

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A/ EMPIRE STATE DEVELOPMENT

REQUEST FOR PROPOSALS

PREPARATION OF ONLINE MAPPING APPLICATION FOR THE ENVIRONMENTAL ASSESSMENT
FORMS

New York State Urban Development Corporation d/b/a/ Empire State Development (ESD) is requesting proposals from a company experienced in the development of geographical or spatial mapping software to develop an online mapping application tool to be used in conjunction with the workbooks for the Department of Environmental Conservation's environmental assessment forms.

Bid due date and time: February 1, 2013 at 12 Noon

Specific submission instructions are detailed in Section VII. below.

I. INTRODUCTION

The New York State Department of Environmental Conservation (DEC) adopted revised model environmental assessment forms (EAFs) on January 21, 2012 that will become effective on April 1, 2013. In order to assist local governments with the use of the new forms, ESD seeks vendors who are qualified (as described within) to develop an online mapping application to support answering the place-based questions on the EAFs. The online mapping application will provide information to users, including local and regional economic development organizations, project sponsors and local governments that will be needed to answer several of the place-based questions on the revised EAFs.

II. BACKGROUND

Local government throughout the state must assess the environmental impacts of their actions, including permitting, funding, and direct actions using environmental assessment forms (EAFs). Projects or activities proposed by a state agency or unit of local government, and all discretionary approvals (permits) from a New York State (NYS) agency or unit of local government, require the preparation of an environmental assessment as prescribed by [6 NYCRR Part 617 State Environmental Quality Review \(SEQR\)](#). [Statutory authority: Environmental Conservation Law Sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113].

The existing EAFs are out-of-date and no longer adequately serve the purposes for which they were created. As a result, DEC adopted revised model EAFs on January 21, 2012 but do not

become effective until April 1, 2013. The EAFs are used by municipalities, local development corporations, local economic development zone administrative boards and state agencies. Each agency will likely conduct many SEQR reviews during the course of a single year so the number of times the forms are used can be well over 30,000.

The forms will be accompanied by a workbook which will assist the users in completing the EAF. The workbook will contain links to an interactive application which will provide information needed to complete the place based questions. This feature should provide the project sponsor and reviewing agencies the ability to complete a more thorough environmental review.

III. SCOPE OF WORK

The work that is the subject of this request for proposals (RFP) involves the development of an online mapping application that will provide a simple mechanism for answering the place-based questions contained in the EAFs and ensure the most current, best available spatial data is used to answer the questions. Copies of the revised forms can be found at: <http://www.dec.ny.gov/permits/70293.html>.

The respondent's proposal must include a solution that addresses the mandatory requirements outlined in **Appendix 1** - Online Mapping Application for the Environmental Assessment Form Technical Requirements. The respondent must include a work plan and schedule identifying how the work will be achieved by including all the requirements detailed in **Appendix 1**. The selected respondent must design and develop the solutions to function in DEC's current operating environment (see **Appendix 2**, Current DEC Environment). The application must be online and functional by April 1, 2013.

ESD is the entity with whom the selected respondent would enter into a contract. All work progress and deliverable requirements will be monitored, reviewed and commented upon by the DEC, and DEC will advise ESD on the acceptability of deliverables.

The selected respondent must be available to work closely with staff from Office of Information Technology Services (ITS) and Environmental Permits and ESD on all phases of the project.

The selected respondent's work will consist of the Project Approach outlined below and more specifically defined in the respondent's Work Plan submitted in the proposal.

IV. PROJECT APPROACH

1) Work Planning and Schedule

A draft work plan will be developed based on the tasks included in the scope of work with refinements as needed to ensure that the planned tasks include all required

activities and deliverables. A schedule will be developed to guide the execution of the tasks.

Deliverables:

- Draft Work Plan and Schedule

2) System Analysis and Detailed Design

a) *Requirement Definition and System Analysis*

ITS will assign a Project Manager and GIS Technical Lead to work with the selected respondent on all phases of the project. This will include system analysis and design activities. The team will begin with a series of information gathering sessions to gather requirements. The Requirements and Systems Analysis will serve to document in detail the system requirements necessary to meet the needs of the project.

These sessions will focus on gaining a common understanding of the scope of work for the interactive map application, which will support the public in answering spatially-related questions on the EAF. The team will also begin to explore the workflow and information flows for the application.

b) *Detailed Design*

The detailed design iteration will serve to document the system interface “look and feel” and detail the precise application and application flow, data structures, and interface (if applicable) with the EAF.

A series of facilitated design sessions will be held to gain input into the system prototype, and overall system navigation. These sessions will also be used to capture in detail the business rules and logic that is required. Using the input gathered during the onsite sessions a series of detailed design deliverables will be developed for team review and comment.

