PURPOSE

The primary goal of this process is to identify a partner to help modernize the Town's IT systems, operations, policies, security and support.

The Town is seeking the services of a qualified firm experienced in:

- Assessing the entirety of the Town's IT environment
- Development of a strategic plan for modernization
- Development of a project plan for strategic plan implementation

The Town expects this process will include interviews with various Town Staff and Elected Officials (i.e., the Town's IT consumers) to determine vision, strengths and capabilities.

The result of this process will be to obtain a firm, fixed priced contract for all deliverables and professional services described herein.

An award of contract for the scope of work outlined in this document will not include a contract for project manager for implementation or on-going IT support services. The successful respondent will have the opportunity to propose an on-going IT services contract to the Town. Based on the results of the deliverables and professional services, the Town expects that a contract for ongoing support is probable.

### IV. RFP DELIVERABLES

- 1) Current State Analysis
  - a) Inventory of all IT elements: applications, software, hardware, databases
  - b) Backup/restore routine
  - c) Infrastructure diagram: process diagram, responsibility/management hierarchy, application support
  - d) Staffing capacity
  - e) Policies and level of adherence
  - f) Identification of current vulnerabilities



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### 2) Strategic Plan

- a) Considerations regarding the Town's current staffing structure and how it relates to IT systems operational continuity and maintenance, developing a plan suitable for on-going contracted IT support.
- b) Recommendations for procuring and staffing IT applications, server operations and support roles.
- c) Solutions for management of public information and related data in accordance with NYS retention schedules.
- d) Considerations of collaborative IT responsibilities between staff and future IT contractor.
- e) Townwide prioritized recommendations and outlined pathways for implementing and/or upgrading and maintaining cybersecurity and antivirus systems and practices, hardware, enterprise-level or other software solutions based on individual department needs, licensing and other recommendations.
- f) Solutions should be pragmatic, to-scale, cost effective and easy to use for small local government.
- g) Recommendation regarding the method to isolate the Town Court's data from all other Town Departments.
- h) Recommendations regarding cybersecurity and general IT training for all Town Staff and Elected Officials.
- i) Recommendations for defining and scoping a future contingency plan, an incident response plan, a disaster mitigation, a recovery plan, and a business continuity plan.

### 3) Implementation Plan

- a) IT policies and procedures creation and updates
- b) System penetration and internal vulnerability testing
- c) IT asset lifecycle planning, purchasing practices recommendations
- d) Itemized estimated expenses: one time and on-going

## v. PROJECT MANAGEMENT EXPECTATIONS

The following considerations should be made regarding the Town's involvement in project development:

1. Regular status reports
2. Routine meetings to update the Town's IT Committee
3. Interviewing current staff and Town officials to identify current state as well as future goals
4. Town Board updates and presentations



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### VI. RESPONSE INSTRUCTIONS

1. Those intending to respond to this RFP are required to submit their intention in writing as described within.
2. Response to this RFP indicates your ability to meet contract terms described within.
3. All responses must be electronic and received by date and time indicated in section XI PROCUREMENT SCHEDULE via e-mail to both [ulysses.clerk@gmail.com](mailto:ulysses.clerk@gmail.com) and [townofulysses@gmail.com](mailto:townofulysses@gmail.com).
  - a. Confirmation of response receipt will be provided. If confirmation is not received by 5pm on the due date, call (607) 387-5767 x 235
4. It is the sole responsibility of the respondent to see that its proposal is received in the proper time. Proposals received after the specified time will not be considered.
5. Adherence to the rules set forth in this RFP is mandatory to ensure a fair and objective analysis of all proposals. Failure to comply with or complete any portion of this request may result in rejection of a submitted proposal.
6. All proposals submitted to the Town become the property of the Town and are subject to The New York State Freedom of Information Law, Public Officers Law, Article 6, which provides for public access to information. Any confidential information, such as a company's financial status, if required by the specifications, shall be submitted in a separate document with the word "CONFIDENTIAL" as a watermark.
7. Receipt of a proposal by the Town or submission of a proposal to the Town confers no rights upon the respondent nor obligates the Town in any manner.
8. The apparent silence of the specifications as to any details or the omission from it of a detailed description concerning any point shall be interpreted as meaning that only the best commercial practices are to prevail and that only professional services of first quality are to be used, specified or accepted.



