

REQUEST FOR PROPOSAL

COMPLIANCE MONITORING SERVICES

COLUMBIA UNIVERSITY EDUCATIONAL MIXED-USED DEVELOPMENT

LAND USE IMPROVEMENT AND CIVIC PROJECT

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Empire State Development
633 Third Avenue, New York, New York 10017 Tel (212) 803-3819
Web Site: www.empire.state.ny.us

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I. INTRODUCTION

A. Invitation to Submit Proposal

New York State Urban Development Corporation d/b/a Empire State Development (“**ESD**”) issues this Request for Proposal (“**RFP**”) seeking to select a consultant to provide compliance monitoring services for an initial engagement of up to three years in connection with the Columbia University Educational Mixed-Use Development Land Use Improvement and Civic Project (the “**Project**”).

ESD Directors approved a Modified General Project Plan for the Project in 2008 (the “**GPP**”). The GPP anticipates that Columbia University (“**Columbia**”) will construct new state-of-the-art educational facilities and open spaces on a 17-acre site in the Manhattanville section of West Harlem in the City of New York, and will take other actions that will benefit the surrounding community. ESD is assisting Columbia in implementing the Project.

Consistent with the GPP, Columbia has signed a Declaration of Covenants and Restrictions, dated as of December 14, 2011 (the “**Restrictive Declaration**”), under which Columbia is obligated to, among other things: (a) construct and complete the Project in stages within certain construction milestones; (b) design and construct the Project in an environmentally sustainable manner; (c) relocate occupants of approximately 135 dwelling units on the Project site to alternate housing; (d) provide specific community benefits including but not limited to new educational opportunities, public access to facilities, transportation improvements, and job training; and (e) seek affirmative action contracting and hiring goals during construction and operation of the Project. The obligations of Columbia described in Sections 2.07, 2.10, 5.03, 5.05, 5.06 and 5.07 (other than obligations under Section 5.07(e)) of the Restrictive Declaration are collectively referred to in this RFP as the “**GPP Obligations**.” A copy of the Restrictive Declaration can be located at [www.nylovesbiz.com / Subsidiaries & Development Projects/Columbia Manhattanville Project/Additional Resources](http://www.nylovesbiz.com/Subsidiaries%20&%20Development%20Projects/Columbia%20Manhattanville%20Project/Additional%20Resources).

The consultant retained by ESD to provide compliance monitoring services will be designated the “**GPP Monitor**” to review compliance documentation provided by Columbia, to periodically report to ESD on compliance issues, and to report to and advise ESD concerning Columbia’s compliance with the GPP Obligations. Columbia is required to fund the GPP Monitor for a minimum period of 25 years. ESD intends to initially engage the consultant to serve as GPP Monitor for a period of one year, with ESD retaining the option to renew the engagement for two additional terms of one year each.

In addition to the GPP Obligations set forth above, Columbia has certain environmental obligations set forth in the Final Environmental Impact Statement (“**FEIS**”) prepared for the Project and in the Restrictive Declaration. Columbia’s compliance with such environmental obligations is outside the scope of this RFP, and will be monitored by a separate consultant (the “**FEIS Monitor**”) retained by Columbia for the benefit of the City of New York. ESD’s selected GPP Monitor may not serve as the FEIS Monitor.

B. RFP Schedule

Post and mail RFP	Monday, February 27, 2012
Pre-Proposal Information Session and Site Tour	Tuesday, March 13, 2012 1 to 4 pm
Last Day for Respondents to Submit Questions (if any) via E-mail	Tuesday, March 20, 2012
Last Day for ESD to Post Addendum (if any) on Web Page	Friday, March 23, 2012
<u>RFP RESPONSES DUE</u>	<u>3:00PM Thursday, April 5, 2012</u>
Shortlist interviews beginning	promptly after ESD review of responses
Consultant selected	promptly after conclusion of interviews

II. BACKGROUND

ESD was created by the New York State Legislature in 1968 (see McKinney's Unconsolidated Laws §6251 *et seq.*). ESD is authorized to undertake projects that: (a) address the need for educational facilities; and (b) ameliorate substandard and insanitary conditions; both of which will be accomplished by the Project.

The Project site is located in the Manhattanville section of West Harlem, Manhattan, City of New York, approximately a half mile north of Columbia's existing Morningside Heights campus and one and three-quarters miles south of the Columbia University Medical Center campus. The Project site is bounded by and includes West 125th Street on the south, West 133rd Street on the north, Broadway on the east and Twelfth Avenue on the west, as well as certain areas located beneath streets owned by the City of New York within this area. The Project site also consists of an area bounded by and including Broadway, West 133rd and West 134th Streets on the south and north, and a line between West 133rd and West 134th Streets approximately 200 feet east of Broadway, along with an irregularly-shaped block enclosed by and including Broadway on the west, Old Broadway on the east, West 131st Street on the south, and West 133rd Street on the north. A map depicting the Project site appears at Exhibit A to the Restrictive Declaration. As indicated on the map, the Project site extends over all or part of seven city blocks.

Major components of the Project include: development of ~4.8 million square feet above-grade in up to 16 new buildings (and renovation of one building) for primarily academic and academic research uses and for university housing; construction of ~2 million square foot, multi-level, below-grade facility that would connect many of the new buildings and provide shared support and other facilities; and creation of new open spaces accessible to the general public which include widened sidewalks, midblock open spaces, a large square and smaller open spaces.

ESD's role in the Project is, among other things, to assist Columbia with Project site assemblage and to impose certain development parameters on the Project in addition to those imposed by zoning. ESD is providing no financing for the Project.

The Project is being constructed in stages over a period of approximately 25 years, and is estimated to create approximately 14,000 construction jobs and 6,000 new University jobs. Construction will proceed, subject to extensions for uncontrollable circumstances and other extensions set forth in the Restrictive Declaration, in accordance with milestones set forth in Section 2.10 of the Restrictive Declaration. Construction has already begun on Block 1996, and Columbia is currently undertaking necessary relocation, above-grade abatement and remediation and demolition as needed to permit initial construction on Block 1997.

III. SCOPE OF SERVICES

A. Overview

The GPP Monitor will generally serve as ESD's "eyes and ears" in monitoring Columbia's compliance with the GPP Obligations, which fall into two broad but diverse categories: construction obligations; and community benefit obligations. The GPP Monitor will be appointed by and for the benefit of ESD, serve as a consultant to ESD, and report to ESD. Columbia will provide: (i) periodic Implementation Plans pursuant to Section 5.03 of the Restrictive Declaration to establish that Columbia is implementing and complying with the GPP Obligations during the reporting period; and (ii) such other documentation to show Columbia's compliance with the GPP Obligations (collectively, "**Evidence of Compliance**").

A Detailed Scope of Services is set forth in Section III.B. below. The GPP Monitor's services will consist primarily of: (a) obtaining and reviewing the Evidence of Compliance; (b) evaluating the Evidence of Compliance and independently verifying, as necessary, that Columbia is adhering to the GPP Obligations, through site visits, review of books and records and other appropriate measures; and (c) periodically meeting with, and reporting in writing to, ESD thereon (see Task 1, below). The GPP Monitor will not meet with Columbia's consultants or contractors without advance notice to and approval of Columbia, and then only if accompanied by a representative of Columbia.

The GPP Monitor may be called upon periodically to review and comment on revisions of or adjustments to the Evidence of Compliance submitted by Columbia pursuant to the Restrictive Declaration (see Task 2). The GPP Monitor will also assist with miscellaneous administrative functions associated with ESD's monitoring responsibilities (Tasks 3 to 5), including maintaining information on any written claims by Columbia concerning construction delays in connection with Columbia's obligation to complete construction of the Project within the Milestone Dates set forth in Section 2.07 and 2.10 of the Restrictive Declaration (Task 3). The GPP Monitor will not have the responsibility or the authority to enforce the Restrictive Declaration or to send notices of default thereunder.

ESD recognizes that the GPP Monitor's responsibilities include broad ranges of tasks that require diverse skills. Therefore, ESD encourages and will accept proposals from consultants who elect to partner or otherwise combine their respective skill sets and present a unified response that demonstrates an efficient and effective plan for performing the totality of the

GPP Monitor's obligations. ESD also may encourage such combinations between qualified consultants who respond to this RFP.

B. Detailed Scope of Services

Task 1. Review Reports and Verify Evidence of Compliance. The GPP Monitor will review Columbia's Evidence of Compliance and independently verify, as necessary, that Columbia is adhering to the applicable GPP Obligations. The specific services required of the GPP Monitor for this task include:

- (a) Review Evidence of Compliance, and assist ESD in determining whether same is complete and sufficient with respect to each of the applicable GPP Obligations.
- (b) If ESD determines that the Evidence of Compliance is incomplete or insufficient, assist ESD in providing notice to Columbia specifying the areas of noncompliance and affording Columbia the opportunity to resubmit compliance documentation or to cure any noncompliance, and assist ESD in determining whether any resubmitted documentation is complete and sufficient with respect to the applicable GPP Obligations.
- (c) Upon reasonable written notice to Columbia and to the extent reasonably necessary in good faith to verify Columbia's compliance with the GPP Obligations: (i) access any facilities or buildings owned or controlled by Columbia on or proximate to the Project Site, accompanied by a representative of Columbia, and (ii) review reports, books and records maintained by Columbia relating to the GPP Obligations.
- (d) Meet with, and as requested report in writing to, ESD periodically in order to ascertain whether Columbia is complying with the GPP Obligations.
- (e) Receive and transmit reports to ESD from the FEIS Monitor in connection with Columbia's obligation to design and construct the project in an environmentally sustainable manner under Section 5.07(e)(i)-(iv) of the Restrictive Declaration.