Deliverables:

- Project Requirements Document
- Design Document

3) System Development

System Development

The construction of the application will begin once the project team has approved the detailed design of the deliverable. A progression of development tasks will be performed which iteratively build upon one another.

Deliverables:

- System Design Document
- Data Dictionary and Data Model

- Technical Documentation

4) Integration Testing and Implementation

a) Deploy Application in DEC Environment

The unit tested application will be deployed first in the DEC Development Environment, and upon successful deployment, into the Test Environment. Baseline testing will be performed to confirm that the application works as expected in the new environment and to help identify any system performance issues.

b) Integration Test Application

The selected respondent will be responsible for training the project team and provide support throughout the testing phase. Project team members will perform integration testing of all components of the system. The results of each test and re-test will be recorded. Issues will be logged in an issue management system.

c) Resolve Integration Testing Issues

The results of system testing will be used to correct any coding errors and omissions, resulting in an enhanced version of the application. This new version of the application will be deployed in the DEC test environment, ready for Acceptance Testing.

d) Perform Acceptance Testing

This final round of testing will both confirm that the issues identified during Integration Testing have been appropriately resolved, and allow the project team the opportunity to verify that the system has implemented the system requirements as defined. Completion of this round of testing, and subsequent DEC acceptance of the system, is a pre-requisite for implementation of the system into the DEC production environment.

e) Resolve Acceptance Testing Issues

The results of the acceptance testing period will be used to correct any final coding errors, resulting in a final version of the application. This final release of the new system will be deployed in the DEC production environment, ready for Acceptance Testing.

f) Migration to Production

This task involves migrating from the test environment to production. Once acceptance testing is complete the production environment will be set up. The selected respondent's project team will work with DEC technical staff to install the production version of the application and database in the DEC environment.

g) Technical Transfer

The selected respondent's project team will work with designated Department ITS staff to transfer knowledge to develop in-house expertise for continued maintenance of the system.

Deliverables:

- User Test Plan
- Application

5) Training and Documentation

- a) The selected respondent's project team will train DEC Environmental Permit staff to understand and use the application.
- b) Instructions for use of the application will be documented in a series of on-line help pages.

All vendor work product will become the property of the State of New York by and through the DEC and shall be submitted in a format directed by ESD and the DEC.

V. QUALIFICATIONS

The selected respondent must possess a minimum of five (5) years experience with ArcGIS Server software and a minimum of three (3) years experience developing interactive mapping applications with FLEX. The selected respondent must have conducted at least one engagement for which it has designed, developed, and implemented an interactive mapping application in an ArcGIS Server (v.9.3 or later) environment in the last two (2) years. The engagement must have been similar in scope to that described in this RFP.

VI. PROPOSAL REQUIREMENTS

All quotations submitted in response to this RFP must include the following information. Failure to submit any of the following proposal requirements may result in your submission being considered non-responsive and may result in elimination from further consideration.

Proposal submissions must include the following components:

- **Resume** - A business resume detailing that the respondent submitting the proposal has the requisite expertise as described above in the Qualification Section to develop an online mapping application. All respondents must submit a sample of supporting documentation prepared as part of a previous project. This documentation may be a user manual, troubleshooting guide or design document.
- **Employee Roster** - All personnel participating in the preparation of the application must be identified. Any sub-contractors must provide the same information identified in this RFP.
- **Pricing Worksheet** - All vendors must complete and submit **Parts 1 & 2 of Appendix 3** which details the cost associated with the successful implementation of the proposal and all additional fees.

- **Work Plan and Schedule** - The respondent must include a work plan identifying how the work will be achieved by including all the requirements detailed in **Appendix 1**. The schedule must include a timetable for project completion including milestone dates. (e.g., design, development, testing, implementation & training).
- **MWBE** - Certification pursuant to Executive Law 15 – if the respondent or any sub-contractor is either a minority or woman owned enterprise recognized by NYS.
- **Reference Form** - A list of five (5) business references must be listed in a priority order on the Reference Form, attached hereto as **Appendix 4**. References will be called in the order they appear on the reference list until three responses are obtained. The list shall include clients whose profile is similar to those requirements described in Scope of Work. The contact person for the listed references must be available for interviews by telephone. If additional references are provided, they must be listed in priority order. In the event that the named contact person is unavailable, the next available reference in order will be contacted until three responses have been obtained. Please include Name of Organization, Address and Website URL, Phone Number and E-mail, Contact Name and Title and Scope of Work and Dates of Completion. The list shall include clients for whom work has been performed in the past 5 years. A brief paragraph describing the project must also be included.
- **Required Forms**
 - a. **Schedule A** - All respondents to this RFP will be required to comply with ESD's Terms & Conditions (Schedule A). Respondents will also be required to comply with State Tax Law Section 5A and State Finance Law Section 139j-139k which are included in Schedule A, which can be found at:
http://intranet.empire.internal/Resources/Data/Procurement/ProcurementGuidelines/Nov2009_ScheduleA.pdf
 - b. **Proof of Insurance** - Current insurance coverage, including amounts and policy expiration dates (see specific requirements in Section XII).
 - c. **Status Report** - Provide current status report of any and all litigation during the past three (3) years for respondent and any team member.
 - d. **VendRep Form** – provide Vendor Responsibility Questionnaire as described more specifically in Section XI. below.