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### VII. PROPOSAL CONTENT

1. Executive Overview & Respondent Profile: A comprehensive overview of the needs outlined in this proposal. Highlight the understanding of the project described in this proposal, experience with like-projects, explain the respondent's value that could be provided to the Town for this service. Names and resumes or biographies of key staff to contribute to this project, as well as any planned subcontractor information is required. This section will likely be read carefully and distributed to a greater number of individuals than those which comprise the Project Team, including elected officials - many of whom may have insufficient time to read the full proposal.
2. Implementation Plan: include a work plan that delineates and defines the various project phases, components, and anticipated deliverables. This response section should also include:
  - a. A description of the Consultant's proposed approach to project management and a preliminary timeline.
  - b. Specification regarding how Consultant intends to conduct work and communications with the Town: in person, remote, hybrid, etc.
3. References & Similar Projects: a list of 3 (three) current references and contact information from relevant projects, preferably located within the State of New York. Include:
  - a. Organization/Entity
  - b. Primary Contact Name and Information
  - c. Project Description
  - d. Solution Description
  - e. Project / Contract Start and End Dates
  - f. Current Level of Consultant Support
4. RFP response form as provided in this document. See section XV.
5. Exception Letter: should the respondent take exception to any terms and conditions identified in this request; a letter must be submitted identifying all exceptions. Any exceptions will be part of the evaluation process. The Town will not entertain any exceptions not submitted in this fashion.
6. Acknowledgement of the respondent's ability to meet contract requirements as outlined in the Contract Terms section XIV of this document.



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### **VIII. CONTACT WITH TOWN EMPLOYEES / WRITTEN QUESTIONS**

Intention to submit a proposal, and questions about or errors found regarding this document are required to be submitted in writing by the date indicated in section XI PROCUREMENT SCHEDULE to both [ulysses.clerk@gmail.com](mailto:ulysses.clerk@gmail.com) and [townofulysses@gmail.com](mailto:townofulysses@gmail.com).

1. Intention to submit can be a simple statement via email, it is not binding and is meant to ensure uniformity in responses to all interested vendors.
2. Inquiries will be answered and released uniformly to all those who have submitted their intent to submit a proposal (see the "Procurement Schedule" section of this document) and will be included as an addendum to this document as well as the final contract with the selected respondent.
3. Errors found post release of this document that may impact responses will be specified and clarified as an addendum to this document. Failure to report errors constitutes acceptance as written.

### **IX. REVIEW AND EVALUATION**

The Town will use a Proposal Evaluation Committee (PEC) comprised of project stakeholders and other Town personnel to review all proposals received as part of a documented evaluation process. For each decision point in the process, the PEC will evaluate respondents on a variety of quantitative and qualitative criteria and will then elevate a select number of offerors to compete in the next level. Respondents not previously elevated may be elevated at a later date. The lowest price proposal will not necessarily be selected.

The sole purpose of the proposal evaluation process is to determine which respondent can provide the best value to the Town (highest level of service and desired deliverables in the most cost-effective manner that most closely meets the Town's needs). The evaluation process is not meant to imply that one respondent is superior to any other, but rather that the selected respondent can best support the Town's needs, based on the information available and the Town's best efforts of determination.





# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

**Evaluation Criteria** The proposal evaluation criteria should be viewed as standards that measure how well a respondent's approach meets the desired requirements and needs of the Town. The criteria that will be used to evaluate proposals may include, but are not limited to the following:

1. **RESPONSIVENESS**

The degree to which the respondent's submission have responded to this document's stated purpose and scope; included in this criterion is conformance in all material respects to this document.

2. **RESPONSIBILITY**

Respondent's ability, in all respects, to perform fully the contract requirements and demonstrate the moral/business integrity necessary to assure good faith performance.

3. **EXPERIENCE**

Respondent's experience in providing services and deliverables as requested in this request including, but not limited to, reference checks.

4. **CAPABILITY**

Respondent's capability, flexibility and skill to meet the Town's current needs assessment scope identified in this document. Respondent's ability to develop creative alternatives and value-added services/ technologies as well as account for ongoing/routine future IT systems management.

5. **COST**

Cost is scored by the team based on the competitiveness of the pricing as compared to the other proposals. The PEC may also elect to use cost to perform a trade-off analysis for finalists to determine if the technical differences between proposals justify paying a cost or price differential.

**Presentation and Interview**

Selected respondents may be invited to submit sample materials and/or make presentations to Town personnel and elected officials. Representative(s) attending/hosting these presentations must be qualified to respond to questions related to any component of the proposal.

**Validity of Proposals**

Proposals are to be good for ninety (90) days from the proposal due date. The Town may hold the proposals for ninety (90) days after the proposal due date, and may award a contract at any time during that period. Should there be reasons why a contract cannot



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

be awarded within the specified period; the time may be extended by mutual agreement between the Town and the selected respondent.

