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MARKETING, MATCHING AND ENGAGEMENT PROGRAM

2014 REQUEST FOR PROPOSALS

RFP Number: 14-6094

RFP Released: April 17, 2014
PROPOSALS DUE: May 9, 2014 BY 5:00 P.M.

ESD/NYSTAR
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Albany, New York 12245
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I. Program Overview and Requirements

A. Goals and Objectives

The Marketing, Matching and Engagement Program is designed to establish a “one stop shop” for manufacturers to access regional, state and federal services. The designated entity under this program will assist manufacturers by serving as a referral and monitoring agent assisting with solving challenges hampering production/growth and project engagement and other issues New York State manufacturers are facing.

The objective of this Request for Proposals is to further develop and expand the mission that was developed under the National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP) Technology Cooperative Agreement Recipient (tCAR) grant. Through Solutions Forums and an online platform, New York Manufacturing Extension has been bringing manufacturers together with trusted resources from across the state in an effort to address obstacles preventing growth.

As NIST MEP federal funding for the service established by the tCAR grant ends in the spring of 2014, it is critical the tCAR mission continue and expand to reach and assist a larger percentage of New York’s manufacturers.

In addition this funding will be used to further engage, team build and expand NYSTAR’s Regional Innovation Specialist Program and future programs established through New York State or Federal funding – such as the Manufacturing Technology Acceleration Center (M-TAC) Federal Funding Opportunity and other similar opportunities made available through NIST MEP or other federal agencies – with express written agreement from Empire State Development Division of Science, Technology and Innovation (ESD/NYSTAR).

This program will be a statewide effort intended to address core manufacturing needs and incentivize innovative projects leveraging NYS resources by:

- Assisting manufacturers with identifying solutions or resources addressing issues hampering growth;
- Partnering with university technology centers, design/prototyping centers, incubators, and other organizations successful at assisting manufacturers;
- Exploring methods of attracting manufacturers to benefit from available resources necessary to achieve company growth and positive impacts; and,
- Building an advisory team including manufacturers to provide insight to current and future opportunities and challenges facing New York State manufacturers.

B. Eligibility and Program Requirements

Only not-for-profits with an economic development mission may apply for this opportunity. ***Effective August 1, 2013, not-for-profit organizations must be prequalified in order to do business with New York State. In order to prequalify, not-for-profit organizations must submit an online Prequalification Application through Grants Gateway at the following website address; https://grantsgateway.ny.gov/IntelliGrants_NYSGG/module/nysgg/goportal.aspx. The requalification Application is comprised of five components to gauge your organizational structure and the types of services you provide. The required forms and document uploads are all part of the Document Vault. Resources to complete the application and associated document vault can be found in the Quick Links Section. Applications from those NOT prequalified will be rejected without review.***

1. General Requirements

- a. Proposals must identify how they will partner with ESD/NYSTAR to manage this program and detail how they will provide the services described in Section I.E.1. of the RFP.
- b. Applicant must demonstrate the ability to meet the matching funds requirements explained in Section I.D. The award recipient will provide all matching funds identified in their proposal.
- c. Applicant must demonstrate a quantifiable track record of linking services available across the state to NYS manufacturers.
- d. Applicant must demonstrate a consortium model to address the various needs of New York's manufacturing sectors.

2. General Limitations

- (1) Any proposal not complying with all of the requirements of this RFP, including submission of all required documentation shall be rejected without review.
- (2) ESD/NYSTAR funds will be used to support the activities and items described in Section I.E.

C. Contract Period and Award Amounts

1. Designation and Contract Periods

This program will begin on June 1, 2014 and end on July 30, 2017. See timetable (Section II.A.). Any awards not contracted by June 1, 2014 may be rescinded.

2. Regions and Award Amounts

This is statewide service coordinated through ESD/NYSTAR. It is anticipated that up to \$2 million will be available for this program subject to availability of funds.

