



ENVIRONMENTAL INVESTMENT PROGRAM

PROGRAM GUIDE 2013/ 2014

The Environmental Investment Program (EIP) assists businesses in completing projects that lead to recycling, pollution prevention, waste reduction and sustainable economic development results. EIP awards are made on a competitive basis. Successful projects are those with a strong likelihood of creating substantial environmental and economic results in a timely fashion.

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TO APPLY

Applications are reviewed competitively by Empire State Development and the Regional Councils. Applications must be presented through the NYS Consolidated Funding Application (CFA) however applicants and businesses are strongly urged to contact the Environmental Investment Program staff before applying to discuss a proposed project.

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1. PROGRAM OBJECTIVE

The objective of EIP is to assist New York State business in completing projects that result in substantive environmental improvements and associated economic benefits.

Environmental improvements may be achieved through:

- Recycling (which includes reuse, remanufacturing and composting)
- Pollution prevention and waste reduction
- Sustainable product and technology development/implementation

Associated economic benefits may include:

- Job creation and retention
- Savings to the business by reduced operating or purchasing costs
- Increased sales revenues, expanded production output and new product development

2. INVESTMENT AREAS

EIP projects must achieve measurable outcomes in one or more of these investment areas:

- A) Recycling (which includes reuse, remanufacturing and composting)
- B) Pollution prevention and waste reduction
- C) Sustainable product and technology development/implementation

A) Recycling (includes Reuse, Remanufacturing and Composting)

Recycling: Eligible projects expand the capacity to recycle, increase the volume of material recycled, or enhance the value of the processed material or finished product made from it. Recycling projects process material for use as a feedstock or use recycled materials to make value-added end products. Recycling projects must increase the value of the material. Hazardous wastes may only be recycled within the facility where they are generated.

Recycling projects focus on:

- Solid waste
- Source-separated organic waste (may not include human septage)
- Industrial process waste (non-hazardous solid, liquid and airborne wastes resulting from industrial processes)
- Hazardous waste (may only be recycled at the generating facility as a feedstock)

Reuse: Eligible projects collect and return items to use "as is." EIP reuse investment priorities focus on materials that are generated and reused by commercial/industrial business sectors; and on initiatives to address gaps in the reuse of materials with higher intrinsic value.

Remanufacturing: Eligible projects may include disassembling products to clean, repair or replace parts, and reassemble them to sound working condition. Remanufacturing returns items to use so that they are either as good as new or made with a known useful life.

Composting: Eligible projects produce usable quality soils and soil enhancers from source-separated organic wastes. EIP supports composting projects that incorporate substantial amounts of commercially or industrially generated food wastes. EIP is prohibited from assisting composting projects that incorporate human septage.

B) Pollution Prevention and Waste Reduction

Pollution prevention/waste reduction may include projects that prevent or reduce the generation of wastes, substitute less toxic materials or substances and/or adopt the use of environmental technologies. Pollution prevention projects must achieve environmental results that exceed the required thresholds for compliance. Project environmental outcomes focus on:

- Solid waste
- Industrial process waste (non-hazardous solid, liquid and airborne wastes resulting from industrial processes)
- Hazardous waste

C) Sustainable Product and Technology Development/Implementation

Sustainable product and technology development supports the creation of new or reformulated products and industrial process technologies. These products and technologies must enhance environmental performance in a measurable way when compared to the conventional product or process technology currently in use. Sustainable product/technology development projects may enhance environmental performance by addressing:

- Industrial process waste in all media (non-hazardous solid, liquid and airborne process wastes)
- Hazardous waste
- Toxic and heavy metal reductions/substitutions
- Recycled content feedstock
- Lifecycle design for reuse/remanufacturing of products/technologies

3. PRIORITIES

Projects that focus on the following areas may receive priority:

- Projects which build on previous efforts to incorporate recycling or pollution prevention into a business's operations as evidenced by completion of a waste assessment, waste audit, environmental management system audit or other review, for example, a project that proposes implementing recommendations from a previously completed waste assessment.
- Commercial/Industrial-Generated Food Waste
 - Increase capacity to process commercial/industrial food waste for recycling
 - Increase capacity to compost commercial/industrial food waste
 - Enhance collection technology and practices to make food waste diversion cost-effective
 - Expand value-added markets for compost
- Building Construction and Demolition (C&D) Debris
 - Increase capacity to divert building C&D material from disposal to reuse/recycling
 - Increase value and value-added uses for recovered material
 - Increase capacity for deconstruction and building material reuse
- Electronic Devices
 - Increase capacity and cost-effectiveness of electronics recycling and remanufacturing

- Tires
 - Expand value-added uses for recycled tire materials
- Industrial Process and Hazardous Waste
 - Prevent or reduce use, substitute less hazardous materials or expand the capacity to recycle

4. INELIGIBLE PROJECTS

The following project types are not eligible for funding through the EIP program:

- Energy production, recovery, conservation and efficiency
- Incineration, the processing of waste for use as refuse derived fuel, substituting lower cost energy sources or energy sales
- End-of-pipe pollution control technologies including practices and equipment to achieve compliance with NYS environmental conservation laws or regulations
- Recycling, reuse or processing of DEC regulated hazardous waste or hazardous substances that were not used in the company's own process
- Shifting waste from one medium to another with no net environmental benefit
- Substitution of a hazardous substance or output with another with no net environmental benefit
- Storm water run-off mitigation
- Clean-up or remediation of contaminated sites
- Municipal waste treatment projects, such as a water or sewage treatment facilities
- Municipal waste reduction or waste recycling projects eligible for funding through NYSDEC
- Recycling or pollution prevention outcomes that occur only once
- Waste collection and/or processing that will only include basic processing (aggregating, sorting, baling, etc) of non-industrial recyclables with no intermediate or advanced processing to prepare the material as a manufacturing feedstock.
- Speculative projects

5. PROJECT OUTCOMES

Projects must clearly define measurable environmental and economic results which are reported as project outcomes. Project outcomes must be quantifiable and measured as improvements over baseline operations. Environmental outcomes are measured as tons of material recycled, remanufactured or reused; tons of pollution prevented; or, millions of gallons of water reduced or recycled. Economic outcomes are measured as jobs created or retained, the value of reduced costs and/or increased revenue.

6. TYPES OF PROJECTS

EIP assists three types of projects:

- Capital
- Research, Development and Demonstration (RD&D)
- Technical Assistance (TA)

A. Capital Projects

Purpose

- Assist businesses with the purchase of machinery and equipment, building, property, and infrastructure improvements directly associated with the project

Eligibility

- Non-profit organization or municipality must apply on behalf of a NYS business. The non-profit organization or municipality is referred to as the contractor. The business that implements the project is referred to as the project co-implementer.

Funding Limits

- Up to 50% of eligible project costs, not to exceed \$500,000 after taking into consideration all other applicable Federal, State and other funding sources. Capital projects are typically funded at 10-25% of eligible costs.
- Capital assistance must be matched with cash.

Eligible Costs

- Machinery and equipment directly related to the project, including associated engineering, shipping and installation costs. Transportation equipment is limited to those items used on site and generally not able to be registered with NYS DMV.
- Acquisition, construction and improvements to real property when the costs are integral to the project results, reasonable, and increase the likelihood that the project will start and complete in a timely manner. Improvements, alterations or repairs to real property may include site preparation; demolition, installation or relocation of utilities; transportation facilities; construction materials and labor.
- Consulting costs associated with the acquisition of legal, engineering and architectural services directly related to the installation and start-up of the equipment.

Ineligible Costs

- Consultant fees for services such as preparing an EIP application, writing reports, measuring results or performing R&D
- In-kind costs
- Permit fees
- Costs incurred prior to the date of application approval

Other

- The useful life of each funded asset must be mutually agreed to prior to contract execution. The useful life may be determined by its accounting life for purposes of depreciation; the original equipment manufacturer; or an alternative method.
- The contractor must own the assets supported by EIP for the term of its agreed upon useful life, on behalf of the private sector co-implementer. At the end of the useful life the asset is transferred to the co-implementer (business).
- Co-implementer uses the assets supported through capital project contracts to achieve project results. Co-implementers must be committed to measuring and verifying project results.
- Economic outcomes for recycling and pollution prevention projects must be directly derived from the environmental improvement achieved at the site where the

investment is made. Environmental outcomes for sustainable product development projects do not have to be achieved at the site where the investment is made.