Prior to award, ESD reserves the right to seek clarifications, request revisions, or to request any information deemed necessary for proper consideration of quotations from all respondents. Failure to provide requested information may result in rejection of the quotation.

The total amount available for this contract is not to exceed \$100,000. Proposals should, however, be based on an accurate accounting of actual and necessary costs for preparing the

mapping application. Assignment of personnel for this contract should be made in consideration of this budget amount.

VII. PROPOSAL SUBMISSION PROCEDURES

A copy of your response with appropriate contact information must be received no later than 12:00 noon on February 1, 2013. Proposals must be submitted to both the ESD in New York City and the DEC in Albany, New York. Proposals must be clearly labeled on the outside of the envelope or package with the following statement:

Online Mapping Application for the Environmental Assessment Forms
Quote Open Date and Time: February 1, 2013 at 12:00 p.m.
Quote - DO NOT OPEN

Three (3) copies of proposal must be sent to the following:

Jennifer Fitzpatrick, Project Manager
New York State Office of Information Services
625 Broadway, 3th Floor
Albany, NY 12233-2750

One (1) copy of proposal must be sent to the following:

Rachel Shatz
VP, Planning & Environmental Review
Empire State Development
633 Third Avenue, 34th Floor
New York, NY 10017

All copies must be received not later than 12:00 noon on February 1, 2013.

Please note that the above deadline is for receipt of the proposal submissions at the above locations, not for mailing or entrusting to a delivery service. Late submissions will be returned unopened. No electronic or fax submissions will be accepted.

ESD will accept written questions via email by the date indicated below (see Schedule of pertinent dates) citing the particular proposal section and paragraph number the question pertains to. Written questions must include the requestor's name, e-mail address, and the interested company the requestor is representing. Questions should be sent to mapapp@esd.ny.gov. Responses to all appropriate questions will be posted on the ESD website: <http://www.esd.ny.gov/CorporateInformation/RFPs.html> no later than January 28, 2013.

It is the responsibility of the respondent to check the ESD website for any RFP updates and responses to questions.

No contact related to this solicitation with ESD Board members, ESD and DEC staff or consultants, other than as specified in this RFP, will be allowed during the pendency of this RFP. Any such contact by a respondent is unlawful will be grounds for disqualification.

If a respondent discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, notification should be sent immediately to the above e-mail address requesting written clarification or modification to the RFP. Should ESD find it necessary, modification to the RFP will be made by addenda. It is the responsibility of the respondent to check the ESD website (see the link provided above) for any information regarding addenda to this RFP. Respondents should note that all clarifications, including those related to the terms and conditions of the contract are to be resolved prior to the submission of a proposal. All respondents are obligated to update any changes in the proposal prior to its due date.

Schedule of pertinent dates

Release of RFP	January 11, 2013
Deadline for Submission of Questions	January 21, 2013
Posting of Answers on ESD Website	January 28, 2013
Proposal Submission Deadline	February 1, 2013

Following selection of a candidate, ESD will prepare a contract defining all project terms and conditions and the selected candidates responsibilities in conformance with "Schedule A" which can be found at:

<http://esd.ny.gov/CorporateInformation/RFPs.html>

ESD will notify each respondent to the status of the selection process once a candidate has been selected.

VIII. STATEMENT OF LIMITATIONS

This RFP, submissions from respondents to this RFP, and any relationship between ESD and respondents arising from or connected or related to this RFP, are subject to the specific limitations expressed below, as well as the terms contained elsewhere in this RFP. By responding to this RFP, respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the entity acknowledges and accepts ESD's rights as set forth in the RFP, including this Statement of Limitations.

The issuance of this RFP and the submission of a proposal by any respondent or the acceptance of such response by ESD does not obligate ESD in any manner whatsoever. Legal obligations

will only arise upon execution of a formal contract by ESD and the firm(s) selected by ESD.

