



**Empire State
Development**

Andrew Cuomo
Governor

Howard Zemsky
ESD President, CEO & Commissioner

NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT

REQUEST FOR PROPOSALS

**TRADE DEVELOPMENT SERVICES
IN AUSTRALIA, BRAZIL, CHILE, INDIA, MEXICO AND
SOUTH AFRICA**

**PROPOSAL DUE DATE SEPTEMBER 15, 2015, 3:00 P.M. EST
(LATE PROPOSALS CANNOT BE ACCEPTED)**

RFP NUMBER 15-6109

Release August 7, 2015

Request For Proposal (RFP) Response Form

RFP # 15-6109

Please review this RFP. Complete the following information and mail this form or if submitting a proposal, this form together with your entire proposal, to the address at the bottom of this page. Late proposals cannot be accepted.

/ / Attached is our proposal

/ / We do not intend to submit a proposal for the following reason(s):

Name of Organization: _____

Address: _____

- Is this address your company's principal place of business? Yes _____ No _____
The term "principal place of business" is defined as follows:

A company's principal place of business is generally considered to be the enterprise's main office, where the regular meetings of its board of directors occurs, and where a company's business is managed, conducted and directed, regardless of where the administrative departments or the physical property of the business are located. For purposes of determining the principal place of business, a foreign business enterprise's principal place of business is not necessarily the same as its state of incorporation. In sum, the determinate is where the actual "business" of the corporation takes place.

If the above address is not your principal place of business, please indicate the full address of your principal place of business on the following two lines:

- Will this product or service be substantially produced in NYS: Yes _____ No _____
- Subject to the "Conditions Governing Proposals" article stated in this RFP, proposals must be in agreement with all terms and conditions of this RFP.

Phone #: _____ **Fax #:** _____

Signature: _____ **Date:** _____

Type or Print Name and Title: _____

By checking this box, we request that you remove our name from your bidders' list

Mail this as the first page of your proposal. If not submitting a proposal, please mail this form to: Lisa Sutton, NYS Department of Economic Development, Office of Fiscal Management, and Albany, NY 12245.

NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT
REQUEST FOR PROPOSAL (15-6109)
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RFP 15-6109

SECTION I - ADMINISTRATIVE INFORMATION

1.0 Purpose

The New York State Department of Economic Development is seeking a qualified entity (the "Contractor") to perform economic development services with an emphasis on market coverage for Mexico and South Africa (the "Designated Area") but also offering trade development services in Australia, Brazil, Chile, and India ("Additional Markets") for New York State ("NYS" or the "State").

The main objective of this project is to locate shared trade office contractor representation in the Designated Area, with the option of coverage in Additional Markets, to creatively expand exports of New York State (NYS) companies' goods and services. The expected deliverables for trade development are detailed in Appendix C.

Specifically, the selected contractor would be expected to:

- Promote increased exports by NYS companies in the Designated Area;
- Promote increased exports by NYS companies in alternate Additional Markets, at the option of DED; and
- Conduct trade show, trade mission or other international business development promotion and marketing related tasks as assigned by the department.

It is important and in the interest of the selected contractor (the "Contractor") that the Contractor maintains independence and remains free to perform business development services for other parties, provided that such parties are disclosed to NYSEDED and are not competitive with NYS's business development interests. Therefore, in order for the Department to secure the Contractor's services, it is critical that an independent contractor relationship be established versus an employer-employee relationship. Contractors working for DED must avoid anything that causes, or can be seen as causing, a conflict of interest. Contractors must be able to give a 100% commitment to serving the best interests of New York State trade development. Since this contract is focused on trade development services, often involving collaboration across industry clusters and regions, cost effectiveness through use of shared international trade offices for a consortium of states is strongly encouraged.

1.1 Inquiries

All questions must be submitted in writing via email to rfpfaq@esd.ny.gov with "Trade Development Services" in the subject line. **Please do not contact the Department by telephone.** Questions must be received by the Department no later than August 20, 2015, 5:00 PM. All inquiries must cite the particular RFP section in the questions. Answers to all questions of a substantive nature will be provided to all known recipients of the RFP.

1.2 Schedule of Pertinent Dates

Release of RFP	August 7, 2015
Deadline for Receipt of Questions	August 20, 2015 by 5:00 PM EST
Submission of Proposals	September 15, 2015 by 3:00 PM EST Late proposals cannot be accepted.
Oral Presentations/Interviews	By appointment at the discretion of NYSDDED
Award of Contract	October, 2015 (estimated)

1.3 Submission of Proposals

Interested individuals or firms must submit their proposals no later than **3:00 P.M. U.S. Eastern Standard Time, on September 15, 2015**. Submit five (5) copies of the proposal to the following address:

**NYS Department of Economic Development
Office of Fiscal Management
625 Broadway – 8th floor
Albany, NY 12245
Attention: Lisa Sutton**

In addition to the hard copies, the Applicant must submit an identical electronic version of the proposal, including appendices and forms to rfpinfo@esd.ny.gov with **“Trade Development Services – your company name”** in the subject line. **Electronic copies are used for administrative purposes and do not fulfill the requirement to submit the hard copies by the deadline.** Zip files cannot be accepted.

It is the responsibility of each individual or firm to ensure timely submission of its proposal. Proposals received after the scheduled date and time cannot be accepted.

- Designated Contacts

For the purpose of the Procurement Lobbying requirements of this RFP (see section 3.7 and Appendix H), the Department’s designated contacts shall be Lisa Sutton at rfpinfo@esd.ny.gov and employees designated by the Department as part of the Department’s Contract Management Unit and all staff designated by the Department to have responsibility and duties in the Department’s International Division and the Department’s Counsel’s Office.

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

2.0 Background

The Department is empowered under Section 100 as well as Article 10 of the NYS Economic Development Law to encourage and develop commerce with other states and foreign countries. Information regarding the Department’s activities, programs, incentives, target industries for foreign direct investment, etc., can be found on the Department’s website at www.global.ny.gov. The Department currently maintains representatives in Canada, China, the United Kingdom, and Israel. This RFP is intended to allow the Department to establish new contracted representation in Mexico and South Africa (“Designated Area”), with the option of alternative coverage in Australia, Brazil, Chile, and India (“Additional Markets”).

2.1 Structure of Operations

The department is seeking representation for the trade development interests of the State of New York in the “Designated Area,” with the option of alternative coverage in Additional Markets. The selected representative will have the ability to cover the markets of interest and perform the tasks described in the Scope of Services paragraphs. There is no requirement to establish or maintain a separate or standalone New York State office, and multi-state shared trade offices are strongly encouraged for cost effectiveness. Any existing offices of the representative will be sufficient as long as they have the required technology and communications suite to communicate and report results to the department in the required manner.

The selected representative shall perform trade development related activities under the direction of the department program management. The department will assign a program manager/director to manage “trade/export” related activities. The manager will communicate to the representative and provide program management and oversight (including expenditures).

2.2 Scope of Services

The Contractor shall perform Trade Development services for NYS exporters, as further described in this Section 2.2. For the purpose of this RFP and any contract (“the Contract”) resulting from it, Business Development Activities shall mean the promotion of increased exports of goods and services, including agricultural products by NYS companies to the Designated Area, with the option of alternative coverage in Additional Markets. On occasion the Contractor should be prepared to represent NY State with other economic development issues such as tourism development. The Contractor shall render the Services in accordance with the highest professional and ethical standards. The Department shall identify the Project Managers prior to commencement of the Contract. The Services performed by the Contractor under the Contract shall include the following:

1. Trade Development

The Contractor shall provide business development services in the Designated Area and Additional Markets to create export sales opportunities for NYS companies that produce, manufacture, develop technologies, and offer goods and/or services for sale. The contractor shall help qualified New York State companies, industry associations and regional entities representing best prospects for export

expansion, as specified by the Department and in Appendix C.

Information the Department believes will further and enhance the ability of the contractor to enhance exports will be provided to contractor, but the applicant should propose how they can best meet the deliverables of the RFP from their previous experience or proposed activities.

The Contractor should focus on the regional markets and sectors that offer the most promising opportunities for meeting NYS export expansion objectives, and focus on leading NYS industry sectors for trade efforts, as outlined below, and as further specified by the Department as future market opportunities and business conditions evolve. The Contractor would also be expected to provide trade assistance in other sectors, based on the Department's requests and the potential for new business opportunities in the Designated Area and Additional Markets. Some leading NYS manufacturing sectors for trade development efforts include:

- Advanced Materials & Manufactured Goods
- Agricultural Products, Food, Beverages & Spirits
- Aerospace & Defense
- Biotech & Life Sciences
- Cleantech & Renewables
- Jewelry, Precious Metals & Gems
- Optics & Imaging
- Technology & Electronics
- Transportation Equipment & Logistics.

Significant services export sectors include business consulting, engineering, marketing, finance, higher education and tourism.