Task 2. Periodic Revisions to Reports. ESD or Columbia may from time to time request that the Evidence of Compliance be amended or adjusted in order to better or more accurately reflect compliance with the GPP Obligations or to reflect modifications to the GPP Obligations or methods of compliance mutually agreed to by Columbia and ESD. The GPP Monitor will be expected to consult with Columbia and ESD on such proposed amendments/adjustments and to advise ESD on their appropriateness in view of the goals of the GPP Obligations. The specific services required of the GPP Monitor for this task include:

- (a) Consult with and respond to ESD with respect to written requests from Columbia concerning revisions to the Evidence of Compliance.
- (b) Make recommendations to ESD on an as-needed basis for improvements and refinements to the Evidence of Compliance to improve clarity, respond to changed circumstances, or minimize undue administrative burdens.
- (c) Advise ESD with respect to requests made by Columbia under Section 5.08 of the Restrictive Declaration.

Task 3. Tracking Construction Milestones and Delays. The specific services required of the GPP Monitor for this task include:

- (a) Review and verify reports to be submitted by Columbia (in tabular form) to ascertain whether Columbia is on track to: (i) complete Project components within the Milestone Dates set forth in Section 2.10 of the Restrictive Declaration; and (ii) otherwise comply with Section 2.07 of the Restrictive Declaration.
- (b) Review, evaluate and advise ESD concerning any claim made by Columbia to ESD that the Project is or will be subject to a delay that may affect Columbia's achieving one or more of the Milestone Dates.
- (c) Suggest any adjustments to the foregoing reports submitted by Columbia to reflect any Columbia delay claim accepted by ESD.

Task 4. Project Administration. The specific services required of the GPP Monitor for this task include:

- (a) At least 60 days prior to the end of each one year term, submit an itemized budget for the following one year term that assumes that Columbia will reasonably cooperate with the GPP Monitor and will at all times be in compliance with the GPP Obligations.
- (b) Participate in meetings with ESD staff (at least quarterly).
- (c) Attend meetings, as directed by ESD, with Columbia, Columbia's consultants, Columbia's contractors, the FEIS Monitor, and/or the City of New York, as necessary to independently verify compliance; provided that meetings with Columbia's consultants or contractors be attended by a representative of Columbia.
- (d) Participate in at least one annual meeting with ESD and Columbia to review compliance issues and frequency of reports.

- (e) Advise and assist ESD in connection with the preparation of any correspondence, notices, and other documents related to Columbia's compliance with the GPP Obligations. Upon direction from ESD, make inquiries to the FEIS Monitor on behalf of ESD. The GPP Monitor will not have the responsibility or the authority to enforce the Restrictive Declaration or to send notices of default.

Task 5. Miscellaneous. The miscellaneous services required of the GPP Monitor include:

- (a) Assist ESD in various administrative functions in connection with the Project, including, but not limited to, scheduling meetings, document management, assistance in complying with Freedom of Information Law requests, tracking compliance timelines, and providing supplemental written memoranda regarding compliance issues at ESD's request.

C. Schedule of Services

The services identified in Section III.B. ("Detailed Scope of Services") are scheduled to commence upon ESD's execution of Contract with Consultant GPP Monitor. Columbia's Evidence of Compliance will be available at that time.

D. Pre-Proposal Information Session and Site Tour

A pre-proposal information session, followed by a site tour, will be held on the Project Site on Tuesday, March 13, 2012 beginning at 1pm at the Studebaker Building, 615 West 131st Street, Second Floor, Conference Room 207, New York, New York. While Respondent's attendance is not mandatory to propose for the contract described in this RFP, it is strongly encouraged. Anyone wishing to attend must RSVP by emailing ESD's Mr. Robin Stout at rstout@esd.ny.gov with the names of all attendees by Monday, March 12, 2012. There is a limit of three attendees per potential Respondent.

IV. SUBMISSION REQUIREMENTS

A. Submission Procedures

Interested firms or individuals (each a "**Respondent**") are required to follow the guidelines and instructions contained in this RFP. In the event it becomes necessary to revise any part of this RFP, revisions will be provided by addenda posted on the ESD website (www.nylovesbiz.com) under the following headings: Subsidiaries & Development Projects, Columbia Manhattanville Project, Additional Resources, Columbia Manhattanville Compliance Monitoring Services RFP. It is the responsibility of all Respondents to check the ESD website for posting of clarifications, amendments, or addenda on an ongoing basis.

1. Respondents must submit one original, one electronic copy on a CD, and three copies of the proposal. The length of proposal is limited to 12 pages, excluding the required forms and cover page, but including the cover letter and resumes.
2. The cover page of each proposal should state "Columbia/Manhattanville Compliance Monitoring Services" and the entire set of proposals should be contained in a sealed package clearly labeled "Columbia/Manhattanville Compliance Monitoring Services."
3. Sealed proposals must be delivered in hard copy by hand, regular mail or express mail. Proposals sent via facsimile or e-mail transmittal will not be accepted.
4. Proposals are due and must be received at the location designated below no later than **3:00PM Thursday, April 5, 2012**. Proposals received after the indicated date and hour and/or at a different location may not be considered at the discretion of ESD. It is the sole responsibility of each Respondent to ensure that its proposal is received before the submission deadline. Respondents shall bear the risk associated with delays in mail, courier services or hand delivery. If the proposal is to be delivered by messenger, please note that only individuals with valid photo identification will be permitted access to ESD's offices. Messengers without valid identification will be turned away and their packages not accepted. Proposals will not be publicly opened or read.
5. Proposals must be submitted to:

**Mr. Robin Stout, Senior Counsel
Empire State Development
633 Third Avenue, 37th Floor
New York, NY 10017-6754**
6. ESD reserves the right, at its discretion, to postpone the date for submission and opening of proposals. Any proposal submitted prior to notice of such postponement may be withdrawn without prejudice.
7. Please note that Respondents must respond to this RFP in order to be eligible to be considered for the award of the Contract for the Compliance Monitoring Services pursuant to this RFP.
8. ALL QUESTIONS, COMMENTS, REQUESTS FOR CLARIFICATION, AND OTHER COMMUNICATIONS REGARDING THIS RFP MUST BE DIRECTED IN WRITING VIA E-MAIL TO MR. ROBIN STOUT AT RSTOUT@ESD.NY.GOV. CONTACT WITH ANY OTHER PERSON REGARDING THIS SOLICITATION IS PROHIBITED BY LAW. All questions and requests for clarification will be responded to in writing and disseminated to all persons and organizations having expressed an interest in this solicitation.
9. Addenda to this RFP, including responses to any questions submitted in writing, will be posted on the ESD website as set forth above.

10. ESD staff will make the final selection of the prospective consultant. ESD reserves the right to require any Respondent to exclude or replace one or more subconsultants included in Respondent's proposal with other subconsultants satisfactory to ESD.

B. Proposal Content

Proposals should provide a straightforward, complete and concise description of Respondent's capabilities to satisfy the requirements of this RFP. Proposals must include the following, in the order set forth below:

1. Cover Letter. A cover letter on the Respondent's letterhead that is signed by an individual with authority to contractually bind the Respondent and that includes the following:

- (a) The full legal name, address and type of legal entity, and jurisdiction in which the entity is formed (if applicable), telephone number and e-mail address of the representative who is authorized to discuss and/or negotiate the proposal.
- (b) Federal Employee Identification Number or Social Security Number.
- (c) Text explaining ownership (corporate and/or individual) of proposing entity and all subsidiaries or parent company, if applicable.
- (d) A statement that Respondent is ready, willing and able to engage in the services set forth in the proposal upon execution of contract.
- (e) A statement that Respondent accepts the Conflicts of Interest terms set forth in Section IV.B.5 to this RFP.
- (f) Identification of any exceptions or conditions to the ESD Standard Form Contract attached to this RFP as Appendix 1.
- (g) Indicate if Respondent is, or will partner or otherwise combine with, an MBE/WBE (Minority Business Enterprise or Women's Business Enterprise) as certified by New York State for any portion of the services requested.

2. Firm Qualifications and Experience.

- (a) A history of Respondent's experience providing compliance monitoring services or similar services within the previous five (5) years, with emphasis on successful large scale, mixed-use real estate development projects and construction scheduling. Indicate whether Respondent has experience with the critical path method (CPM) in the scheduling and management of large-scale construction projects. Such history should also detail any experience providing these services to economic

development organizations, municipalities, other governmental entities, private developers, and not-for-profit and civic organizations.