ESD reserves the right (i) to amend, modify, or withdraw this RFP, (ii) to revise any requirements of this RFP, (iii) to require supplemental statements or information from any respondent, (iv) to accept or reject any or all responses thereto, (v) to extend the deadline for submission of responses thereto, (vi) to negotiate or hold discussions with any respondent and to correct deficient responses which do not completely conform to the instructions contained herein, and (vii) to cancel, in whole or part, this RFP, if ESD deems it in its best interest to do so. ESD may exercise the foregoing rights at any time without notice and without liability to any respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of the respondent.

All information submitted in response to this RFP is subject to the Freedom of Information Law (FOIL), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, all Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

This RFP shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a response to the RFP. ESD will not be responsible for or reimburse any costs incurred by respondents related to preparing and submitting a response to this RFP, attending oral presentations, or for any other associated costs. All material submitted in response to this RFP will become the sole property of DEC and ESD. DEC and ESD expressly reserves the right to utilize any and all ideas submitted in the proposals received unless covered by legal patent or proprietary rights.

ESD reserves the option to hold oral interviews as part of the selection process. In the event interviews are held, respondents will be notified accordingly.

A respondent accepts all provisions of this RFP by submitting a proposal and is responsible for the accuracy of its submission.

IX. METHOD OF AWARD

A. Selection Process

ESD will award the Contract based upon evaluation of all aspects of the proposal according to the needs of ESD and the best interests of NYS with award going to the Vendor whose proposal provides the best value.

B. Preliminary Review

ESD reserves the right to reject and return to the proposer all proposals received after the RFP due date and time. All proposals will be reviewed to determine if they contain all required submittals specified in this RFP. Incomplete proposals may be rejected.

C. Evaluation

The purpose of the evaluation is to examine the responses for compliance with this RFP, and to identify the complying firms that have the highest probability of satisfactorily performing the scope of work. The evaluation will be conducted in a comprehensive and impartial manner as set forth herein.

D. Criteria for Selection

In evaluating proposals submitted pursuant to this request, ESD places high value on the following factors, not necessarily in order of importance:

- The quality of the proposal in addressing the tasks described above.
- Demonstrated adherence to the submission procedures contained in Sections VI and VII.
- Items described in Section V Qualifications and Section VI Proposal Requirements.
- Fee and schedule.

E. Interviews

ESD reserves the right to determine whether interviews will be necessary. The purpose of the interview is to further document the proposer’s ability to provide the required services, and to impart to the committee an understanding of how specific services will be furnished. The proposed engagement partner, as well as other key personnel proposed to provide the services, must be present and participate in the interview. The interview will be evaluated on the basis of whether it substantiates the characteristics and attributes claimed by the proposer in its written response to this RFP and any other information requested by the committee prior to the interview.

X. AFFIRMATIVE ACTION

See Attachments A and B.

XI. PROCUREMENT AND TAX LAW REQUIREMENTS

State Tax Law Section 5-a.

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESDC from approving any such contract with any

entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. **To comply with STL 5-a, all respondents to this solicitation must include in their responses a properly completed Form ST-220-CA. A copy is accessible at the Required Forms for Vendors link at the ESDC web site: <http://esd.ny.gov/CorporateInformation/RFPs.html>.**

Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-contractors, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-contractors.

State Finance Law Sections 139-j and 139-k

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that (x) all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed below; (y) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and (z) periodic updating of such forms during the term of any contract resulting from this RFP. **Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law as part of their submittal.**

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

<http://esd.ny.gov/CorporateInformation/RFPs.html> (under “ESDC Policy Regarding Permissible Contacts under SFL 139”).

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and the sub-contractors complete the forms required above.

Vendor Responsibility

ESD encourages vendors to register in the State's Vendor Responsibility System (VendRep System). The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company's trade industry.

XII. INSURANCE REQUIREMENTS:

The selected candidate will be expected to comply with ESD's insurance requirements, as listed below.

- A. Commercial General Liability insurance - \$1 million per occurrence / \$2 million aggregate.
- B. Auto Liability insurance - \$1 million per occurrence / \$1 million aggregate
- C. Excess Umbrella Liability insurance - \$1 million per occurrence / \$ 1 million aggregate minimum
- D. Professional Liability insurance - \$1 million minimum (preferably \$5 million)
- E. Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits.
- F. Must show evidence of Disability insurance coverage at State statutory limits.

- G. The NYS Urban Development Corporation d/b/a Empire State Development must be named as an additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Auto Liability, and Excess Liability policies
- H. All policies above should include a waiver of subrogation in favor of the NYS UDC d/b/a ESD.