B. Research, Development and Demonstration (RD&D) Projects

Purpose

- Assist business with testing/research to move new or reformulated product/process prototypes to commercialization. The product or technology tested must have the potential to achieve measurable recycling and pollution prevention outcomes.

Eligibility

- New York State business or non-profit organization employing fewer than 500 workers or earning less than \$10 million in gross annual sales.

Funding

- May be up to 80% of eligible project costs, not to exceed \$200,000 after taking into consideration all other applicable state sources. RD&D projects are typically funded at 20-40% of eligible costs. RD&D assistance must be matched with at least 20% of project costs in cash.

Eligible Costs

- Incremental expenses associated exclusively with the conduct of the test, evaluation, or demonstration. This includes equipment rental, raw materials/feedstock, supplies and outside testing services.
- Indirect costs (expenses that are in support of the project) may be accounted for in one of two ways; added as a percentage to the project budget or itemized. When added as a percentage to the project budget indirect cost rates may not exceed 22% of the total project cost or of any funding source.
- Purchase of equipment when essential to the research outcomes and when rental or lease options are not available (must be documented).
- Personnel and fringe benefit in-kind expenses may be included as part of the match unless they have been approved for EIP reimbursement. Justification of these expenses must document why identified individuals are uniquely qualified to conduct relevant portions of the RD&D project.

Ineligible costs

- Equipment purchases except as noted above
- Capital improvements
- Unless they are indirect costs as noted above, fixed costs incurred regardless of the project (i.e., rent, overhead and others associated with the normal cost of doing business)
- Employee wages except as noted above
- Costs incurred prior to the date of application approval
- Costs incurred to prepare an EIP application.

C. Technical Assistance (TA) Projects

Purpose

- Provide businesses with technical assistance to achieve measurable recycling, pollution prevention or sustainable product use outcomes and the associated economic outcomes of job creation, cost savings, or enhanced revenues.

Eligibility

- Non-profit organization or municipality providing technical assistance to NYS businesses.

Funding

- Up to 50% of eligible project costs, not to exceed \$100,000/year. TA projects are typically funded at 20-40% of eligible costs. Projects must incorporate cash contributions from assisted businesses.

Eligible Costs

- Personnel expenses (salaries and fringe benefits) for employees engaged in technical assistance delivery.
- Supplies and materials; publications; travel; communications; equipment rental; facility rental; telephone and utilities.
- Indirect costs (expenses that are in support of the project may be accounted for in one of two ways; added as a percentage to the project budget or itemized. When added as a percentage to the project budget indirect cost rates may not exceed 22% of the total project cost or of any other funding source.
- Equipment to implement technical assistance at business locations may be eligible.

Ineligible Costs

- Operating costs not directly associated with delivery of technical assistance to businesses.
- Costs incurred prior to the date of application approval
- Costs incurred in preparing an EIP application.

7. SELECTION CRITERIA

EIP applications will be scored using these criteria:

Appropriateness of the project in fulfilling regional economic development and environmental improvement needs:

REGIONAL ECONOMIC DEVELOPMENT COUNCIL SCORE 20 points

Commitment and ability of applicant to achieve short and long term goals of project:

- Soundness (financial viability) of the business 10 points
- Likelihood the project will start and be completed on time 5 points

Technical feasibility of the project:

- The extent to which preliminary research or evaluation of the technical and economic merits of the proposed project have been quantified and such analysis indicates the project can be successfully implemented and/or commercialized 10 points
- Focuses on EIP priorities 5 points

Economic feasibility of the project:

- The financial need of the applicant and/or co-implementor 5 points
- The project represents a cost effective use of state funds as measured by economic return on state investment 10 points
- Degree to which requested funds leverage matching cash funds from other sources and/or degree to which requested funds leverage other like projects and/or degree to which results may apply to other NYS business enterprises 10 points

Environmental benefit to the state

- The project represents a cost effective use of state funds as measured by environmental return on investment 10 points
- The impact or potential impact the project will have on reducing the amount of waste requiring disposal 5 points
- The project contributes or will contribute to a strong secondary materials processing and manufacturing capacity in the community or state 5 points