- (b) Examples of up to three (3) projects that Respondent has completed in the area of compliance monitoring or similar services involving major construction projects. For each project, include: discussion about the specific role performed by Respondent and the key individual(s), any problem(s) encountered, how the problem(s) were dealt with, the outcome of the project, and to the best of Respondent's knowledge, what transpired with the project once Respondent's role in the project ended. Include the client, the name of a client contact person who is able to provide a reference, a description of the nature of the work, the size and complexity of the project, construction cost, and the amount and the agreed fee arrangements.
- (c) Description of any relevant services or activities performed in the vicinity of the Project or in the community surrounding the Project.

3. Staff Qualifications and Experience.

- (a) Name(s), title(s) and resumes of personnel who will be responsible for the performance of the requested services, clearly indicating their relevant experience and specific areas of expertise. Each resume shall be limited to two (2) pages, shall include education, professional credentials and employment history. Also, include the resumes of any MBE/WBE partner or subconsultant that will be involved in the provision of services required under this RFP, along with a description of how each such partner or subconsultant will work in connection with Respondent to fulfill the Scope of Services, distinguishing the roles, responsibilities and commitment of each team member.
- (b) An analysis or table of the hours and percentage of time to be spent by each person assigned to the Project.

4. Statement of Methodology/Management Approach.

- (a) A written narrative description of Respondent's understanding of, methodology and approach to, and any comment on, the Scope of Services described herein, and of Respondent's demonstrated ability to perform these services within the designated timeframe. Respondent should elaborate, as appropriate, on the tasks listed in the Scope of Services, including work by MBE/WBE partners or subconsultants, if any.
- (b) A detailed description of the proposed management approach to be taken for the performance of the required services. Factors addressed in

Respondent's management approach shall include, but are not limited to: Respondent's proposed organizational structure to be responsive to ESD's needs; Respondent's proposed approach and schedule for keeping ESD timely apprised of Project status; and Respondent's proposed approach to ensuring the quality of the work product to be produced, as well as the practices and procedures Respondent follows to control the costs of the services and stay within budget.

5. Statement Concerning Conflicts of Interest.

- (a) A statement describing whether the engagement with ESD would create any potential conflict of interest, or appearance of impropriety, relating to other clients/customers of Respondent or former officers and employees of ESD. Indicate what procedures will be followed to detect, notify ESD of, and resolve any conflicts.
- (b) A statement that Respondent has not provided services to Columbia within the past 5 years; that Respondent, if selected to serve as GPP Monitor, shall not serve as FEIS Monitor nor provide services to Columbia during the time it is engaged with ESD, nor shall any MBE/WBE partner, or any subconsultant engaged by Respondent, seek such work or negotiate to perform any such work for Columbia during such period; that Respondent, if selected to serve as GPP Monitor, shall not work for Columbia in any capacity within two years after the engagement as GPP Monitor has ended and shall be permanently barred from performing services for Columbia concerning any matter for which it was directly involved as GPP Monitor.
- (c) PLEASE BE ADVISED: No current employee of Columbia may serve as the GPP Monitor (nor as a consultant to the GPP Monitor) nor can anyone serve as the GPP Monitor (or consultant) who was an employee of Columbia within three years of such persons leaving employment with Columbia. No person receiving a pension or any deferred compensation from Columbia shall be qualified to serve as GPP Monitor. The GPP Monitor shall not derive any income from performing services for Columbia or from any contractor or subcontractor engaged by Columbia on the Project.
- (d) Specify any past, pending or threatened litigation or administrative or state ethics board or similar body proceedings to which Respondent or any of Respondent's partners are a party and which would either materially impair Respondent's ability to perform the services enumerated herein, or, if decided in an adverse manner, materially adversely affect the financial condition of Respondent.

- (e) Any Respondent selected pursuant to this RFP will be required to advise ESD of any developments during the term of this engagement with respect to existing and/or any new civil or criminal legal investigations, pertinent litigation and/or regulatory action involving Respondent or its employees which could impact the Respondent's role or ability to fulfill its obligations.

6. Fee Proposal. Specify the total proposed annual fee; hourly rates for calendar years 2012 and 2013 for each person cited in the proposal; reimburseable expenses proposed to be charged; and any other fees or charges to ESD. Indicate whether Respondent is willing to accept any cap on the compensation Respondent will receive. State whether the fee proposed by Respondent is based upon reduced fees Respondent offers to municipalities, governmental entities, economic development or nonprofit organizations, and civic organizations. ESD will require Respondent to represent that proposed billing rates and fees are equivalent or less than those charged to any other clients for equivalent services. For purposes of the fee proposal, Respondent should assume that all of the reports furnished to ESD shall be in writing, however ESD may, at its discretion, request that any report be provided orally instead of in writing.

The GPP Monitor will be required to furnish ESD with a good faith budget of the costs to be incurred in the following 12 months by the GPP Monitor, for approval by ESD. ESD will not permit the GPP Monitor to exceed such proposed budget during the applicable 12-month period without ESD's prior written approval.

C. Additional Proposal Requirements and Certifications

1. 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. ESD's non-discrimination and affirmative action policy shall apply to this contract. Minority/Women-owned Business Enterprises are encouraged to respond. It is the policy of the State of New York and ESD to comply with all federal, State and local laws, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status. Further, 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 ("MWBES") 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" (the "Disparity Study"). The Disparity Study found evidence of statistically significant disparities between the level of participation of MWBES in state procurement contracting versus the

number of MWBEs 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 MWBEs 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 establish goals for maximum feasible participation of New York State Certified MWBEs 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 procurement, ESD hereby establishes an overall goal of 20% for MWBE participation: 15% for Minority-Owned Business Enterprises (“MBE”) participation and 5% for Women-Owned Business Enterprises (“WBE”) participation. The selected Respondent must document good faith efforts to provide meaningful participation by MWBEs as partners, subcontractors, or suppliers in the performance of this contract, and 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 www.esd.ny.gov/MWBE/directorySearch. 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, the selected Respondent 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 Respondent 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, Respondent agrees to the following:

(a) Respondent shall submit with its proposal a Schedule of Minority/Women Owned Business Participation in the form attached hereto as Schedule A-1 to Appendix 2. Any modifications or changes to the Schedule after the Contract Award and during the term of the Contract must be reported on a revised Schedule and submitted to ESD.

(b) ESD will review the submitted Schedule, or any modifications thereof, and advise Respondent of ESD’s acceptance or issue a notice of deficiency within 30 days of receipt thereof.

(c) If a notice of deficiency is issued, Respondent agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to Robin Stout at ESD 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 Respondent and direct Respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(d) ESD may disqualify Respondent as being non-responsive under the following circumstances:

- i) If Respondent fails to submit a Schedule of Minority/Women Owned Business Participation;
- ii) If Respondent fails to submit a written remedy to a notice of deficiency;
- iii) If Respondent fails to submit a request for waiver; or
- iv) If ESD determines that Respondent has failed to document good faith efforts.

Respondent shall attempt to utilize, in good faith, any MBE or WBE identified within its Schedule 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.

Respondent shall submit a Contractor's Quarterly Compliance & Payment Report to Robin Stout at ESD 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, Respondent agrees with all of the terms and conditions of Schedule C to the ESD Standard Form Contract attached as Appendix 1 to this RFP. 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 this contract; or (ii) employment outside New York State.

Respondent further agrees, where applicable, to submit with its proposal a Staffing Plan (in the form attached as Schedule A-2 to Appendix 2 attached to this RFP) identifying the anticipated work force to be utilized on the Contract. Respondent further agrees, if awarded the Contract, to submit to ESD an updated Schedule of Minority/Women Owned Business Participation (in the form attached as Schedule A-1 to Appendix 2 attached to this RFP), as necessary, identifying the workforce actually utilized on the Contract if known.

Respondent shall comply with the provisions of the Human Rights Law and all other State and Federal statutory and constitutional non-discrimination provisions. Respondent and any partners and/or subconsultants 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.

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

ESD's Affirmative Action Unit ("**AAU**") is available to assist Respondent in identifying New York State certified M/WBEs that can provide goods and services in connection with the Contract. If Respondent requires M/WBE listings, please call the AAU at (212) 803-3224.

2. State Tax Law Section 5-a. Any contract resulting from this solicitation is subject to the requirements of State Tax Law Section 5-a ("**STL 5-a**"). STL 5-a prohibits ESD 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-220CA, a copy of which is attached as Attachment 4.6 to Schedule A to the ESD Standard Form Contract attached as Appendix 1 to this RFP. 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-220CA. Solicitation responses that do not include a properly completed ST-220CA will be considered incomplete and non-responsive and may not be considered for contract award. Only the prime consultant completes Form ST 220CA, but Schedule A to Form ST 220CA requires detailed information from the subconsultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the subconsultants.

3. 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 person listed below; (y) the completion by Respondents of "Offerer Disclosure of Prior Non-Responsibility Determinations" and "Offerer's Affirmation of

Understanding and Agreement” pursuant to State Finance Law (these two forms are attached as Attachments 4.7-(1) and 4.7-(2) to Schedule A to ESD Standard Form Contract attached as Appendix 1 to this RFP); and (z) periodic updating of such forms during the term of any contract resulting from this RFP. Respondent must submit the “Offerer Disclosure of Prior Non-Responsibility Determinations” and the “Offerer’s Affirmation of Understanding and Agreement” forms pursuant to State Finance Law as part of its proposal.