Appendix 1

Online Mapping Application for the Environmental Assessment Forms Technical Requirements

Technical Design

- The application will be an interactive map application using ArcGIS Server services and ESRI's Flex Application Programming Interface (API), see Appendix 2 for current DEC environment.
- The application will be hosted by DEC.

Assumptions

- The application will be stand alone, and will not provide any data transfer or communication to other systems, forms, etc.
- EAF Applicants will be provided with an Adobe PDF version of the short and long EAF Forms. The PDFs will be stand alone, and will not connect to the application being developed as part of this work effort.
- There is a web-based workbook which is under development. This will provide instructions on the completion of EAF questions. For place-based questions in the EAF, an html link will be provided from the workbook web page to the application being developed as part of this proposal.
- DEC will take lead responsibility in identifying and creating the mxd/msd(s) used to create web map services for the geographic data sets necessary to answer the place-based the questions. The proposal will be responsible for creating the web map services.

Descriptive Capabilities

- Some of the questions require sensitive data (e.g. archeological sites, endangered species) to answer. That data may not be exposed to the end user. Rather, spatial queries will be necessary to provide boolean results.
- The services and application must be coded and configured in a way that excludes any possibility of users downloading geospatial data or retrieving geospatial data.
- The user will be presented with the EAF place-based questions, and provided corresponding wizard-like dialogs, accompanying tools, and workflows to answer each specific question. The actual design of this will be determined through a series of workshops led by the contractor.
- Answers to each question will be presented in a manner and format which will facilitate easy transfer to the fillable PDF.
- The application will provide data, tools, and workflows necessary to answer the place-based questions on the EAF. Those questions include:

FULL FORM EAF (FEAF)- Part One	
Question	Data Required to Answer
B. Government Approvals, Funding or Sponsorship	
B.i.i Is the project site within a Coastal Area or the waterfront area of a Designated Inland Waterway?	Coastal Management Boundaries
B.i.ii Is the project site located in a community with an approved Local Waterfront Revitalization Program?	LWRP
B.i.iii Is the project site within a Coastal Erosion Hazard Area?	Coastal Erosion Hazard Areas
C. Planning and Zoning	
C.2.b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?	Remediation – Brownfield – Heritage Areas State - Federal
D.	
D.2.g. i. Is the project site located in an Air-quality non-attainment area?	Air Permitting Areas of Concern (Non-Attainment Areas)
E.	
E.1.e. Does the project site contain an existing dam?	Dams
E.1.f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?	Regulated Facilities
E.1.h.i Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database?	Remediation
E.1.h.iii Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation Database?	Remediation
E.2 Natural Resources On or Near Project Site	
E.2.c Predominant Soil Type(s) present on Project Site?	Soil Types
E.2.g Are there any unique geologic features on the project site?	Unique Geologic Features
E.2.h. Surface water features.	

E.2.h.i Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes?)	NYS Regulatory Freshwater Wetlands Water Quality Classification Protected
E.2.h.ii Do any wetlands or other waterbodies adjoin the project site?	NYS Regulatory Freshwater Wetlands Water Quality Classification Protected
E.2.h.iii Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?	Wetlands, National Wetlands Inventory NYS Regulatory Freshwater Wetlands Water Quality Classification Protected
E.2.i. Is the project site in a designated floodway?	FEMA Flood Data
E.2.j. Is the project site in the 100 year Floodplain?	FEMA Flood Data
E.2.k. Is the project site in the 500 year Floodplain?	FEMA Flood Data
E.2.l. Is the project site located over, or immediately adjoining, a primary, principal or sole aquifer?	Aquifers, Primary
E.2.o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species?	Filtered Natural Heritage Program EO
E.2.p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern?	Filtered Natural Heritage Program EO
E.3. Designated Public Resources On or Near Project Site	
E.3.a. Is the project site, or portion of it, located in a designated agricultural district certified pursuant to Agricultural and Markets Law, Article 25-AA, Section 303 and 304?	Agricultural Districts
E.3.c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Landmark?	National/State Register Site
E.3.d Is the project site located in or does it adjoin a state listed Critical Environmental Area?	Critical Environmental Areas
E.3.e. Does the project site contain, or is it substantially contiguous to, a building, archeological site or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the	National/State Register Site Archeological Sites

