



New York State Teachers' Retirement System

10 Corporate Woods Drive
Albany, NY 12211-2395
(800) 348-7298 or (518) 447-2900
NYSTRS.org

August 25, 2015

The attached questions and answers serve as Amendment #1 to NYSTRS' Request for Proposals (RFP) for Financial Audit Services (System), RFP #16-02. Material in this Amendment supersedes any contradictory material in the RFP.

Please note that the due date for the submission of responses **has been extended.** **All bids are due by 2:00 pm (EDST) on Thursday, September 3, 2015.**

Sincerely,

A handwritten signature in black ink that reads "Michelle Gilchrist".

Michelle Gilchrist
Contract Management Specialist

THESE RESPONSES WERE DEVELOPED FROM QUESTIONS RECEIVED FROM VENDORS THROUGH 8/13/2015. THIS INFORMATION OFFICIALLY AMENDS THE ORIGINAL RFP SPECIFICATIONS ISSUED 8/3/2015 AND SHOULD BE TAKEN INTO CONSIDERATION WHEN PREPARING YOUR PROPOSAL.

New York State Teachers' Retirement System
RFP# 16-02 - Financial Audit Services (System)
RFP Amendment 1 - Questions and Answers

#	Question	Response
1	Why is the audit work going out to bid?	This contract is routinely rebid every five years. The current contract is expiring and there are no further extension options available.
2	Is your current audit firm eligible to bid again on this audit work?	Yes; any firm meeting the qualifications and requirements of this RFP may submit a bid.
3	Approximately how many adjustments were posted during the audit for the last two years?	None
4	Is a copy of your AU 265 letter (material weakness/significant deficiency communication), if applicable, available for viewing?	N/A - No material weaknesses/significant deficiency's noted.
5	GASB 72 will be effective for the organization for the year ended 06/30/2016. How has the organization started to prepare?	NYSTRS (through its external advisors and money managers) has been following FAS 157 rules for determining fair value of its invested assets as GASB had not yet provided such guidance prior to now. In reviewing GASB 72 again it follows very closely the FAS 157 method of determining fair value so we see no changes are needed. Disclosures, however, will need to be modified to satisfy GASB 72 and we have begun to evaluate the required changes. We do not anticipate extensive effort will be required to accommodate those changes.
6	Does NYSTRS prepare the CAFR or is that anticipated as part of the audit contract?	NYSTRS prepares the CAFR, but it is reviewed by the external auditor prior to issuance to ensure the information presented is consistent with the audited financial statements.
7	Section 10.1.5 speaks to audit deadlines but doesn't address when NYSTRS will be ready for the audit to begin. When will the organization be ready for the audit to commence?	Over the years, interim work has commenced as early as January but more commonly commences in April. Year end work usually commences in late July and continues through August and September and into early October. The System will make every effort to accommodate the auditor's schedule so that deadlines can be met.
8	What has been the typical audit timing? How long have the auditors been in the field (both for the CAFR audit, including interim, and the GASB 68 schedules)?	See question #7. The GASB 68 Schedules have not yet been prepared under the timelines specified in the RFP. The first time that will occur will be for the year ended 6/30/15.
9	What is the extent that NYSTRS does payroll/census testing at participating employers?	The NYSTRS Internal Audit Department commenced payroll/census data testing during the 2014-15 fiscal year with site visits at 10 employers. During the 2015-16 fiscal year, 26 employer audits are planned. These audits are independent of the census data testing performed by the external auditors.
10	Is there a page limit for the proposal itself?	No information beyond that specifically requested is required, and firms are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications.
11	On pg 6 of the RFP, Section 9.3, the last paragraph indicates that internal audit assisted the prior audit firm with 120 hours of general audit assistance and 224 hours of census data testing. What did the 120 hours of general audit assistance entail? Did the census data testing involve site visits to participating employers?	The 120 hours are spent providing assistance with investment and benefit confirmations, alternative procedures for confirmations not returned, clearing exceptions to the census data testing performed by the external auditors, and agreed upon audit procedures for investment and member related testing. The census data testing performed by Internal Audit included site visits to 14 participating employers. These site visits are performed as direct assistance and are independent of the employer audits referenced in question #9.

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RFP# 16-02 - Financial Audit Services (System)
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#	Question	Response
12	<p>Section 12.4.3 on page 12 of the RFP requests the names and resumes of individuals within our firm to be called upon with specific questions in various areas. Will a firm be precluded from bidding if they do not have in-house actuarial expertise but will be subcontracting with an actuarial firm to provide the requested actuarial opinion that is part of this RFP (Section 10.1.2)?</p>	<p>In order to conduct the independent actuarial review as part of the required audit services, it may be necessary for your firm to engage licensed actuaries if your firm is not a licensed firm or does not employ a licensed actuary. Such use of qualified sub-contractor(s) is permissible, subject to the following conditions:</p> <p>1) Proposing firm shall disclose the name(s) of any sub-contractors that will be used to perform any of the services required pursuant to the RFP.</p> <p>2) Any award made and contract entered as a result thereof shall be between the successful bidding firm ("Contractor") and NYSTRS and include the following conditions:</p> <p>a) Contractor shall be solely responsible and liable to NYSTRS as prime contractor for the performance of all services provided hereunder; and</p> <p>b) To the fullest extent permitted by law, Contractor in performance of its duties pursuant to the written agreement shall fully indemnify and hold NYSTRS and its board members, officers, employees and agents or servants harmless from and against any and all claims, suits, actions, damages, losses and expenses and costs of every name and description, including, but not limited to, attorneys fees, imposed against NYSTRS for any actual or alleged personal injury or death, damage to or destruction of real or personal tangible or intangible property, or any other claim for direct damages arising out of any act or omission on the part of the Contractor, its employees, agents or subcontractors for any work or services performed on behalf of NYSTRS by the Contractor, which liability shall not be limited to any minimum insurance coverages required by Appendix C hereof; and</p> <p>c) Contractor agrees to require any and all subcontractors hired to perform work on the project to obtain insurance coverage as may be required of Contractor. All such insurance coverage shall name NYSTRS as an additional insured on a primary, non-contributory basis. Contractor shall provide NYSTRS with valid certificates of insurance for each subcontractor at least ten (10) working days prior to subcontractor's commencement of any work on the project or entry onto NYSTRS premises or project site. All subcontractors' insurance carriers shall meet the requirements set forth in paragraph 1 of Appendix C of the RFP, as amended herein; and</p> <p>d) Subcontractor is bound by the same or higher standards pertaining to confidentiality as Contractor and NYSTRS agree.</p>
13	Should subcontracting of the actuarial portion of this RFP be acceptable, what information does NYSTRS require as part of the proposal related to the actuarial subcontract relationship?	See response #12.
14	Will detailed CPE records of each auditor included in the proposal be required?	No
15	What was the prior year audit fee?	Fees from prior years are not relevant because the service requirements have changed significantly over the past few years as a result of GASB 67/68. The budget for the 2016 audit is \$329,000.
16	How many hours did the prior auditors incur during the audit and/or how many weeks were they in the field?	Budgeted hours for the 2015 audits totaled approximately 1860 hours net of hours contributed by Internal Audit.
17	Is all audit work performed on-site?	In previous audits, work has been performed at both NYSTRS and the auditor's office.
18	Section 10-Scope of Services. Please consider deleting "its designee" from the first sentence of the first paragraph under Section 10 and adding the following at the end of said sentence: "provided that the auditor is under no obligation to provide access to its work papers to the extent such access could, in the auditor's opinion, violate applicable professional standards or undermine the integrity of the audit."	This is consistent with Appendix A and cannot be changed.
19	Section 10-Scope of Services. In the first sentence of Section 10.1.1, please consider inserting "upon completion" before the phrase "express an opinion".	This modification is accepted.
20	Section 10-Scope of Services. Please consider adding the following as the last sentence of Section 10.1.5: "The aforementioned deadlines are subject to the timely preparation of the financial statements and the Schedule of Employer Allocations and Schedule of Pension Amounts by Employer by System management and the availability of audit evidence required to express the related opinions."	This modification is accepted.

New York State Teachers' Retirement System
RFP# 16-02 - Financial Audit Services (System)
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#	Question	Response
21	Section 10-Scope of Services. We noted that the scope of services detailed under Section 10 does not include an annual audit of the financial statements of the New York State Teachers' Retirement System Retired Employee Health Benefits Trust ("Trust") in accordance with audit standards generally accepted in the United States of America. Is the audit of the Trust not considered part of the scope of work to be performed under the current RFP? Will there be an annual audit of the Trust's financial statements procured under a separate RFP?	The audit of the Trust is not considered part of the scope of this RFP. These services will be procured under a separate RFP. RFP #16-14 , for financial audit services related to the Trust, was issued on 8/21/2015 and can be downloaded from our website (https://www.nystrs.org/About-Us/Procurement-Information).
22	Appendix A - This document appears to make modifications to be the Standard Clauses for New York State Contracts as located at http://www.ogs.ny.gov/procurecounc/pdfdoc/AppendixA.pdf . Did the System intend to make such modifications? We request that the Standard Clauses for New York State Contracts be incorporated unmodified.	NYSTRS is a public pension fund existing pursuant to Article 11 of the NYS Education Law and having the powers and privileges of a corporation as per §502 thereof; therefore, NYSTRS utilizes a modified version of Appendix A.
23	Appendix B, Item 10.q - Please consider deleting or specifying/explicitly identifying such penalties	Appendix B is a standard form and many of the provisions relate solely to the bidding process. Any exceptions should be noted in accordance with RFP section 12.3., third bullet.
24	Appendix B, Item 10.r - Please consider deleting this provision as a "testing period " would appear not to apply to professional auditing services.	Appendix B is a standard form and many of the provisions relate solely to the bidding process. Any exceptions should be noted in accordance with RFP section 12.3., third bullet.
25	Appendix B, Item 16 - In the first sentence of the first paragraph of this item, please consider adding "provided that such inspection does not undermine the effectiveness and integrity of the audit process." after "Contract negotiations ".	Appendix B is a standard form and many of the provisions relate solely to the bidding process. Any exceptions should be noted in accordance with RFP section 12.3., third bullet.
26	Appendix B, Item 20 - Please consider replacing this item in its entirety with the following: "The parties agree that any dispute or claim arising out of or relating to the Contract or the services provided thereunder shall first be submitted to non-binding mediation as a prerequisite to litigation. Mediation may take place at a location to be designated by the parties using the Mediation Procedures of the International Institute for Conflict Prevention and Resolution, with the exception of paragraph 2 (Selecting the Mediator). If, after good faith efforts, the parties are unable to resolve their dispute through mediation within 90 days after the issuance by one of the parties of a request for mediation, then the parties are free to pursue all other legal and equitable remedies available to them. Nothing herein shall preclude Contractor from filing a timely formal claim in accordance with applicable New York law provided, however, that Contractor shall, if permitted, seek a stay of said claim during the pendency of any mediation. Either party may seek to enforce any written agreement reached by the parties during mediation in any court of competent jurisdiction."	The proposed modifications are NOT acceptable. NYSTRS expressly does not agree to any mediation or arbitration provisions.
27	Appendix B, Item 23 - Please consider replacing the remainder of the item after "transition of services" in the first sentence with "in accordance with professional standards."	Appendix B, clause 23 is hereby deleted and replaced with the following: "The Contractor shall be responsible for and shall assist NYSTRS in the orderly transition of services, in accordance with professional standards, should a new contractor be selected at the conclusion of the contract term. The Contractor shall accommodate all reasonable requests made by NYSTRS to effect such orderly transition."
28	Appendix B, Item 25 - In the first sentence of this item , please consider inserting "applicable" before "laws, ordinances, rules and regulations".	This modification is accepted.