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.

For the purpose of compliance with State Finance Law Sections 139-j, contacts with Mr. Robin Stout at rstout@esd.ny.gov are considered permissible.

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

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

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

4. 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.

V. SELECTION PROCESS

A. Evaluation Criteria

Proposals, submitted pursuant to this RFP, will be evaluated on the following criteria.

1. Methodology (20%).
 - (a) Approach described in the RFP response demonstrates a full comprehension of the anticipated Scope of Services and the ability to consistently provide such Services to ESD at a high performance level.
 - (b) Quality and thoroughness of the written proposal.
2. Relevant Experience (20%).
 - (a) Experience with successful, large-scale mixed-use planning and development projects, particularly in urban centers.
 - (b) Experience with similar initiatives and public agencies.
 - (c) Experience in conducting compliance monitoring or similar services
 - (d) Number, complexity, and nature of projects handled by Respondent.
 - (e) Respondent shall have not less than 3 years of experience in having performed similar services for which it is engaged as a consultant.
 - (f) Experience with similar or other relevant projects, services and/or activities in the vicinity of the Project or in the community surrounding the Project. Familiarity with Project and surrounding community.
3. Staff (20%).
 - (a) Proposed staff ability and record of achievement.
 - (b) Availability of staff of Respondent to take on services, particularly the consistent availability of senior principals. Respondent is to plan and allot the time necessary to complete all services in a timely and efficient manner.
 - (c) Previous successful collaborations between Respondent team members with public agencies and community stakeholders with respect to large urban redevelopment projects.
4. Presentation and Collaboration Skills (10%).

- (a) Effective presentation and communication skills.
- (b) Excellent record of relations, communication and collaborations with past clients.

5. Compliance (10%). Conformity with or exceeding applicable ESD policies as noted herein.

6. Fee (20%). Proposed fee structure and hourly rates.

B. Compensation

A one year contract will be issued to the selected GPP Monitor upon approval by ESD Directors. All expenses not identified in the proposal and agreed to in the Contract will be the GPP Monitor's sole responsibility and not billed to ESD. Office, transportation and food expenses will not be reimbursable expenses.

C. Selection Process

ESD reserves the right to act as the sole judge of the content of the proposals submitted, to negotiate an agreement with any or no Respondent, or to waive any informalities or irregularities. Issuance of this RFP and receipt and evaluation of responses do not obligate ESD to undertake any action. ESD will evaluate proposals and may interview one or more respondents. Key personnel and staff assigned to the engagement must be present at any interview. ESD reserves the right to interview some, none, or all Respondents, as it deems appropriate. ESD's request for an interview shall not constitute acceptance of a proposal. ESD reserves the right to request "best and final offers" or to conduct other additional competitive proceedings with respect to this RFP. ESD staff will recommend contract award to ESD Directors at a regularly scheduled Directors' meeting.

VI. GENERAL TERMS AND CONDITIONS

The acceptance of any proposal shall be subject to, and contingent upon, the execution and delivery by ESD of a contract for the services described herein ("Contract"), a form of which ("Draft Contract") is annexed hereto as Appendix 1 and provided to Respondents hereunder. ESD shall not be bound to the terms of such Draft Contract but shall use such form as a basis of negotiating the final Contract.

A. The Contract shall contain, among other terms, certain provisions required by law or policies of the City and State, including, without limitation:

- 1. Provisions providing that the successful Respondent:
 - (a) is an independent contractor who owes an independent, unbiased, objective and direct duty to ESD to diligently and fairly discharge its

oversight duties to ESD without fear of or favoritism to Columbia or any other involved group or entity;

- (b) shall defend, indemnify and hold harmless the State, ESD and their respective officers, directors, employees and agents from and against any claims or damages relating to Respondent's acts and omissions;
- (c) shall maintain financial and other records relating to the Contract and make such records available for inspection and audit;
- (d) has no conflicts of interest with, or outstanding financial obligations owing to, the State, the City, or ESD;
- (e) maintains and provides the following insurance: Commercial General Liability insurance of \$1 million per occurrence and \$2 million in the aggregate; Commercial Automobile Liability with a limit of \$1 million for both bodily injury and property damage; Excess/Umbrella Liability of \$5 million; Errors and Omission insurance as necessary with a limit of \$1 million and evidence of Workers Compensation/Employers' Liability insurance providing statutory NYS coverage, and with insurers licensed to provide insurance in the State of New York. Such policies of insurance shall be in a form acceptable to, and shall include any conditions reasonably required by ESD and shall name the State, ESD, and Columbia as additional insureds.
- (f) is qualified to do business in the State of New York and is in receipt of all licenses, if any, required by applicable governmental entities; and
- (g) shall represent and warrant that neither it nor any of its directors, officers, members, or employees has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services as set forth in the Contract. The successful Respondent must further agree that in the performance of the services no person having such a conflict of interest shall be employed by it in the performance of the Scope of Services.
- (h) shall include in all reports an express statement that they are intended with respect to ESD to be full, truthful and complete and that all statements contained thereon are made under penalties of perjury.

B. Unless a specific exception is noted, submission of a proposal in response to this RFP shall constitute an irrevocable offer extending for the next six (6) months on the part of the successful Respondent to execute a contract substantially in the form annexed hereto as Appendix 1 and in accordance with the terms of this RFP that shall include the supporting documents and all other items attached as appendices to this RFP and to cooperate in

supplying any information as may be required with respect to any other government review and approval forms.

C. News Releases - Recipients of this RFP shall make no news/press release pertaining to this RFP or anything contained or referenced herein without prior written approval from ESD. Any news release pertaining to this RFP may only be made in coordination with ESD, and if required by ESD, with Columbia.

D. Prohibited Persons - No Respondent to this RFP will be selected if an individual who is an owner, shareholder, member, partner, officer or director, or otherwise a principal and/or its management team is determined, in ESD's sole discretion, to have been convicted of a felony or a crime involving moral turpitude, to be an organized crime figure, to be under indictment or criminal investigation, to be in arrears or in default of any debt, contract or obligation to or with the City or State of New York, or any other of their instrumentalities or otherwise to be a prohibited person as defined by ESD. The selected Respondent and all principals thereof, if applicable, and/or owners, shareholders, members, partners, officers or directors of Respondent's team must complete a background questionnaire and are subject to investigation by ESD. The selection of a Respondent may be revoked in the event that any derogatory information is revealed by such investigations.

E. Proposal Costs – Neither the State nor any agency thereof, including ESD, shall be liable for any cost incurred by Respondent in the preparation of its proposal to this RFP or, with respect to Respondent, for any work performed prior to the execution and delivery of the Contract. All material submitted in response to this RFP will become the sole property of ESD.

F. ESD shall be the sole judge of each Respondent's conformity with the requirements of this RFP and of the merits of the proposal. ESD reserves the right, in its sole discretion and subject to applicable law, to: amend, modify or withdraw this RFP; modify the requirements set forth herein and to expand, limit or otherwise alter the scope of the requested services; waive any requirements or conditions or modify any provisions of this RFP with respect to one or more Respondents; require supplemental statements and information from any Respondent to this RFP; to award a contract to as many or as few or none of the Respondents as ESD may select; award a contract to entities who have not responded to this RFP; extend the deadline for submission of proposals; negotiate or hold discussion with one or more Respondent; correct deficient proposals that do not completely conform with this RFP; reject any or all proposals and to cancel this RFP, in whole or in part, for any reason or no reason. ESD may exercise any such rights at any time, without notice or liability to any Respondent or other parties for costs, expenses, or other obligations incurred in preparation of a proposal or otherwise.

G. This RFP and any contract or agreements resulting herein are subject to all applicable Federal, state and local laws, rules, regulations and executive orders.

H. Any waiver or modifications to this RFP must be issued in writing by ESD. Nothing stated at any time by any representative of ESD, the State, the City or of any other entity shall

effect a change in, or constitute a modification to this RFP unless confirmed in writing by ESD. Respondents may request clarification by e-mail to ESD prior to the submission deadline. Any such clarification from ESD must be in writing in order to be binding on ESD.

I. ESD is not obligated to pay any costs, expenses, damages or losses incurred by any Respondent at any time unless ESD has first expressly agreed to do so in writing.

J. ESD shall not be obligated to pay any fee, cost, or expense for brokerage commissions or finder's fees with respect to the execution of the Contract. It shall be a condition of any contract that Respondent agree to pay the commission or other compensation due to any broker or finder in connection with the transaction, and to indemnify and hold harmless the State and ESD from any obligation, liability, cost or expense incurred by it or them as a result of any claim for commission or compensation brought by any broker or finder by reason of the transaction.