### **Contract Award**

The Town reserves the right to (a) reject any or all proposals, or to make no award, (b) request modifications to initial proposals or (c) make partial or multiple awards. In addition, the Town reserves the right to obtain other supplemental information concerning the respondent. The Town further reserves the right to excuse technical defects in a proposal when, in its sole discretion, such excuse is beneficial to the Town. The Town may award based on initial proposals received, without discussion of such proposals.

### **X. RIGHT OF REFUSAL**

The Town reserves the right to reject all responses to this document in their entirety, or to select certain applications from respondent's proposal submissions. The Town reserves the right to award a contract in any manner deemed in the best interest of its citizens.



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### XI. PROCUREMENT SCHEDULE **Updated on 11/8/22**

Schedule Item	Date
RFP Release Date	9/15/2022
Deadline for intent to submit	<del>10/28/2022</del> - <b>Updated deadline: 11/15/2022</b>
Deadline for Submissions of Respondent Questions	11/15/2022
Estimated Date of Town Response to Respondent Questions	11/30/2022
RFP Due	12/15/2022 4pm EST
Evaluation of all responses	Estimated: 1/15/2023
Interviews	Estimated: 1/15 - 1/31/2023
Contract Negotiations	Estimated: 2/1 - 2/28/2023
Contract Award	Estimated: 3/1/2023
Project Kickoff Meeting	Estimated: 3/1/2023
Commencement of Services	Estimated: 3/1/2023
Deliverables received by Town	Within an agreed amount of time post contract award, not to exceed <b>6</b> months from contract start date.

### XII. EXPENSE OF PREPARING RESPONSES TO THIS PROPOSAL

The Town accepts no responsibility for any costs incurred respondents of this request for proposals, including costs associated with interviews. Such expenses are to be borne entirely by respondents.



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### XIII. TAX EXEMPTION

In regard to any taxes applicable to this project, please acquire a copy of form ST-120.1 from the New York State Department of Taxation and Finance and follow accordingly. Tompkins County is tax exempt. Tax exempt certificates, if required, will be forwarded upon request.

### XIV. CONTRACT TERMS

Responding to this proposal recognizes standard clauses in the Town's contract requirements, summarized below. **Please note that these contract terms are not in final form and are provided in order to outline a basic understanding of required contract terms.**

This section is provided for informational purposes. If contract terms impact the cost of providing services, potential respondents must ask questions regarding contract terms prior to their proposal submission, send questions via email to:

[townofulysses@gmail.com](mailto:townofulysses@gmail.com)

#### 1. Term of Service

The initial term of the proposed contract shall be for a set period of time. The contract shall be in effect from the date of execution by the Town through project completion. The assessment completion date shall be within a mutually agreed period of time after receipt of Notice to Proceed.

#### 2. Communication

Immediate notification to the Town Supervisor of any urgent issues identified along with an estimation of the risk.

#### 3. Nature of Relationship

The relationship between the parties to a contract resulting from this solicitation shall be that of independent contractors. Nothing contained herein shall be interpreted or construed as establishing an agency or employer/employee relationship between the parties or between either party and the employees or representatives of the other party. The Consultant is responsible for all Social Security taxes and Bureau of Workers Compensation contributions for itself and any of its employees.



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

4. The Town of Ulysses is required to follow New York State procurement laws as well as the Town's procurement policy. This applies to all purchase including service contracts, hardware and software.
5. NYS Prohibition of Assignment of Contracts

In accordance with the provisions of Section 109 of the General Municipal Law of the State of New York, The Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Contract, or of its right, title or interest in this Contract, or its power to execute this Contract, to any other person or corporation without the previous consent in writing of the Town.

### 6. Ownership of Records

- a. The Consultant will take no action to compromise the Town's legal obligation to maintain records and adequate documentation transactions of public business. The Consultant agrees that records and other documentation produced from this work are the property of the Town.
- b. All records, documents, data, reports or other material, regardless of form or finish, produced by The Consultant as a result of services provided hereunder, are work for hire, and shall become the property of the Town upon creation. The Consultant may not assert any right, title or interest in any product produced under this Contract.

### 7. Recognition of NYS Freedom of Information Law

The Consultant acknowledges that the Town of Ulysses shall adhere to The New York State Freedom of Information Law, Public Officers Law, Article 6, which provides for public access to information.