The Contractor shall perform their responsibilities for export expansion in accordance with the specification as described in Appendix C of this RFP. The Department maintains a professional staff of trade development experts who will provide the Contractor with export-ready companies interested in the Designated Area and potentially in alternative Additional Markets. The determination of export readiness would be made by the Department's International Trade staff, based on an export readiness assessment checklist tool.

The Contractor shall also provide support for special projects, related to the scope of services detailed in Appendix C, as designated by the Department. The Department will provide the contractor with specific quantifiable guidelines on what is expected of them. The contractor will be expected to fulfill those metrics and requirements. The Contractor need not set aside a specific amount of time or budget for special projects, nor will special projects interfere with primary trade responsibilities. However, the Contractor should remain flexible and willing to accommodate special trade project needs, with the understanding that the Department will provide relevant resources for such projects.

2. Reports.

In connection with activities assigned under this contract, the Contractor shall provide monthly and annual reports as further described in Appendix C. These reports are expected to supplement data entered into an online CRM system that is being used by the Department. DED is using Microsoft

Dynamics CRM, which has the capability of uploading data from compatible formats. The contractor shall utilize the department's CRM systems to input and track trade activities and results. In connection with the financial activities, the Contractor shall provide monthly reports, receipts and proof of all expenditures under this contract. The reporting shall identify the expenses incurred for the month by the categories identified in Appendix B. The Contractor shall include in each such monthly financial report a description and detail of any expense line. The reports shall be written in English, prepared in US Dollars using the existing currency exchange rates and delivered not later than the last day of the month. Receipts or invoices provided to the Department in languages other than English will need to be translated into English to be processed.

(c) Place of Work and Office Management. The Contractor will provide Services primarily from the Contractor's Principal Office(s) located in the Designated Area or Additional Markets, but will, as needed, come to other places designated by the Department to meet with representatives of the Department. The Contractor will:

- Be responsible for the physical arrangement, management and compliance with all Designated Area and Additional Market host nation laws and regulations for the Trade Office(s), including the hiring of the Contractor's own support staff, licensing or registration of offices and operations, and maintenance and repair of the Trade Office(s);
- Develop and submit updates to the annual Financial Proposal as requested by the Department;
- Be able to provide material related to the functions above, including material provided by the Department to interested parties.
- Be responsible for all activities involving the Trade Office(s);
- Be liable and responsible for paying all applicable taxes and fees relating to employment of staff and operation of the Trade Office(s); and
- Ensure that the Trade Office(s) meet the Technical Requirements described in Appendix C.

(d) Business Records. The Contractor shall prepare and maintain all financial and other business records. The financial records shall be prepared and maintained in accordance with generally accepted accounting principles in the United States. During the term of this Contract, with five (5) business days written notice, the Department shall have access and the right to examine, audit, excerpt, photocopy, and transcribe any and all financial and other business records prepared and maintained by the Contractor. During the term of this Contract, Contractor will provide the Department with a database listing all of Contractor's contacts in the Designated Area or Additional Markets, such databases to be provided quarterly on an Excel-compatible format. Upon termination of this Contract, copies of all financial and business records contemplated under this section shall be provided to the Department or to an agent designated by the Department.

(e) Time Devoted to Services and Operations of Trade Offices. In accordance with Section 4.4(b) of this RFP, the Department will rely on the Contractor to determine the manner of and time required for performance of the Services. As a guideline, performance of the Services will require that the Trade Office(s) be operational and staffed in accordance with customary business practices in the Designated Area and Additional Markets in order to interface with the Department and clientele being represented; however, the Contractor need not perform these services in person.

(f) Knowledge Regarding New York. The Contractor shall maintain in-depth knowledge concerning the State's economic structure, business interests, practices, tourism markets, educational assets relevant

to international business development (e.g. colleges/universities, R&D facilities, etc.) and culture and shall be fully conversant with the State's economic development programs and services. The Contractor should include money in their budget for one trip per year to New York to meet with Department officials about new strategies, initiatives and programs developments.

2.3 MANDATORY QUALIFICATION REQUIREMENTS

Your proposal must demonstrate your ability to comply with each of the items identified below. Inability to demonstrate compliance with these qualifications will result in the disqualification of your proposal.

- Experience in trade development and export-related marketing, through multi-state shared trade offices or other trade offices, with at least 5 years of such experience in the Designated Area and Additional Markets.
- Fluency in reading, writing and speaking English, and official languages of the Designated Area and Additional Markets.
- Demonstrated knowledge of the business communities in the Designated Area and Additional Markets, with specific knowledge of NYS targeted industry clusters (see <http://www.nylovesbiz.com>) preferred. Current residency for trade offices located in the Designated Area and Additional Markets is also required;
- University degree; business, international business or related subjects
- Demonstrated knowledge of New York State (i.e. economics, geography, business community); and
- At least 5 years of experience in providing the trade services described in this RFP. At least 5 years of experience in direct business marketing and outreach through various sales, distribution and virtual channels including social media.

2.4 Selection Criteria

Proposals that meet all the mandatory qualifications as outlined in Section 2.3 above will be evaluated by NYSDED based on the Selection Criteria stated in this section. Proposals will be scored based on the following criteria:

- 1. Technical evaluation** consisting of:
 - a. Experience of the organization and the staff proposed to carry out the scope of services/plan of action **20 points**
 - b. Plan of action **30 points**
(Evaluation of the approach proposed to accomplish Section 2.2 – Scope of Services, Appendix C, and Appendix D as further discussed in Section 3.1 of this RFP)
 - c. Language Ability (English, official languages of Designated Area and Additional Markets) **10 points**
 - d. Knowledge of New York State **10 points**
 - e. Diversity Practices **7 points**
- 2. Cost (Budget must be bound separately from the rest of your proposal)** **30 points**
(Please review Section 3.1, item f and complete Appendix B – Financial Proposal in full. Do NOT substitute your own budget format.)

Interview/Oral Presentation

Interviews/Oral Presentation of finalists may be conducted at the discretion of the Department. The interview/oral presentation will allow finalists to elaborate on information included in their proposals. Key personnel directly responsible for the project will participate in the interview/oral presentation. Costs incurred by the finalists for preparation and participation in the interviews/oral presentations including but not limited to travel and staff time shall be the sole responsibility of each finalist.

Evaluation Process

Initial evaluation of proposals will be done in two parts – Technical Evaluation and Cost Evaluation. NYSDDED's Evaluation Committee will review the technical portion of each proposal based on the technical criteria listed above. NYSDDED's Evaluation Committee will not be advised of the costs proposed or cost scores (points awarded for cost) prior to the selection of the Finalists. However, the Evaluation Committee may be advised of information contained in each bidder's budget (Appendix B) if such information is deemed by the Department to be pertinent in assessing the level of effort to be put forth by the bidders in performing the project. Then cost scores, computed by NYSDDED's Contract Management Unit based on a weighted average formula, will be added to the technical score resulting in the total score for the written proposal.

NYSDDED reserves the right to determine whether oral presentations/interviews will be necessary. If NYSDDED decides to conduct oral presentations/interviews, such oral presentations/interviews will occur as follows:

- A. Following the evaluation of proposals as provided above, the Evaluation Committee will determine the Finalists to be interviewed as those having the highest combined technical and cost scores. NYSDDED anticipates that three (3) proposers will be selected as Finalists.
- B. Each Finalist will be notified of the date and time of their oral presentation/interview to be held via telephone/video conference. The oral presentation/interview should further document the proposer's ability to provide the required services. Key personnel directly responsible for the project including the Senior Project Consultant should be present and participate in the oral presentation/interview. The purpose of the oral presentation/interview is to impart to the Evaluation Committee an understanding of how specific services will be furnished and clarify other information included in the proposal. Further information with regard to the format of this stage of the evaluation may be provided to the finalists prior to their oral presentations/interview.

Contract Award

Following the oral presentation/interviews, if any, the Evaluation Committee members will re-score each proposer interviewed on the technical criteria listed above. NYSDDED anticipates that the Evaluation Committee will make an award recommendation of one proposer based upon its determination of the best value for NYSDDED as the highest total scores (technical and cost).

Upon selection, negotiations will be commenced with the successful proposer to enter into a contract setting forth the general terms that would govern the contract for services contemplated by this RFP.

The Department will not enter into protracted negotiation with the successful proposer over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract including any amendments thereto. If the successful proposer does not sign and return to the Department the proposed contract including any draft of the proposed contract, within thirty (30) calendar days of receipt by the Contractor, the Department reserves the right to declare the award of the project to the Contractor null (null award). The Department will not be responsible for any cost incurred by the Contractor as a result of a null award. An award will then be made to the next highest scoring proposer.

SECTION III - PROPOSAL CONTENT AND CONDITIONS

3.0 General Information

In preparing proposals, individuals and firms should follow the guidelines within this RFP.