APPENDIX 1

ESD STANDARD FORM CONTRACT

STANDARD FORM CONTRACT – SHORT FORM FOR MATERIALS/SERVICES

<p>FOR UDC USE ONLY</p> <p>1. Contract No. _____</p>	<p>2. Project Name: _____</p>	<p>3. Project Number: _____</p>
<p>4. THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION (UDC), a corporate governmental Agency and Public benefit corporation organized under the laws of the State of New York, pursuant to the New York State Urban Development Act, having its principal office and place of business at 633 Third Avenue, New York, N.Y., 10017</p>		
<p>5. HEREBY REQUESTS YOU</p> <p><i>Name of Contractor:</i> <i>Address Line 1:</i> <i>Address Line 2:</i> <i>City, State, Zip:</i></p> <p>ATTENTION: <i>Title:</i> <i>Phone:</i></p>		
<p>6. TO PROVIDE the materials/services as described below and in accordance with the terms set forth in this agreement</p>		
<p>7. The above materials/services are to be provided on or before (date) _____</p>		
<p>8. COMPENSATION for the above materials/services shall be as follows:</p> <p><input type="checkbox"/> materials/services for this project are tax exempt</p> <p><input type="checkbox"/> compensation/rate schedule attached</p> <p>Total Compensation for materials/services provided pursuant to this Agreement shall in the aggregate not exceed \$ _____</p>		
<p>9. "This contract may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law section 2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the state, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). <u>If this contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with this contract, unless and until OSC approval has been received.</u>"</p> <p>Any questions related to this Agreement may be referred to (individual's name) : _____ at telephone number: _____</p>		
<p>10. To receive payments, a substantiated invoice must refer to the above Contract Number and be forwarded to the UDC Accounts Payable Department, 633 Third Avenue, New York, N.Y., 10017.</p>		
<p>11. Schedule A and other schedules (if applicable) attached hereto are an integral part of this Agreement.</p>		
<p>12. If the proposed Agreement is acceptable please execute all copies and return to UDC's Contracts Office for final approval. A copy of the fully executed Agreement will be forwarded to you which will then constitute your authorization to proceed with the work described herein.</p>		
<p>13. UDC LOCAL EXECUTIVE OFFICE (if applicable)</p> <p>DATE: _____</p>	<p>14. AGREED TO AND ACCEPTED BY</p> <p>Name of Contractor _____</p> <p>BY _____</p> <p>Name & Title _____</p> <p>Date _____</p>	<p>15. APPROVED: NEW YORK STATE URBAN DEVELOPMENT CORPORATION</p> <p>By _____</p> <p>Title _____</p> <p>Date _____</p>

SCHEDULE A

**CONDITIONS APPLICABLE TO THE CORPORATION'S⁽¹⁾ AGREEMENTS
FOR MATERIALS/SERVICES**

ARTICLE 1
RELATION OF CONTRACTOR TO THE CORPORATION

1.1 **SUPERVISION BY THE CORPORATION.** The services to be performed by Contractor under this Agreement shall be subject to the general supervision and direction of the Corporation provided that neither the Corporation's exercise nor failure to exercise such supervision and direction shall relieve the Contractor of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

1.2 **CONTRACTOR'S PERSONNEL.** The Contractor shall designate in writing to the Corporation one individual, satisfactory to the Corporation, who shall be responsible for coordinating all of the services to be rendered by the Contractor and who shall be the Corporation's normal point of contact with the Contractor on matters relating to such services. Such individual shall be replaced upon the Corporation's written request.

1.3 **APPROVAL OF SUBCONTRACTORS.** The Contractor shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subcontractor") in connection with the performance of its obligations under this Agreement without the prior written consent of the Corporation. The Contractor shall inform the Corporation in writing of the name, proposed service to be rendered, and compensation of the Subcontractor, and of any interest the Contractor may have in the proposed Subcontractor.

1.4 **CONTRACTOR AS INDEPENDENT CONTRACTOR.** Notwithstanding any other provisions of this Agreement, the Contractor's status (and that of any Subcontractor) shall be that of independent contractor and not that of an agent or employee of the Corporation. Accordingly, neither the Contractor nor any Subcontractor shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of the Corporation.

1.5 **THE CORPORATION'S REPRESENTATIVE.** The Corporation will designate in writing to the Contractor an individual who will serve as the Corporation's Representative and normal point of contact for the Contractor in regard to this Agreement and the Contractor's services and obligations hereunder. The Corporation may from time to time change this designation by written notification to the Contractor.

1.6 **APPROVALS OR ACCEPTANCE BY THE CORPORATION.** Whenever action is to be taken, or approval or acceptance given, by the Corporation, such action, approval or acceptance shall be deemed to have been taken or given only if so taken or given by the Corporation's Representative, by the official of the Corporation who signed this Agreement on behalf of the Corporation, or by another officer or employee of the Corporation duly designated by such signing officer to represent the Corporation in connection therewith. The Corporation shall notify the Contractor in writing of the giving or withholding of each such approval or acceptance within a reasonable period of time. The Corporation's acceptance or approval of any specifications, drawings, plans, reports or other materials prepared by the Contractor hereunder shall in no way relieve the Contractor of responsibility for such materials.

1. As used in this Schedule A, the "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") unless the Contract for Materials/Services of which this Schedule A forms a part has been entered into by a subsidiary corporation of ESD, in which case the "Corporation" shall mean such subsidiary corporation.

1.7 **CONFLICT-OF-INTEREST.** The Contractor represents and warrants that:

(a) The Contractor has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Contractor's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of the Corporation, or any of its subsidiaries shall be permitted by the Contractor to share in any benefit to arise from the Contractor's work.

(c) The Contractor shall not permit any officer, employee, agent or director of the Corporation, or any of its subsidiaries to participate in any decision relating to this Agreement which affects the personal interest of the aforementioned individuals, or the interests of any corporation, partnership, or association in which those individuals are directly or indirectly interested; nor shall any officer, agent, director or employee of the Corporation, or any of its subsidiaries be permitted by the Contractor to have any interest, direct or indirect, in this Agreement or the proceedings thereof.

(d) The Contractor shall cause, for the benefit of the Corporation, every contract or agreement with any Subcontractor to include the representations contained in subsections (a), (b), (c) of this Section 1.7. The Contractor will take such action in enforcing such provisions as the Corporation may direct, or, at its option, assign such rights as it may have to the Corporation for enforcement by the Corporation.

1.8 **NO BROKER.** The Contractor represents that it has not employed any person, corporation or partnership, to solicit or procure this Agreement, and has not made, and will not make, any payment or agreement for the payment of any commission, percentage, brokerage or contingent fee, or other compensation in connection with the procurement of this Agreement.

1.9 **NOTICE OF OVERRUNS AND DELAYS.** The Contractor shall promptly give written notice to the Corporation's Representative of the occurrence of an event or action, the discovery of a condition or the failure of an event or action to occur or a condition to exist as anticipated, which may result in an increase in (a) the compensation due Contractor; (b) reimbursable expenses and/or (c) the number of hours necessary to perform the work.

The Contractor shall promptly give written notice to the Corporation's Representative of the occurrence of an event or action, or the discovery of a condition, or the failure of an event or action to occur or a condition to exist as anticipated, which may delay completion of the work (or extend the Completion Date).

ARTICLE 2 **DOCUMENTS AND RECORDS**

2.1 **OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Contractor under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of the Corporation, and the Corporation shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specifications and other documents without payment of any additional royalty, charge or other compensation to Contractor. Upon request of the Corporation during any stage of the work, Contractor shall deliver all such materials to the Corporation.

The Contractor agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of the Corporation, except that Contractor may retain copies of such reports and other documents for general reference use.

22 MAINTENANCE OF RECORDS. The Contractor shall, and shall require any and all subcontractors to, until six (6) years after completion of services hereunder or termination of this Agreement by Corporation, maintain (a) the original books, documents, materials and other records created or collected in the course of Contractor's (and Subcontractors') performance of its (their) obligations under this Agreement (and any subconsulting agreement), and indexes of the same; (b) unless waived or modified in writing by the Corporation, complete and correct records of time spent by Contractor (and Subcontractor) in the performance of its obligations under this Agreement (and any subconsulting agreement); and (c) if Contractor is being reimbursed for out-of-pocket expenses, complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement (and any subcontract), including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Contractor (and Subcontractors) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Contractor (and Subcontractor) in performing its obligations hereunder (or under any subcontract). Contractor (and Subcontractor) shall make such books, records and indexes available to the Corporation, the State of New York, any other governmental entity having an interest in the performance of services under this Agreement (or any subconsulting agreement) and any of their authorized representatives for review and audit at all such reasonable times as the Corporation or any such other entity may from time to time request. Contractor shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Contractor invoices in accordance with this Agreement.

This Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 3 **TERMINATION**

31 DEFAULT BY CONTRACTOR. If any material representation made by the Contractor in this Agreement shall prove to be false or misleading in any material respect, or if the Contractor shall default in the timely performance of any of its obligations under this Agreement and such default shall continue for a period of ten (10) days after written notice from the Corporation specifying the occurrence, omission or failure giving rise to such default, or if, in the opinion of the Corporation, by reason of the nature of such default, such default cannot be cured within such ten (10) day period, then if the Contractor shall not within such period commence with due diligence the curing of such default and thereafter prosecute and complete the curing of such default as promptly as possible, except that the Corporation shall not be required to give Contractor such written notice and Contractor shall not have such right to cure for Contractor's failure to comply with Section 1.9 hereof, the Corporation, in addition to any other remedies or claims it may have with respect to such representation or such default may terminate this Agreement immediately upon verbal or written notice to the Contractor. In the event of such termination, the Corporation, without waiving any such remedy or claims, (including consequential damages) shall not be required to pay the Contractor any portion of the fee specified in this Agreement remaining to be paid for which valid vouchers have not been submitted pursuant to this Agreement on or before the date of the Corporation's notice of termination.