### 8. Insurance Requirements

- a. A waiver of subrogation in favor of the Owner shall be included in all comprehensive general liability insurance policies.
- b. The Consultant shall obtain, and maintain during the life of this Contract, general liability and property damage insurance as shall protect it from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this Contract. The amounts of such insurance shall be as follows:



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

- c. General liability insurance in an amount not less than \$1,000,000 (one million dollars) for injuries, including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$1,000,000 (one million dollars) on account of any one occurrence.
  - i. Property damage insurance in an amount not less than \$1,000,000 (one million dollars) for damage on account of all occurrences.
  - ii. The Consultant shall furnish the above insurances to the Town and shall also name the Town as an additional named insured in said policies.
- d. Umbrella Liability of Subcontractors
  - i. Contractor shall ensure that all Subcontractors provide bodily injury and property damage insurance.
    - 1. Liability Limit: each accident or incident \$1,000,000 (one million dollars)

### 9. Termination

- a. Termination for Cause: If through any cause, one party shall fail to fulfill in timely and proper manner, its obligations under this Contract, or if one party shall violate one of the covenants, agreements, or stipulations of this Contract, the other party shall thereupon have the right to terminate this Contract hereunder by giving written notice of such termination. In case of termination, all finished and unfinished documents shall become the property of the Town.
- b. Termination for Convenience: The Town may terminate this Contract at any time for any reason, upon submitting to Contractor 10 (ten) days prior written notice of its intention to terminate. Upon receipt of such notice, Contractor shall immediately cease to incur expenses pursuant to this Contract unless otherwise directed in the termination notice. Contractor shall promptly notify the Town of costs incurred to date of termination and the Town shall pay all such reasonable and supportable costs which payment shall not exceed the unpaid balance due on this Contract.
- c. In the event of termination, The Consultant shall be compensated payment of an amount equal to the services or goods actually provided by The Consultant to the Town as of the date of termination.



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### 10. Prevailing Wage

- a. The parties hereto, in accordance with the provisions of section 220(3) of the Labor Law, hereby agree that *if* the work to be performed by Consultant is considered “public work” as defined by the New York State Labor Law, then there shall be paid each employee engaged in work under this Contract not less than the wage rate and supplements set opposite the trade or occupation in which he/she is engaged, as listed on Appendix \_\_\_ attached hereto and made a part of this Agreement, which are the wage rates and supplements established as the prevailing rate of wages for the work covered by this Contract.
- b. Labor classifications not appearing on the schedule of wages can be used only with the consent of the Owner and then the rate to be paid will be given by the Owner after being advised by the Department of Labor.
- c. The Consultant shall post in a prominent and accessible place on the site of the work a legible statement of all wage rates and supplements, as specified in the Contract, for the various classes of mechanics, workingmen/women, or laborers employed on the work.

11. The Consultant agrees to provide an outline of activities and scheduling in coordination with the TOWN as the first activity of the contract, based on the Statement of Work.

### 12. Standard Clauses for NYS and Fed Money

- a. Labor Law section 220-e and Executive Law sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and providing equal opportunity.
- b. Affirmative action as required by the Labor Law.
- c. Prevention of dust hazard required by Labor Law section 222-a.
- d. Preference in employment of persons required by Labor Law section 222.
- e. Eight-hour workday as required by Labor Law section 220(2).
- f. New York State Sexual Harassment Training Requirements
- g. New York State Workplace Violence Training Requirements
- h. The Standard Clauses of New York State Contracts, a copy of which is attached hereto as Attachment XVII and made a part hereof.



# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### XV. PROPOSAL RESPONSE FORM

Respondent legal business name: \_\_\_\_\_

Respondent designated contact name: \_\_\_\_\_

Respondent designated contact phone: \_\_\_\_\_

Respondent designated contact email: \_\_\_\_\_

Legal business entity status: \_\_\_\_\_

Description of insurance coverage and limits:

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Dollar figure RFP / not to exceed for development of strategic plan and project implementation plan as outlined in this document:

Relevant notes regarding the above figure:

Current contracted IT support hourly rates (for reference only):





# TOWN OF ULYSSES

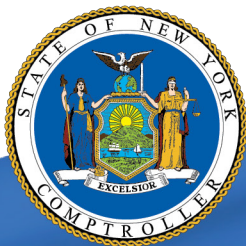
## Request for Proposals Information Technology Assessment

### XVI. ATTACHMENT: OSC AUDIT

# Town of Ulysses

## Information Technology

APRIL 2022



OFFICE OF THE NEW YORK STATE COMPTROLLER  
**Thomas P. DiNapoli, State Comptroller**