The extent to which selection of the project would insure, to the extent practicable, a regional distribution of projects across the state 5 points

8. CONTRACT GUIDELINES

- The contract term is typically 2- 5 years, depending upon the project type and useful life of the EIP funded equipment.
- All contracts are performance-based and payments are made on a reimbursement basis as project outcomes are achieved. EIP reserves the right to withhold at least 20% of the full contract amount until satisfied that the project has been completed, the contractor has met all contractual obligations including project outcomes have been achieved and final reports.
- If the contractor's cash or in-kind contributions fall below the contractual budget commitments, EIP reserves the right to proportionately reduce the EIP award.
- If a contractor fails to complete the project as approved, or disposes of supported equipment before its agreed upon useful life(Capital and TA), or changes the project or any portion thereof without the prior written approval from DED, the contractor may be liable for any contract payment made.
- For RD&D, the study results must be implemented through a New York State facility or make the results available to other interested NYS business enterprises through sale, licensing or other means within two years of project completion. If the RD&D contractor does not comply, EIP retains the right to make the project results available

for public use after two years. All non-proprietary information generated by RD&D projects and provided to EIP may be used by EIP in any manner deemed appropriate to further environmental quality objectives.

- DED is subject to the Freedom of Information Law (FOIL) that governs the process for the public disclosure of certain records maintained by the Department. Guidelines are included in the Appendix.
- Awards made by EIP are subject to the New York State Executive Law Article 15-A which governs equal employment opportunities for minorities and women and the participation of certified minority and women-owned business enterprises (MWBEs) on State contracts. EIP has an overall program goal of 20% for MWBE participation. Goals for each project/contract shall be established pursuant to current MWBE availability. For further information regarding ESD's MWBE requirements for EIP, please refer to "Participation Opportunities for MWBE's in this program guide."

9. APPLICATION REVIEW AND AWARD PROCESS

Applications are submitted through the Consolidated Funding Application (CFA). Applications are reviewed to verify and analyze financial and technical information related to the company or project. EIP staff may conduct telephone interviews, site visits, industry research and request additional information as needed to complete due diligence. EIP staff will consult with the NYS Department of Environmental Conservation and other pertinent Federal, State and local agencies to ensure the applicant (or co-implementer) is in compliance with all appropriate laws and regulations. EIP staff may also seek guidance from experts at the New York State Energy Research Development Authority, universities, trade associations, or other individuals.

Applications are evaluated competitively by the Investment Review Committee (IRC) and the Regional Economic Development Council.

Award announcements are subject to the availability of funds. Upon award, EIP staff work with contractors/co-implementers to finalize project milestone and outcomes. Project milestones and outcomes will become the performance standards for the contract disbursement(s).

If an award is granted, all contractors and co-implementers must complete and submit the following forms prior to contracting*:

1. OSC Forms ST-220-CA and ST-220-TD (certification to collect NYS sales tax):
(Municipalities, IDAs, and contracts in which EIP support is in excess of \$100,000 are generally exempt)
2. Vendor Responsibility Questionnaire (VRQ)
(Municipalities, IDAs, and contracts in which EIP support in excess of \$100,000 are generally exempt)
3. MWBE Forms E1, E2, E4 and E5 may be required. Contact an EIP staff person for an explanation.
4. Proof of Workers Compensation (WC) Insurance and Disability Benefits (DB) Insurance from both contractor and co-implementer. (Municipalities and IDAs are exempt)

*Subject to modification

For capital contracts the following must be submitted prior to the first invoice:

1. A copy of the ratified agreement between the applicant and the co-implementer to fulfill the conditions of the agreement between DED and contractor.
2. A copy of the Uniform Commercial Code (UCC) filing to secure ownership of the equipment for which it will be reimbursed via this contract. For UCC filing information visit <http://www.dos.state.ny.us> or call (518) 474-4763.

Other documentation unique to your contract type may be required by contractor and/or co-implementer.