32 OPTIONAL TERMINATION BY THE CORPORATION. The Corporation at any time, in its sole discretion, may terminate this Agreement or postpone or delay all or any part of the Agreement upon written notice to the Contractor. In the event of such termination, postponement or delay, the Corporation shall pay the Contractor for professional time and out-of-pocket expenses incurred by Contractor to the date notice of such action is received by Contractor. The Contractor agrees to cause any agreement or contract entered into by Contractor with any Subcontractor to provide for an optional termination by Contractor similar to the provisions of this Section 3.2.

ARTICLE 4 **REQUIRED PROVISIONS**

41 CONTRACTOR TO COMPLY WITH LEGAL REQUIREMENTS. The Contractor in performing its obligations and in preparing all documents required under this Agreement shall comply with all applicable laws and regulations. All provisions required by such laws and regulations to be included in this

Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

4.2 **CONTRACTOR TO OBTAIN PERMITS, ETC.** Except as otherwise instructed in writing by the Corporation, the Contractor shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the Corporation or the Contractor in connection with this Agreement.

4.3 **WORKERS' COMPENSATION INSURANCE.** The Contractor agrees that:

(a) It will secure Workers' compensation and disability insurance and keep insured during the life of this Agreement such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Worker's Compensation Law; and

(b) This Agreement shall be voidable at the election of the Corporation and of no effect unless the Contractor complies with this provision.

4.4 **NO ASSIGNMENT WITHOUT CONSENT.** The Contractor agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of the Corporation;

(b) If the prohibition of Section 4.4(a) be violated, the Corporation may revoke and annul this Agreement and the Corporation shall be relieved from any and all liability and obligations thereunder to the Contractor and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Contractor and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

4.5 **NON-DISCRIMINATION & AFFIRMATIVE ACTION**

The Contractor shall comply and cause each of its subcontractors to comply with the provisions of Attachment 4.5 attached to and made a part of this Agreement, relating to non-discrimination and affirmative action. Attachment 4.5 is replaced by Schedule C.

4.6 **TAX LAW SECTION 5-a COMPLIANCE**

(a) During the term of this Agreement, the Contractor shall, at the times specified in paragraph (b) of this subsection, properly complete and deliver to the Corporation for inclusion in this Agreement, an updated NYS Tax Form 220-CA: Contractor Certification Pursuant to Section 5-a of the Tax Law. A copy of the Contractor's initial Form ST-220-CA is attached hereto as Attachment 4.6. Immediately upon delivery, such updated form shall form a part of this Agreement.

(b) The Contractor's updated certification shall be made if this Agreement authorizes renewal thereof at the conclusion of an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term.

(c) If the Contractor is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Contractor is exempt), the Contractor shall so certify to the Corporation, including in such certification the reason(s) for exemption, in a notarized statement submitted in lieu of Form ST-220-CA.

4.7 **STATE FINANCE LAW SECTION 139-J AND 139-K COMPLIANCE**

The Contractor hereby certifies that all information provided to the Corporation with respect to State Finance Law Section 139-j, including, without limitation, the information contained in Offerer's

Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j, attached to this Agreement as Attachment 4.7 – (1), and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Attachment 4.7 – (2), is complete, true and accurate. The Contractor acknowledges that the preceding sentence is a material representation upon which the Corporation is relying in entering into this Agreement. Should any such information be found to be intentionally false or intentionally incomplete, this Agreement shall be subject to termination pursuant to Section 3.1 hereof.

ARTICLE 5
OTHER STANDARD PROVISIONS

5.1 **NO WAIVER.** No failure by the Corporation to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by Contractor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Corporation. No waiver of any breach shall affect or alter this Agreement, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

5.2 **INDEMNIFICATION.** Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for all injuries to persons, including death, and all damage sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or Subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Contractor pursuant to this Agreement. Contractor agrees to defend, indemnify and hold the Corporation, the State of New York and, if the Corporation is an ESD subsidiary, ESD and each of their respective officers, directors, commissioners, employees and representatives (collectively, the "Indemnitees") harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or its Subcontractors, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the Indemnitees by reason of claims against Contractor or its Subcontractors, or their employees, agents, servants, independent contractors and subcontractors for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the Indemnitees for reasonable attorneys' fees incurred in connection with the above. Contractor shall be solely responsible for the safety and protection of all its Subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Contractor or its Subcontractors, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Contractor, its Subcontractors, or their respective agents, employees, servants, independent contractors or subcontractors.

This Article shall survive the expiration or earlier termination of this Agreement.

5.3.1 **ASSIGNMENT BY THE CORPORATION.** The Corporation may transfer and assign any and all of its rights and obligations under this Agreement, including transferring and assigning its rights to the Contractor's performance of any portion of the services provided for herein, together with the Corporation's obligations and rights pertaining to such portion of services, to any partnership, firm, corporation, governmental agency or department or other entity which the Corporation determines has undertaken or will undertake any part of the Agreement. The Corporation shall give the Contractor written notice of any such transfer and assignment. Such transfer and assignment shall relieve the Corporation of any further liability or obligation hereunder

5.3.2 **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 Corporation'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 Corporation 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 Corporation's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

5.4 **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, except where the Federal supremacy clause requires otherwise.

5.5 **ENTIRE AGREEMENT/AMENDMENT.** This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

5.6 **CONFIDENTIALITY.** Contractor hereby agrees that all data, recommendations, reports and other materials developed in the course of performance under this Agreement are strictly confidential between Contractor and the Corporation and Contractor may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from the Corporation. Notwithstanding the preceding sentence, Contractor shall cooperate fully with such third parties as the Corporation may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Contractor in connection with performance under this Agreement.

5.7 **RELEASE AND DISCHARGE.** Simultaneously with request for final payment hereunder, Contractor shall execute and deliver to the Corporation an instrument releasing the Corporation from any and all claims, demands and liabilities whatsoever of every kind of nature both at law and in equity arising from, growing out of, or in any way connected with this Agreement. A copy of such release is annexed hereto as Attachment 5.7 and made a part hereof.

5.8 **NOTICES.** All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

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

State of New York [Agency Name]

Name:
Title:

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

[Contractor Name]

Name:
Title:
Address:

Telephone Number:
Facsimile Number:
E-Mail Address:

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

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

59 **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.

59.1 **MISCELLANEOUS.** The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any other part of this Agreement.

ARTICLE 6
BILLING POLICY

61 The Contractor is required to submit detailed documentation in support of Contractor's request for reimbursement. All invoices and their accompanying documentation must be forwarded along with a completed copy of the sample INVOICE SUMMARY attached hereto as Attachment 6.1 and a letter of transmittal to:

Accounts Payable Department
New York State Urban Development Corporation
633 Third Avenue
New York, New York 10017-6754

Invoices should be submitted monthly and include the Corporation's contract and project numbers, if any. Contractor should also include federal identification number with the first invoice.

62 Out-of-pocket expenses should be delineated on any invoices by general category. The Contractor must submit supporting documentation for each individual expense category in excess of \$250.

63 **MEALS.** Business meals will be reimbursed in accordance with the Corporation's Schedule of Reimbursable Allowances, a copy of which is attached as Attachment 6.3, provided that the names of all attendees shall be included in the request for reimbursement.

6.4 **PRINTING.**

(a) Internal print or xeroxing is not reimbursable. It is part of the Contractor's overhead cost, unless ordered by or for specific use of the Corporation,

(b) Outside printing will be reimbursed only to the extent of prints requested by the Corporation, and at cost evidenced by a receipt.

(c) No postage will be reimbursed for printing requested by the Corporation.

6.5 TELEPHONE.

(a) Only calls to the Corporation and calls relating to telephone surveys are chargeable. All other calls are part of Contractor's overhead costs.

(b) Calls between the Contractor's office and its employees are not reimbursable.

6.6 TRANSPORTATION. Reimbursed in accordance with the the Corporation's Schedule of Reimbursable Allowances (see Attachment 6.3).

6.7 LODGING. Reimbursed in accordance with the Corporation's Schedule of Reimbursable Allowances (see Attachment 6.3).

6.8 NON-REIMBURSABLES.

- (a) Flight insurance
- (b) Valet Services (except five or more consecutive days of travel)
- (c) Personal expenses of any type
- (d) Expenses paid for the Corporation's employees.
- (e) Travel to any office of the Corporation to "deliver vouchers or pick up check".

6.9 EQUIPMENT AND SUPPLIES. Where the Agreement allows reimbursement for equipment and supplies, insurance or similar items, the Contractor must supply the following detailed documentation:

(a) Receipts of suppliers' invoices for costs of commodities, equipment and supplies, insurance or other reimbursable items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).

(b) Title to all equipment purchased pursuant to this Agreement is vested in the Corporation. The Corporation has the option of claiming any or all of such equipment.

6.10 GENERAL.

(a) All receipts must be legible. Illegible receipts will not be reimbursed.

(b) Whenever possible original receipts should be presented for reimbursement.