3. Adjustment to Award Amounts

If ESD/NYSTAR finds the awardee's contractual performance to be unsatisfactory, this contract may be terminated before the end of the designation period. In such a case, ESD/NYSTAR may administer another competitive process to award another center.

D. Matching Funds Requirements

The award recipient must meet matching funds requirements to be eligible for reimbursement. To receive the full annual allocation, expenses submitted must demonstrate adequate match and be approved by ESD/NYSTAR. Based on the sources of funding for this program a 1:1 match will be required. Further details of match are listed below.

1. Categories of Acceptable Match

There are three categories of eligible matching funds to match the NYSTAR funding:

- a. Local Cash—Matching funds contributed from non-government sources including fees charged companies for direct services, membership fees, and other cash match.
- b. State Funds—Grant funds awarded by a New York State agency and expended by the awardee as in the case of the NYS Department of Labor grants.
- c. In-Kind—Quantifiable goods and services including, but not limited to, professional services and time, equipment, material and office space for use by the awardee in furtherance of its stated purposes or provided on behalf of the awardee to others for such purposes and for which there is no monetary remuneration. Discounted prices or rates are not eligible as in-kind. A specific item or service must be completely donated to qualify as an in-kind contribution.

2. General Match Requirements and Limitations

- a. ESD/NYSTAR reserves the right to make determinations concerning the extent to which funds, goods and services qualify as matching funds. All proposed matching funds must be approved by ESD/NYSTAR before it is credited. The award recipient is required to document and maintain detailed records for any financial and in-kind match, in accordance with Generally Accepted Accounting Principles.
- b. Cash qualifies as match only when it is expended for activities under this program. In-kind qualifies as match only during the period in which it is received.
- c. Matching funds contributions must be provided for, and traceable to, allowable items and activities as defined in Section I.E.

E. Use of Funds

1. General Provisions

ESD/NYSTAR and matching funds may generally be used for the following activities:

- A. Statewide Matching, Matching and Engagement
 - a. Supporting an existing proven referral management tracking system and events platform focused on identifying manufacturers' technology, development, process and other needs and matching the company to reliable available resources. The system must also track the progress of leads to ensure clients are properly referred and dispatched to the appropriate resource;
 - b. Hosting events focused on matching, supply chain and other services at the approval of NYSTAR; and
 - c. Advise NYSTAR on the current and future needs of NYS Manufacturers and offer recommendations for better programmatic alignment.

- B. Engagement

The applicant should explore different methods of assisting manufacturers with facilitating in high growth potential projects that they may not otherwise engage in. Method(s) should include leveraging resources currently available.

2. Use of ESD/NYSTAR Funds

ESD/NYSTAR funds may be expended on items that directly support the above activities, such as:

- a. Salaries and fringe benefits for the applicant's employees or consultants who are performing ESD/NYSTAR approved innovation activities;
- b. Equipment, materials and supplies;
- c. Travel to clients, conferences, competitions, showcases and/or ESD/NYSTAR meetings;
- d. Services subcontracted to partner organizations or other third parties;
- e. Events, staff training, marketing, and outreach; and
- f. Other items explicitly approved by ESD/NYSTAR prior to being incurred.

3. Prohibited Uses of ESD/NYSTAR Funds

- a. The best available price for the type and quality of products or services required must be sought for any ESD/NYSTAR-funded expenditure. The Applicant must retain documentation to support the solicitation process and/or choice of vendor for ESD/NYSTAR expenses at an established threshold. **Applicants procuring services must follow New York State's Competitive Bid Requirements.**
- b. There are no indirect costs allowed for any of the programs involved in this RFP.

F. Reporting and Monitoring Requirements

1. General Provisions

- a. Award recipients must submit quarterly progress and financial reports to ESD/NYSTAR using specific ESD/NYSTAR reporting guidelines and forms.
- b. Award recipients will report on companies served and other metrics deemed necessary by ESD/NYSTAR.
- c. Award recipients will assist ESD/NYSTAR in tracking companies in New York State's innovation pipeline and provide success stories as required.
- d. Award recipients must maintain an accounting system in conformance with Generally Accepted Accounting Principles (GAAP) that permits identification of all expenditures, matching funds and revenues.
- e. Contract payments are contingent on ESD/NYSTAR's receipt and review of required reports and may be impacted by the award recipient's compliance with other ESD/NYSTAR contracts.