# Contents

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**Report Highlights . . . . . 1**

**Information Technology . . . . . 2**

    What Policies and Procedures Should the Board Adopt to Help  
    Secure and Protect IT Systems? . . . . . 2

    The Board Did Not Adopt Adequate IT Policies or an IT  
    Contingency Plan . . . . . 3

    How Should Officials Manage User Accounts? . . . . . 4

    Officials Did Not Adequately Manage Local User Accounts . . . . . 4

    Why Should the Board Have a Written Service Level Agreement  
    with the Town’s IT Service Provider? . . . . . 5

    The Board Did Not Have a Written Service Level Agreement with  
    the Town’s IT Service Provider. . . . . 5

    What Do We Recommend? . . . . . 5

**Appendix A – Response From Town Officials . . . . . 7**

**Appendix B – Audit Methodology and Standards . . . . . 9**

**Appendix C – Resources and Services. . . . . 11**

# Report Highlights

## Town of Ulysses

### Audit Objective

Determine whether Town of Ulysses (Town) officials ensured information technology (IT) systems were adequately secured and protected against unauthorized use, access and loss.

### Key Findings

Town officials did not ensure IT systems were adequately secured and protected against unauthorized use, access and loss.

- The Board did not adopt adequate written IT policies or a written IT contingency plan.
- Officials did not adequately manage local user accounts.
- The Board did not enter into a written service level agreement with the Town's IT service provider.

Sensitive IT control weaknesses were communicated confidentially to officials.

### Key Recommendations

- Adopt comprehensive written IT policies, including a written IT contingency plan.
- Regularly review local user accounts and disable those that are unnecessary.
- Enter into a written service level agreement with the Town's IT service provider.

Town officials agreed with our recommendations and indicated they planned to initiate corrective action.

### Background

The Town is located in Tompkins County and is governed by an elected five-member Board including the Town Supervisor. The Board is responsible for overseeing Town operations and finances, including IT operations.

An IT consultant provides IT services for the Town related to monitoring and managing the server, backups, local user accounts, software programs, hardware/software updates and any other IT-related issues as needed.

#### Quick Facts

On-site Servers and User Computers	14
Employees	26
Local User Accounts Reviewed	46
Payments to the IT Consultant During Audit Period	\$7,685

### Audit Period

January 1, 2020 – April 30, 2021. We extended our audit period forward through June 17, 2021 to complete our IT testing.

# Information Technology

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Town employees and officials use and rely on the Town's IT assets and systems to initiate, process, record and report transactions, email and for Internet. We reviewed IT settings for nine on-site computers at the Town – one Town server computer, five Town user computers used by various Town officials and employees, and three user computers used by the Town Justice and court clerk. The Court computers were provided by the New York State Unified Court System's (UCS) Office of Court Administration (OCA),<sup>1</sup> which is responsible for purchasing, distributing, supporting and upgrading the computer equipment for all town and village courts throughout the State.

## **What Policies and Procedures Should the Board Adopt to Help Secure and Protect IT Systems?**

IT policies, such as acceptable use, password security, wireless security, remote access,<sup>2</sup> mobile computing and removable device policies, describe the tools and procedures to protect data and information systems, define appropriate user behavior and explain the consequences of policy violations. A board should establish such policies for all IT assets and information, disseminate the policies to officials and staff and ensure that officials monitor and enforce the policies.

A board should consider people, processes and technology that form the town's unique computing environment when determining the content of its IT policies. Further, a board should periodically review these policies, update them as needed, designate personnel who are responsible for monitoring policy compliance and communicate the policies to all users.

A written IT contingency plan typically includes an analysis of business processes and continuity needs, instructions, specific roles of key individuals and precautions needed to recover data and quickly resume operations in the event of an unplanned disruption. The plan should be tested periodically and updated as appropriate to ensure officials understand their roles and responsibilities during a disruptive event, such as a major natural disaster (e.g., flood, fire) or software or hardware failure caused by a computer virus or human error.

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<sup>1</sup> OCA is the administrative arm of UCS. The Division of Technology is a unit within OCA that provides technology services for UCS, including town and village courts.

<sup>2</sup> Remote access is when a user accesses an IT system from a physical location other than that of the system.