(c) At any time or times until three years after completion of Contractor's services or earlier termination of this Agreement by the Corporation, the Corporation may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by the Corporation on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

ARTICLE 7
INSURANCE

7.1 The Contractor shall carry, and shall require each of its Subcontractors to carry, insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required

depending on the nature of the services to be performed under this Agreement or a subconsulting agreement. Any such additional types or amounts of coverage shall be specified on Attachment 7.1 attached hereto.

7.2 Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars (\$2,000,000) aggregate and One Million Dollars (\$1,000,000) per occurrence. Such insurance is to be written on an occurrence basis. The Corporation and, if different, the New York State Urban Development Corporation d/b/a Empire State Development Corporation and each of their directors, officers, employees, agents and representatives shall be named as an additional insureds (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85). Other additional insured as the Corporation may specify in writing on Attachment 7.2 attached hereto.

7.3 Automobile Liability and Property Damage Insurance in an amount not less than \$1,000,000 combined single limit for both Bodily Injury and Property Damage.

7.4 Professional Liability Insurance if and as may be specified on Attachment 7.1.

7.5 Workers' Compensation: Employers liability and disability benefits as required by New York State. Proof of compliance shall be in the form specified on Attachment 7.5.

7.6 Excess Liability Insurance if and as may be specified on Attachment 7.1

7.7 Certificates of Insurance for all of the aforementioned coverages shall be of form and substance acceptable to the Corporation and shall be provided to the Corporation prior to the commencement of work under this Agreement.

7.8 Other requirements.

(a) Acceptance and/or approval by the Corporation of any insurance does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities.

(b) All required insurance shall be obtained at the Contractor's sole cost and expense; shall be primary and non-contributing to any insurance or self-insurance maintained by the Corporation; shall be endorsed to provide written notice be given to the Corporation at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail.

(c) All required insurance shall be maintained with insurance carriers licensed to do business in New York State, acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

(d) Contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the Corporation.

(e) Contractor shall require that any of its subcontractors hired in connection with the services to be performed under this Agreement carry insurance of the same types and with the same limits and provisions provided herein.

(f) The Contractor shall cause all insurance to be in full force and effect as of the commencement of this Agreement and to remain in full force and effect throughout its term until conclusion of the services to be performed hereunder or earlier termination of this Agreement. Contractor shall not take

any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

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

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

SCHEDULE B
SCOPE OF WORK

SEE REQUEST FOR PROPOSAL Section III

1. Project Area and Purpose

2. Scope of Project

(Indicate technical scope and identify specific work tasks and product deliverables for each phase of the work aggregating the total fee.)

3. Project Schedule

Dated: _____

Non-Discrimination and Affirmative Action Provisions

SEE SCHEDULE C

ATTACHMENT 4.6

Tax Law Section 5-a

Form ST-220-CA



Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name				For covered agency use only Contract number or description	
Contractor's principal place of business		City	State	ZIP code	
Contractor's mailing address (if different than above)					
Contractor's federal employer identification number (EIN)			Contractor's sales tax ID number (if different from contractor's EIN)		
Estimated contract value over the full term of contract (but not including renewals)					
\$					
Contractor's telephone number		Covered agency name			
Covered agency address					Covered agency telephone number

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a covered agency within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a contractor within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a contract within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF)

SS.:

COUNTY OF)

On the ___ day of _____ in the year 20___, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at _____

Town of _____

County of _____

State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

(If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

(If a corporation): he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(If a partnership): he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(If a limited liability company): he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public: _____

Registration No. _____

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 6-a, 171, 171-a, 287, 305, 429, 475, 506, 697, 1096, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 406(a)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Hamman Campus, Albany NY 12227; telephone 1 800 225-8229. From areas outside the United States and outside Canada, call (518) 485-6900.

Need help?

Internet access: www.nystax.gov (for information, forms, and publications)
Fax-on-demand forms: 1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931
To order forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (618) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 672-1233.

ATTACHMENT 4.7 -(1)
STATE FINANCE LAW SECTION 139-j

OFFERER'S AFFIRMATION OF UNDERSTANDING AND AGREEMENT

Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

Background:

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.

Instructions:

A Governmental Entity 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. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity 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:

ATTACHMENT 4.7 - (2)

STATE FINANCE LAW SECTION 139-j

OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by a Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § 139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law § 139-k is complete, true and accurate.

By: _____ Date: _____
Signature

Name:

Title:

ATTACHMENT 5.7

RELEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby acknowledges that pursuant to an agreement dated the day of _____, 20____ (the "Agreement"), pursuant to which the undersigned agreed to furnish to the Urban Development Corporation d/b/a Empire State Development Corporation or one of its subsidiaries (as the case may be, the "Corporation") all of the work necessary to complete the Agreement, and that the Corporation has paid or will pay the undersigned, or a person, firm or corporation claiming by or through the undersigned, the sum of:

(\$ _____) Dollars and up to _____

(\$) Dollars in reimbursable expenses, in each case subject to the terms, covenants and conditions of the Agreement, said amounts being the full and entire sum due from the Corporation to the undersigned pursuant to the Agreement by reason of work, labor or materials furnished or performed by the undersigned, in connection with the Agreement. In consideration of such payment, the undersigned hereby releases and discharges the Corporation, its officers, agents, and employees, of and from all claims of liability for any payment, fee or expenses payable to the undersigned pursuant to the Agreement.

The undersigned further acknowledges that neither the aforesaid payment nor acceptance by the Corporation of the work covered by the Agreement, shall in any way or manner operate as or constitute a release or waiver of the undersigned's obligations, undertakings or liabilities under the Agreement or in any way affect or limit the same.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed and its seal to be hereunto affixed this _____ day of _____, 20____.

Name of Firm

(Corporate Seal)

By: _____

ATTACHMENT 6.1

INVOICE SUMMARY
(Submit with Letter of Transmittal)

Accounts Payable Department
New York State Urban Development Corporation
633 Third Avenue, New York, NY 10017-6754

Date: _____
Invoice No: _____
Amount \$ _____

Contractor _____

Address _____

Project _____

Contract No. _____ Project No. _____

	Original Contract Amount	Amendments Total	Revised Contract Amount	Previously Billed	This Invoice**	Invoiced To Contract Date	Contract Balance
1. Fee							
2. Reimbursables							
3. Extra Services* 4.Total		\$	\$	\$	\$	\$	\$
\$							

Latest Contract Amount \$ _____
Billed to Date \$ _____
Paid to Date \$ _____
Balance Due \$ _____

*Attach letters of Authorization
**Attach back-up

SAMPLE

SCHEDULE OF REIMBURSABLE ALLOWANCES

	<u>BREAKFAST</u>	<u>LUNCH</u>	<u>DINNER</u>
	Without Receipt	Without Receipt	Without Receipt
I. MEALS ALLOWANCES			
A. OVERTIME			
NORMAL WORKDAY - 8:00 PM (10 or more hours worked)			\$15.00
SAT., SUN & HOLIDAYS			
OVER 4 HOURS		\$10.00	
OVER 10 HOURS			\$15.00
B. BUSINESS GUESTS (PER PERSON)			
METRO N.Y. & OUT OF STATE	\$10.00	\$25.00	\$45.00
UPSTATE N.Y.	\$ 8.00	\$20.00	\$35.00
C. NON-OVERNIGHT TRAVEL DAY TRIPS			
	\$8.00 ^(a)		\$15.00 ^(b)
D. OVERNIGHT			
TRAVEL 1st & last		\$7-\$9 ^(a)	\$27-\$37 ^(b)
Interim full days			

(REIMBURSEMENT RATES ARE BASED ON LOCALITY-See Attached)

BREAKDOWN OF MEALS BASED ON LOCATION

DAILY BREAKFAST DINNER

\$64	\$13	\$51
\$59	\$12	\$47
\$54	\$11	\$43
\$49	\$10	\$39
\$44	\$9	\$35
\$39	\$8	\$31

II. LODGING (See attached)

III. TRANSPORTATION ALLOWANCES

A. PERSONAL CAR MILEAGE	44.5 cents per mile.
B. PERSONAL CAR OVERTIME	Actual \$50 limit on overtime
C. CAR RENTAL	Actual Note: Be sure that sales tax is not charged and that collision damage waiver insurance is accepted when renting in NYS.
D. AIRLINE & OTHER PUBLIC TRANSPORTATION	Actual - evidenced by receipt coach rate.
E. TAXI FARES	Actual - evidenced by receipt \$50 limit on overtime

(a) When travel status begins prior to 7:00 AM
 (b) When travel status ends after 8:00 PM