State or National Register of Historic Places?	
E.3.f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archeological sites on the NY State Historic Preservation Office (SHPO) archeological site inventory?	National/State Register Site Archeological Sites
E.3.h. Would the project site be visible from any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?	State – (Federal) Historic Sites Scenic Areas of Statewide Significance Scenic Byways
E.3.h. <i>ii</i> Would the project site be visible from any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? Nature of, or basis for, designation (e.g. established highway overlook, state or local park, state historic trail or scenic byway, etc.	State – (Federal) Historic Sites (Scenic Areas of Statewide Significance and Scenic Byways)
E.3.i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?	Wild Scenic and Recreational Rivers
FULL FORM EAF (FEAF)- Part Two	
Question	Data Required to Answer
1. Impact on Lands	
1.g. The proposed action is, or may be, located within a Coastal Erosion Hazard Area.	Coastal Erosion Hazard Areas
2. Impact on Geological Features	
2.b. The proposed action may affect or is adjacent to a geological feature listed as a Registered National Landmark	National Natural Landmarks (polygon)
3. Impacts on Surface Water	
3.c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or waterbody	Wetlands, National Wetlands Inventory NYS Regulatory Freshwater Wetlands Water Quality Classification Protected
3.d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other waterbody	Tidal Wetlands (regulated under Article 25) Wetlands, National Wetlands Inventory NYS Regulatory Freshwater Wetlands Water Quality Classification Protected
3.j. The proposed action may involve the application of the pesticides or herbicides in or around any waterbody.	Tidal Wetlands (regulated under Article 25) Wetlands, National Wetlands Inventory NYS Regulatory Freshwater Wetlands Water Quality Classification Protected
4. Impact on Groundwater	
4.f. The proposed action may require the bulk	Aquifers, Primary

storage of petroleum or chemical products over ground water or an aquifer.	
5. Impact on Flooding	
5a. The proposed action may result in development in a designated Floodway	FEMA Flood Data
5.b. The proposed action may result in development within a 100 year floodplain.	FEMA Flood Data
5.c. The proposed action may result in development within a 500 year floodplain.	FEMA Flood Data
5.f. If there is a dam located on the site of the proposed action, the dam has failed to meet one or more safety criteria on its most recent inspection.	Dams
6. Impacts on Air	
6.a. If the proposed action requires federal or state air emissions permits, the action may also emit one or more greenhouse gases at or above the following levels.	Air Monitoring Stations Air Permitting areas of concern
7. Impacts on Plants and Animals	
7.a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by NYS or the federal government, that use the site, or are found on, over, or near the site.	Natural Heritage Program EO – Or Filtered
7.b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by NYS or the federal government.	Natural Heritage Program EO – Or Filtered
7.c. The proposed action may cause reduction in population or loss of individuals of any species of special concern or conservation need, as listed by NYS or the federal government, that use the site or are found on, over, or near the site.	Natural Heritage Program EO – Or Filtered
7.d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by NYS or the federal government.	Natural Heritage Program EO – Or Filtered
7.e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological	Natural Heritage Program EO – Or Filtered National Natural Landmarks (Polygon)

community it was established to protect.	
8. Impacts on Agricultural Resources.	
8.b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.).	Agricultural Districts
8.d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	Agricultural Districts
10. Impact on Historic and Archeological Resources.	
10.a. The proposed action may occur wholly or partially within, or substantially contiguous to, any building, archeological site or district which is listed on or has been nominated by the NYS Board oh Historic Preservation for inclusion on the State or National Register of Historic Places.	National/State Register Site Archeological Sites
10.b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archeological sites on the NYS Historic Preservation Office (SHPO) archeological site inventory	Archeological Sites
12. Impact on Critical Environmental Areas.	
12.a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	Critical Environmental Areas
12.b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA	
16. Human Health	
16.b. The site of the proposed action is currently undergoing remediation.	Remediation
16.g. The proposed action involves construction or modification of a solid waste management facility.	Regulated facilities

SHORT FORM EAF	
Question	Data Required to Answer
7. Is the site of the proposed action located in,	Critical Environmental Areas

or does it adjoin, a state listed Critical Environmental Area?	
12a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	National / State Register Site
12b. Is the proposed action located in an archeological sensitive area?	Archeological Sites
13a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency	Wetlands, National Wetlands Inventory NYS Regulatory Freshwater Wetlands
13b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres:	NYS Regulatory Freshwater Wetlands
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed INFO by the State or Federal government as threatened or endangered?	Natural Heritage Program EO – Or Filtered
16. Is the project site located in the 100 year flood plain? Additional Information - FEMA FEMA Map Services	FEMA Q3 Flood data (We might be able to use the NEPA mapper)
18. Does the Proposed site include construction of other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dams)?	Dams
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?	Regulated Facilities (Landfill areas of Solid Waste)
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?	Regulated Facilities (Landfill areas of Hazardous Waste)
SHORT FORM (SEAF)- Part Two	
Question	Data Required to Answer
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environment Area (CEA)?	Critical Environmental Areas