#	Question	Response
29	<p>NYSTRS received several questions from vendors regarding the use of MWBEs with respect to this RFP. In summary:</p> <p>In reviewing the RFP, there appeared to be no requirement for use of MWBE Professional Service Firms. Please confirm whether there is any requirement for the utilization of a minority and women-owned business enterprise (MWBE) on this engagement and whether the utilization of an MWBE firm as part of the engagement team have any impact on the scoring of the proposal?</p>	<p>NYSTRS encourages all segments of the business community to participate in its procurement opportunities. A directory of certified minority and women-owned business enterprises, as well as a list of certified NYS Service Disabled Veteran-Owned Businesses, is available on NYSTRS' website at https://www.nystrs.org/About-Us/Procurement-Information under "NYS Procurement Resources." See also "Procurement Procedures" on our webpage https://www.nystrs.org/About-Us/Procurement-Information for NYSTRS' procurement policies.</p> <p>Qualified licensed independent Certified Public Accounting firms submitting a response to this RFP are encouraged to review and design their approach, audit work plan and scheduling, giving consideration to applicable professional standards, including audit standards generally accepted in the United States of America, and the aforementioned NYSTRS guidelines for the purpose expanding opportunities for women and minority-owned business enterprises and Certified Service-Disabled Veteran-Owned Business Enterprises at the subcontractor level and increase competition and diversity in procurements.</p> <p>See response #12 for information and requirements on subcontracting.</p> <p>In addition to this procurement opportunity, NYSTRS will also be seeking Request for Proposals for the Audit of the Financial Statements of the NYSTRS Retired Employee Health Benefits Trust pursuant to RFP#16-14 to be issued on or about August 21, 2015. Information about the RFP for Trust Audit Services will be posted on our website at https://www.nystrs.org/About-Us/Procurement-Information under the Request for Proposals or Quotes section and disseminated via the NYS Contract Reporter. As you may be aware, NYSTRS previously put out to bid financial audit services for both the system and trust as one RFP. We are now purposely splitting these opportunities into two separate bids to promote equal opportunity and access to contracting and procurement opportunities with NYSTRS and to maximize opportunities for the participation of New York State business enterprises, including certified minority and women-owned and certified service-disabled veteran-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.</p> <p>While utilization of MWBEs will not have an impact on the numerical scoring of proposals, NYSTRS encourages the consideration of MWBEs and SDVOBEs as part of the RFP response/engagement team as the same may serve to distinguish a proposal from among comparably scored proposals.</p>



New York State Teachers' Retirement System

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Albany, NY 12211-2395
(800) 348-7298 or (518) 447-2900
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August 3, 2015

TO WHOM IT MAY CONCERN:

Attached is the Request for Proposals (RFP) for the Audit of the Financial Statements of the New York State Teachers' Retirement System ("Financial Audit Services").

The due date for submission of proposals is Tuesday, September 1, 2015 by 2:00 pm (EDST).

Please complete and return Attachment 2, *Notice of Vendor Interest*, by 8/21/2015. This information will be used to assist NYSTRS in notifying your firm immediately of any changes or addendums to the specifications and/or bid calendar. **Failure to return this form may delay important communications to your firm.**

Please direct all questions to the designated contact listed in RFP [Section 4.0](#), *Issuing Office*.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michelle Gilchrist'.

Michelle Gilchrist
Contract Management Specialist

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

TABLE OF CONTENTS

<u>Section</u>	<u>Page Number</u>
TABLE OF CONTENTS	2
LINKS TO OTHER DOCUMENTS.....	2
1. INTRODUCTION	3
2. CALENDAR OF EVENTS*	3
3. PURPOSE	3
4. ISSUING OFFICE.....	3
5. AMBIGUITY, CONFLICT, DISCREPANCY OR OTHER ERROR	4
6. INQUIRIES & QUESTIONS.....	4
7. NOTICE OF VENDOR INTEREST	4
8. STANDARD CONTRACTUAL REQUIREMENTS.....	5
9. OVERVIEW OF THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM.....	5
9.1. NATURE OF ENTITY	5
9.2. RECORD KEEPING.....	5
9.3. INTERNAL AUDIT.....	6
9.4. ACTUARY	6
9.5. FINANCE	6
9.6. INVESTMENT OPERATIONS DEPARTMENT	7
10. SCOPE OF SERVICES.....	7
10.1. SERVICES REQUIRED	7
10.2. ASSISTANCE AVAILABLE.....	9
10.3. WORK SCHEDULES; MANNER OF PAYMENT.....	9
11. PROPOSAL SUBMISSION REQUIREMENTS.....	9
12. PROPOSAL FORMAT AND CONTENT.....	10
12.1. TITLE PAGE.....	10
12.2. TABLE OF CONTENTS.....	10
12.3. TRANSMITTAL LETTER	10
12.4. DETAILED PROPOSAL.....	11
13. EVALUATION AND AWARD	12
13.1. EVALUATION CRITERIA	12
13.2. EVALUATION PROCESS	13
13.3. CONTRACT TERM; ESCALATION.....	13

Attachments

Appendix A	Standard Clauses for New York State Contracts
Appendix B	General Information Provided to Prospective Bidders
Appendix C	Contract Provisions
Appendix D	Insurance Requirements
Attachment 1	Fee Schedule
Attachment 2	Notice of Vendor Interest

Links to Other Documents

[Compilation of Laws Covering NYSTRS](#)
[2014 Comprehensive Annual Financial Report \(CAFR\)](#)
[Schedules of Employer Allocations and Schedules of Pension Amounts by Employer](#)
[Actuarial Valuation Report as of 6/30/2013](#)

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

1. INTRODUCTION

The New York State Teachers' Retirement System was created and exists pursuant to Article 11 of the New York State Education Law. The System is the administrator of a cost sharing, multiple employer public employee retirement system, administered by a 10-member Board to provide pension benefits for teachers employed by participating employers in the State of New York, excluding New York City.

General administration and responsibility for the proper operation of NYSTRS is delegated to the Executive Director and Chief Investment Officer. Approximately 400 full-time employees are responsible for its day-to-day administration and operation, which serves 824 employers, including public school districts, BOCES, SUNY, community colleges, charter schools, and special act districts. NYSTRS' membership as of June 30, 2014 was 425,970, consisting of 270,039 active members, 150,268 retired members, and 5,663 beneficiaries who receive monthly retirement payments. Benefits are statutory and are paid in accordance with the laws enacted by the New York State Legislature. Further information and a copy of the latest NYSTRS Comprehensive Annual Financial Report can be found on the NYSTRS's website, <https://www.nystrs.org/Library/Publications/Annual-Report>.

2. CALENDAR OF EVENTS*

RFP Issued	8/3/2015
Last Date for Clarifications/Inquiries. <i>Notice of Vendor Interest</i> forms due.	8/13/2015 (close of business)
Responses to Inquiries/Clarifications Sent Out	8/21/2015
Response Due Date	9/1/15, 2:00 p.m.
Interview of Finalists by Evaluation and Selection Committee**	Week of 10/5/2015
Oral Presentations to the Audit Committee of the Retirement Board**	10/29/2015
Award	11/2/2015 (on or about)
Contract Commencement	1/4/2016 (on or about)

**All dates are subject to change, at NYSTRS sole discretion.*

***Conducted at NYSTRS' sole discretion.*

3. PURPOSE

The New York State Teachers' Retirement System ("NYSTRS" or "System") is requesting proposals from qualified, licensed independent Certified Public Accounting firms to conduct independent annual audits of the financial statements of the System, as well as the System's Schedules of Employer Allocations and Pension Amounts by Employer in accordance with the services required in [Section 10](#) of this RFP. The initial audit will be for the fiscal year ending June 30, 2016.

Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

4. ISSUING OFFICE

This solicitation includes and imposes certain restrictions on communications between NYSTRS and a bidder during the procurement process. A bidder is restricted from making contacts, from the earliest notice of intent to solicit offers through final award and approval of the procurement contract, to other than designated staff specified herein. Unless otherwise expressly authorized, all proposals, specifications, inquiries, formal

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

correspondence, and other bidder communications shall be limited and directed to the sole point of contact below, or her designee within the purchasing unit, as follows.

Michelle Gilchrist
Purchasing Unit
New York State Teachers' Retirement System
10 Corporate Woods Drive
Albany NY 12211-2395
Tel: (518) 447-2818
Fax: (518) 447-2646
E-mail: Michelle.Gilchrist@nystrs.org

5. AMBIGUITY, CONFLICT, DISCREPANCY OR OTHER ERROR

If a bidder discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, the bidder should promptly notify the Issuing Office of such ambiguity, conflict, discrepancy, omission or other error and affirmatively request in writing a clarification or modification of the document. Issues concerning the RFP should be clearly identified in the subject line as related to “**NYSTRS RFP #16-02.**”

Notice of any clarification or modification shall be given prior to the final filing date for submission of proposals, in accordance with [Section 6](#) below.

If a proposing firm fails to point out such ambiguity, conflict, discrepancy, omission or other error prior to proposal submission, such issue(s) cannot be raised after proposals have been opened because they could be used to a proposing firm's advantage during the award process and un-level the playing field with other bidders. Consequently, a proposing firm shall assume all risks. If awarded the contract, the proposing firm shall not be entitled to additional compensation or time by reason of the error or its late correction.

6. INQUIRIES & QUESTIONS

Any questions the proposers may have regarding the specifications and/or requirements must be submitted in writing and received by the Issuing Office no later than 8/13/2015.

Inquiries/questions may be mailed, faxed or e-mailed to the Issuing Office. Inquiries/questions must cite the particular page, section and paragraph number, where applicable. Inquiries/questions shall not be accepted beyond the deadline for submission of inquiries/questions noted above. Inquiries/questions concerning the RFP should be clearly identified in the subject line as related to “**NYSTRS RFP #16-02.**”

A list of questions presented, NYSTRS responses, and clarifications (if any) to these specifications shall be given on or about 8/21/15 to all bidders that have been furnished a copy of this RFP by NYSTRS, and to those bidders that have returned a completed *Notice of Vendor Interest* form (see below for more information). This information will also be made available on NYSTRS procurement website (<https://www.nystrs.org/About-Us/Procurement-Information>) under “Requests for Proposals or Quotes.”

7. NOTICE OF VENDOR INTEREST

Please complete and return Attachment 2, *Notice of Vendor Interest*, by close of business on 8/13/2015. This information will be used to assist NYSTRS in notifying your firm immediately of any changes or addendums to the specifications and/or bid calendar. **Failure to return this form may delay important communications to your firm.**

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

The return of this form is not mandatory. However, should you elect to not provide a completed *Notice of Vendor Interest* by the date indicate above, it will be your firm's responsibility to check NYSTRS website (<https://www.nystrs.org/About-Us/Procurement-Information>) for any updates, addenda or amendments to RFP 16-02.

8. STANDARD CONTRACTUAL REQUIREMENTS

See Appendix A and Appendix B, hereto attached and incorporated herein, for standard terms and conditions pertaining to this RFP and any subsequent contract.

9. OVERVIEW OF THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM

9.1. Nature of Entity

NYSTRS is a Public Employee Retirement System (PERS), created and existing pursuant to Article 11 of the Education Law with all the powers and privileges of a corporation. NYSTRS is a defined benefit plan that commenced business in August 1921. Many departments within NYSTRS, depicted on page 8 of the [CAFR](#), contribute toward our primary mission to provide retirement allowances and other specified benefits for its members. The foregoing legislation establishes the basis of substantially all of NYSTRS' significant accounting policies. A link to our website containing Article 11 of the Education Law and a link to other laws affecting NYSTRS' operations may be found on the [Table of Contents](#) hereof, and are incorporated herein by reference.

9.2. Record Keeping

NYSTRS maintains accounting records on the accrual basis. NYSTRS has received the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting for its comprehensive annual financial report since 1995.

The Administrative Fund has a budget established each year against which revenues, expenditures, appropriations and encumbrances are recorded. The General Ledger and most subsidiary ledgers are computerized. The documentation of these systems will be made available to you.

As of June 30, 2014, NYSTRS had net assets in excess of \$108 billion. The primary investment classes include domestic and global fixed income securities, domestic and global equities, mortgages, real estate and alternative investments. Pursuant to Section 507 of the Education Law, the Deputy Commissioner and Treasurer of the Department of Taxation and Finance is the Statutory Custodian. The physical custody and safekeeping of stocks and bonds has been turned over to a custodial bank, State Street Bank and Trust Company located in Boston, MA, pursuant to authority granted by Section 178a of the New York Retirement and Social Security Law. The custodial bank maintains all bonds and stocks in nominee name and/or book entry through DTC or FBE. The custodial bank collects all interest and dividends and credits them to our account. NYSTRS receives activity notifications daily and inventory listings at least twice monthly. State Street provides two SOC 1 reports to NYSTRS every 6 months: Information Technology General Controls (ITGC) and Global Fund Accounting and Custody System (GFAC). Mortgage documents are maintained at NYSTRS' headquarters.

NYSTRS uses the following accounting and investment systems:

- PeopleSoft HRMS 8.3 (HR, Pension, Payroll) and Financials 9.0 (GL, AP);
- PORTIA® (SS&C – public securities);
- Private i® (The Burgiss Group LLC - private equity);
- PAMmort™ (Princeton Financial Systems, Inc. - mortgage asset management); and

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

- For externally managed public securities NYSTRS relies upon the custodian as the official book of record and does not maintain record keeping for these portfolios in-house.

A link to NYSTRS most recent comprehensive annual report can be found in the [Table of Contents](#) hereof.