3.1 Complete Proposal

Each participating individual or firm must submit a complete proposal with each element of the Selection Criteria, Section 2.4, addressed. In addition, all proposals must include the following information. Bidders supplying incomplete responses may be deemed non-compliant. Please follow the format listed below, and limit your proposal response to no more than 5 double-sided pages:

- a. Title page, indicating:
Name, address, phone & fax number, contact person, email address, and federal ID number (if applicable). It must also include a statement that the offer shall be firm and not revocable for a period of 60 days.
- b. Table of Contents
- c. Approach to provide the Scope of Services outlined in Section 2.2, Appendix C and Appendix D
Develop a plan of action describing how your organization intends to accomplish all of the duties described in Section 2.2 - Scope of Services, Appendix C and Appendix D and to meet the main objectives stated in Section 1.0 of this RFP. Include a discussion of marketing activities such as trade shows, seminars, direct mail/e-mail/telephone solicitation, event sponsorship, advertising, public relations, market intelligence and research, advocacy, websites, social media, etc. that you propose to implement. Your approach should demonstrate your knowledge on the following areas and how you will use that knowledge and other relevant knowledge to accomplish the minimum performance targets identified in Appendix C:
 - Business and government contacts, especially those in the industry clusters relevant to NYS;
 - Local business practices;
 - Distribution services;
 - Sales channels;
 - New technologies being used in trade development, such as social media, in order to leverage all media and marketing techniques to practically saturate audiences about the products and services of New York, and to target best prospects and maximize return.

Also, include how you could surpass the performance targets in any area in any contract year. If subcontracting, subcontractors must be identified by contractor name, and the bid shall include an explanation of the specific function they perform and a description of the working arrangements.

The plan of action shall be limited to 5 pages, single-spaced on 8½"x11" or A4 paper. The Department reserves the right to reject any proposal in which the bidder does not offer all of the services included in Section 2.2, Appendix C and D of this RFP.

d. Experience

NYSDDED considers direct, prior experience in providing the Services requested in this RFP as a mandatory requirement. Your proposal must cite how your entity meets the experience requirements listed in Section 2.3, including narratives of past projects, successful results, and client and contact lists. Also include three references able to substantiate that your organization meets those requirements.

e. Organization and Staffing

Include in your proposal current resume(s) of professional staff who will be performing the services. Highlight experience relevant to the scope of services discussed in Section 2.2, Appendix C and Appendix D and specifically identify any special education, certification, language ability, and/or training.

f. Financial Proposal

Appendix B of this RFP must be completed and submitted as part of your proposal. DO NOT USE AN ALTERNATIVE BUDGET FORMAT. The Budget proposal must be bound separately from the rest of your proposal. The budget limit is US \$100,000 per year. This annual cost shall include all employment-related expenses including payroll taxes, health insurance, employer liability insurance, etc. The bidder shall include in his proposal the expenses associated with attending (admission fees, travel, etc.) the Trade Events as noted in Appendix C, Section I.C but not the costs of exhibiting (booth fees) at such events. If any of the personnel duties will be filled with subcontractors, please include their costs under the Subcontractor line. Subcontractor services are performed by other organizations or individuals who are not employees of the Contractor. All figures shall be included in US dollars. Note: NYS will not pay for Contractor relocation expenses. Do not include such costs in your financial proposal. Also, do not exceed the annual budget total limit noted above in your financial proposal.

Assuming statutory and programmatic funding to the Department remains the same, it is expected that the \$100,000 annual amount will remain the same should NYSDDED opt to renew the contract for up to four additional years, and will be the total annual amount available. Proposals at higher amounts will NOT be considered. The Contractor should prepare its financial proposal based on its anticipated annual plan of work for this specified amount. Once a contract has been awarded, the Department and the contract may mutually agree to modify and update the contract and annual plans to meet any changing demands of the market, needs of New York businesses or the Department. Any unanticipated adjustments would reflect changes in work plans and related expenses and operations.

g. Other

Please complete and include Appendices E, F, G, and H (Non-Collusive Bidding Certification, MacBride Fair Employment Principles, Responsibility Questionnaire, and Procurement Lobbying Disclosures Pursuant to Sections 139-j and 139-k of State Finance Law respectively). The Successful Bidder must also complete the following but their inclusion is not required at the time of proposal:

- (a) New York State tax forms ST-220-CA and ST-220-TD. The ST-220-CA may be found at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf. The ST-220-TD may be found at http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_fill_in.pdf.

- (b) A State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term (Form A) available at <http://www.osc.state.ny.us/agencies/gbull/g226forma.pdf>
- (c) The State Consultant Services Contractor's Annual Employment Report (Form B), to be submitted annually, available at <http://www.osc.state.ny.us/agencies/gbull/g226form%20b.pdf>.
More information on the consultant services reporting can be found at <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>.

3.2 Conditions Governing Proposals

Only those individuals or firms who have supplied complete information will be considered. Any patented or proprietary information included in the proposal must be clearly identified in the proposal and in a cover letter submitted with the proposal (see Section 3.4).

The Department reserves the following prerogatives:

- (f) to accept or reject any or all proposals;
- (g) to decline to award a contract resulting from this RFP;
- (h) to waive or modify minor irregularities in proposals received;
- (i) to eliminate mandatory qualifications unmet by all bidders;
- (j) to disqualify proposals that fail to meet the mandatory qualifications;
- (k) to require clarification from any bidder for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;
- (l) to negotiate with any or all bidders, within the proposal requirements, to best serve the interests of the State of New York;
- (m) to amend the specifications after their release, with due notice given to all those solicited to modify their proposals to reflect the changed specifications;
- (n) to utilize any or all ideas submitted in the proposals received unless those ideas are covered by legal patent or proprietary rights;
- (o) to award contract(s) for any or all parts of a proposal; and
- (p) to elect to award contract(s) to one or more responsive and responsible bidders, provided that the basis for the election among multiple contracts at the time of award shall be the most practical and economical alternative and shall be in the best interest of the State.

By submitting a proposal, an entity agrees that it will not make any claim for or have any right to damages because of any lack of information or misinterpretation of the information provided in this RFP.

3.3 Notification of Award

The Department will notify the successful proposer in writing. Each proposer whose proposal is rejected will be notified in writing by the Department.

A contract defining all terms and conditions of the parties will be drafted by the Department. The contract may incorporate sections of this RFP, the State's standard contracting provisions (attached hereto as APPENDIX A) and as much of the successful firm's final proposal as may be appropriate among its provisions. After the Department and the successful firm execute the contract, it must be submitted for approval to the Attorney General's Office (AG), the Office of the State Comptroller (OSC), and in some cases the Department of Civil Service. The Contract will not be considered fully executed until approved by both the AG and OSC.

3.4 Debriefing

An unsuccessful bidder has the right to a debriefing regarding the reasons its proposal was not selected for award. Upon request, the Department will provide a debriefing to any unsuccessful applicant as to the reasons that the proposal submitted was not selected for an award. To request a review of an unsuccessful proposal send an e-mail to rfpinfo@esd.ny.gov. A review should be requested by an unsuccessful bidder within thirty (30) days of the date of the notice that its proposal was not selected for an award.

3.5. Liability

The Department is not liable for any costs incurred by any individual or firm for work performed to prepare its proposal or for any travel and or other expenses incurred in the preparation and/or submission of its proposal. Further, the Department is not liable for any costs incurred until the contract has been approved by the Attorney General and State Comptroller's Office.

3.6 Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Department and Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in Section 1.4 of this solicitation. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers contact only Department staff identified in the aforementioned section of this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> or by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41st Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. E-mail: Anne.Phillips@OGS.State.NY.US.

State Finance Law Sections 139-j and 139-k may be viewed at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-j.htm> and at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-k.htm>

SECTION IV - CONTRACTUAL INFORMATION

4.0 Contract Term

The successful offerer shall perform the work and provide the services set forth in this RFP as an independent contractor for a period of one (1) year with an option to extend the term for up to four (4) additional one year terms. The total term of the contract shall not exceed five (5) years. Both parties agree that any contract resulting from this RFP shall end on the termination date unless terminated as described in Section 4.1 – Cancellation below.

4.1 Cancellation

Once a contract or other agreement resulting from this RFP is fully executed and approved, the Department has the right to cancel it for cause or unavailability of State funds at any time or for convenience on thirty (30) calendar days written notice to the Contractor. The Department shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; (iii) convenience, (iv) the Contractor's failure to meet the performance goals provided by the State. The Department at its option may terminate the Contract for convenience without prior notice upon paying the Contractor an amount equal to 30 calendar days' fee in lieu of such notice. If cancelled for cause, payment to the Contractor for charges incurred will be made at the Department's sole discretion. If cancelled for unavailability of State funds, the Department will not be liable for payment but will use its best efforts to pay outstanding charges previously approved by the Department to the extent permitted by New York State Law.