8. Will the proposed action impair the character or quality of important historic, archeological, architectural or aesthetic resources?	National/State Register Site Archaeological Sites
9. Will the proposed action result in an adverse change to natural resources (e.g. wetlands, waterbodies, groundwater, air quality, flora and fauna)?	Wetlands, National Wetlands Inventory NYS Regulatory Freshwater Wetlands Air Monitoring Stations Water Quality Classification Protected

Application Development Requirements

The preferred language for access to ArcGIS Server services is Flex. Variables that are liable to change shall not be hard-coded into application code. Instead, this type of information should be specified in and read from a properties, configuration or data file. The reason is so that variables can be easily changed as the application migrates from development to test to production, or when a server is replaced, other infrastructure change is made, feature class names change, etc. Examples of the type of information that must be easy to change are:

- server name
- geodatabase name
- ArcSDE port number
- feature class name
- SDEHOME path
- web service URL(s) for map services, geocode services, etc.
- name(s) of connection file(s)

The properties or configuration file should be a plain text file or, if it is an XML file, the variables should be defined near the top of the file, separately from any logic. The properties or configuration file should include comments that define each variable. Use meaningful/self-documenting variable names.

System Security and Back-up Requirements

- System will be web-based and comply with NYS’s Mandatory OFT Technology Policy NYS-P08-005, Accessibility of Web-Based Information and Applications.
- The contractor must be responsible for complying with NYS Technology Law, including the Internet Security and Privacy Act, and will be responsible for any notifications required by Law. Any notifications must be approved by the DEC.
- Access to DEC data must be restricted to those contractor employees with a need to access the information. The contractor will maintain a list of all its employees who have had access to DEC data, and supply this list to the DEC upon request.
- DEC data may not be made available to any other person or organization except as described in this document and the contract or as otherwise authorized by the DEC in writing.
- In the event that any part of the work is subcontracted, the contractor is responsible for all requirements identified in this document.

- The contractor must be responsible for complying with the most recent version of NYS' Office of Cyber Security Information Security Policy – Cyber Security Policy P03-002.
- The contractor must document its information-security policy, standards and procedures, making them available for review by ESD and DEC upon request.

Documentation Deliverables

- Work Plan
- Schedule
- Project Requirements Document
- Design Document
- System Design Document
- Data Dictionary and Data Model
- Technical Documentation
 - Installation instructions
 - The location of the application
 - A list of files in the application and the function of each file
 - A list of map documents and their location
 - A list of data layers which specifies the fields and expressions used for:
 - scale dependencies for drawing and labeling
 - labels
 - definition queries
 - searches
 - A troubleshooting guide
 - Information on steps to follow to change parameters and migrate the changed application to production.
- User Test Plans
- On-Line Help - as part of the development effort the system must provide an on-line help for Users. Provide a series of simple pull-down menu style HELP pages to assist user education and utilization of all application functions. The Help pages will be assembled by topic.
- Application

Technical Requirements

In addition to meeting the requirements above, outlined as tasks and deliverables, the contractor must adhere to the following technological requirements:

1. The contractor must design and develop the solutions to function in DEC's current operating environment. This means that all solutions developed must be compatible with the most current hardware and software versions at DEC. See **Appendix 2** for details on DEC's operating environment as of 11/19/12. Note that the versions listed in this Appendix may be upgraded by the time the project begins.

2. The contractor cannot make use of any software that is not already owned by DEC as part of the tools and workflows developed, without prior consent by DEC. DEC does not intend to purchase hardware or software as part of this project. Preferred solutions developed will utilize technologies already owned by DEC and/or free, open-source tools, unless otherwise agreed upon. DEC reserves the right to approve or deny the use of any software or tools proposed by the contractor.
3. The contractor must use scripting and programming/coding languages and platforms that are fully supported by ESRI and are compatible with the software and hardware versions implemented at DEC at the time of project initiation. For example, ESRI states the following:

“ArcGIS 10 is the last release to include Visual Basic for Applications (VBA), so it is important to migrate customizations currently implemented using VBA to another supported customization environment. VBA no longer provides the optimum toolset for customizing ArcGIS Desktop.”
- Therefore, VBA shall not be used by the contractor as part of the products developed for this project.
4. Off-site development must take place in the DEC environment. The contractor will be provided remote access to DEC environments at the discretion of the DEC.
5. The contractor will be on-site to assist DEC staff in deployment to test and production.