10. GLOSSARY

Co-implementer – a New York State business that conducts the project. The co-implementer subcontracts with the contractor to use the EIP assisted assets to achieve the project results. Project matching funds are provided by the co-implementer. EIP awards are paid on a reimbursement basis to the contractor upon verification that the co-implementer has achieved contractual project outcomes. The Contractor disburses funds to the co-implementer upon receipt of payment.

Example: An industrial development agency (IDA) contracts with EIP to invest in machinery and equipment on behalf of a manufacturer to recycle process wastes and water. The manufacturer is the co-implementer. The manufacturer enters into a separate agreement with the IDA and must successfully operate the new equipment and verify achievement of the contractual recycling outcomes.

Contractor – Capital projects - the contractor is the municipality or non-profit organization who applies for funding on behalf of a New York State business. The contractor also holds title to EIP-supported assets for the useful life of that asset. RD&D projects - the contractor is a New York State business or non-profit organization that contracts directly with DED.

Technical Assistance projects - the contractor is a non-profit business service organization or municipality that contracts with DED to provide technical assistance to New York State businesses.

Employment

Full-time Permanent Employee – A full-time, permanent, private sector employee or 2 part-time, permanent, private sector employees: on contractor/co-implementer's payroll who work(s) at the project location for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is/are entitled to receive the usual and customary fringe benefits extended by the contractor/co-implementer to other employees of comparable rank and duties.

Full-time Contract Employee – A full-time, private sector employee (or self-employed person) who is not on the contractors/co-implementer's payroll but who works for the contractor/co-implementer for a minimum of 35 hrs per week for not less than 4 consecutive weeks

providing services that would otherwise be provided by a full time permanent employee. The position held by a full time contract employee is a year round position.

Retained Jobs – Jobs at risk of being lost or moved out of state should the Project not proceed.

Match

In-Kind Match – an in-kind match is an existing resource and quantifiable cost that the applicant dedicated to implement the project. In-kind matching resources may include, but are not limited to, staff time, facility space, equipment, inventory, and supplies. In-kind matches are valued at the cost paid to sustain them. For example: an existing staff person dedicates part of his/her time to implement the project. Part of that worker's salary and benefits may be counted as an in-kind match to the project. An exception to this policy is if a third party cash match is used to pay for the existing expenses described above, it would be considered a cash match.

Cash Match – a cash match represents a new expenditure the applicant or benefitting business incurs in order to implement the project. Such expenditures must be integral and necessary to complete the project. For example: an organization lacks sufficient staff to implement a project and hires a consultant or temporary worker dedicated to the project. The cost of the consultant or temporary worker may be counted as a cash match.

Match Sources – In Capital and TA projects, project funding not provided by EIP may not be Federal, Other Assistance or NYS Waste Prevention Assistance received or to be received. If those sources are needed to successfully complete the project they will be subtracted from the Total prior to applying the 50% maximum State funding rule. "Other Assistance" is any assistance that does not have to be paid back, such as a grant. -In RD&D projects match funding may not include funds from NYS Waste Prevention sources. Contact program staff for details.

Municipality – a local public authority, public benefit corporation, a county, city, town village, or Indian tribe residing in New York State or any combination thereof.

Non-profit/ Not-for- Profit Organization – (1) organized and operated as a not for profit organization (2) does not have stock, shares or certificates for stock or shares as described in NYS Dept of Tax and Finance CT-247 (3) no part of its net earnings may benefit any officer, director, or member (4) must be exempt from federal income taxation under IRC section 501, subsection (a).

Project Outcomes – are the measurable environmental and economic results the project commits to achieve. For Capital and Technical Assistance, project outcomes must be expressed as quantifiable and verifiable numbers: as tons of material/waste or millions of gallons of water reused, recycled, reduced or conserved; and as dollars of savings or increased revenue; and as jobs created or retained. More specific guidance for expressing capital and technical assistance project outcomes is provided in the application or by contacting an EIP staff specialist.

For RD&D, project outcomes are precise statements about what the applicant will test and demonstrate and should reflect the research methodology. Applicants must also estimate the ultimate value of the project outcomes. That is, what will be achieved when the RD&D results are applied commercially? While somewhat speculative, this must be expressed in quantifiable terms. EIP invests in RD&D projects that have the highest potential for commercial implementation and will achieve substantive environmental results.