2. Economic Impacts

Impacts generated by the Program will be measured to assess the success of the Program. For example, projects that can be surveyed will be surveyed using NIST MEP survey process with company impacts collected, including: jobs retained; jobs created; increased sales; etc. Other measurements that shall be tracked are: amount of funding leveraged; number of referrals to and from strategic partners; number of referrals served; and other measurements deemed necessary by ESD/NYSTAR.

G. Sample Contract

A sample contract can be found at the [Grants Reform Webpage](http://www.grantsreform.ny.gov/) (<http://www.grantsreform.ny.gov/>). Terms and conditions of an executed contract may vary.

II. Submission Information

A. Timetable

2013-2014 Competition TIMETABLE	
Marketing, Matching and Engagement Program RFP released	April 17, 2014
Written questions on proposals accepted through	April 28, 2014
Proposals due by 5 pm to ESD/NYSTAR	May 9, 2014
Anticipated Contract Start Date	June 1, 2014

B. Questions on the RFP

All questions must be submitted in writing via email to rfpfaq@esd.ny.gov with **“Marketing, Matching and Engagement Program”** in the subject line. **Please do not contact the Department by telephone.** Questions must be received by the Department no later than **April 28, 2014, 5:00 PM**. All inquiries must cite the particular RFP section in the questions. Answers to all questions of a substantive nature will be provided to all known recipients of the RFP.

C. Submission Instructions

Interested individuals or firms must submit their proposals no later than **5:00 P.M. U.S. Eastern Standard Time, on May 9, 2014**. Submit five (5) copies of the proposal to the following address:

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

In addition to the hard copies, the Applicant must submit an identical electronic version of the proposal to rfpinfo@esd.ny.gov with **“Marketing, Matching and Engagement Program – applicant name”** in the subject line. **Electronic copies are used for administrative purposes and DO NOT fulfill the requirement to submit the hard copies by the deadline.**

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

All narrative sections not on ESD/NYSTAR forms must be single-spaced, in 12-point font, on 8½" x 11" paper with one-inch margins. Number pages and include tabs to identify major sections and appendices. Use the forms included in Appendix C to this RFP located at the [Requests for Proposals \(RFPs\) Webpage](http://esd.ny.gov/CorporateInformation/RFPs.html) (<http://esd.ny.gov/CorporateInformation/RFPs.html>), and adhere to the specific instructions that follow. Do not edit any formatting or text on the templates aside from inserting additional space.

Receipt will be determined by physical receipt of the proposal. Failure to submit on time shall result in the proposal being rejected without review, unless it is clearly proven that the delay was not in any way caused by the applicant.

D. Proprietary Information

Some information contained in a proposal may be considered sensitive and the applicant may wish it not to be disclosed if possible. If this is the case, the applicant must identify the information it wishes to protect and request that it be protected.

ESD/NYSTAR will take efforts to safeguard proprietary, confidential and sensitive information as allowed under the law, including the Freedom of Information Law (FOIL) (see Article 6 of the Public Officer's Law). However, all information will be made available to those who are conducting the review of the proposals.

To request an exception to FOIL, an applicant must submit a letter included as **Appendix 5** to the proposal specifically identifying the sensitive information and reasons it should be protected. The applicant must identify the information with a CONFIDENTIAL, PROPRIETARY or SENSITIVE stamp in the margin of each paragraph containing proprietary information and check the appropriate box on the cover page.

III. Proposal Components

Applicants must ensure that proposals have been thoroughly reviewed for clarity and professional presentation.

A. Proposal Cover Forms

Complete the Proposal Cover Page, Checklist, and Certification.

B. Table of Contents

Include a table of contents delineating major headings, sub-headings, and required appendices.