Additionally, the Department also reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k (see Appendix H) was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this contract. The contract will have termination language that allows for cancellation upon mutual written consent of the Parties.

4.2 Subcontracting Requirements

The bidder may subcontract elements of the program for which it lacks locally or in-house capabilities. The firm's proposal must identify the subcontracting firm or firms and cite the proposal. The Department is an equal opportunity contractor and reserves the right to review and approve all subcontracting firms.

After the contract resulting from this RFP, if any, is awarded, any subcontractors or purchases in excess of \$50,000 that were not originally identified in the Contractor's proposal must receive prior approval from the Department. This subcontracted amount would be within the specified \$100,000, not in excess of that budget.

The Contractor may not, without written consent of the Department, assign to any party the Contract or any interest herein, or claim hereunder.

a. Financial Terms/Payment Process

(a) Payment for Contractor's Services. All amounts referred to in this RFP and the Contract shall be in United States Dollars. The Department shall pay to the Contractor a fee for the Services as established in the Contractor's Financial Proposal. No other amounts for compensation, expenses, taxes, fees or other costs shall be owed by the Department to the Contractor for Services during the term of the Contract. Payment for services performed to the satisfaction of the Department shall be made in the

ordinary course of State business upon receipt of duly authenticated invoices/vouchers and upon receipt of monthly reports and/or deliverables, if required elsewhere in this RFP. The contractor shall invoice the Department quarterly on the first day of the following quarter. Unless otherwise agreed by the parties, all payments relating to fees described in the Contract shall be made by the Department by deposit into the Contractor Account which is further described in Section 4.3(e). The contract anticipates quarterly submissions of progress and financial reports with subsequent reimbursement. The Department will work with contractors during the term of the contract if more frequent reimbursements are warranted.

(b) Expenses. Contractor shall be responsible for all expense which Contractor incurs in rendering services under the Contract, including without limitation, compensation to Contractor's subcontractors, employees, assistants or agents, if any, travel expenses, long distance, and local telephone charges, entertainment expenses, office rental or mortgage expenses, training expenses, the cost of tools and supplies, and all other expenses incurred in rendering services under the Contract.

(c) Payments of Taxes Assessments. As an independent contractor, the Department will not be responsible for payment of any FICA, FUTA, or other similar charges or withholding for Contractor, and Contractor acknowledges and agrees that it is solely the Contractor's obligation to report and pay all Designated Area, Additional Markets, or any country or political subdivision thereof, federal, state and local income, self-employment and other taxes due for him on all compensation from the Department as may be required by law. The Department will issue a Form 1099 for all compensation paid to Contractor. Additionally, Contractor assumes full responsibility for the payment of all assessments or contributions, whether of the Designated Area, Additional Markets, or any country or political subdivision thereof, state or U.S. federal, with respect to all employees engaged by Contractor to perform services in connection with the Contract. Contractor shall furnish to the Department, on the request of the Department, a certificate or other evidence of compliance with all laws of the Designated Area, Additional Markets, or any country or political subdivision thereof, New York or U.S. concerning contributions, taxes and payroll compensation, transaction, sales, use or other taxes or assessments of whatever nature or kind levied or assessed as a consequence of the work performed or on the compensation to be paid under the Contract.

(d) Deviations from Financial Proposal. Should additional costs not provided for in the Financial Proposal but related to the Contract be incurred, the Contractor shall be responsible for payment of such costs. The Department reserves the right to provide additional funding, at its sole discretion, for expenses for special projects that are not considered part of the day to day operations of the office.

(e) Contractor Account. The Contractor shall establish and maintain a deposit account ("Contractor Account") with a financial institution designated by the Contractor having offices in the Designated Area or Additional Markets for use of the Trade Offices. The Contractor shall notify the Department of the location and account number of such Contractor Account, and this account shall be used exclusively for the Trade Office(s).

1. Accounting Records.

(1) The Department shall not be liable for a negative balance in the Contractor Account or any other account.

(2) All expenses shall be recorded in the books of the Trade Office and charged against the Contractor

Account at cost. The Contractor shall not be allowed any fee, commission or other benefit based on cost incurred under Contract.

(3) Financial records of the Contractor shall be maintained in accordance with generally accepted accounting principles in the United States.

(4) Financial records shall be kept on an accrual basis.

(g) Financial Reports. Monthly and annual reports shall be provided in accordance with Section 2.2 and Appendix C of this RFP.

(h) No Benefits. Contractor will be responsible for providing Contractor's own benefits and insurance coverage during the term of the Contract. Contractor, as an independent contractor, and Contractor's subcontractors and employees shall not be eligible for or entitled to participate in the benefits, plans, and insurance coverage provided by the Department to its employees.

(i) Termination. Upon termination, the Department shall pay to the Contractor a pro rata share of any amounts due and payable pursuant to Section 4.3(a) of this RFP through the effective date of the termination. Within ten (10) business days after the effective date of termination of the Contract, the Contractor shall deliver to the Department all unearned payments previously advanced to the Contractor. If the Contractor fails to turn over all unearned payments to the Department, then, in addition to any other rights or remedies that the Department may have in law or in equity, the Department shall be entitled to recover from the Contractor interest at the annual rate of twelve (12) percent per annum on the principle amount of all unreturned unearned payment, together with court costs and reasonable attorney fees incurred in the collection of such amounts.

4.4 Relationship

(a) Independent Contractor Status. The relationship of the Contractor to the Department shall be that of an independent contractor, not an employee.

(b) No Control by Department. The parties acknowledge and agree that the Contractor shall use Contractor's own judgment as to time, place, details and means by which Contractor accomplishes the results of Contractor's Services under the Contract, that Contractor is not subject to instructions by the Department as to when, where, and how the Services should be performed, that Contractor is not required to work set hours of the day or week established by the Department, that Contractor is not required to perform Services in sequence determined by the Department, and that nothing contained herein shall be construed to create the relationship of employer and employee between the Department and the Contractor; provided, however, that Contractor is expected to provide the Services in a timely and competent manner in order to meet the needs and expectations of the Department.

(c) Employees of Contractor. The Contractor may, at its sole expense, employ and retain such employees as may be necessary to conduct the Services in the Designated Area, or Additional Markets. All obligations relating to the compensation, benefits and taxes of such employees shall be the sole obligation and responsibility of the Contractor, who shall be deemed the employer of such employees. The Contractor shall direct the work of all employees and subcontractors.

(d) Other Activities of Contractor. The Parties agree that Contractor may be engaged as a consultant,

employee or otherwise in non-profit, business or commercial activities for other parties during the term of this contract, provided that such activities: (1) do not prevent Contractor from performing his obligations as set forth in the Contract; and (2) are not Competitive Activities (as defined below), detrimental to the Department or cause the Contractor to breach any of the provisions of the Contract. "Competitive Activities" are those activities which (i) are performed by the Contractor for another state, trade association, or trade group which represents interests or performs services which are competitive with the State or the Department and (ii) are similar to the Services.

(e) Limitation on Authority. The Contractor acknowledges that it is not an agent or legal representative of the Department and the Contractor shall not have nor represent that it does have any power or right to bind the Department. Neither the Department nor any employee or agent of the Contractor shall be deemed to be the legal representative or an employee of the Department by reason of the Contract. During the term of the Contract, the Contractor shall not take any action inside or outside of the Designated Area and Additional Markets which could: (1) confer on the State or Department "permanent establishment" or equivalent status, as defined in any applicable law or income tax treaty; (2) subject the State or the Department to income or other taxation in the Designated Area, Additional Markets, or any country or political subdivision thereof; or (3) impair the treatment of the Trade Offices as representative offices or liaison representative offices. Nothing contained in the Contract shall in any way be construed to create an agency or employee relationship between the Contractor and the Department.

(f) Insurance. Contractor agrees to maintain such insurance necessary to fully protect both Contractor and Department from any and all claims under the Workers' Compensation Act, or any foreign country equivalent, including maintaining insurance, through appropriate local government department or agency; or employers' liability laws, and from any and all other claims for damage to property or for personal injury, including death, made by any person whomsoever, that may arise from or relate to performance of the Services by Contractor, any subcontractor or any person directly or indirectly engaged or employed by Contractor or any subcontractor. Contractor agrees to provide the Department with certificates evidencing the required insurance coverage within thirty (30) days after Contractor begins performance of the Services.

(g) Department's Right of Inspection. The actual performance and supervision of all work hereunder shall be by Contractor, but the Department shall designate a representative or representatives who shall at all times have access to the Trade Offices for the purposes of observing or inspecting the work performed by Contractor, to judge whether such work is being performed by Contractor in accordance with the terms of the Contract. Such representative or representatives shall be empowered to act for the Department in all matters relating to Contractor's performance of the work undertaken hereunder.