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## The Board Did Not Adopt Adequate IT Policies or an IT Contingency Plan

IT Policies – The Town’s IT policies addressed acceptable use but lacked clear expectations and guidance about the following:

- Password complexity, length and age requirements and the number of failed log-on attempts the system will allow. Without clear expectations and guidance, the risk is increased that users could select short and simple passwords that never expire which would increase the likelihood that an attacker could successfully guess or otherwise determine a targeted password. In addition, if unlimited log-on attempts are allowed, potentially malicious individuals would have more opportunities to guess or crack a password.
- Conditions that wireless devices must satisfy and who (e.g., all employees, contractors, consultants, temporary and other workers) is authorized to connect to the Town’s network. The lack of this guidance could lead to unauthorized access to the Town’s network.
- Specifying who is authorized to have remote access, the rules and requirements for connecting remotely and the approval process for granting access. This lack of guidance could lead to an increased risk of unauthorized access and compromises to the Town’s data.
- Controls over mobile computing and removable devices that contain or access information resources. The lack of this guidance could lead to unauthorized access to information resources.

Officials told us that they believed that the policies covered in the Town’s employee handbook sufficiently covered IT issues, and they were not aware of the IT policies that they were missing. A lack of appropriate policies detailing the Board’s expectations significantly increases the risk that data, hardware and software systems may be lost or damaged by inappropriate access and use. Without properly designed and functioning internal controls, there is a likelihood that significant errors or fraud could occur and remain undetected.

We reviewed the Internet use and web history on a sample of nine out of the Town’s 14 on-site computers and, aside from minor discrepancies discussed with Town officials, determined that the usage and web histories were for appropriate and allowable Town purposes.

IT Contingency Plan – The Board did not develop a written IT contingency plan to document processes and inform Town officials how they should respond to unplanned disruptions. Consequently, in the event of a disaster, ransomware attack or other unplanned event, staff have insufficient guidance or plans to follow to recover data and resume essential operations in a timely manner. Officials

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stated that they relied on the IT consultant and data backup procedures to protect the Town's data and had not formally documented procedures to respond to potential disruptions. Without a comprehensive written plan, officials and employees are not informed of the expected procedures to follow in the event of an unplanned disruption. As a result, the Town has an increased risk that it could lose important data and suffer a serious interruption to operations, such as not being able to process checks to pay vendors or employees, due to improper or insufficient recovery efforts.

## How Should Officials Manage User Accounts?

Town officials are responsible for restricting user access to only those applications, resources and data needed to complete job duties and responsibilities. This helps ensure data and IT assets are protected from unauthorized use and/or modification. Local user accounts enable computers and certain applications to recognize specific users and accounts and provide user accountability by affiliating user accounts with specific users or processes. These accounts are potential entry points for attackers because, if compromised, they could be used to access and view data stored on the computer.

To minimize the risk of unauthorized access, officials should actively manage user accounts, including their creation, use and dormancy, and regularly monitor them to ensure they are appropriate and authorized. When user accounts are no longer needed, they should be disabled in a timely manner.

## Officials Did Not Adequately Manage Local User Accounts

Officials did not adequately manage local user accounts. This occurred because officials did not inform the IT consultant, who they relied on to manage local user accounts, of necessary changes. As a result, the Town had unneeded and unused local user accounts that had not been disabled and/or monitored.

We judgmentally selected nine out of the 14 on-site Town and Court computers and identified 46 local user accounts.<sup>3</sup> Six local user accounts on Town computers were for former employees. Officials told us that these user accounts were not disabled because they needed access to files saved on the user accounts. However, officials could transfer files from former employees' user accounts prior to disabling the user accounts.

When unnecessary local user accounts are not disabled in a timely manner, there is a greater risk of unauthorized access to personal, private and sensitive information (PPSI) and compromises to IT resources.

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Without a comprehensive written plan, officials and employees are not informed of the expected procedures to follow in the event of an unplanned disruption.

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<sup>3</sup> Refer to Appendix B for further information on our sample selection.

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## Why Should the Board Have a Written Service Level Agreement with the Town's IT Service Provider?

A board should ensure that it has qualified IT personnel to manage the town's IT environment. This can be accomplished by using town employees, an IT service provider or both. To protect town assets and avoid potential misunderstandings, the board should have a written service level agreement (SLA) with the town's IT service provider that clearly identifies the town's needs and service expectations. The agreement should include provisions relating to confidentiality and protection of PPSI.

An SLA is a written contract that establishes comprehensive, measurable performance targets so that there is a mutual understanding of the nature and required level of services to be provided. It provides detailed explanations of the services to be performed by identifying the parties to the contract and defining terminology; duration of the agreement, scope and/or subject limitations; service level objectives and performance indicators; roles and responsibilities; nonperformance impact; security and audit procedures; reporting requirements; review, update and approval processes; and pricing, billing and terms of payment.