9.3. Internal Audit

The Internal Audit Department reports functionally to the Audit Committee and administratively to the Executive Director. It has no operating responsibilities. The staff presently consists of seven (7) auditors and three (3) support staff. All 7 professional auditors are credentialed and collectively possess 5 CPA licenses, 6 CIA certificates, 3 CISA certificates, 3 CIDA certificates and 3 CFE certificates, among others. Pursuant to a Board approved charter, the Director of Internal Audit and staff of the Internal Audit Department are authorized to have full, free, and unrestricted access to all NYSTRS activities, records, property, and personnel. Per the Charter, the Internal Audit Department follows the Standards for the Professional Practice of Internal Auditing promulgated by the Institute of Internal Auditors and is, accordingly, peer reviewed every 5 years. The Internal Audit Plan, and all Internal Audit reports and associated working papers (housed in TeamMate™) will be made available to the external auditor upon request. Internal audit staff will be available to directly assist the independent auditors with the audits.

Direct assistance provided by Internal Audit during the 2014 audit consists of 120 hours of general audit assistance and 224 hours of census data testing.

9.4. Actuary

The Office of the Actuary at NYSTRS provides in-house actuarial services to NYSTRS. The Actuarial Department is responsible for providing all actuarial valuations, cost estimates, and statistical analyses as they relate to NYSTRS. The department acts as a technical resource for NYSTRS as well as the executive and legislative branches of the State government and all constituent organizations. The employer contribution rate is determined annually in accordance with an actuarial valuation of NYSTRS assets and liabilities. A copy of the System's most recent [Actuarial Valuation Report \(6/30/13\) can be found on the System's website](#). With respect to such valuation report, NYSTRS engaged a qualified, independent actuarial firm to provide an evaluation sufficient to allow the consultant to express an opinion regarding the reasonableness and/or accuracy of valuation results, actuarial assumptions, funded percentage, employer contribution rate and application of the actuarial cost method.

Actuarial staff members will be readily available to provide information, documentation, explanations and access to systems as needed to facilitate the audits.

The actuarial software used to perform the valuation is PVL – Pension Valuation Language – produced and maintained by the Hay Group, Inc. A member of the Actuarial Department will be assigned and made available to contact representatives of the Hay Group regarding software related questions.

9.5. Finance

The Finance department manages the General Fund and Administrative Expense Fund including: general accounting, budgeting, payroll and taxes, cash control and procurement functions of the System. This allows the department to provide strong financial stewardship of our members' future while servicing our members, Retirement Board, System employees, and other internal/external customers. The Finance department is comprised of several units, detailed below.

9.5.1. Budget and Planning

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

Responsible for preparing and administering the System's annual operating budget; coordinating administrative expense fund transfers throughout the year; coordinating the System's business plan; and assists in projects as needed.

9.5.2. Cash Control

Responsible for processing all receipts and disbursements of the System; petty cash reimbursements and train ticket requests.

9.5.3. General Accounting

Coordinates with the Investment Operations Department to ensure that the official books and records accurately reflect the System's financial condition. The unit is responsible for all accounting entries, trial balances and sub-ledgers for the General Fund, Administrative Expense Fund and the OPEB Trust, including the following: operating expenses, employee and retiree payroll, active member benefits, and capital assets; bills and collects employer and employee contributions; processes vendor payments and travel reimbursements.

9.5.4. Payroll/Tax

Coordinates and processes the bi-weekly employee payroll; monthly retiree payroll and the daily member payroll (loans, withdrawals, etc.); provides tax information to active and retired members, and annually produces Forms 1099's and W-2's.

9.5.5. Purchasing/Procurement

The unit ensures proper purchasing procedures are followed and oversees the procurement method in accordance with administrative policy necessary to obtain goods and services, which best meet the business goals of NYSTRS at the best price, and is instrumental in third-party problem resolution with bidders, vendors and contractors. In addition, the unit is responsible for assisting requesting departments with drafting specifications for quotes and requests for proposals (RFPs) and arranging all airfare travel for System employees.

9.6. Investment Operations Department

The Investment Operations department is responsible for the proper accounting, custody and monitoring of System investments and cash movement, including compliance with System investment policies, to ensure timely funding of payment commitments and collection of all investment entitlements. In addition, the department provides timely, accurate, and relevant information about System investment holdings to internal and external customers.

10. SCOPE OF SERVICES

Working papers developed and maintained by the auditor during the engagement are to be made available to NYSTRS, its designee or regulator for seven (7) years following the year of the audit. NYSTRS is regulated by the NYS Department of Financial Services (DFS), which conducts a formal examination of the System once every five (5) years. During previous examinations, the DFS has reviewed the audit working papers of the System's external auditors. The next DFS examination is expected to take place during the 2017-18 fiscal year, with a scope of the five (5) years ended June 30, 2016.

10.1. Services Required

10.1.1. Perform an annual audit of the System's financial statements in accordance with audit standards generally accepted in the United States of America and express an opinion as to whether the financial statements present fairly, in all material respects, the plan net assets of the System as of the applicable June 30, 201X

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

and 201X and changes in plan net assets for the years then ended in conformity with U.S. generally accepted accounting principles. The audit shall include tests of the accounting and other supporting records (including census data) as deemed necessary by the independent auditor in order to express such opinion.

- 10.1.2. Perform an independent actuarial review of the actuarial assumptions, methods and procedures used by the System's Actuary to calculate the pension benefit obligation and employer contributions for the plan, in accordance with generally accepted actuarial principles and practices as set forth in Actuarial Standard of Practice No. 4 and fairly represented in accordance with Statement No. 67 of the Governmental Accounting Standards Board. Provide an independent actuarial review opinion suitable for publication in the System's CAFR. (The form and content of such opinion shall be materially and substantially the same as the one published on page 100 of [NYSTRS CAFR](#) for fiscal year ended 6/30/14.)
- 10.1.3. Perform an annual audit of the Schedule of Employer Allocations and Schedule of Pension Amounts by Employer in accordance with audit standards generally accepted in the United States of America and express an opinion as to whether those schedules and accompanying notes present fairly, in all material respects, the audited elements for the specified year ended June 30, 201x, in accordance with U.S. generally accepted accounting principles. These schedules, referred to as the "GASB 68 Schedules," are the result of AICPA guidance found in their whitepaper titled "Governmental Employer Participation in Cost-Sharing Multiple-Employer Plans: Issues Related to Information for Employer Reporting." See the [GASB 68 Schedules for the year ended June 30, 2014](#) for more information.
- 10.1.4. Address completed reports to the Retirement Board, New York State Teachers' Retirement System.
- 10.1.5. Complete the financial statement audits and issue the audit reports by mid-October of each year. (Note: The System fiscal years end June 30th.) Complete the audit of the Schedule of Employer Allocations and Schedule of Pension Amounts by Employer by mid-November of each year. Note: The preparation of these schedules follows the preparation and audit of the System's financial statements. Further, the reporting deadlines for certain participating employers requires the System to provide audited schedules on or about December 1 so that the participating employers can extract the information they need to meet their financial reporting deadlines. Consequently, there is a very short time frame to complete this audit and the successful firm will need to have resources ready and available to commence this audit as soon as the in-house preparation of the schedules is complete.
- 10.1.6. The partner-in-charge of the engagement will present the financial statement audit reports pertaining to the System to the Audit Committee of the Retirement Board at the October meeting of the Retirement Board. Further, the partner-in-charge of the engagement or delegate will present the audit plan at the March meeting of the Audit Committee and a status of the audits in progress at the September meeting of the Audit Committee. The partner-in-charge of the engagement or delegate will attend the June and December meetings of the Audit Committee, and present as necessary. Meetings are subject to change, to meet the needs of the Retirement Board.
- 10.1.7. Keep NYSTRS informed of all current events affecting Public Employee Retirement Systems (PERS), including an analysis of proposed accounting standards and federal tax matters. Furthermore, we will have an occasional need to consult with the accounting firm's technical specialists to solve technical and work-related problems.
- 10.1.8. NYSTRS may from time to time require additional services beyond the scope of these specifications. Should NYSTRS require such additional services and the successful vendor agrees to provide these services, a formal statement of work will be developed and the discounted hourly rates provided on the fee schedule will be used as the basis for compensation. Please note, however, this does not represent an

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

intention or commitment by NYSTRS to grant exclusive right to the successful proposer to provide said additional services.

10.2. Assistance Available

It is the intention of NYSTRS to assist the independent auditors as much as possible.

- 10.2.1. Finance, Investment Operations and Actuarial Department staff will be available to prepare schedules, retrieve documents and generally accomplish the routine requirements where possible.
- 10.2.2. The Information Services Department will be available to assist wherever possible.
- 10.2.3. The Internal Audit Department will be available to directly assist in the audit pursuant to SAS 128, "Using the Work of Internal Auditors."
- 10.2.4. NYSTRS is prepared to provide written representations as applicable to the System relating to: the financial statements and the Schedule of Employer Allocations and Schedule of Pension Amounts by Employer; completeness of Information; recognition, measurement, and disclosure; subsequent events; and other matters to address specific inquiries made by the auditor as required by the auditing standards generally accepted in the United States of America.
- 10.2.5. NYSTRS will provide reasonable work space in close proximity to the necessary records.
- 10.2.6. We anticipate that the work papers of our previous independent auditor will be made available to the awarded firm.

10.3. Work Schedules; Manner of Payment

By March 1 of each contract year, the successful firm must submit a detailed audit work plan, time schedule, staffing assignment, staff budget and list of any System-prepared work schedules.

Progress payments will be made on the basis of actual hours of work completed during the course of the audit in accordance with the schedule of hourly rates presented in the fee schedule. Progress payments shall cover a work period of at least thirty (30) days. The total of all progress payments plus a final payment shall not exceed the maximum dollar cost proposed in the fee schedule. Out-of-pocket costs (e.g. travel expenses) will not be reimbursed.

Invoices shall be sent to the Director of Internal Audit, who is the contract administrator for this engagement.

11. PROPOSAL SUBMISSION REQUIREMENTS

To be considered as eligible, the bidder must submit a complete response to this RFP in conformance with the format and content requirements set forth herein. A proposal that does not provide all the information requested below may be subject to rejection. The proposal must contain sufficient information to assure NYSTRS of its accuracy.

ALL SEALED PROPOSALS MUST BE RECEIVED IN THE HANDS OF THE NYSTRS PURCHASING OFFICE PRIOR TO 2:00 P.M. ON 9/1/2015 (PREVAILING TIME), AT WHICH TIME SEALED TECHNICAL PROPOSALS WILL BE PUBLICLY OPENED AND ACKNOWLEDGED. FAXED OR ELECTRONICALLY TRANSMITTED PROPOSALS WILL NOT BE ACCEPTED. LATE PROPOSALS WILL NOT BE CONSIDERED. BIDDERS ASSUME ALL RISKS FOR TIMELY, PROPERLY SUBMITTED BID DELIVERIES.

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

Electronic-only submissions of your proposal are not acceptable. All proposals, including paper and electronic copies of your proposal, must be enclosed in a sealed package to prevent dissemination of its contents before the deadline for the submission of all proposals. **Any shipping container and the exterior of the sealed envelope must be labeled with the notation: “Financial Audit Services RFP #16-02.”**

Submit six (6) paper copies and one (1) electronic copy (CD/DVD only) of the complete proposal, including proposed fees, in a sealed package or packages, labeled **“Proposal for RFP #16-02 for Financial Audit Services.”** For more information about the format and content of your proposal, please refer to [Section 12](#) below.

It will be the bidder’s responsibility to provide all required information, including required attachments, and to satisfy all the requirements cited in this RFP.

12. PROPOSAL FORMAT AND CONTENT

To expedite the review of the submissions, the proposal requirements must be submitted in a binder with tabs numbered to match the outlined information (items 12.1 through 12.4) below. Additional information, if any, should be submitted separately. This separation of information will facilitate the review of the material requested. No information beyond that specifically requested is required and firms are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications.

A proposal that does not provide all of the information requested below may be considered non-responsive and rejected.

12.1. Title Page

Include RFP subject, name of proposing firm, address, telephone number, contact person, and date.