(h) Department Not a Joint Venturer or Partner. In entering into and complying with the Contract, Contractor is at all times performing as an independent contractor. Nothing in the Contract shall constitute or be construed as a creation of a partnership or joint venture between Contractor and the Department, or their successors or assigns.

(i) Title to Contractor's Materials. Title to the materials to be furnished by Contractor in connection with the performance of the Services shall remain with the Contractor unless otherwise specified in Sections 4.6 and 4.7.

4.5 Intellectual Property/Personal Property Rights in Data, Computer Software & Other Intellectual Property

(a) Rights in Data. All studies, reports, findings, sources, bibliographies, subscriber lists, mailing lists, working papers, files, input materials and output materials, the media upon which the same are located (including cards, tapes, discs, and other storage facilities), together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, and all other materials, prepared for and delivered to the Department in the course of performance of this Agreement hereunder, (hereinafter referred to as "Data"), shall be deemed to be "work made for hire" (as defined in Section 101 of Title 17 of the United States Code), and shall be provided to and become the exclusive property of the Department. Data shall be deemed and determined to not include computer software and related documentation. If it is determined that any Data encompassed above does not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Contractor hereby covenants and agrees to transfer all right, title and interest in any such Data to the Department, and cooperate with the Department, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

4.6 Confidentiality:

For and in consideration of the term of the Contract, Contractor agrees to the following for the ongoing protection of the Department:

(a) Obligations. The Contractor and the Department agree that Contractor shall have an affirmative duty to preserve the confidentiality and safekeeping of all Department documents and "Confidential Information" (as defined below). In particular, except to the extent that the use or disclosure of any Confidential Information is required to carry out Contractor's assigned duties as an independent contractor for the Department, during the term of the Contract and following the termination of the Contract (for whatever reason):

(1) Misappropriation; use for the purpose of competing with Department, either directly or indirectly; disclose to any third party, either directly or indirectly; or aid anyone else in disclosing to any third party, either directly or indirectly; all or any part of any Confidential Information; or

(2) Use, disclose, divulge or communicate directly or indirectly to any third party: (a) the names, addresses and other contact data regarding any customers of the Department; or (b) the details of any contracts, business transactions or negotiation to which the Department is party or of any tenders, offers or proposals submitted or to be submitted by the Department in connection with its business.

(b) Scope. For purposes of the Contract, "Confidential Information" shall mean confidential and proprietary business or technical information furnished to or obtained by Contractor during the course of his contracting arrangement with the Department (including, without limitation, information created, discovered, developed or made know by such Contractor as part of his engagement with the Department), whether such information is in the form of data, forecasts, records, reports or other documents prepared by or on behalf of the Department. Such Confidential Information includes, by way of illustration, but is not limited to: (1) any Department information regarding a Department Customer

(as defined below), including but not limited to customer lists, contracts, business transactions, requirements, billing histories, needs, and products or services provided by the Department to such customers; or (2) all financial information concerning the Department, including but not limited to financial statements, balance sheets, profit and loss statements, earnings, commissions and salaries paid to employees, sales data and projections, forecasts, cost analyses, and similar information; or (3) all Department information regarding sources and methods of supply to the Department, including but not limited to supply agreements, supplier lists, supply terms, product discounts and similar information; or (4) all plans and projections for business opportunities for new or developing business of the Department, including but not limited to marketing concepts and business plans; or (5) all software, drawings, specifications, models, and marketing techniques developed by the Department; or (6) all information relating to the Department's services, products, prices, costs, development activities, service performance, operating results, employee lists, personnel matters, and other confidential or proprietary information; or (7) any of the information described in subsections (1)-(6) of this Section 4.7(b) that the Department obtains from another party or entity and that the Department treats or designates as confidential or proprietary information, whether or not such information is owned or was developed by the Department. "Confidential Information" shall not include information that is generally known or available to the public.

For purposes of the Contract, "Department Customer" means any company or individual customer of the Department: (1) at the time of the end of the term of the Contract; (2) who contacted Contractor, whom Contractor contacted or served, or for whom Contractor assisted in contact or service during the term of the Contract; and/or (3) any company or individual customer of the Department who purchased products or services from the Department during term of the Contract.

(c) Return of Documents/Data. Contractor acknowledges and agrees that, with the exception of information that Contractor can demonstrate was possessed or owned by him prior to his engagement with the Department that has not otherwise been modified, updated, or improved by Contractor or the Department in connection with his engagement with the Department, all sales files, customer records, customer lists, supplier records, supplier lists, product information, letters, contracts, notes, notebooks, records, reports, memoranda, formulae, and all other Department materials, documents, and data used, prepared, or collected by Contractor as part of his engagement with the Department, in whatever form, are and will remain the property of the Department. Contractor also understands and agrees that all Confidential Information that comes into his possession while he is an independent contractor of the Department, whether prepared by him or others, is and will remain the property of the Department. Thus, Contractor agrees that he will return all documents, written material, information, products, devices, and other property belonging to the Department, as well as all documents and other materials of any kind that constitute or contain any Confidential Information, in his possession or control, regardless of how stored or maintained, including all originals, copies, and compilations and all information stored or maintained on computer, tapes, discs, or any other form of technology upon the earlier to occur of (i) five (5) business days after receipt of the Department's written request to return such property or (ii) the last day of the Contractor's engagement with the Department.

(d) Duration of Confidentiality Obligations. Contractor agrees that he will maintain and keep all Confidential Information strictly confidential throughout the term of the Contract and for a period of twelve (12) months after his engagement with the Department ends. In addition, Contractor agrees that the provisions of this Section 4.7 shall survive the termination or end of Contractor's independent

contractor relationship with the Department, regardless of the date, reason or manner of such termination, and such termination shall not in any way impair or affect Contractor's continued obligation to observe the provisions of this Section 4.7.

4.7 Right to Publish.

The Contractor shall not publish, circulate or disclose any articles, reports or other writing concerning their business or the subject matter of the Contract without the prior written consent of the Department.

4.8 Compliance with Applicable Laws.

The Contractor shall, at all times, comply with and observe all applicable laws, statutes, codes, ordinances and regulations which are in effect during the term of the Contract and which, in any manner govern or affect the Contractor's performance of the Services, including without limitation the laws of the United States, the Designated Area, Additional Markets, or any country or political subdivision thereof.

4.9 Indemnification.

(a) General. The Contractor hereby agrees to indemnify the State and the Department and each of their directors, officers, employees and agents, and hold the State and the Department, and each of their directors, officers, employees and agents, harmless from and against any and all claims, demands, and causes of action based on any violation of any laws, statutes, codes, ordinances, and regulations and the defense of any such claims, demands or causes of action, including, in each case, any such arising from actual or alleged action or omissions of the Contractor or any of its subcontractors or employees.

(b) Taxes. Contractor shall indemnify the Department and the State against all liability and loss in connection with, and shall assume full responsibility for payment of all Designated Area, Additional Markets, or any country or political subdivision thereof, United States, state and local taxes or contributions imposed or required under unemployment insurance, workers' compensation, social security, pension, and income tax laws, with respect to the Contractor and Contractors' employees and subcontractors.

4.10 Publicity.

Any publication or news releases relating to the Trade Offices shall state that the Trade Offices is supported by the New York State Department of Economic Development or Empire State Development as instructed by the Department. Publications and news releases shall not be published or released without the prior written consent of the Department.

4.11 Non-Discrimination and Contractor & Supplier Diversity

1. General Provisions

1. The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein,

with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing and (2) in excess of \$100,000 for real property renovations and construction.

2. Contractor will agree, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of Economic Development (the "Department"), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Labor Law or other applicable federal, state or local laws.
3. Failure to comply with the following requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions or enforcement proceedings as allowed by the Contract.
4. The Department has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement shall be required to include as part of their response to this procurement, as described in Section 2.4, Selection Criteria, herein, the Diversity Practices Questionnaire (See Appendix J).

2. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
 - A. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - B. The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the Letter of Intent to award Contract.
 - C. If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement (see *Form OCSD-1*).
 - D. The Contractor's EEO policy statement shall include the following language:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
2. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
3. 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.
4. Contractor will include the provisions of sections (a) through (c) of this subsection in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

C. Staffing Plan (see *Form OCSD-2; required only of contracts valued at \$250,000 or more*)

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

D. Workforce Employment Utilization Report (see *Form OCSD-3, required only of contracts valued at \$250,000 or more*)

- A. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- B. Separate forms shall be completed by the Contractor and any subcontractor performing work on the Contract.
- C. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or sub Contractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the subject contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the

information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

3. Contract Goals

1. For purposes of this procurement, the Department hereby establishes the following Minority and Women-Owned Business Enterprises (“MWBE”) participation goals related to the total value of the contract:

Minority-owned Business Enterprise Participation:	<u>15</u> %
Women-owned Business Enterprise Participation:	<u>15</u> %
<u>COMBINED OVERALL MWBE PARTICIPATION GOAL:</u>	<u>30</u> %

2. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract Goals established in subsection “A”, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=3754>

3. Pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

IV. MWBE Utilization Plan

1. MWBE Utilization Plan

1. Contractor is required to submit an MWBE Utilization Plan (see *Form OCSD-4*) to the Department, within ten days of the execution of an awarded Contract. If additional time is required, Contractor may request an extension by contacting the Office of Contractor and Supplier Diversity at ocsd@esd.ny.gov.
2. The Utilization Plan shall list the MWBEs Contractor intends to use to perform on the Contract and provide a description of the Contract scope of work which Contractor intends to structure to increase the participation by NYS Certified MWBEs on Contract pursuant to the prescribed Contract Goals set herein, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of the Contract which Contractor intends to be performed by NYS Certified MWBEs.
3. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and/or during the Contract term must be reported on a revised MWBE Utilization Plan and submitted to the Department for approval.