C. Glossary of Terms Used

Include an alphabetized glossary of acronyms and technical terms used in the proposal and a brief definition of each.

D. Executive Summary (up to two pages)

Include an Executive Summary that sets forth a self-contained description of the activities and benefits that would result if the Proposal were funded.

The Executive Summary must not contain any proprietary information and must be suitable for publication.

E. Proposal Narrative (up to 10 pages excluding required forms and appendices)

Address the specific review criteria presented in Section IV.A. ; and elaborated on below. All visual materials (such as charts, graphs, maps, photographs, and other pictorial presentations), footnotes, endnotes, and citations must be included within the 10-page proposal narrative. Follow the outline presented below:

1. Project Management and Personnel

- a. Describe the management structure and the plan for coordinating efforts with ESD/NYSTAR to best assist New York State manufacturers.
- b. Highlight the quality and relevant experience of the individuals continuing the mission established under the tCAR grant. Show any relevant experience provided for similar services.

2. Economic Opportunity

- a. Describe the plan to expand services that identify manufacturers' needs, provide assistance, and capture metrics tracking the effectiveness of the applicant's proposal.
- b. Establish a plan to continue and expand the mission established by NIST MEP tCAR grant.
- c. Discuss the applicant's ability to coordinate attraction of new clients and services provided in partnership with other RTDCs, ESD/NYSTAR -funded contractors and other partners.
- d. Discuss the applicant's ability to implement a referral management tracking system focused on identifying manufacturers' technology, development, process and other needs and matching the company to reliable available resources.
- e. Discuss how the applicant will manage and track the progression of leads to ensure clients are properly referred and dispatched to the appropriate resource.

- f. Describe the plan on how the applicant will hold events focused on matching manufacturers to to services.
- g. Describe the applicant’s proficiency and plan on how to market and increase brand recognition for NYMEP and other NYS Economic development programs.
- h. Describe how the applicant will build and advisory group to provide NYS the current and future needs of NYS Manufacturers.
- i.

3. Use of Funds

- a. Provide a justification for the requested funding. Describe how both the requested ESD/NYSTAR funds and matching funds will support the activities described in the applicant’s proposal.
- b. Describe the sources of matching funds the applicant intends to use to match its ESD/NYSTAR expenditures.

F. Budget

Use the budget form provided in Appendix C to this RFP detailing a NYSTAR/ESD funding level of \$2 million. Complete the shaded portion and submit as **Appendix 3** to the proposal.

- 1. Budget Form One – List any staff to be paid in whole or in part from ESD/NYSTAR and/or matching funds. List each subcontractor and any other expenses on a separate line. For all other categories, indicate ESD/NYSTAR and matching funds budgeted.
- 2. Budget Form Two – List sponsors for all committed matching funds, the amount and a description. Ensure that descriptions are adequate for In-Kind.

G. Appendices to the Proposal

Include the following required appendices:

- Appendix 1 –Success Stories
- Appendix 2 –Personnel Resume
- Appendix 3 – Budget Forms
- Appendix 4 – MWBE Forms
- Appendix 5 – Proprietary Information Exception Request (if applicable)

No sections, appendices, and/or supporting information to the Proposal beyond those items required by ESD/NYSTAR in this RFP will be accepted or reviewed.

IV. Review Criteria and Process

For the review of eligible proposals, ESD/NYSTAR has established the following criteria to be applied in accordance with the review process set forth in Section IV.B. In addition to addressing the review criteria stated below, refer to the proposal instructions in Section III of this RFP for specific items that must also be addressed.