Responsibilities of DEC

1. For initial system development and production deployment, the DEC will supply all data necessary to support geodatabase and tool/workflow development.
2. DEC will provide documentation and other information that will assist the contractor in all efforts to successfully complete the project.
3. DEC will provide a project manager to act as a liaison between Division of Environment Permits, Office of Information Services (ITS), and the contractor.
4. DEC will provide the workstation and/or network privileges necessary when the contractor is working on-site. Access to these resources must be coordinated between the contractor and ITS staff.
5. DEC staff will be available to test the solution, both on DEC network and on the internet to simulate public access.
6. DEC staff will review project deliverables and provide written sign-offs (either acceptance or rejections) to the Contractor within the prescribed period of time (to be defined in the Project Plan).

Appendix 2

Current DEC Environment

CURRENT DEC ENVIRONMENT

Details on the DEC test and production environments are provided below. This information describes the current environment as of November 19, 2012. Note that in some cases, upgrades to newer versions are planned in the upcoming months. The consultant is required to develop and implement the geodatabases and workflows using whichever versions are deployed within the Agency at the time of development.

Database/ArcSDE Environment:

- ArcSDE 9.3.1 Service Pack 1 in UNIX
 - Multiple environments:
 - Development ArcSDE 10
 - Test
 - Production
- ArcGIS Desktop 10 SP3
 - Central Office staff use ArcGIS on the desktop
 - ArcGIS is accessed through Citrix for Regional staff on DEC WAN and non-WAN
- Oracle 11.2.0.1.0
- Unix Solaris 10
- UNIX file systems accessed by Desktop ArcGIS via SAMBA

AGS 10.0 on a Windows 2008 server R2

DEC public applications are served via a reverse proxy server to integrate the applications into a consistent web server name (www.dec.ny.gov). Our current applications are written in Java or Cold Fusion, and will be running on an a 64 bit Linux-based application server. The application must work when running in a DMZ network.

Appendix 4 Reference Form

REFERENCE INFORMATION

This completed form **must be submitted** along with the proposal. A minimum of five (5) references must be provided. Additional references are allowed.

These references will be assessed as detailed in Section VI of the RFP. Each reference must include a Name of Organization, Address and Website URL, Phone Number and E-mail, Contact Name and Title and Scope of Work and Dates of Completion.

References

Name of Organization	Address and Website URL	Phone Number and Email	Contact Name and Title	Scope of Work and Dates of Completion
1.				
2.				
3.				
4.				
5.				

ATTACHMENT A

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of ESD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ESD establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 20% for MWBE participation. A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that ESD may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://esd.ny.gov/MWBE.html>.

For guidance on how ESD will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and ESD may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract (“Bidder/”) agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan (see Attachment C) with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD.
- B. ESD will review the submitted MWBE Utilization Plan and advise the Bidder of ESD acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the ESD Division of MWBD, 633 Third Avenue, 33rd Floor, New York, NY 10017, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on MWBE Utilization Plan. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. ESD may disqualify a Bidder as being non-responsive under the following circumstances:
 - a) If a Bidder fails to submit a MWBE Utilization Plan;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If ESD determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor’s Quarterly M/WBE Contractor Compliance & Payment Report (see Attachment E) to the ESD Division of MWBD, 633 Third Avenue, 33rd Floor, New York, NY 10017 by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (see Attachment D) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the ESD a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

ATTACHMENT B

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. GENERAL PROVISIONS

- A. The ESD 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 or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State ESD (the “ESD”), to fully comply and cooperate with the ESD 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 Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein 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, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. CONTRACT GOALS

- A. For purposes of this procurement, the ESD hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:
<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, 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 the 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 ESD for liquidated or other appropriate damages, as set forth herein.

III. 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:
1. 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.
 2. The Contractor shall submit an EEO policy statement to the ESD within seventy two (72) hours after the date of the notice by ESD to award the Contract to the Contractor.
 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the ESD may provide the Contractor or Subcontractor a model statement (see Form – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The Contractor’s EEO policy statement shall include the following language:
 - a. 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.
 - b. 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.

- c. 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.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, 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 the Contract.

C. Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the 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 ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the ESD 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.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. 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 subcontractor'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 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.

- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military

status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

- A. For Waiver Requests Contractor should use Form – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the ESD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor 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 ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business 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 to the ESD 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.

VII. LIQUIDATED DAMAGES - MWBE PARTICIPATION

- A. Where ESD determines that Contractor is not in compliance with the requirements of the Contract 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 ESD liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. 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 ESD, Contractor shall pay such liquidated damages to the ESD within sixty (60) days after they are assessed by the ESD unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development 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 ESD.

After Word version is approved, will insert into final PDF EEO form, M/WBE Utilization form, Waiver Request Form, and M/WBE Contractor Compliance