B. The Department will review the MWBE Utilization Plan and issue to Contractor a written notice of

acceptance or deficiency within twenty (20) days of its receipt. A notice of deficiency shall include (1) the name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals and the reasons why it is not acceptable; (2) elements of the Contract scope of work which the Department has determined can be reasonably structured by Contractor to increase the likelihood of participation in the Contract by NYS Certified MWBEs; and (3) other information which the Department determines to be relevant to the MWBE Utilization Plan.

- C. In the event a notice of deficiency is issued Contractor shall respond to the notice within seven (7) business days of receipt by submitting a written remedy in response to the notice of deficiency to the Department. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the Contractor and direct Contractor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on forms provided by the Department. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
4. The Department may disqualify Contractor as being non-responsive under the following circumstances:
1. If Contractor fails to submit a MWBE Utilization Plan;
 2. If Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
 3. If Contractor fails to submit a request for waiver in the event of a deficiency within the utilization plan; or
 4. If the department determines that Contractor has failed to document good faith efforts to meet the contract goals prescribed in Article III.

V. Waivers

1. For Waiver Requests Contractor should use Waiver Request (see *Form OCSD-5*).
2. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
3. If the Department, upon review of the Utilization Plan and updated Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (*Form OCSD-6*) to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

Contractor may also submit the quarterly compliance information electronically through the New York State Contract System (NYSCS), found at <https://ny.newnycontracts.com>. For additional information regarding the NYSCS, contractor may contact the Office of Contractor & Supplier Diversity (OCSD) at ocsd@esd.ny.gov.

VII. Administration Hearing on Disqualification

1. If the Department disqualifies a bid based on deficiency in Contractor's utilization plan, Contractor shall be entitled to an administrative hearing, on the record, before the Department to review the determination of disqualification of the bid and determination of non-responsibility of the Contractor.
2. Such final administrative determination shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within thirty (30) days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Executive Law Article 15-A, §313.

VIII. Complaints

1. If the Department determines that the Contractor is not in compliance with the requirements found in Part 142 of the MWBE Regulations and the Department is unsuccessful in its efforts to resolve the matter and bring the Contractor into compliance with the requirements, the Department may file a complaint with the Director according to the provisions of Executive Law Article 15-A, §§ 313 & 316 or may assess liquidated damages pursuant to § 316-a.
2. Subsequent to the award of this Contract, if Contractor submits a Request for Waiver of MWBE participation goals and the Department denies the request or fails to respond within twenty (20) days of receiving it, or if Contractor has received a written determination from the Department that Contractor has failed or refused to comply with the provisions of this Contract, Contractor may file a complaint with the Director in accordance with the provisions of Executive Law Article 15-A, §§ 313 & 316.
3. The complaint must be filed within twenty (20) days of the Department's receipt of the Request for Waiver. If the Department fails to respond in that time, or within twenty (20) days of a notification that the request has been denied by the Department or within twenty (20) days

of receipt of notification from the Department that the Contractor has failed or refused to comply with the goals:

1. A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
2. The party filing a complaint, whether the Contractor or the Department, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.
3. Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty (30) days of receipt of the complaint the Director is unable to resolve the complaint to the satisfaction of the Department and the Contractor, the complaint shall be referred to the Division's designated hearing officer. Upon conclusion of the administrative proceeding, the hearing officer will submit to the Director his or her final determination regarding the alleged violation of the Contract or refusal of the Department to grant a waiver request by the Contractor and his or her recommendations regarding the imposition of fines, sanctions or penalties.
4. The Director, within ten (10) days of receipt of the hearing officer's decision, will issue a final determination with regard to fines, sanctions or penalties and shall cause a copy of such determination to be served upon the contractor by personal service or by certified mail, return receipt requested.
5. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by Contractor or Contractor's representative or the Contractor's willful and intentional disregard of the MWBE participation requirement included in this Contract may include a determination that Contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such Contract for up to one year following the final determination.
6. If a Contractor has previously been debarred, the penalties imposed for any subsequent violations, if such violation occurs within five years of the first violation, may result in debarment for up to five (5) years after the final determination. Such information shall be posted on the Division's web site.
7. The determination of the Department or the Contractor to proceed with a complaint shall not preclude the Department, in its discretion, from pursuing any other remedies which it may have pursuant to law and Contract, including withholding from payments to the Contractor the estimated amount of the fines and penalties which may be imposed pursuant to this subsection.

IX. Liquidated Damages - MWBE Participation

1. In lieu of the complaint procedures set forth in Article VIII of this Appendix, if the Department determines that Contractor is not in compliance with the requirements of this subsection and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.

- E. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - I. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals;
and
 - II. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

- 2. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

herein; and

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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>

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

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

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

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

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

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

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

January 2014

APPENDIX B
Financial Proposal

Your Financial Proposal must be bound separately from the rest of your proposal.

COMPLETE this financial proposal form in full (Contract Years 1). Do not change the budget format. Failure to complete the financial proposal or bidder changes to the format may result in the disqualification of your proposal. Any bidder failing to complete the budget pages will be disqualified.

Refer to Section 3.1, item f for additional guidance on completing the following budget.

BUDGET PROPOSAL

Budget Category	Contract Year 1
Contract Employees List titles (use additional pages if necessary) _____ _____	\$ _____
Misc. Contractual Services – describe _____	\$ _____
Travel	\$ _____
Marketing, Promotion and Event Costs	\$ _____
Equipment and Supplies	\$ _____
Other Expenses–describe _____	\$ _____
BUDGET TOTALS	\$ _____

APPENDIX C

Additional Specifications on Scope of Services

The following, Section 2.2 and Appendix D of this RFP describe primary specifications for the Contractor. Appendix C's specifications to the scope of services clearly identify the expected tasks and deliverables for the Contractor, including numerical targets wherever feasible. The Appendix D's responsibilities and tasks guidelines are meant to illustrate respective roles of NYS-based staff, of the international representatives, and of NYS companies. The Contractor's budget should reflect the travel costs needed for accomplishing the specified trade deliverables, within the available annual budget. The trade management team will coordinate with the Contractor on follow-up, etc., generally as outlined in Appendices C and D.

The Contractor should specify relevant trade events and prioritize them, with a frank assessment of the pros and cons of NYS participation. The bidder's recommendations for prioritized events for NYS must include the costs for participating in same (e.g. registration fees and travel – but NOT costs of exhibit booths) in the financial proposal (per section 3.1 f). Such travel would relate to providing assistance to NYS firms at such events.

The Contractor should recommend the number of trade events relevant to the annual budget and the anticipated deliverables. Given the funding level, between 2 and 5 trade events per year have been supported in recent years. ESD will pay for advertising, trade show exhibit booths, etc. out of separate funds. Depending on the event and whether it is deemed worth the investment of time and resources, a determination will be made regarding the level of service needed on behalf of New York State. Any additional travel to support NYS companies, outside of the scope of participating in approved trade events, would require prior approval.

These specifications will be reviewed annually. In the event that the Contractor and the Department do not agree on updates prior to the start of each renewed contract year, it is agreed that the specifications of the previous contract year will be in effect. The services provided in the Designated Area and Additional Markets support New York State companies in their export activities. Providing services such as matchmaking services, market intelligence, trade events programming, and lead generation; and fueled by input from the Department and New York State companies themselves, the Contractor can best assist this State's export activities in the following ways:

I. SERVICES PROVIDED

The services provided by international representative trade offices, as contracted, can be grouped under five broad categories: **(A) Trade Assistance Work Order Services, (B) Country-Specific Intelligence, (C) Trade Events Program Administration, (D) Reporting, (E) Other Duties.** These targets are objectives for anticipated deliverables, and will also depend on NYS staff resources. The Contractor will be expected to document how an aggressive good faith effort has been made to meet them.