The SLA should be periodically reviewed, especially when the town's IT environment or needs change significantly.

## The Board Did Not Have a Written Service Level Agreement with the Town's IT Service Provider

The Board used the services of an IT consultant who agreed to fix computers, install new hardware and software, make recommendations for purchases, perform updates and backups and maintain the server on an as-needed basis. However, the Board did not have a written SLA with the consultant and only a verbal agreement.

Without a written SLA, the Board and IT service provider do not have stated responsibilities and procedures for how to resolve any failures in IT controls, service disruption or data breach. This can contribute to confusion over who has responsibility for the various aspects of the Town's IT environment, which could put the Town's computer resources and data at greater risk for unauthorized access, misuse or loss.

## What Do We Recommend?

The Board should:

1. Adopt comprehensive written IT security policies to address password security, wireless security, remote access and mobile computing and removable devices.

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Without a written SLA, the Board and the IT service provider do not have stated responsibilities and procedures for how to resolve any failures in IT controls, service disruption or data breach.

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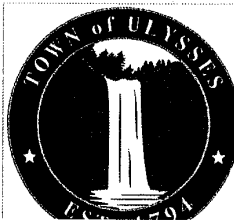
- 
2. Develop and adopt a comprehensive written IT contingency plan.
  3. Develop a written SLA with the IT service provider to address the Town's specific needs and expectations for IT services and the roles and responsibilities of the parties.

The Board should designate appropriate personnel to:

4. Periodically assess local user accounts and permissions to ensure unnecessary accounts are disabled as soon as there is no longer a need for them.

# Appendix A: Response From Town Officials

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## TOWN OF ULYSSES

10 Elm Street, Trumansburg, NY 14886  
ulysses.ny.us

Town Supervisor (607) 387-5767, Ext 232    supervisor@ulysses.ny.us  
Town Clerk (607) 387-5767, Ext 221    clerk@ulysses.ny.us

March 10, 2022

Ann C. Singer, Chief Examiner  
Office of the New York State Comptroller  
Division of Local Government & School Accountability  
Binghamton Regional Office  
State Office Building, Room 1702  
44 Hawley Street  
Binghamton, NY 13901-4417

Dear Chief Examiner Singer:

Thank you to the Division of Local Government and School Accountability for reviewing our records in 2021, and we appreciate the opportunity to respond to your findings.

IT/Cyber security is deeply important to the well-being and security of our community, and it touches all parts of our government operations. As a small municipality, we are grateful for the time and consideration given to our IT/Cyber Security issues, and the detailed recommendations about how we can improve our systems to better serve the public. We do not dispute the findings reflected in the report, and have provided our Correction Action Plan (CAP) in this letter of acknowledgement.

### **Corrective Action Plan**

Prior to receiving the report, the Town of Ulysses has already undertaken a number of steps to remedy concerns identified in the report.

We have formed an IT/Cyber Subcommittee and appointed members to oversee our response and make policy and procedural recommendations to the Town Board for implementation.

Our IT service provider has upgraded our Town computer systems and addressed inefficiencies.

During budget development in the fall of 2021, the Town Board determined and created a budgetary line in the 2022 budget to hire an IT Consultant to develop a plan to address issues both currently identified and still unknown issues. Additionally, the Town added cyber protection to our insurance coverage.

<b>The Board Should:</b>	<b>Who</b>	<b>What</b>	<b>When</b>
Adopt comprehensive written IT security policies to address password security, wireless security, remote access and mobile computing and removable devices.	Ulysses Town Board, with advice from the Cyber/IT Subcommittee and legal counsel	Comprehensive written IT security policies, which will include specifics regarding password security, wireless security, remote access and mobile computing and removable devices	A preliminary version will be adopted by July 31, 2022. We anticipate modifying and improving the policies after the completion of our IT consultant's review of Town system in 2023.
Develop and adopt a comprehensive written IT contingency plan.	Ulysses Town Board, with advice from the Cyber/IT Subcommittee and legal counsel	A comprehensive written IT contingency plan.	A preliminary version will be adopted by December 31, 2022. We anticipate modifying and improving the policies after the completion of our IT consultant's review of Town system in 2023.
Develop a written SLA with the IT service provider to address the Town's specific needs and expectations for IT services and the roles and responsibilities of the parties.	Ulysses Town Board, with advice from the Cyber/IT Subcommittee and legal counsel	A written SLA with the IT service provider to address the Town's specific needs and expectations for IT services and the roles and responsibilities of the parties.	Contractual language is already in development. Contracts will be issued to service providers by May 31, 2022, with the intention of being fully completed by June 30, 2022.
Periodically assess local user accounts and permissions to ensure unnecessary accounts are disabled as soon as there is no longer a need for them.	Cyber/IT Subcommittee; IT Service Provider	Local user accounts and permissions will be periodically assessed to ensure unnecessary accounts are disabled as soon as there is no longer a need for them.	Completed for Town (excluding Court) computers as of March 10, 2022; will be completed periodically as needed.