<u>City</u>	<u>County</u>	<u>Maximum Lodging Amount</u>	<u>Meal Date</u>	<u>Maximum Per Diem Date</u>
Albany	Albany	94	49	143
Binghamton/Owego	Broome and Tioga	71	39	110
Buffalo (October 1 - November 19)	Erie	70	54	124
Buffalo (November 20 - September 30)	Erie	79	54	133
Floral Park/Garden City/Glen Cove/Great Neck/Roslyn	Nassau	162	64	226
Glens Falls (October 1 - June 30)	Warren	75	49	124
Glens Falls (July 1 - August 31)	Warren	121	49	170
Glens Falls (September 1 - September 30)	Warren	75	49	124
Ithaca/Waterloo/Romulus	Tompkins and Seneca	86	44	130
Kingston	Ulster	83	49	132
Lake Placid (October 1 - November 30)	Essex	95	54	149
Lake Placid (December 1 - February 28)	Essex	114	54	168
Lake Placid (March 1 - June 30)	Essex	83	54	137
Lake Placid (July 1 - August 31)	Essex	142	54	196
Lake Placid (September 1 - September 30)	Essex	95	54	149
Manhattan (includes the boroughs of Manhattan, Brooklhn, Queens, the Bronx and Staten Island (October 1 - December 31)	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island	226	64	290
Manhattan (includes the boroughs of Manhattan, Brooklhn, Queens, the Bronx and Staten Island (January 1 - May 31)	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island	201	64	265
Manhattan (includes the boroughs of Manhattan, Brooklhn, Queens, the Bronx and Staten Island	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and	180	64	244

(June 1 - August 31)	Staten Island			
Manhattan (includes the boroughs of Manhattan, Brooklyn, Queens, the Bronx and Staten Island (September 1 - September 30))	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island	226	64	290
Niagara Falls (October 1 - June 30)	Niagara	60	44	104
Niagara Falls (July 1 - August 31)	Niagara	83	44	127
Niagara Falls (September 1 - September 30)	Niagara	60	44	104
Nyack/Palisades	Rockland	95	49	144
Poughkeepsie	Dutchess	102	54	156
Riverhead/Ronkonkoma/Melville/Smithtown/Huntington Station/Amagansett/East Hampton/Montauk/Southampton/Islandia/Commack/Medford/Stony Brook/Hauppauge/Centereach	Suffolk	126	64	190
Rochester	Monroe	81	44	125
Saratoga Springs/Schenectady (October 1 - June 30)	Saratoga and Schenectady	93	44	137
Saratoga Springs/Schenectady (July 1 - August 31)	Saratoga and Schenectady	147	44	191
Saratoga Springs/Schenectady (September 1 - September 30)	Saratoga and Schenectady	93	44	137
Syracuse	Onondaga	78	44	122
Tarrytown/White Plains/New Rochelle/Yonkers	Westchester	130	59	189
Troy	Rensselaer	80	39	119
West Point	Orange	97	44	141

Additional Insurance

Additional Insureds

Proof of Workers' Compensation and Disability Benefits Insurance

To comply, you must submit one of the following proofs:

Private Insurer	-	Form C-1 05.2
State Insurance Fund	-	Form U.26.3
Status as Self-Insured	-	Form SI-12
Status as Member of Group Self Insurance	-	Form GSI-1 05.2

(Please obtain the above forms from your insurance carrier, licensed insurance agent or self-insurance administrator.)

Statement that Applicant Is Not Required to Carry New York State Worker's Compensation Insurance	-	Form WC/DB-100 OR Form WC/DB-101
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Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at www.web.state.ny.us.

If you have questions regarding workers' compensation insurance coverage requirements, please contact the Bureau of Compliance at: **1-800-298-7830**.

DISABILITY BENEFITS INSURANCE

Section 220 of the New York State Workers' Compensation Law requires that before any permit, license or contract is issued by any municipal, county or state government entity, the applicant must submit proof of compliance with NYS disability benefits coverage requirements.

To comply, you must submit one of the following proofs:

All Insurance Carriers	-	Form DB-1 20.1 or DB-820/829
Status as Self-Insured	-	Form DB-155

(Please obtain the above forms from your insurance carrier or self-insurance administrator.)

Statement that Applicant Is Not Required to Carry New York State Disability Insurance	-	Form WC/DB-100 OR Form WC/DB-101
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Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at www.wcb.state.ny.us.

If you have questions regarding disability benefits insurance coverage requirements, please contact the Disability Benefits Office at: **1-800-353-3092**.

SCHEDULE C

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

I. General Provisions

- A. ESD is required to implement the provisions of NYS 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. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with 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 NYS 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 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. 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,

SCHEDULE C

demotion, transfer, layoff, termination, and rates of pay or other forms of compensation.

2. Contractor shall submit an EEO policy statement to ESD within seventy two (72) hours after the date of the notice by ESD to award the Contract to Contractor.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, a model statement is attached to the end of this Schedule C (see "Minority and Women-Owned Business Enterprises - Equal Employment Opportunity Policy Statement").
4. Contractor's EEO policy statement shall include the following language:
 - a. 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. 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. 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. Contractor will include the provisions of subsections II.B.4. (a) through (c) above and of subsection II.E. below (which provides for relevant provisions of the Human Rights Law) in every subcontract in such a manner that the requirements of those subsections will be binding upon each subcontractor as to work in connection with this Contract.

C. EEO Staffing Plan (see RFP Appendix 2, Schedule A-1)

To ensure compliance with this section, Contractor shall submit an EEO 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. Contractor shall complete and submit the required EEO Staffing Plan as part of its 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")

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1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to 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 and all other State and Federal statutory and constitutional non-discrimination provisions. 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.

III. Contract Goals

- A. For purposes of this procurement, ESD hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBEs") participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation.
- B. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract goals established in subsection III.A., Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:
www.esd.ny.gov/MWBE/directorySearch

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- 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 this Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, 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 Contractor shall be liable to ESD for liquidated or other appropriate damages, as set forth herein.

IV. MWBE Utilization Plan (see RFP Appendix 2, Schedule A-2)

- A. Contractor acknowledges that Contractor is required to submit the MWBE Utilization Plan either prior to, or at the time of, the execution of this Contract.
- B. Contractor further agrees to use such MWBE Utilization Plan to document the use of MWBEs in connection with this Contract in order to demonstrate Contractor’s good faith efforts to comply with the prescribed MWBE goals set forth in subsection III.A. above.

V. Waivers

- A. If Contractor, after making good faith efforts, is unable to comply with the MWBE goals set forth in subsection III.A. above, Contractor may submit a Request for Waiver documenting good faith efforts by Contractor to meet such goals. If the documentation included with the waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- B. If ESD, upon review of Utilization Plan and updated Compliance Reports (see subsection VI. below), determines that Contractor is failing or refusing to make good faith efforts to comply with the MWBE goals set forth in subsection III.A. above, and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to Contractor. 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 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 this Contract, and Contractor refuses to comply with such requirements, or if Contractor

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is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to ESD.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had 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 payment of liquidated damages and such identified sums have not been withheld by ESD, Contractor shall pay such liquidated damages to ESD within sixty (60) days after they are assessed by ESD, unless prior to the expiration of such sixtieth day, 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 ESD.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES –
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, an authorized signatory of Contractor _____, agree to adopt the following policies with respect to the Project being developed or services rendered at _____

M/WBE This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

- (a) This organization 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 programs of affirmative action to ensure that minority group members 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 on state contracts.
- (b) This organization shall state in all solicitation 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 disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organizations' obligations herein.
- (d) Contractor shall comply with the provisions of 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. Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement 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 State contract

Agreed to this _____ day of _____, 2_____

By: _____

Name: _____

Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (MWBE-EEO) program.

MWBE Contract Goals

_____ % Minority and Women's Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % Women's Business Enterprise Participation

EEO Contract Goals

_____ % Minority Labor Force Participation

_____ % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

APPENDIX 2

ESD AFFIRMATIVE ACTION FORMS

STAFFING PLAN

Project/RFP Title _____ Location of Contract _____ County _____ Zip _____

Contractor/Firm Name _____ Address _____ City _____ State _____ Zip _____

Check applicable categories: (1) Staff Estimates include: Contract/Project Staff Subcontractors
 (2) Type of Contract: Construction Consultants Commodities Services/Consultants

Federal Occupational Category	TOTAL ANTICIPATED WORK FORCE										Total Percent Minority Employees	Total Percent Female Employees	
	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American Alaskan Native				
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female			
Officials/Admin.													
Professionals													
Technicians													
Sales Workers													
Office & Clerical													
Craft Workers													
Operatives													
Laborers													
Service Workers													
TOTALS													

CERTIFICATION:
 I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Staffing Plan and (ii) to the best of my knowledge, information and belief the information herein is complete and accurate.

Signature _____ Date _____ Telephone Number: _____

Empire State Development
 Affirmative Action Unit – HELEN DANIELS
 633 Third Avenue
 New York, NY 10017
 Email: hdaniels@empire.ny.state Fax: (212) 803-3223

APPENDIX 3

SUBMISSION CHECKLIST

1. See Proposal Content at RFP Section IV.B.(1) – (6).
2. Schedule of Minority/Women Owned Business Participation (Appendix 2, Schedule A-1).
3. Staffing Plan (Appendix 2, Schedule A-2).
4. Form ST-220-CA (Attachment 4.6 to Schedule A to ESD Standard Form Contract attached as Appendix 1 to this RFP).
5. Offerer Disclosure of Prior Non-Responsibility Determinations (Attachment 4.7-(2) to Schedule A to ESD Standard Form Contract attached as Appendix 1 to this RFP).
6. Offerer Affirmation of Understanding and Agreement (Attachment 4.7-(1) to Schedule A to ESD Standard Form Contract attached as Appendix 1 to this RFP).