12.2. Table of Contents

12.3. Transmittal Letter

The bidder must include a cover letter with its proposal signed by the individual(s) authorized to bind the bidder contractually. This cover letter must indicate that the signer(s) is so authorized and the title or position the signer(s) holds in the bidder’s firm. An unsigned proposal may be rejected. The letter must also contain the following:

- Include your understanding of the work to be performed, and commitment to perform the work within the time schedule.
- A statement to the effect that the price quoted is a firm and irrevocable offer for no less than 180 days.
- Include an acknowledgement that you have reviewed and are willing to adhere to the terms and conditions of this RFP, the Standard Clauses for New York State Contracts (Appendix A), General Information Provided to Prospective Bidders (Appendix B), Contract Provisions (Appendix C) and NYSTRS’ Insurance Requirements (Appendix D), any exceptions to the foregoing to be specifically stated. **However, any material exceptions could provide an advantage to the bidder taking the exceptions. Due to this fact, NYSTRS will only consider making an award to a bidder with exceptions if the exceptions do not constitute a “material deviation” from these specifications. The bidder must drop “material” exceptions from their proposal, or else risk losing an award altogether. “Material” term(s), whether a clarification or exception, is (are) “material” if it gives or concedes to bidder some advantage which the other bidders did not have, or if it takes**

away a right or benefit which NYSTRS would otherwise be entitled to under the specifications. Whether or not an exception is considered “material” is determined by NYSTRS in its sole discretion by asking the following questions: Would the bidder gain a benefit or advantage from the exception which would permit him to offer a lower price than other proposers who did not take the same exceptions? Is NYSTRS agreeing to take something less? NYSTRS may negotiate exceptions with a bidder if they are not material as such terms are defined above. Where a bidder’s exceptions materially alter the terms of these specifications, NYSTRS has the right to ask the bidder to withdraw the exception, or in its sole discretion may reject the proposal.

12.4. Detailed Proposal

The detailed proposal should include the following.

- 12.4.1. Work Plan. Submit a preliminary work plan for performance of the services described in [Section 10](#). Include a listing of staff hours budgeted by staff level.

Include your proposed methodology for the following:

- Risk assessment methodology.
- Balance between reviews of controls and substantive testing.
- Reporting approach—interim reports, management reports, presentations to management and Board.
- Number of hours allocated to the assignment, breakdown between interim and final audits.
- Number of visits to NYSTRS for the audit.
- Approach to reviewing the financial system.
- Proposed interaction with/use of internal audit function;
- Ability to complete the engagement within established deadlines.

- 12.4.2. Technical Experience of the Firm. Provide a statement supporting the qualitative reasons the firm should be considered for the contract. Include pertinent facts with regard to:

- Prior experience auditing PERS;
- Please provide a list of all PERS audited by the firm over the past five (5) years
- Available professional resources with audit experience in our IT environment;
- Available professional resources in the area of actuarial consulting;
- Available professional resources in the area of investment accounting;
- Available professional resources in the area of federal taxation.

- 12.4.3. Qualification of Firm and Staff Assigned.

- State the size of the firm and the size of the audit staff.
- Provide a list of your principal offices and indicate the location from which the work on this engagement will be accomplished.
- Indicate the number and experience level of professional staff proposed for this engagement; and whether on a full- or part-time basis.
- Provide copies of any materials that would facilitate evaluation of the firm.

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

- Identify the principal supervisory and management staff, including the specific partner(s) and manager(s) who will be assigned to the engagement. Indicate the NYS CPA licensure status of each person. Submit resumes of each person. Provide as much information as possible about the qualifications and experience of the staff to be employed on this engagement. Indicate how staff competency level over the term of the contract will be assured. NYSTRS reserves the right to perform background checks for any person working on an audit engagement, including knowledge experts identified in the next bullet.
- Specifically identify and provide resumes for those individuals in your firm who can be called upon with specific questions in the following areas:
 - Information technology;
 - Federal taxation;
 - Actuarial services;
 - GASB and FASB pronouncements;
 - Accounting for investments; and
 - PERS and defined benefit pension plans.
- A statement of your firm's potential conflicts of interest, should it be selected for this proposal.
- Submit a copy of your firm's latest Peer Review Report and accompanying management letter.

12.4.4. References. A list of at least five (5) references for which your proposed team performed the types of services outlined in this RFP within the past three years. Ideally, these firm references should be similar in size and nature to NYSTRS. Please include the name and address of the firm or agency as well as a contact person, telephone number, and email address for each reference.

12.4.5. Fee Schedule (Attachment 1). Each bidder must prepare a bid sheet detailing the cost of the services, using the format provided in Attachment 1. Bidders are required to provide a not-to-exceed fee for each of the annual audits. Bidders must also provide details supporting the maximum dollar cost presented on the fee schedule. The breakdown must show the estimated professional hours and discounted hourly billing rate by staff classification.

If there are services that are NOT described in the Scope of Work in this RFP but are required for the successful completion of an annual financial audit in accordance with professional auditing standards, those services should be sufficiently described in your proposal and explained as to necessity. Fees related to such additional scope of work must be separately itemized in your overall fee proposal.

NYSTRS shall reimburse the bidder monthly for actual hours worked.

13. EVALUATION AND AWARD

13.1. Evaluation Criteria

NYSTRS will evaluate each firm's proposal based on Best Value. The firm(s) submitting the proposal, which, in NYSTRS' opinion, "optimizes quality, cost, and efficiency among the responsible and responsive bidders," shall be selected for contract award.

The factors used to evaluate each proposal include:

- Qualifications of firm and individual staff members assigned to the engagement (35 points);
- Technical experience of the firm (25 points);

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES
RFP #16-02

- Work plan (20 points); and
- Fee (20 points).

13.2. Evaluation Process

The evaluation process shall be conducted as follows:

- An Evaluation Committee (the Committee) comprised of NYSTRS staff shall convene.
- Each member of the Committee shall review each bidder's technical proposal and develop a technical score for each proposal.
- The technical scores of each Committee member shall be combined and averaged to develop an overall technical score.
- The cost proposals shall be ranked relative to the lowest cost proposal submitted.
- Technical and Cost Proposals shall be combined to produce a total score. The weighting between Technical and Cost will be split 80% - 20%, respectively.

The selection committee reserves the right to narrow the number of prospective candidates that can satisfactorily provide the required and requested services. The Committee may select **up to three** of the top-scored responses for further consideration ("finalists"). The finalists may undergo further evaluations which may include oral presentations, interviews, site visits, and/or demonstrations before the selection committee.

13.3. Contract Term; Escalation

NYSTRS' intention is to award a contract covering a three-year period with a negotiable extension for two additional one-year periods.

In the event that the successful vendor(s) should desire a price increase during either of the two renewal periods, then it is incumbent upon the vendor to notify NYSTRS' purchasing unit in writing 90 days prior to the expiration of the then current contract term to negotiate and justify such increase. In no event shall the increase be greater than the percent change in the Employment Cost Index (ECI) for Civilian Workers, as published by the United States Bureau of Labor Statistics, Washington, DC., 2012 (<http://www.bls.gov/ect/home.htm>). ECI increase will be determined by using the most recently released index as of 90 days prior to the contract anniversary date, compared to the same quarterly index from the prior year. For example, a contract has an anniversary date of 5/1/2015. NYSTRS would use the index available on 2/1/2015, which would be the December 2014 index, and compare it to the December 2013 index.

Additionally, either party shall have the right to terminate the contract without cause with thirty (30) days written notice. If, however, the vendor terminates the contract without cause during the course of an audit, all progress payments shall be refunded.

IF, IN NYSTRS' OPINION, NO ENTITY CAN SUBSTANTIALLY MEET ALL OF THE CRITERIA, THEN NYSTRS RESERVES THE RIGHT TO WITHDRAW THE RFP AND NOT MAKE AN AWARD. HOWEVER, IT IS EXPRESSLY UNDERSTOOD THAT EVEN AFTER SELECTION OF A SUCCESSFUL PROPOSER, IF ANY, NYSTRS SHALL HAVE NO OBLIGATION OR LIABILITY WHATSOEVER UNLESS NYSTRS ENTERS INTO A WRITTEN CONTRACT IN FORM AND SUBSTANCE SATISFACTORY TO NYSTRS. NYSTRS MAY, FOR ANY REASON WHATSOEVER, DECLINE TO NEGOTIATE AND/OR EXECUTE SUCH CONTRACT. THE RESULTING CONTRACT SHALL, AMONG OTHER PROVISIONS, INCORPORATE THIS RFP AND THE SUCCESSFUL PROPOSER'S PROPOSAL.

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 New York State Teachers' Retirement System ("NYSTRS"), whether a contractor, licensor, licensee, lessor, lessee or any other party.

1. EXECUTORY CLAUSE. NYSTRS shall have no liability under this contract to the Contractor or to anyone else beyond funds allocated for this contract.

2. NON-ASSIGNMENT CLAUSE This contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of NYSTRS and any attempts to assign the contract without NYSTRS' written consent are null and void.

3. WORKERS COMPENSATION BENEFITS. 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.

4. NON-DISCRIMINATION REQUIREMENTS. In accordance with 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 agrees that neither it nor its subcontractors shall 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. Further, the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of NYSTRS' contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sexual orientation sex, age, disability, genetic predisposition or carrier status or marital status.

It is the policy of NYSTRS to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises and service-disabled veteran-owned businesses, 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

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

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

A list of certified NYS Service Disabled Veteran-Owned Businesses is available from:

NYS Office of General Services
Division of Service-Disabled Veterans' Business Development
41st Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
844-579-7570
email: VeteransDevelopment@ogs.ny.gov
http://ogs.ny.gov/core/docs/CertifiedNYS_SDVOB.pdf

5. NON-COLLUSIVE BIDDING CERTIFICATION. If this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition.

6. INTERNATIONAL BOYCOTT PROHIBITION. 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.

7. SET-OFF RIGHTS. NYSTRS shall have all of its common law, equitable and statutory rights of set-off.

8. 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. NYSTRS and any other person or entity authorized to conduct an examination, 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. Nothing contained herein shall diminish, or in any way adversely affect, the NYSTRS' right to discovery in any pending or future litigation.

9. 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.

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

11. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by the terms of Article XI-A of the State Finance Law.

12. 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.

13. 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 NYSTRS' 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 NYSTRS to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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 NYSTRS; 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 NYSTRS.

15. 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.

16. 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.

17. DATA PRIVACY AND 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). Contractor shall: (i) at all times process NYSTRS' Personal and Private Information (as defined in the above Breach and Notification Act) in accordance with applicable rules, regulations or laws governing the processing of personal identifiable information; (ii) maintain, and shall require any third party (whom Contractor engages) having access to and processing such Personal and Private Information to maintain, appropriate physical, technical and organizational measures to secure and protect the confidentiality and integrity of NYSTRS' Personal and Private Information against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure or access; and (iii) exercise at least the same degree of care to secure and protect NYSTRS' Personal and Private Information, which it exercises to secure and protect its own similar personal and private information, but in no event less than reasonable care.

18. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN 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 NYSTRS determines that such action of termination is in its best interest.

19. OFAC COMPLIANCE. The Contractor represents, warrants, and covenants that it shall conduct its business and this engagement and transaction at all times in compliance with applicable law, rules, and regulations and further certifies that Contractor, including but not limited to its partners, officers, directors, and affiliates are not: (i) in violation of, and shall not violate, any relevant anti-money laundering legislation, rule, regulation, or order administered by the Office of Foreign Assets Control of the US Department of the Treasury ("OFAC"), including Subtitle B, Chapter V of Title 31 of the U.S. Code of Federal Regulations each as amended from time to time; (ii) Persons appearing on the Specially Designated Nationals and Blocked Persons List of the OFAC or Persons with whom a transaction is prohibited by Executive Order 13224, the USA PATRIOT Act, the Trading with the Enemy Act, or the foreign asset control regulations of the United States Treasury Department, each as amended from time to time; or (iii) Persons having its principal place of business located in a country to which the foregoing item (ii) applies.

**NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
GENERAL INFORMATION PROVIDED TO PROSPECTIVE BIDDERS**

APPENDIX B

- 1) The New York State Teachers' Retirement System (NYSTRS) will not be liable for any cost incurred by the bidder in association with the preparation of this bid/proposal including costs associated with vendor demonstrations.
- 2) All bids/proposals and accompanying documentation become the property of NYSTRS and will not be returned.
- 3) NYSTRS abides by the requirements set forth in the Freedom of Information Law (Article 6 of the New York State Public Officers Law) governing the disclosure of public records. Accordingly, unless specifically exempted under that statute and clearly identified as such by the bidder in their submission, any proposal, including attachments and related materials, submitted to NYSTRS is presumptively available for public inspection and disclosure after final approval of the contract.
- 4) All information in this bid/proposal including evaluation results, specifications, and other specific claims may be included as part of the final contract.
- 5) All contracts with NYSTRS require compliance with the laws of New York State. Accordingly, a document entitled "Standard Clauses for New York State Contracts" (Appendix A) will become part of the contract. Additionally, prior to any contract or purchase order becoming effective, bidder agrees to fulfill any applicable obligations with respect to sales and compensating use tax pursuant to Section 5-a, which was added to the Tax Law under Part N of Chapter 60 of the Laws of 2004 and amended under Part L of Chapter 62 of the Laws of 2006, and may be further amended from time to time. Section 5-a generally requires that contractors, prior to approval of contracts valued at more than \$100,000, certify to the Department of Taxation and Finance that Contractor, and to the best of Contractor's knowledge, any affiliates and subcontractors, are registered to collect state sales and compensating use tax, or that Contractor and, to the best of Contractor's knowledge, any affiliates and subcontractors, did not have sales within New York State of tangible personal property or taxable services in excess of \$300,000 during the immediately preceding four consecutive sales tax quarters. Contractor must also certify in writing to NYSTRS that such requisite certification has been duly made and filed with the Department of Taxation and Finance, or that the certification is not required to be filed, and that such certification is correct and complete. The certification to NYSTRS must be included in its procurement record. Questions regarding scope and applicability of Tax Law Section 5-a should be directed to: Department of Taxation and Finance, Taxpayer's Contact Center 1-800-698-2931 or request Publication 223 from the Department of Taxation and Finance's Web site, by fax, or by mail.
- 6) Late bids/proposals will not be accepted.
- 7) Bids/proposals must be signed by an authorized representative of the submitting firm.
- 8) The bidder shall assume full responsibility for providing the goods and services detailed in their proposal. The bidder shall be held solely responsible for contract performance by its employees, subcontractors and agents. The bidder shall be responsible for payment of all employees, sub-contractors, suppliers including all third-party equipment, license fees and service providers contracted by or through the bidder in performance of the agreement.
- 9) The bidder may not sub-contract on any portion of the delivery of goods or services hereunder without the express written consent of NYSTRS.
- 10) NYSTRS reserves the right to:
 - a. Make an award under this RFP in whole or in part.
 - b. Withdraw or cancel the RFP, at its sole discretion.
 - c. Change the scheduled dates stated in this RFP.
 - d. NYSTRS reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if NYSTRS determines its best interests will be served. NYSTRS, in its sole discretion, may accept or reject illegible, incomplete or vague Bids and its decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer
 - e. Waive or modify minor irregularities (including minor typographical and computational errors) in bids/proposals; and to make minor modifications, including but not limited to adjusting bidder's mathematical errors, after prior notification and concurrence of the bidder.
 - f. Adapt all or part of a vendor's proposal in selecting the optimum level of service unless those ideas are covered by legal patent or copyright.
 - g. Negotiate with Bidders to serve the best interests of NYSTRS, including negotiating separately with any

**NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
GENERAL INFORMATION PROVIDED TO PROSPECTIVE BIDDERS**

APPENDIX B

- source whatsoever in any manner necessary to best serve the interests of NYSTRS.
- h. Reject any or all bids/proposals at any time and for any reason, including proposals which do not conform to the requirements of the RFP; and, at NYSTRS' sole discretion, to solicit new bids on the same or different terms.
 - i. Conduct contract negotiations with the next eligible responsible bidder should NYSTRS be unsuccessful in negotiating an agreement with the selected bidder within a timeframe acceptable to NYSTRS; such timeframe is to be determined solely by NYSTRS based on its best interests.
 - j. Prior to bid opening, modify or amend the specifications. Any amendment(s) to bid specifications will be posted on NYSTRS' website. Subsequent to the bid opening, modify or amend the specifications.
 - k. Seek clarification and/or additional information, at NYSTRS' sole discretion, for the purpose of fully understanding the bidder's proposal, and seek revision from all bidders capable of receiving award.
 - l. Eliminate mandatory requirements unmet by every bidder.
 - m. Waive any requirement(s) that is (are) not material.
 - n. Reject/disqualify a bid if, in NYSTRS' sole discretion, the bid price is determined to be excessive.
 - o. Reject an obviously unbalanced bid or to make "NO AWARD" on individual listings or sub-items if individual bid prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. In such case, ranking and evaluation of bids may be made on remaining items. Award would be made on the remaining items. The determination of an unbalanced bid shall be at the sole discretion of NYSTRS. Options contained in this paragraph shall also be at NYSTRS's sole discretion.
 - p. Use the proposal, information obtained through site visits, management interviews, investigation of bidder qualifications, experience, ability, financial standing and any other information that is generally available in the public domain to evaluate the bidders' response to the RFP and their ability to provide the goods and services requested.
 - q. To impose penalties for other than completely satisfactory performance, in accordance with state rules, regulations, guidelines, past practices or NYSTRS policy.
 - r. Establish an extended acceptance testing period and, if not satisfied with the performance during the testing period, award the contract to the next most responsive bidder.
 - s. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP.
 - t. Require the Bidder to demonstrate to the satisfaction of NYSTRS any feature(s) presented as a part of its bid.
 - u. Terminate the contract(s) if it deems the price adjustment pursuant to the solicitation or contract is not in the best interests of NYSTRS.
 - v. If requested by Bidder, and if in NYSTRS' best interest to do so, implement changes in price based on unforeseen factors such as dramatic changes in availability, delivery, costs, etc., for product, supplies, etc., that substantively affect the contractor's business processes or that may impact contract pricing. Such changes may be based on information from the U.S. Bureau of Labor Statistics, industry data, or other sources.
 - w. After an unsuccessful attempt to speak with the contact person noted on the reference form, survey another person knowledgeable and familiar with the Bidder from the submitted reference due to time constraints.
 - x. Review and consider other known clients of the Bidder in addition to those provided, including NYSTRS, and to disqualify based on unsatisfactory reports and/or records of services provided.
 - y. Reject all bids which do not comply with the bid specifications. However, NYSTRS may elect to award to the Bidder who receives the highest overall combined evaluation score even if such Bidder does not comply with all of the bid specifications, providing that the Bidder's non-compliance is deemed by NYSTRS to be non-material to overall performance of the services.
 - z. Invalidate a Bidder's scores at any time during the evaluation process if the Bidder's bid is deemed non-responsive or is otherwise disqualified.
 - aa. Disqualify a Bidder from receiving the award if the Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
 - bb. Accept or reject any of the Bidder's employees assigned to this contract and to require their replacement at any time.
 - cc. Consider amendments which are not specifically covered by the terms of the contract but are judged to be in the best interest of NYSTRS.
- 11) Each person or entity submitting a proposal to NYSTRS must disclose in writing as part of its proposal if, to the proposer's knowledge, a NYSTRS **decision maker** has an **interest** in such proposal. The proposer must also identify the nature of such **interest**. For the purposes of this requirement, a NYSTRS **decision maker** includes each member of NYSTRS' Retirement Board, Investment Advisory Committee and Real Estate Advisory Committee and each NYSTRS employee required to take any discretionary action in

**NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
GENERAL INFORMATION PROVIDED TO PROSPECTIVE BIDDERS**

APPENDIX B

connection with the proposal. A NYSTRS **decision maker** may have an **interest** in the proposal, for example, where s/he or his/her spouse is a **family member** of the proposer; has entered or intends to enter into a business or financial relationship with the proposer; has recently received substantial pecuniary or material benefits from the proposer; or will receive a pecuniary or other benefit if NYSTRS acts favorably on the proposal. For these purposes, a **family member** is a spouse, child, step-child, parent or dependent.

- 12) Bidders and their employees must comply at all times with the requirements of NYSTRS' Code of Ethics, NYSTRS' Policy Governing the Receipt of Gifts, and other applicable codes, rules and regulations establishing ethical standards for the conduct of business with NYSTRS. Copies of these policies may be downloaded from NYSTRS' procurement website (<https://www.nystrs.org/About-Us/Procurement-Information>). Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.
- 13) All outstanding tax liabilities, if any, against the bidder in favor of the State of New York must be satisfied prior to contract execution or a payment schedule arranged for the speedy satisfaction of any such outstanding tax liabilities.
- 14) **Remanufactured, Recycled, Recyclable or Recovered Materials.** Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without increasing NYSTRS' cost and without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without increasing NYSTRS' cost and without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials.
- Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.
- 15) **EQUIVALENT OR IDENTICAL BIDS.** In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of NYSTRS to award a Contract to one or more of such Bidders shall be final.
- 16) **PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS.** NYSTRS reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive.
- A Bidder/Contractor must be prepared to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid.
- If NYSTRS determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, NYSTRS may reject such Bid or terminate the Contract.
- 17) **DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY.** Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts or is deemed non-responsible.
- 18) **DEBRIEFING.** Any unsuccessful Bidder may request a debriefing by notifying NYSTRS in writing after receiving notification of the contract non-award. All requests for debriefings shall be emailed to the designated contact person specified in the applicable bid. The debriefing shall be addressed following the execution of the resulting contract, within a reasonable time period after such execution taking into account all relevant circumstances.

A debriefing will be limited to a review of an unsuccessful Bidder's own submission and the scoring of that

**NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
GENERAL INFORMATION PROVIDED TO PROSPECTIVE BIDDERS**

APPENDIX B

- submission.
- 19) The contract may be canceled by NYSTRS at the Contractor's expense if the Contractor becomes unable or incapable of performing the work, or fails to meet any requirements or qualifications set forth in the contract, or for non-performance, or upon a determination that Contractor is non-responsible. Contractor shall have thirty (30) days from the date of notice from NYSTRS to cure a breach, if the breach can be remedied. In such event, NYSTRS may complete the work in any manner as it may deem advisable and pursue available legal or equitable remedies for breach. If the contract is terminated for cause, and if any secondary contract award results in an increased cost to NYSTRS, the previous contractor will be held liable for the increased cost. NYSTRS reserves the right to cancel the contract without cause upon ten (10) days written notice.
 - 20) The Contractor and NYSTRS shall first attempt to resolve any disputes through one or more conferences between designated representatives of the parties. If NYSTRS and the Contractor are unable to resolve the dispute in this manner, then NYSTRS and the Contractor may pursue any legal or equitable remedy they may have. However, if the Contractor does so, it will continue to perform the disputed work in accordance with the direction of NYSTRS pending the outcome of such proceedings.
 - 21) Provisions will be included in the contract to address changes to the project recommended by either party, if appropriate.
 - 22) NYSTRS reserves the right to withhold payment for the Contractor's failure to perform services under the Agreement. Additionally, NYSTRS reserves the right to automatically withhold payment from, and/or cease transacting with, the Contractor at any time if (a) such engagement violates any applicable law, rule or regulation; or (b)(i) the Contractor's name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specially Designated National and Blocked Persons," in each case as amended from time to time and as published and updated in various mediums including on the OFAC website; or (ii) the Contractor is an automatic blocked person in accordance with OFAC's 50% rule as the result of one or more direct or indirect owners of the Contractor being on the SDN list.
 - 23) The Contractor shall be responsible for and shall assist NYSTRS in the orderly transition of services should a new contractor be selected at the conclusion of the contract term. The Contractor shall accommodate all reasonable requests made by NYSTRS to effect such orderly transition.
 - 24) Employers are required by Federal law to verify that all employees are legally entitled to work in the United States. Accordingly, NYSTRS reserves the right to request legally mandated employer held documentation attesting to the same for each employee/consultant assigned work under any contract awarded as a result of this solicitation or other procurement method. In accord with such laws, NYSTRS does not discriminate against individuals on the basis of national origin or citizenship.
 - 25) Bidder represents and warrants that if awarded a contract it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the resulting contract, at the contractor's expense. Prior to award and during the contract term and any renewals thereof, contractor must establish to the satisfaction of NYSTRS that it meets or exceeds all requirements of the Bid and contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof upon NYSTRS' request. Failure to comply or failure to provide proof may constitute grounds for NYSTRS to cancel or suspend the contract, in whole or in part, or to take any other action deemed necessary by NYSTRS.
 - 26) Any "right" of NYSTRS in this Appendix B indicates a permissive exercise of such right by NYSTRS in its sole and absolute discretion, and does not imply or create any duty or obligation to exercise such right. The term "discretion," as used in this Appendix B, means the sole and absolute discretion of NYSTRS, absent an express limitation on such discretion.
 - 27) The bid/proposal process does not constitute or create a commitment on the part of NYSTRS to purchase any goods or services from the Bidder. No contract or agreement pertaining to the potential transaction between NYSTRS and Bidder will be deemed to exist until a definitive, legally-binding written agreement has been executed and delivered by NYSTRS and Bidder. NYSTRS is not obligated to conduct any discussions with Bidder concerning its bid/proposal, and NYSTRS may terminate discussions with Bidder at any time.