Project outcomes must be realistic and achievable. The project outcomes, milestones to reach the outcomes and verifications will become part of the project contract and form the basis for determining disbursements.

Source Separated Organic Materials – readily degradable organic material such as food, yard and wood waste, including agricultural and food processing waste, which is collected separately from mixed solid waste, but does not include sewage, sewage sludge, sludge or septage.

Source Reduction – any practice which:

- Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
- Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.
- The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service, for example, a company-wide paper reduction program.
- **Sustainable/Sustainability** – a product or process that reduces environmental impacts throughout the product life or operation of the technology when compared to current products or practices. For EIP, sustainable product and technology development/implementation addresses:
 - Industrial process waste in all media (non-hazardous solid, liquid and airborne process wastes)
 - Hazardous waste
 - Toxic and heavy metal reductions/substitutions
 - Recycled content feedstock
 - Lifecycle design for reuse/remanufacturing of products/technologies

Waste – For the purpose of this program, waste is defined to include:

Air Contaminant – any regulated air emissions, including SO_x, NO_x, Volatile Organic Compounds, Hazardous Air Pollutants and others as defined by the Department of Environmental Conservation under Part 200.1(d). Consult with an EIP specialist to determine applicability.

Hazardous Waste – those wastes that appear on the list, or satisfy the characteristics of hazardous waste promulgated pursuant to section 27-0903 of the Environmental Conservation Law. Hazardous wastes do not include source, special nuclear or by-product material as defined in the Atomic Energy Act of 1954, as amended.

Industrial Process Waste — any liquid, gaseous or solid substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards adopted in subdivision five of section 17-0105 of the Environmental Conservation Law. Industrial Process Waste does not include hazardous waste.

Solid Waste — all putrescible and non-putrescible materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of discard or rejection. This can include, but is not limited to, garbage, refuse, industrial and commercial waste, sludges from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal, but does not include sewage and other highly diluted water-carried materials or substances and those in gaseous form. This does not include hazardous waste.

11. APPENDIX

The Appendix contains standard clauses that govern all New York State contracts and general contract provisions regarding minority and women-owned business enterprise participation and equal employment opportunity considerations. It also contains information regarding the Freedom of Information Law (FOIL) that governs the process for the public disclosure of certain records maintained by DED, provisions concerning subcontracting and provisions concerning payment process. Provisions outlined in the Appendix are incorporated into every EIP contract. It is available as a separate document for review at any time.

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of

materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to,

the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

(b) at the request of the contracting agency, the Contractor shall request each employment agency,

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

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

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

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including

any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits

purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business
Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner

as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163

(4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MWBES

DED is required to comply with and implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. Approval of funding by DED is conditioned upon and subject to the following requirements:

- a) Contractor agrees to fully comply and cooperate with DED in the implementation of New York State Executive Law Article 15-A. These requirements include contracting opportunities for MWBES.
- b) DED has an overall agency goal of 20% for MWBE participation. Goals for each project/contract shall be established pursuant to current MWBE availability. For purposes of this EIP Project, DED hereby establishes an overall goal of TBD% for MWBE participation, TBD% for MBE participation and TBD% for WBE participation.
- c) 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, other applicable federal, state or local laws.
- d) For purposes of providing meaningful participation by MWBES on the project and achieving the project goals established herein, Recipient should reference the directory of New York State Certified MBWES found at the following internet address:
<http://www.esd.ny.gov/MWBE/directorySearch.html>.
Additionally, Recipient is encouraged to contact Diane Kinnicut of Empire State Development Office of Contractor and Supplier Diversity at (518) 292-5727 to discuss additional methods of maximizing participation by MWBES on the project.
- e) Contractor is required to submit a MWBE Utilization Plan (Exhibit 1) not later than ten (10) days after request. Any modifications or changes to the MWBE Utilization Plan during the performance of the project must be reported on a revised MWBE Utilization Plan and submitted to DED.
- f) DED will review the submitted MWBE Utilization Plan and advise the Contractor of DED acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- g) If a notice of deficiency is issued, Contractor agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY, EMPIRE STATE DEVELOPMENT, EMPIRE STATE DEVELOPMENT, ALBANY, NY 12245, c/o Diane Kinnicut 518-292-5727, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DED to be inadequate, DED shall notify the Recipient and direct the Recipient to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form E5. Failure to file the waiver form in a timely manner may result in a finding that Recipient has intentionally or willfully failed to comply with the requirements of the Executive Law Article 15-A and the MWBE provisions outlined herein.
- h) DED may find that Contractor has willfully or intentionally failed to meet the MWBE project/contract requirements under the following circumstances:
 1. If a Contractor fails to submit a MWBE Utilization Plan;