Thank you for the opportunity to outline our plan for corrective action concerning the issues identified in your report. We look forward to serving as a model in the future to IT/Cyber best practices, and appreciate the time and attention of your office.

Sincerely,

Katelin Olson, Town Supervisor  
Town of Ulysses, NY

## Appendix B: Audit Methodology and Standards

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We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We reviewed Board minutes, policies and the Town's employee handbook, and we interviewed Town officials and the IT consultant to obtain an understanding of IT operations and determine the adequacy of IT-related policies and procedures.
- We judgmentally selected nine computers (one Town server computer, five Town user computers and three Court user computers) that were frequently used by Town officials and employees and examined computer settings for 46 local user accounts using specialized audit scripts run on June 9, 2021 and June 17, 2021:
  - We ran a web history computerized audit script on nine computers and then reviewed the Internet use and web history to evaluate whether Internet use was appropriate and if unnecessary exposure of PPSI had occurred.
  - We ran a configurations computerized audit script on nine computers. We then analyzed the results generated by the scripts to obtain information about the computers' user accounts to determine whether local user account and security settings were necessary and appropriate. We reviewed local user accounts to identify unused and potentially unnecessary accounts. We also analyzed local user accounts and security settings applied to those accounts.

Our audit also examined the adequacy of certain information technology controls. Because of the sensitivity of some of this information, we did not discuss the results in this report, but instead communicated them confidentially to Town officials.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

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The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in the Town Clerk's office.

## Appendix C: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf](http://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf)

### **Cost-Saving Ideas** – Resources, advice and assistance on cost-saving ideas

[www.osc.state.ny.us/local-government/publications](http://www.osc.state.ny.us/local-government/publications)

### **Fiscal Stress Monitoring** – Resources for local government officials experiencing fiscal problems

[www.osc.state.ny.us/local-government/fiscal-monitoring](http://www.osc.state.ny.us/local-government/fiscal-monitoring)

### **Local Government Management Guides** – Series of publications that include technical information and suggested practices for local government management

[www.osc.state.ny.us/local-government/publications](http://www.osc.state.ny.us/local-government/publications)

### **Planning and Budgeting Guides** – Resources for developing multiyear financial, capital, strategic and other plans

[www.osc.state.ny.us/local-government/resources/planning-resources](http://www.osc.state.ny.us/local-government/resources/planning-resources)

### **Protecting Sensitive Data and Other Local Government Assets** – A non-technical cybersecurity guide for local government leaders

[www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf](http://www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf)

### **Required Reporting** – Information and resources for reports and forms that are filed with the Office of the State Comptroller

[www.osc.state.ny.us/local-government/required-reporting](http://www.osc.state.ny.us/local-government/required-reporting)

### **Research Reports/Publications** – Reports on major policy issues facing local governments and State policy-makers

[www.osc.state.ny.us/local-government/publications](http://www.osc.state.ny.us/local-government/publications)

### **Training** – Resources for local government officials on in-person and online training opportunities on a wide range of topics

[www.osc.state.ny.us/local-government/academy](http://www.osc.state.ny.us/local-government/academy)

## Contact

Office of the New York State Comptroller  
Division of Local Government and School Accountability  
110 State Street, 12th Floor, Albany, New York 12236  
Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: [localgov@osc.ny.gov](mailto:localgov@osc.ny.gov)  
[www.osc.state.ny.us/local-government](http://www.osc.state.ny.us/local-government)  
Local Government and School Accountability Help Line: (866) 321-8503

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### **BINGHAMTON REGIONAL OFFICE** – Ann C. Singer, Chief Examiner

State Office Building, Suite 1702 • 44 Hawley Street • Binghamton, New York 13901-4417  
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# TOWN OF ULYSSES

## Request for Proposals Information Technology Assessment

### XVII. ATTACHMENT: NYS STANDARD CLAUSES



## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

January 2014

**TABLE OF CONTENTS**

	<b>Page</b>
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7

## **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, licenser, 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). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by 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  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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