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

This **Agreement** is entered into as of _____ by and between the NEW YORK STATE TEACHERS' RETIREMENT SYSTEM ("NYSTRS"), a public pension fund existing pursuant to Article 11 of the NYS Education Law and having the powers and privileges of a corporation as per §502 thereof, which has its headquarters located at 10 Corporate Woods Drive, Albany, NY 12211, and _____ ("Contractor"), which has an office located at _____.

WHEREAS, NYSTRS has formally requested qualified and experienced firms to submit proposals for the following described Project:

To conduct independent annual audit of the financial statements of NYSTRS including the Actuarial Report as well as the System's Schedules of Employer Allocations and Pension Amounts by Employer for the years ending 2016, 2017, and 2018 in accordance with the specifications of RFP #16-02; and

WHEREAS, Contractor submitted a sealed proposal dated _____, as supplemented, to NYSTRS to perform required services and provide deliverables related to the Project, as specified in more detailed in its proposed solution contained in such proposal (collectively, "Contractor's Proposal," incorporated herein and hereinafter referred to as Appendix C); and

WHEREAS, NYSTRS has determined through a competitive process that Contractor is the successful bidder, and Contractor is willing to undertake the professional services and to provide the necessary materials, labor and equipment in connection therewith.

NOW, THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations of each party hereto, the parties do hereby agree as follows:

1. Statutory Requirements of Public Contracts

Contractor agrees to be bound by all statutory requirements of public contracts under New York state law, which said requirements are hereby incorporated by reference as if fully set forth herein. Without limiting the generality of the foregoing, some of said statutory requirements are set forth in "Standard Clauses for New York State Contracts," which is attached hereto as Appendix A and made a part hereof.

2. Governing Law

This Agreement will be governed by, construed and enforced in accordance with the laws of the State of New York, without regard or giving effect to the conflict of law principles thereof. All suits, proceedings or claims in connection with this Agreement shall be subject to the exclusive jurisdiction of competent courts within the State of New York and the parties hereby consent to the jurisdiction and venue of those courts.

3. Entire Agreement

The Request for Proposal #16-02 issued 7/31/2015, as amended (collectively the "Request for Proposal," incorporated herein and hereinafter referred to as Appendix B), Appendix C; and NYSTRS' Insurance Requirements, hereto attached as Appendix D, and applicable engagement letters negotiated by the parties are hereby incorporated by reference as if fully set forth herein and are deemed to be a part of this Agreement with the same force and effect as if herein set forth separately, specifically and at length.

This document, together with Appendix A, Appendix B, Appendix C, Appendix D and applicable engagement letters negotiated by the parties incorporated herein, sets forth the entire Agreement and understanding of the parties relating to the subject matter hereof and supersedes any and all prior oral and written agreements, understandings and quotations relating thereto. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by the parties.



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

4. *Effective Date*

The Agreement shall not be effective until signed by Contractor, and delivered to and executed by NYSTRS at 10 Corporate Woods Drive, Albany, NY 12211-2395.

5. *Prime Contractor, Employees, Subcontractors and Agents*

Contractor shall be a prime contractor with respect to the provision of the services hereunder and solely responsible for the performance of the services hereunder and all of the other liabilities and obligations of Contractor under the Agreement, whether or not performed, in whole or part, by Contractor, any other affiliate of Contractor, or any subcontractor, partner or personnel of Contractor. All employees, Subcontractors or agents performing work under the Contract must be trained staff who meet or exceed the professional qualifications set forth in the RFP, and must comply with all security and administrative requirements of NYSTRS. NYSTRS reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional qualifications, quality of work, change in security status or non-compliance with NYSTRS' security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. NYSTRS reserves the right to reject and/or bar from the facility for cause any employees, Subcontractors, or agents of the Contractor.

6. *Contractor Personnel*

- A. For purposes of this Agreement, **Insert Names** are considered key personnel ("Key Personnel"). Contractor acknowledges and agrees that it is the understanding and intent of both parties that Key Personnel so assigned herein shall be committed for the entire term and duration of this Agreement, including any renewals thereof, and continue in Contractor's employ through the completion of all services performed pursuant to this Agreement. Accordingly, Contractor shall use best efforts in retaining Key Personnel during the entire term and duration of the Agreement. Unless otherwise agreed to in writing by both parties, such Key Personnel will be assigned to the NYSTRS relationship and will not thereafter be taken off by Contractor for any reason, except in the event of such Key Personnel's death, injury, disability, resignation or discharge for cause. In the event that any of the Key Personnel assigned hereunder are not available to perform the services under the Agreement or are otherwise no longer in the employ of Contractor at any time during the term(s) of this Agreement, then NYSTRS, in its sole discretion, shall have the option to request a replacement of comparable background and experience as a substitute for such Key Personnel, subject to approval of NYSTRS, or immediately terminate the Agreement upon prompt written notice in the event a substitute for such Key Personnel is not promptly retained and/or does not meet with NYSTRS' approval.
- B. Contractor shall assign experienced personnel to supervise performance of its duties pursuant to this Agreement, and shall make those persons and other knowledgeable resources available as required by NYSTRS at all reasonable times for the provision of services by Contractor hereunder.

7. *Employment Eligibility/Immigration Reform and Control Act (IRCA) of 1986*

Employers are required by Federal law to verify that all employees are legally entitled to work in the United States. In accord with such laws, NYSTRS does not discriminate against individuals on the basis of national origin or citizenship. Contractor attests and covenants that Contractor and its agents, representatives and subcontractors comply and will comply with all applicable local, state and federal laws respecting, employment eligibility, employment verification and non-discrimination and agrees to provide documentation re same to the appropriate authorities as/when/if required.



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

8. Performance and Payment

Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection herewith, in accordance with all of the conditions, covenants and representations set forth in this Agreement, including all appendices attached hereto.

Subject to the terms and conditions of the Agreement, NYSTRS agrees to pay Contractor therefore a sum not to exceed \$_____, inclusive of travel and other miscellaneous expenses, to perform the services. Contractor shall not be entitled to any reimbursement of expenses or other additional compensation, unless specifically authorized in accordance with paragraph 20, *Additional Services*, hereof.

Article XI-A of the State Finance Law and Section 1096 (e) of the State Tax Law shall govern timeliness of payment and any interest thereon (if applicable) to be paid to Contractor for late payment. Relative to taxes ordinarily due thereupon, NYSTRS represents that it is an instrumentality of the State of New York, and as such, is exempt from payment of New York State and local sales and use taxes on its purchases of tangible and intangible personal property and services.

9. Invoicing

Contractor upon completion and acceptance of the services required by this Agreement shall invoice NYSTRS for payment for the fees payable pursuant to this Agreement. Subject to the terms and conditions of this Agreement, NYSTRS agrees to pay such invoiced amount within 30 days from the date the invoice is received. The invoice should be submitted to: Accounts Payable Unit, New York State Teachers' Retirement System, 10 Corporate Woods Drive, Albany, New York 12211. NYSTRS' Project Manager(s) shall review and approve any invoice prior to payment thereof. Contractor agrees to provide NYSTRS with such detailed documentation substantiating fees and disbursements as NYSTRS may reasonably request.

In no event shall NYSTRS be obligated to pay Contractor in excess of the not to exceed amount of \$ _____ under this Agreement, except for additional services and projects subject to paragraph 20, *Additional Services*, hereof.

Neither acceptance of work nor making any payment shall release Contractor from Contractor's obligations under this Agreement. The acceptance by Contractor of final payment shall operate as, and shall be a release to, NYSTRS from all claims of and liability to Contractor under this Agreement.

10. Term and Termination

Services shall commence in accordance with a mutually agreed upon written schedule between the parties on or after _____ and must be completed no later than _____; subject, however, to the right of NYSTRS to terminate this Agreement at any time after the commencement date, with or without cause, upon thirty (30) days written notice.

Following the delivery of any notice of termination hereunder, Contractor shall perform all of its obligations hereunder in good faith as directed by NYSTRS and will cooperate fully with NYSTRS in taking all necessary and appropriate steps in order to effectuate the orderly transfer of files or other information to third parties designated by NYSTRS.

Notwithstanding anything herein to the contrary, in the event the NYSTRS terminates this Agreement prior to completion by Contractor, Contractor will receive a pro-rata amount of the total fees based on a good faith determination by NYSTRS of the percentage of work completed as of the termination date. In no event shall any such payment, or combination thereof, exceed the established bid fee or the total maximum fee otherwise payable under this Agreement. Contractor shall be required to substantiate the claim for payment hereunder by providing information that NYSTRS shall reasonably require. If,



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

however, Contractor terminates the Agreement without cause during the Agreement, Contractor shall refund to NYSTRS all progress payments made relating services rendered hereunder. Any records available to NYSTRS under this Section may be redacted by Contractor to the extent necessary to protect its proprietary and confidential information and to avoid any invasion of personal privacy. To the extent that such redacted record(s) is (are) inconclusive or does (do) not adequately substantiate a claim for payment hereunder, NYSTRS reserves the right in its sole discretion to request additional information or deny payment.

If either party: (i) commences or becomes the subject of any case or proceeding under the bankruptcy, insolvency or equivalent laws of any country; (ii) has appointed for it or for any substantial part of its property a court-appointed receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official; (iii) makes an assignment for the benefit of its creditors; (iv) defaults on any secured obligation; (v) fails generally to pay its debts as they become due; or (vi) takes corporate action in furtherance of any of the foregoing (collectively, herein referred to as "Events of Insolvency"), then, in each case, the party experiencing such an Event of Insolvency shall immediately give notice of such event to the other party. Whether or not such notice is given, the other party shall have the right, to the fullest extent permitted under applicable law, following the occurrence of any Event of Insolvency and without prejudice to any other rights it may have, at any time thereafter to terminate this Agreement, effective immediately upon giving notice to the party experiencing such an Event of Insolvency.

Notwithstanding the expiration or termination of this Agreement or any extension thereof, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or earlier termination shall survive including, but not limited to, terms and conditions concerning payments, warranties, limitations of liability, confidentiality, and indemnities.

11. Confidentiality

A. **Defined.** "Confidential Information", as used in this Agreement, means all information proprietary to a party or any of its customers or suppliers that is marked as confidential or other information verbally disclosed and later confirmed in writing by the disclosing party within ten (10) days of such disclosure. Confidential Information of NYSTRS shall be deemed to include, without limitation, all data to which Contractor obtains access by performing the services and any deliverable containing such data and any findings or recommendations by Contractor and any information regarding NYSTRS information systems, architecture or topology, security practices (including software), NYSTRS members or business partners. Confidential Information of Contractor shall be deemed to include, without limitation, its methodologies, templates, report, policy and plan formats, deliverables (except NYSTRS data), scripts and tools.

For purposes of this Agreement, Confidential Information shall not include information that: (a) is or becomes public domain through no act or omission on the part of Contractor and/or receiving party; (b) is provided to Contractor and/or Additional Recipient/s by any third party without restriction on disclosure and without breach by such third party of any nondisclosure obligation; (c) is substantiated with written records as previously known to Contractor and/or Additional Recipient/s without accompanying obligation to keep it confidential; (d) is expressly released in writing by NYSTRS from the obligations of confidentiality imposed by the Agreement; (e) is independently developed by the Contractor and/or Additional Recipient/s without the use of, reference to, or derivation from the Confidential Information. Any party asserting that information is not Confidential Information by virtue of any of clauses (a) through (e) of this Section shall have the burden of proof on such issue.

B. **Obligations.** The Receiving Party agrees not to disclose or use any Confidential Information of the Disclosing Party in violation of this Agreement and to use Confidential Information of the



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

Disclosing Party solely for the purposes of this Agreement. Contractor acknowledges that all files and other information necessary to provide the services described in this Agreement shall be maintained in a secure and limited access area, under the strictest confidence. Each party shall exercise at least the same degree of care to protect the confidentiality of the other party's Confidential Information, which it exercises to protect the confidentiality of its own similar confidential information, but in no event less than reasonable care. Each Party shall be responsible for any unauthorized disclosure of Confidential Information by its Board members, officers, employees, agents, representatives or subcontractors in violation of the terms of this confidentiality provision. Upon demand by the Disclosing Party, the Receiving Party shall return to the Disclosing Party all copies of the Disclosing Party's Confidential Information in the Receiving Party's possession or control and destroy all derivatives and other vestiges of the Disclosing Party's Confidential Information; provided that the Receiving Party may retain one archival copy solely for the purpose of administering its obligations under this Agreement; and provided further that NYSTRS may retain any deliverables subject to the license of Section 16, *Ownership and Use of Work Product*, and this Section.