2. If a Contractor fails to submit a written remedy to a notice of deficiency;
 3. If a Contractor fails to submit a request for waiver; or
 4. If DED determines that Contractor has failed to document good faith efforts pursuant to 5 NYCRR §142.8.
- i) Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan during the performance of the project/contract. Requests for a partial or total waiver of established goal requirements made subsequent to the execution of the Contract may be made at any time during the term of the project to DED, but must be made no later than prior to the submission of a request for final payment on the project/contract.
- j) Contractor is required to submit a Quarterly MWBE Contractor Compliance & Payment Report to EMPIRE STATE DEVELOPMENT, ALBANY, NY 12245, c/o Diane Kinnicut 518-292-5727, by the 10th day following each end of quarter over the term of the project documenting the progress made toward achievement of the MWBE project goals.
- k) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the project. The Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals and requirements set forth herein, such a finding may result in either the recapture of grant proceeds or reduction in grant amount. Such MWBE Recapture/Reduction shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the MWBE project goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the project.

FREEDOM OF INFORMATION LAW

The Department is subject to the Freedom of Information Law (FOIL), which governs the process for the public disclosure of certain records maintained by the Department. (See Public Officers Law, Sections 84 through 90. Any documents, including a proposal submitted to the Department’s Environmental Investment Program (EIP) may become subject to disclosure pursuant to FOIL.

At the time of application, the Contractor may request that the Department except all or part of Contractor's proposal, reports or other information submitted to the Department from public disclosure, pursuant to Section 87(2)(d) of the Public Officers Law, on the ground that said specified item(s) contain trade secrets or that the information, if disclosed, would cause substantial injury to the competitive position of the

Contractor. The request for an exception must be in writing and must state the reasons why the information should be excepted from disclosure. It must also specify the items or portions thereof for which the exception is requested. The Department reserves the right to determine whether the information submitted by the applicant may be withheld from disclosure under FOIL. A Contractor’s submission of the above referenced letter triggers the Department’s obligation to notify the Contractor of any request for disclosure of their information. A Contractor will then have the opportunity to write to the Department and

request that the previously identified information continue to be excepted from disclosure. The Department will then notify the Contractor of the Department's decision to grant or deny such request for exception from disclosure in accordance with the provisions of Section 89(5) of the Public Officers Law. Any information submitted by the Contractor, for which the Contractor requests exception from disclosure, shall be temporarily excepted from disclosure until fifteen days after the entitlement to such exception has been finally determined by the Department. Contractor's rights upon denial or granting of request may be found in Section 89(5) of the Public Officer's Law.

SUBCONTRACTING AND PURCHASING REQUIREMENTS

The Contractor(s) may subcontract elements of the project for which it lacks location or in-house capabilities. In addition, DED reserves the right to mandate the use of subcontractors pursuant to the disbursement of any EIP grant. All proposals must identify any subcontracting firm or firms and cite them in their proposals, including, but not necessarily limited to, Utilization Plans documenting MWBE expected participation. DED is an equal opportunity contractor and reserves the right to review and approve all subcontracting firms pursuant to the MWBE provisions outlined herein and the Executive Law Article 15-A.

After the contract is awarded, any subcontracts or purchases in excess of \$15,000 which are identified as sole source must include a detailed justification for such a designation.

PAYMENT PROCESS

Payment for services performed to the satisfaction of the DED shall be made in the ordinary course of State business upon receipt of duly authenticated invoices/vouchers and upon receipt of agreed upon financial and activity reports. **All payments shall be on a reimbursement basis only.** Receipts for all non-personal expenses must be attached as evidence of cost whether done in-house or by an outside service. DED shall reimburse the contractor for travel expenses in accordance with State rates.