A. TRADE WORK ORDER SERVICES:

Prior to the start of each contract year, the Department and the Contractor will review previously established targets for Qualified Client Requests for that year and actual sales for that year. The annual minimum targets for the Designated Area and optional Additional Markets trade offices shall include:

1. Services to at least 50 export-ready NYS companies per year; and
2. 50% of NYS companies that participate in Global NY trade shows or missions report export sales;
3. 33% of NYS companies that receive individual export assistance report export sales;
4. 50% of NYS companies that seek new partners report new business relationships (found a distributor, sales agent, retail outlet, etc.);
5. 75% of NYS companies that receive export assistance report above-average satisfaction with the service provided;
6. 75% of NYS companies that receive market intelligence assistance report that the information was more-than-adequate to determine market viability.

The Contractor shall:

- a) Identify best distribution channels for New York State industries in the Designated Area and Additional Markets and maintain records of qualified agents, brokers, wholesalers, dealers, distributors, retailers and EMCs (export management companies);
- b) Identify, per client request, best distribution channels, for client product(s);
- c) Facilitate client/distributor, agent, and representative relationships including language assistance, foreign business protocols, and assistance with methods of payment or regulations, duties etc.; and
- d) Assist NYS exporters traveling to the Designated Area and optional Additional Markets in implementing (2) and (3) supra under this section. The Contractor must sustain and expand New York's current markets in the Designated Area and in Additional Markets, (given the possibility that DED could modify its choice of global markets for representation during the renewable contract period of up to five years, based on potentially changing market opportunities), while identifying and prioritizing the best prospects in untapped regional markets and industry sectors.

B. COUNTRY-SPECIFIC INTELLIGENCE:

The Contractor shall provide:

- Foreign Market Intelligence (product, country or region-specific) including suggestions and guidance for: Product Market Viability (country or region-specific), Market Penetration Strategy, Market Development Strategy, Product Adaptation, Modification, and Compliance
- Statistics and Records (country and region specific) on:
 - a. Best industries
 - b. Best products
 - c. Trade shows
 - d. Trade leads
 - e. Desired representation for NYS companies
 - f. Associations, agencies and individuals of potential service to NY companies
- 3. Other Sources of Information and Referrals (country or region specific) for information on:

- a. Entry regulations/controls/tariffs/duties/etc.
- b. Political, social, cultural peculiarities affecting market

C. TRADE EVENTS PROGRAM ADMINISTRATION

The Contractor shall assist the Department in administering a trade events program in the Designated Area and optional Additional Markets which will be used as a tool for developing NYS trade representative prospects in the Designated Area and optional Additional Markets. Actual events are to be established prior to each contract year and may change subject to the agreement of the Department and Contractor. For each contract year the Contractor shall:

- Provide on-site planning, budgeting and implementing of trade shows (specific to the Designated Area or Additional Markets) with overall project management by the Department;
- Attend trade shows and participate in trade and investment missions, providing service to NYS firms or NYS economic developers;
- Assist trade staff with post-show/mission follow up including post-show and post-mission assessment and follow-up with participants;
- Maintain database of superior industry-specific trade events (see Section B, item 2.c, above); and
- Assist with on-site coordination, planning, and implementing of trade and investment missions.

D. REPORTING ON TRADE DEVELOPMENT ACTIVITY

Monthly Reports on Trade Development Activity shall be completed in the following format. Monthly Reports shall be submitted no later than 30 days after the end of each month for the previous month’s work. The Department reserves the right to modify this report or to substitute or compliment submission of report with entry of relevant information in its CRM system. The Contractor will report primarily to the International Division trade manager.

This RFP is for services going forward. The Contractor should be expected to provide a monthly summary report and a much more comprehensive quarterly report with an end of the year final report of successes, and plans looking ahead, as indicated in Appendix C.

Monthly International Trade Development Activity Report	
Office:	For Month Of:
Date Report Completed: / /	
Services Provided	
(A) Research: List 5 top industry segments	
(B) Business Development:	
<ol style="list-style-type: none"> 1. List the new companies serviced for trade development 2. List trade events, conferences, special events in which you participated. 3. List business travel, purpose, locations, dates 4. List office visitors 5. Other activities 	
(C) Communications: List all confirmed trade leads transferred to the Department	

The Contractor will also prepare an Annual Report in the following format which will be submitted to the

Department within one week of the end of the contract year:

Annual Report	
Office:	For Contract Year starting _____ and ending _____
Date Report Completed: / /	
The Report should be in a narrative format including, but not necessarily limited to, the following:	
• Services provided, including major successes and achievements in trade.	
• Research: Summary of 5 top industry segments, including current market conditions	
• Business Development for Trade: Summary of marketing events and activities conducted.	
• Communications: Summary of confirmed/active trade leads identified and transmitted to the Department, including current status of such leads.	

E. OTHER DUTIES

1. ADMINISTRATIVE DETAILS

The Contractor shall ensure that complete client data information will be entered, updated and maintained in the department assigned CRM (client reporting management) system. This will include all required information, status and results of work orders or other requests, and applicable information to provide quality service to the clients. The Contractor shall also ensure that monthly and annual reports required in the RFP and Contract are submitted by deadlines.

An annual independent audit of the previous contract year's financial records will be concluded in accordance with international accounting practices and submitted to the contract administrator within 6 months of the end of the year audited.

2. TECHNOLOGY REQUIREMENTS

(a) Software: The Contractor shall secure and maintain licensed Microsoft office software (Word, Excel, PowerPoint), that meets the following specifications:

- Must be able to support CRM (client reporting management) system
- Must be able to protect system from viruses and from infiltrating network worldwide.

(b) Communication: The Contractor shall secure and maintain communication services that meet the following specifications:

- Must be able to send and receive landline voice calls.
- Must have facsimile capabilities.
- Must have voice messaging capabilities.
- Must have cellular phone capabilities.
- Must respond to voice messages within 24 hours or the next business day (principal or his/her designee).

(c) Internet Access: The Contractor shall secure and maintain high speed internet services that allow for communications e-mail messaging and CRM connectivity that support department objectives.

APPENDIX D
RESPONSIBILITIES AND TASKS GUIDELINES

The Department has established the following guidelines for the Department's International Division Trade and Investment Specialists based in NYS, International Trade Office(s), and NYS Industry/Technology Clusters, Business Organizations and Individual Companies. Guidelines are subject to change.

International Trade Specialists (NYSDED staff)

- Identify and contact companies in industry sectors to ascertain interest in expanding internationally.
 - How: telephone, e-mail, mass mailing, trade events, industry events, other means as appropriate.
- Visit NYS companies to: (1) explain international trade development and International Trade Office services and available resources; (2) collect information; and (3) establish relationship.
- Confirm that NYS company clients are export-ready, by using export readiness assessment checklist and/or other tools.
- Become familiar with company, product and industry characteristics.
 - How: company interviews, trade publications, industry-related training, other means as appropriate.
- Assist NYS companies with an export strategy and market focus.
- Generate trade work orders for NYS companies and send to International Trade Office(s) as relevant.
- Ensure that the NYS company has provided all the necessary support documentation related to the trade work order, as agreed upon by the trade representative and the International Trade Office. Typically this would include: all data specified in the client request in Client Relationship Management Database, 15 sets of product literature, an introductory letter and samples if appropriate.
 - If necessary, coach client to properly ship and value international shipment of product literature and samples to International Trade Office.
- Confirm that all data have been entered into Client Relationship Management Database and that client has couriered product literature and samples to International Trade Office. Notify International Trade Office via e-mail that official request for assistance by this company has been completed.
- Notify appropriate Regional Office(s) and other relevant DED colleagues via e-mail that request has been initiated, with company contact information. When request is completed, notify again via e-mail.
- Follow up with the NYS company within two weeks after an overseas office response is provided to assess status and assist with next step.
- Inform company of any applicable events, trade shows or missions sponsored by NYSDDED, USDOC, and other partners to assist with market penetration.
 - How: telephone, e-mail, web site, mass mailings, other means as appropriate.
- Recommend that NY company consider a future trip to work with International Office Trade in the market of interest.
- Proactively assist NY company with export-related tasks and questions.
- Track and provide performance measurement data monthly.
 - Develop and improve relationships with trade associations, Chambers of Commerce, universities and other partner organizations.
 - Work with International Trade Office to assist with coordination of industry-related reverse trade missions.