- C. ***Need to Know.*** The Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, officers, directors, auditors, representatives, and third party contractors who have a reasonable need to know such Confidential Information for purposes of this Agreement, provided, however, that prior to any disclosure by Contractor, Contractor's employees, officers, directors, auditors, representatives, and third party contractors shall enter into a written confidentiality agreement, attached hereto as Appendix E. Disclosure of Confidential Information pursuant to any applicable law (including, but not limited to, New York's Freedom of Information Law (N.Y. Publ. Off. Law Section 87)), regulation, judicial or administrative order or decree, or request by other regulatory organization having authority pursuant to the law shall not constitute a violation of this provision provided the Disclosing Party has been given notice, if legally permitted, of such order by the Receiving Party.
- D. ***Systems.*** If a party is given access, whether on-site or through remote facilities, to any computer or electronic data storage system of the other, such access and use shall be limited solely to performance within the scope of this Agreement and the party provided access shall not knowingly access or attempt to access any computer system, electronic file, software or other electronic services other than those specifically required to fulfill its obligations under this Agreement. All user identification numbers and passwords shall be deemed to be Confidential Information.
- E. ***Ownership.*** All Confidential Information of the Disclosing Party shall remain the exclusive property of the Disclosing Party or its third party licensors.
- F. ***Injunction.*** Both parties agree that violation of any provision of this Section would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and that the Disclosing Party will be entitled to immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.

12. Insurance

Contractor shall maintain insurance coverage in accordance with Appendix D, attached hereto and incorporated herein, and any other insurance required by law of an employer. Contractor shall provide NYSTRS with certificates of insurance showing their respective coverages prior to the commencement of any work hereunder. Such certificates of insurance shall name the New York State Teachers' Retirement System as an Additional Insured. Contractor shall indemnify NYSTRS for any claims relating to bodily



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

injury or death to any persons or damage to real and/or tangible personal property to the extent caused by the negligent acts or omissions of Contractor.

By requiring insurance, NYSTRS does not represent that certain coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed a limitation on Contractor's liability under the indemnities granted to NYSTRS under this Agreement.

13. Indemnification

To the fullest extent permitted by law, Contractor in performance of its duties pursuant to this Agreement shall be fully liable for the actions of its agents, affiliates, employees, partners or subcontractors and shall fully indemnify, defend, and hold NYSTRS and its board members, officers, employees and agents or servants harmless from and against any and all claims, suits, actions, damages, losses and expenses and costs of every name and description, including, but not limited to, attorneys' fees, imposed against NYSTRS for any actual or alleged personal injury or death, damage to or destruction of real or personal tangible or intangible property, or any other claim for direct damages arising out of any act or omission on the part of Contractor, its employees, agents or subcontractors for any work or services performed on behalf of NYSTRS by Contractor, which liability shall not be limited to the insurance coverage herein prescribed.

14. Binding Effect, Assignment

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, but neither party may assign its interests or obligations in this Agreement, or any part thereof without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any such assignment shall only be effective if such successor shall expressly assume the respective party's obligations under this Agreement and shall agree to be subject to all of the terms and conditions of this Agreement. Any assignment in contravention of this Section will be void.

15. Representations, Warranties and Covenants of Contractor

- A. ***Authority.*** Contractor represents and warrants (i) that it has full power and authority to enter into this Agreement; and (ii) that this Agreement has been duly authorized and, when executed and delivered, will be binding upon Contractor.
- B. ***Non-Infringement and Indemnification.*** Contractor covenants that it will, and it will cause its employees, consultants and subcontractors ("Contractor Personnel") to perform their responsibilities and provide the services hereunder in a manner that does not infringe or misappropriate any patent, trademark, copyright or trade secret right of any third party. To the fullest extent permitted by law, Contractor in performance of its duties pursuant to this Agreement shall fully indemnify, defend and hold NYSTRS and its board members, officers, employees and agents or servants harmless from and against any and all claims, suits, actions, damages, losses and expenses and costs of every name and description, including, but not limited to, attorneys' fees, imposed against NYSTRS for any actual or alleged personal injury or death, damage to or destruction of real or personal tangible or intangible property, or any other claim for direct damages arising out of any act or omission on the part of Contractor, its employees, agents or subcontractors for any work or services performed on behalf of NYSTRS by Contractor, which liability shall not be limited to the insurance coverage herein prescribed. If any service does not conform to the covenant set forth in this paragraph, Contractor may procure the right for NYSTRS to continue to use the results of the service, or may re-perform the service so that it is non-infringing and meets the original specifications. If the preceding remedies are not reasonably available, upon request by NYSTRS, Contractor will refund the price paid by NYSTRS for the



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

infringing portion of the services and refund the price paid for infringing deliverables that are returned to Contractor. The foregoing is the sole and exclusive remedy of NYSTRS and states the entire liability of Contractor with respect to infringements or misappropriations of any proprietary rights by the services or deliverables. NYSTRS covenants that it owns or otherwise has sufficient rights to furnish Contractor all data and other information and materials furnished by NYSTRS to Contractor in connection with the services.

- C. **Work Standards.** Contractor covenants that (i) Contractor its personnel its affiliates and subcontractors, and its affiliates' and subcontractors' personnel performing services hereunder have the necessary knowledge, skills, experience, qualifications, and resources to perform the services in accordance with the terms and conditions of this Agreement, and (ii) the services shall be performed with professional competence and due professional care in accordance with applicable standards, including but not limited to, federal, state or local laws, regulations as of the date the services are provided, and such additional terms and conditions set forth in the agreement, including all appendices attached thereto. All services and deliverables performed by Contractor shall be subject to the approval of NYSTRS.
- D. **NYSTRS' Cooperation.** NYSTRS agrees to reasonably cooperate with Contractor in the performance of services hereunder. NYSTRS further agrees to take any and all actions reasonably necessary to enable Contractor to perform the services contemplated herein in an effective and efficient professional manner.
- E. **Security and Safety.** The services to be performed pursuant to this Agreement may be rendered at NYSTRS, Contractor's, or subcontractor's facilities or at other suitable locations mutually agreed by NYSTRS and Contractor. Contractor covenants that Contractor and Contractor Personnel performing the services, while present at the facilities of NYSTRS, will comply with the security (including data security) and safety and health policies of NYSTRS that are provided to Contractor.
- F. **Pricing.** Contractor represents (i) that it has priced the terms of this Agreement fairly and reasonably with consideration of the individuality of NYSTRS and the scope of services provided thereto; (ii) that it does not have nor will it provide during the term of this Agreement any written or oral agreements with any other client to provide a substantially similar scope of services that offer terms and conditions more favorable than those offered to NYSTRS; and (iii) it will not grant to any other client any terms or conditions more favorable than those offered herein to NYSTRS without providing prompt advance written notice to NYSTRS and offering NYSTRS the same favorable terms and/or conditions.

16. Ownership and Use of Work Product

Contractor hereby grants NYSTRS, pursuant to the terms and conditions of this Agreement, a perpetual, non-exclusive, royalty-free, non-transferable license (which NYSTRS agrees not to sub-license) to use or duplicate the Work Product (herein defined), documentation, data, source code and all other material delivered to NYSTRS under this Agreement for the purpose of conducting NYSTRS' own business at NYSTRS' facilities, including the need to use or duplicate the Work Product for use with NYSTRS vendor's or third party consultants who have a need to access the Work Product for any existing or proposed system or software utilized by NYSTRS or under contemplation for use by NYSTRS.

Contractor grants NYSTRS the right to alter, maintain, enhance or otherwise modify the Work Product provided that it is solely for the purpose of conducting NYSTRS' own business at NYSTRS' facilities. "Work Product" shall mean the written deliverables provided to NYSTRS under this Agreement. The parties agree that ownership of all Work Product (excluding NYSTRS data) shall remain with Contractor.



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

Contractor may freely use its ideas, concepts, know-how, and techniques that it develops during the course of providing services and deliverables under this Agreement or a Service Order, subject to Contractor's confidentiality obligations set forth in this Agreement and provided that such ideas, concepts, know-how, or techniques do not violate any patent, trademark, copyright or trade secret right of NYSTRS.

17. Conflicts of Interest

Contractor shall notify NYSTRS of any existing conflicts of interest, as well as any future changes or developments with or concerning Contractor during the term of this Agreement and subsequent renewals (if any) that Contractor in good faith reasonably believes could create a conflict of interest that may affect Contractor's duties and responsibilities to NYSTRS and/or its abilities to provide professional and competent services agreed to within this Agreement. In order to further assure the best possible service by Contractor, NYSTRS shall also notify Contractor of any NYSTRS developments or changes that NYSTRS reasonably believes may affect the services to be provided hereunder. Contractor further agrees to provide NYSTRS an annual written representation certifying to any conflicts of interest, or lack thereof, of which Contractor has knowledge that may affect Contractor's duties and responsibilities to NYSTRS and/or Contractor's ability to provide professional and competent services pursuant to this Agreement.

18. Use of Name and Publicity

Each party agrees that it will not, without prior written consent of the other party in each instance, use in advertising, publicity or otherwise the name of such party or any of its affiliates, or any partner or employee of such party or its affiliates, nor any trade name, trademark, service mark, logo or slogan of such party or its affiliates.

19. No Solicitation of Personnel

During the period of performance for the services governed by this Agreement, the personnel performing services hereunder shall not actively solicit for hire, nor shall either party knowingly allow its employees or personnel to solicit for hire, any employee or personnel of the other party associated with the performance of this Agreement without the prior written consent of the other party. This provision shall not restrict in any way the right of either party to solicit generally in the media for required personnel, or hire an employee of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring party. In addition, this provision shall not restrict employees, contractors, or representatives of either party from pursuing on their own initiative employment opportunities from or with the other party.

20. Additional Services

No additional services during the term of this Agreement will be authorized except by written amendment which shall contain the terms and conditions specifying the details of such work and the fixed or estimated compensation for such extra work which Contractor agrees are consistent with the terms of this Agreement. Contractor is not obligated to comply with any requested change hereunder unless and until the parties reach agreement as to the aforementioned compensation and same is reflected as an amendment to this Agreement. If Contractor performs any work that is not established under this Agreement without a duly executed Amendment, Contractor shall be solely liable for said work and no payment shall be due and owing from NYSTRS, unless or until a duly executed and approved Amendment is executed and ratified for said work.

21. Notice



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

Whenever written notice is required pursuant to this Agreement, the same shall be considered received on the date of actual receipt. Any notice may be given by facsimile or e-mail if a signed written original is sent by first class or a reputable overnight delivery service with tracking capabilities within twenty-four (24) hours thereafter. Notices delivered by hand or mail shall be given to the respective addresses set forth at the beginning of this Agreement. Any party may change any such address hereto by the delivery of written notice thereof to the other party.

22. *Electronic Communication*

In performing services under this Agreement, Contractor and/or NYSTRS may wish to communicate electronically either via facsimile, electronic mail or similar methods (collectively, "E-mail"). However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed arrive late or incomplete or otherwise be adversely affected or unsafe to use. Unless notified otherwise, NYSTRS hereby consents to the use of E-mail, when appropriate, for communications with Contractor, provided, however, that any electronic transmission of any system information or deliverable must be encrypted or password protected.

All parties shall carry out procedures to protect the integrity of data transmitted by E-mail, on disk or otherwise. In particular, it is the recipient's responsibility to carry out a virus check on any attachments before launching or otherwise using any documents, whether received by E-mail or on disk or otherwise.

23. *Waiver*

The failure of NYSTRS or Contractor in any one or more instances to insist upon strict performance of any of the terms of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms on any future occasion.

24. *Severability*

If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.

25. *Independent Contractor*

Contractor is and shall be, in all respects, an independent contractor in performing the services described in this Agreement and not in an employer-employee or joint venture with NYSTRS. Neither party hereto shall have the authority to bind the other party or otherwise incur liability on behalf of the other party unless expressly set forth in writing in this Agreement. NYSTRS will have no obligation whatsoever to provide any employee benefits or privileges of any kind or nature, including but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit, to Contractor or its employees, agents or contractors. In accordance with its status as an independent contractor, Contractor covenants and agrees that neither Contractor nor its agents, contractors and/or employees will hold itself or themselves out as or claim to be an officer or employee of NYSTRS.

26. *Third Party Beneficiaries*

No person or entity not a party hereto will be deemed to be a third party beneficiary of this Agreement or any provision hereof.