International Trade Office(s)

- (1) Confirm receipt of request and product literature to company and NYS representative within 3 working days after product literature received.
 - (2) Complete request for trade assistance/work order within mutually agreed upon time between the trade manager and International Trade Office at the time the request is opened, Assess request and communicate projected turnaround to NYS company and NYS representative within one week after receipt.
- ✓ Review of product/company-specific assessment for marketability.
 - ✓ Review of market entry recommendation.
 - ✓ Perform trade contact search.
 - ✓ Analyze pricing information and provide competitive analysis.
 - ✓ Provide in country assistance/visits with companies on a selective basis.
 - ✓ Make recommendations for fine-tuning of marketing/promotional documents.
 - ✓ Complete basic information reports on foreign companies - potential partners and competitors.
 - ✓ Compile results into comprehensive report for NYS company, with copy to NYS manager.
 - ✓ Send comprehensive report in agreed upon format via e-mail. Confirm to NYS company and NYS manager via e-mail that report has been sent.
 - ✓ Track and provide performance measurement data monthly.
 - Develop reverse trade mission opportunities as they arise; communicate and coordinate with NYS manager to take advantage of potential export sales.
 - Plan to participate in upcoming trade shows, missions, or in-country company visits to facilitate follow up from the International Trade Office report.

New York State Companies

- Provide accurate and comprehensive information to NYSDDED trade specialists.
- Provide electronic version or 5 copies of product literature via express courier service or electronically, directly to the appropriate International Trade Office.
- Discuss follow-up and potential market visit to meet and achieve results for the company.
- Plan to participate in upcoming trade shows, missions, or in-country company visits to facilitate follow up from the International Office report.
- Commit to contributing the effort and energy to succeed internationally.

Note: The volume of International Trade Office requests for each market will dictate the turnaround time and level of customer service that can be provided by the given trade office.

APPENDIX E

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW

SECTION 139-D, Statement of Non-Collusion in bids to the State

BY SUBMISSION OF THIS BID, BIDDERS AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

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

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE 1, 2, 3 ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[BIDDERS AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 20__ as the act and deed of said individual, corporation or partnership.

Person Legally Responsible for Binding Bidder

Name _____ Title _____

Signature _____

Joint or combined bids must be certified on behalf of each participant

Legal name of person, firm or corporation

Legal name of person, firm or corporation

Person(s) Legally Responsible for Binding Participant

Name _____

Name _____

Title _____

Title _____

Business Address _____

Business Address _____

Bidder's Identifying Data

Bidder's Name _____

Business Address _____

Street _____

City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Federal id. Number _____

If Bidder is a Partnership complete the following:

Name of Partners or Principals

Business Address

If Bidder is a Corporation complete the following:

Name

Business Address

President

Secretary

Treasurer

APPENDIX F

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

4 has business operations in Northern Ireland;

Yes ____ or No ____

if yes:

5 shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes ____ or No ____

Signature

Date

APPENDIX G

Vendor Responsibility Information

Vendor Name: _____

NYS Vendor ID #: _____

(If one has been assigned)

The Office of the State Comptroller has conveyed that all requests for NYS contract approval must include information regarding Vendor Responsibility for the Contractor. **In addition any subcontractor on a state contract receiving \$100,000 or more must also complete the Vendor Responsibility Questionnaire.** The NYS Department of Economic Development recommends that vendors file the required questionnaire online via the NYS VendRep System. To enroll in and use the system to complete the questionnaire, see the instructions available at http://www.osc.state.ny.us/vendrep/info_vrsystem_vendor.htm or go directly to the VendRep System online at <http://portal.osc.state.ny.us>.

Failure to submit a questionnaire, which has been signed within the last six months, may result in either a contract or designation being rescinded or delayed. In addition, the NYS Department of Economic Development reserves the right to rescind upon a finding that the recipient is deemed not responsible to receive funds. Vendor Responsibility questionnaires expire six months from date of certification.

Please indicate one of the following:

1. A Vendor Responsibility Questionnaire has been filed online. **(Must be certified/updated within the last six months).** Date certified: _____
2. A Vendor Responsibility Questionnaire has been completed within the last six months and is attached hereto. Questionnaire can be found at:
<http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3290s.pdf>

APPENDIX H

PROCUREMENT LOBBYING DISCLOSURE PURSUANT TO SECTIONS 139-J AND 139-K OF STATE FINANCE LAW

(For Agreements of \$15,000 or more please complete this form.)

Statutory Summary

Changes to the New York State Finance Law (referred to as the “new State Finance Law”) effective January 1, 2006, significantly alter the administrative process for the development of State procurement contracts¹. The procedures discussed herein are put in place to address the new State Finance Law. The New York State Department of Economic Development recognizes the considerable additional responsibility that the new State Finance Law places on potential bidders (“Offerers”) as well as on the Department and we regret any inconvenience. The Department assures you that we are interested in receiving a proposal from your company. Among other things, the new law:

- a. Makes the States lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by the Department.
- b. Requires the Department to record all contacts made by lobbyists and contractors (you) about a governmental procurement so that the public knows who is contacting the Department about procurements.
- c. Requires the Department to designate persons who generally may be the only staff contacted relative to the Department’s procurement in a restricted period.
- d. Authorizes the imposition of fines and penalties against persons/organizations engaging in impermissible contacts about a Department procurement and provides for the debarment of repeat violators.
- e. Directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website.
- f. Expands the definition of lobbying to include procurement contracts.

Generally speaking, two related aspects of procurements were affected: (i) activities by the business and lobbying community seeking procurement contracts and (ii) activities involving governmental agencies establishing procurement contracts. The obligations imposed by State Finance Law Sections 139-j and 139-k are collectively referred to as the “new State Finance Law”. State Finance Law Sections 139-j and 139-k may be viewed at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-j.htm> and at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-k.htm>

The following contains language and forms (these forms must be completed and returned as part of your proposal, and when indicated at other times during this procurement process) to be reviewed and completed by you the bidder (“Offerer”), in compliance with sections 139-J and 139-k of the State Finance Law.

NYS Department of Economic Development Policy Language

Pursuant to State Finance Law §§139-j and 139-k, this Invitation for Bid includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Department and Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, are any member of the Department’s Contract Management or Publications Unit. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers contact only Department staff identified in the aforementioned section of this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> or by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41st Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. E-mail: Anne.Phillips@OGS.State.NY.US.

¹ “Procurement contract” shall mean any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, article eleven-B state finance law contracts, program contracts between not-for-profit organizations, as defined in article X1-B of the state finance law, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed procurement contracts.

Termination Provisions

The Department also reserves the right to terminate any PO resulting from this IFB in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this contract.

Form 1 - Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

State Finance Law §139-j(6)(b) provides that: Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer’s understanding of and agreement to comply with the Governmental Entity’s procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

The Department must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k.

Offerer affirms that it understands and agrees to comply with the procedures of the Department relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

Form 2 - Offerer’s Certification of Compliance with State Finance Law §139-k(5)

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

The Department must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity.

Offerer Certification:

I certify that all information provided to the Department with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

Form 4 - Report of Contact under State Finance Law §139-k(4)

THIS FORM TO BE COMPLETED AND RETURNED TO THE DEPARTMENT WHENEVER YOU CONTACT US DURING THE DESIGNATED PERIOD. ATTEMPTS TO CONTACT THE DEPARTMENT WILL NOT BE ACKNOWLEDGED UNLESS YOU PROVIDE THIS FORM. THIS INCLUDES THE SUBMISSION OF QUESTIONS REGARDING THIS IFB.

New York State Finance Law §139-k(4) obligates every Governmental Entity during the Restricted Period of a Procurement Contract to make a written record of any Contacts made. The term "Contact" is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the Governmental Procurement. In addition to obtaining the required identifying information, the Governmental Entity must inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the Governmental Entity.

It should be noted that State Finance Law §139-k(6) provides: [a]ny communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a "contact" within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section.

Offerers and those designated, employed or retained by Offerers are hereby advised of the Department's intention to record all Contacts.

Record of Contact Under State Finance Law §139-k(4)

To: The New York state Department of Economic Development

Regarding Procurement Project No.: _____ (See first page of this document) Date: _____

From: _____
(Name and title of Offerer)

Subject: Record of Contact under State Finance Law §139-k(4). In accordance with State Finance Law §139-k(4), the following information is provided).

Address of Offerer: _____

_____ Telephone Number: _____

Offerer's Place of Principal Employment (Name and Address of your Employer, may be different from the Offerer's name and address, if not state same as above).

Your Occupation: _____

1. Is the above named person or organization the "Offerer" in this governmental procurement? Please circle Yes or No

2. If no, was the above named person or organization retained, employed or designated by the "Offerer" to:

Appear before the governmental entity about the governmental procurement? Please circle – Yes or No
Contact the governmental entity about the governmental procurement? Please circle – Yes or No

APPENDIX J
Diversity Practices Questionnaire

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? **Yes or No**

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers? _____

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?² _____

4. Does your company provide technical training³ to minority and women-owned business enterprises? **Yes or No**

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? **Yes or No**

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? **Yes or No**

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? **Yes or No**

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? **Yes or No**

If Yes, complete the attached Utilization Plan

² Do not include onsite project overhead.

³ Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of
Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business **Error! Reference source not found.** _____

Address _____

City, State, Zip _____

COUNTRY OF _____

STATE OF _____

COUNTY OF _____) ss:

On the _____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State/Country of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

New York State