**NEW YORK
STATE TEACHERS' RETIREMENT SYSTEM**

Professional Services Agreement

27. Force Majeure

Neither party shall be liable to the other for any delay or failure to perform any services or obligations set forth in this Agreement that results from causes beyond its reasonable control, including but not limited to acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, terrorism, or fire, provided that the party was not negligent and shall have used a reasonable effort to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

28. Initial Disaster Recovery

Notwithstanding the force majeure provisions of this Agreement, in the event that Contractor experiences a disruption in Contractor's ability to provide the work or services, from any cause, or Contractor's facilities are incapacitated for any reason, Contractor shall immediately notify NYSTRS and implement Contractor's disaster recovery procedures, or as may be revised and agreed by both parties. NYSTRS reserves the right to suspend this Agreement, at its discretion, until performance of the work or services can be resumed. NYSTRS during any time in which Contractor is unable to perform the work or services due to a disruption may deduct from applicable fees, any costs or expenses that NYSTRS incurs as a result of Contractor's inability perform the work or services.

29. Business Continuity Management

Notwithstanding the force majeure provisions of this Agreement, Contractor agrees to create, implement and maintain a documented business continuity management framework to provide a comprehensive and structured response capability that caters for planned and unplanned interruption events. In the circumstances that Contractor experiences a disruption (interruption event) in Contractor's ability to provide the work or services, or Contractor's facilities are incapacitated for any reason, Contractor shall immediately notify NYSTRS and implement Contractor's appropriate business continuity plan annexed to each Statement of Work (SOW) or this Agreement. Contractor is responsible for backup and record protection, including equipment, program and data files, and the maintenance of a disaster recovery and contingency plan. Such plans must be tested periodically (at least annually) with results provided to NYSTRS. Interdependencies between vendors must be considered when determining business continuity requirements.

NYSTRS expects each site of Contractor to be governed by Contractor's business continuity management framework.

NYSTRS reserves the right to suspend this Agreement, at its discretion, until performance of the work or services can be resumed. NYSTRS during any time in which Contractor is unable to perform the work or services due to a disruption, and deduct from applicable fees, any costs or expenses that NYSTRS incurs as a result of Contractor's inability perform the work or services.

30. Headings

The headings in this Agreement are for convenience only and do not affect the meaning of this Agreement.

31. Interpretation in the Event of Conflict or Inconsistency

Should there be any conflict between the terms of this Agreement and Appendices A through D and applicable engagement letters negotiated by the parties, then the order of priority shall be as follows: Appendix A, this Agreement, Appendix D, applicable engagement letters negotiated by the parties, Appendix B, and Appendix C (excluding any sample Client Agreement or other legal terms and conditions which shall not be binding upon the parties hereto).

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
Insurance Requirements

1. All insurance required hereunder will be placed with an insurance company with a "Best's" rating of "A" or better and authorized to do business in the State of New York by the New York State Department of Financial Services and acceptable to NYSTRS.
2. Contractor shall purchase and maintain the following minimum limits of insurance coverage, or as required by law, whichever is greater:
 - a. Statutory Worker's Compensation Insurance and Employer's Liability Insurance and including NYS DBL:
 - Coverage will include all employees, including corporate officers, partners and sole proprietors.
 - [INTENTIONALLY LEFT BLANK]
 - Endorsements on the Worker's Compensation Insurance and Employer's Liability Insurance policies shall include a waiver of subrogation rights against NYSTRS and all policies must include a thirty (30) days prior written notice of cancellation or non-renewal.
 - b. Commercial General Liability Insurance:
 - Coverage shall include premises and operations, contractor's protective, Products/Completed Operations, contractual liability, personal injury (including accidental death), full explosion, collapse and underground coverage.
 - Limits of liability will be at least \$1,000,000 per occurrence (Coverage A), at least \$2,000,000 general aggregate, at least \$1,000,000 per any one person or organization (Coverage B), and at least \$2,000,000 for Products/Completed Operations aggregate.
 - NYSTRS shall be named as an additional insured on a primary, noncontributory basis.
 - Endorsements on the policy shall include the general aggregate per project form CG2503, a waiver of subrogation rights against NYSTRS and a thirty (30) days prior written notice of cancellation or non-renewal.
 - It shall be the responsibility of the Contractor to maintain and ensure that subcontractors have similar provisions before entering workplace, such insurance in amounts sufficient to fully protect the Contractor and NYSTRS, but in no instance shall amounts be less than those set forth herein.
 - There shall be no endorsement or modification of the Commercial GL form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors.
 - Contractor agrees to require any and all subcontractors hired to perform work on the project to obtain insurance coverage as provided above. All such insurance coverage shall name New York State Teachers' Retirement System as an Additional Insured on a primary, non-contributory basis on form CG 2010 11/85 or its equivalent.
 - c. Automobile Liability Insurance:
 - Coverage shall include all owned, non-owned, leased and hired vehicles.
 - Limits of liability with combined bodily injury and property damage will be at least \$1,000,000 per occurrence.
 - NYSTRS shall be named as an additional insured on a primary, noncontributory basis.
 - Endorsements on the policy shall include a waiver of subrogation rights against NYSTRS and a thirty (30) days prior written notice of cancellation or non-renewal.
 - d. Umbrella/Excess Liability:
 - Limits of liability will be at least \$1,000,000 per occurrence, at least \$1,000,000 Products/Completed Operations aggregate, at least \$1,000,000 general aggregate, at least \$1,000,000 per occurrence (Coverage A), and at least \$1,000,000 any one person or organization (Coverage B).
 - NYSTRS shall be named as an additional insured on a primary, noncontributory basis.

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
Insurance Requirements

- Endorsements on the policy shall include excess coverage over the per project general aggregate, a waiver of subrogation rights against NYSTRS and a thirty (30) days prior written notice of cancellation or nonrenewal.
3. Coverages specified herein shall be maintained without interruption from date of commencement of the work on the project until the date of final payment and termination of any coverage required to be maintained after final payment or until no person or entity other than NYSTRS has an insurable interest.
 4. No insurance policies obtained in accordance with this paragraph shall exclude coverage for liability resulting from application of either Section 240 or Section 241 of the New York State Labor Law. A copy of the Additional Insured endorsement should be provided to New York State Teachers' Retirement System.
 5. Any and all equipment or other resources owned by the Contractor and/or used at the project site shall be the sole responsibility of the Contractor and will be insured or self-insured by the Contractor, at his sole expense. The Contractor shall be solely responsible for any damage to equipment or other resources caused by Contractor's use of the equipment and other resources and NYSTRS will be named as an additional insured on a primary basis on any insurance policy obtained for physical damage to the equipment and other resources.
 6. Contractor will provide NYSTRS with a certificate of insurance at least ten (10) working days prior to commencement of any work on the project and, thereafter, within forty-eight (48) business hours of request by NYSTRS. All certificates of insurance shall provide thirty (30) days' notice to NYSTRS of cancellation or non-renewal. The Contractor shall furnish information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, with reasonable promptness in accordance with the Contractor's information and belief. Failure to comply with these provisions shall be considered a delay by the Contractor. No work on the project shall commence until such time as the Contractor meets the conditions of this paragraph.
 7. Contractor's right to enter NYSTRS premises is subject to immediate cancellation if Contractor does not provide NYSTRS with the evidence of required insurance coverage, including subcontractor's coverage, in accordance with paragraph 5 hereof.
 8. Contractor agrees to require any and all subcontractors hired to perform work on the project to obtain insurance coverage as set forth in paragraph 2 hereof. All such insurance coverage shall NYSTRS as an additional insured on a primary, non-contributory basis. Contractor shall provide NYSTRS with valid certificates of insurance for each subcontractor at least ten (10) working days prior to subcontractor's commencement of any work on the project or entry onto NYSTRS premises or project site. All subcontractors' insurance carriers shall meet the requirements set forth in paragraph 1 hereof.
 9. NYSTRS reserves final judgment as to whether the coverage provided or the insurance carrier providing such coverage is acceptable. The above requirements are established as a **MINIMUM**. In the event that NYSTRS deems that coverage is not acceptable, NYSTRS will provide the Contractor with written notice of the specific inadequacies. It shall then be the Contractor's responsibility to remedy the stated inadequacies within five (5) business days. If the stated inadequacies are not remedied within five (5) business days, then NYSTRS reserves the right to revoke the contract award or cancel the contract.

**FEE SCHEDULE
RFP 16-02**

Bidders are required to provide a not-to-exceed fee for the System audit, Actuarial Report, and GASB 68 Schedules. Bidders must also provide details supporting the maximum dollar cost presented on the fee schedule. The breakdown must show the estimated professional hours and discounted hourly billing rate by staff classification.

If there are services that are NOT described in the Scope of Work in this RFP but are required for the successful completion of an annual financial audit in accordance with professional auditing standards, those services should be sufficiently described in your proposal and explained as to necessity. Fees related to such additional scope of work must be separately itemized in your overall fee proposal.

Maximum dollar cost of all proposed audit services:

	<u>NYSTRS</u>	<u>Actuarial Report</u>	<u>GASB 68 Schedules</u>
For the fiscal year ending June 30, 2016 (not to exceed)	\$ _____	\$ _____	\$ _____
For the fiscal year ending June 30, 2017 (not to exceed)	\$ _____	\$ _____	\$ _____
For the fiscal year ending June 30, 2018 (not to exceed)	\$ _____	\$ _____	\$ _____
Total for the three fiscal years	\$ _____	\$ _____	\$ _____

BREAKDOWN FOR NYSTRS AUDIT

	<u>Hours</u>	<u>Discounted Hourly Rate</u>	<u>Total</u>
Partner	_____	_____	_____
Managers	_____	_____	_____
Supervisors	_____	_____	_____
Senior Accountants	_____	_____	_____
Staff Accountants	_____	_____	_____
Other Titles:			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total Hours	_____	Total (Maximum dollar cost)	\$ _____

Note: Any discount offered must be presented as a discounted hourly billing rate. Do not present the discount as a general percentage or as a gross deduction from the maximum dollar amount.

**FEE SCHEDULE
RFP 16-02**

BREAKDOWN FOR ACTUARIAL REPORT

	<u>Hours</u>	<u>Discounted Hourly Rate</u>	<u>Total</u>
Partner	_____	_____	_____
Managers	_____	_____	_____
Supervisors	_____	_____	_____
Senior Accountants	_____	_____	_____
Staff Accountants	_____	_____	_____
Other Titles:			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total Hours	_____	Total (Maximum dollar cost)	\$ _____

Note: Any discount offered must be presented as a discounted hourly billing rate. Do not present the discount as a general percentage or as a gross deduction from the maximum dollar amount.

BREAKDOWN FOR GASB 68 SCHEDULES

	<u>Hours</u>	<u>Discounted Hourly Rate</u>	<u>Total</u>
Partner	_____	_____	_____
Managers	_____	_____	_____
Supervisors	_____	_____	_____
Senior Accountants	_____	_____	_____
Staff Accountants	_____	_____	_____
Other Titles:			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total Hours	_____	Total (Maximum dollar cost)	\$ _____

Note: Any discount offered must be presented as a discounted hourly billing rate. Do not present the discount as a general percentage or as a gross deduction from the maximum dollar amount.

In the event that the successful vendor(s) should desire a price increase during either of the two renewal periods, then it is incumbent upon the vendor to notify NYSTRS' purchasing unit in writing 90 days prior to the expiration of the then current contract term to negotiate and justify such increase. In no event shall the increase be greater than the percent change in the Employment Cost Index (ECI) for Civilian Workers, as published by the United States Bureau of Labor Statistics, Washington, DC., 20212 (<http://www.bls.gov/ect/home.htm>). ECI increase will be determined by using the most recently released index as of 90 days prior to the contract anniversary date, compared to the same quarterly index from the prior year. For example, a contract has an anniversary date of 5/1/2015. NYSTRS would use the index available on 2/1/2015, which would be the December 2014 index, and compare it to the December 2013 index.



New York State Teachers' Retirement System

10 Corporate Woods Drive
Albany, NY 12211-2395

NOTICE OF VENDOR INTEREST FORM

Please check one:

- My firm **IS** interested in submitting a proposal for this project.
- My firm **IS NOT** interested in submitting a proposal for this project for the following reason(s):

Firm Name: _____

Address: _____

Contact Person (Please Print): _____

Signature: _____

Tel #: _____

FAX #: _____

E-mail Address: _____

Please return this form to:

Michelle Gilchrist
New York State Teachers' Retirement System
10 Corporate Woods Drive
Albany, NY 12211-2395

Fax to: (518) 447-2646

E-mail: Michelle.Gilchrist@nystrs.org

THIS INFORMATION WILL BE USED TO ASSIST US IN NOTIFYING YOUR FIRM IMMEDIATELY OF ANY CHANGES OR ADDENDUMS TO THE SPECIFICATIONS. FAILURE TO RETURN THIS FORM MAY DELAY IMPORTANT COMMUNICATIONS TO YOUR FIRM.