A. Review Criteria

1. Project Management and Track Record (40 Points)

- a. The quality of the management plan and plan for coordination with ESD's Division of Science Technology and Innovation and quality and relevant experience of the individuals continuing the mission established under the tCAR grant. (25 Points)
- b. Quantified track record of linking manufacturers to resources from across the state. And how the applicant will manage and track the progression of leads to ensure clients are properly referred and dispatched to the appropriate resource (15 Points)

2. Economic Opportunity (30 Points)

- a. The quality of the applicant's plan to continue and expand the mission established by NIST MEP tCAR grant, and capture metrics tracking the work under this grant. (10 Points)
- c. The Applicant's ability to coordinate attraction of new clients and services provided in partnership with Centers of Advanced Technology, Centers of Excellence, RTDCs, and other ESD/NYSTAR contractors and partners. (10 Points)
- d. Demonstrated consortium model addressing varied needs of New York manufacturers. (10 Points)

3. Use of Funds (20 Points)

- a. Degree to which the uses of ESD/NYSTAR funds are reasonable and justified. (10 Points)
- b. The demonstrated ability of the Applicant to satisfy the matching fund requirements of the Program. (10 Points)

4. Minority and Women Owned Business Enterprise Utilization (10 Points)

- a. The quality of the applicants' Minority and Women Owned Business Enterprise utilization plan. (10 Points)

B. Review Process

Reviewers may include NYSTAR staff, staff from federal or other State agencies, and individuals selected from the science, business, and academic communities. The reviewers will adhere to the process described in this section and will apply the review criteria detailed above. NYSTAR may limit the number of proposals a reviewer is required to evaluate.

Scoring: Reviewers will independently evaluate and assign a preliminary score to proposals that have been accepted by NYSTAR. The *preliminary scores* for a proposal will be combined to provide an *initial average score* for that proposal.

After the initial average scores are provided to the group, reviewers will convene as a group to review the preliminary scores and discuss the proposals in accordance with the review criteria. At the conclusion of the discussions, each reviewer will individually provide *final scores* for each proposal based upon the panel's discussions.

NYSTAR reserves the right to reject any and all proposals. NYSTAR may recall this RFP at any time prior to award announcement and may also reject proposals for deficiencies; waive technicalities, irregularities, and omissions; or solicit new proposals. NYSTAR reserves the right to act in accordance with the best interests of the people of New York in its interpretation of this RFP.

Applicants and/or their surrogates are prohibited from contacting any ESD-NYSTAR member to advocate on behalf of a Proposal submitted in response to this RFP. Violation of this restriction will disqualify an Applicant's Proposal from the competition.

V. Appendices to this RFP

Appendix A – Standard Clauses for All New York State Contracts

Appendix B - Glossary of terms used

Appendix C – Forms (Proposal Cover Page-Checklist-Certification; Budget; MWBE)

APPENDIX A: Standard Clauses for All New York State Contracts

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

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

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

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the

Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification

number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

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

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

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

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND

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

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

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

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

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

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

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

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

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

Jan.2014

APPENDIX B: Glossary of Terms Used in the RFP

Glossary of Terms Used Throughout the RFP

The following definitions apply to the terms used in this RFP. Terms defined herein are capitalized throughout the text of the RFP. Terms used within a definition that are also defined in this Appendix are noted in italics.

Applicant: An eligible entity requesting funding under this RFP.

Center for Advanced Technology or CAT: A university-based applied research center designated by NYSTAR as a Center for Advanced Technology in accordance with Public Authorities Law §3102-b and Section 5904 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York .

Center of Excellence or COEs: ESD/NYSTAR funded Centers of Excellence.

Committed Matching Funds: Funds associated with a specific project that has been accepted by the *Matching Funds* sponsor and in which the amount of *Matching Funds* support and *CAT* deliverables are defined.

Consortia, Consortium, or Consortium Members: A collaborative effort comprised of a *University(s)* and/or *University-Affiliated Research Institute(s)* working together to perform the tasks identified in the *Proposal*. Each member of a Consortium must individually meet the eligibility requirements as set forth in Section I.C. of this RFP and a *Lead Institution* must be identified.

High Performance Computing: ESD/NYSTAR funded High Performance Computing program.

Indirect Cost(s) or Indirect Cost Rate: Defined by Federal OMB Circular A-87 as the rate used for allocating those common costs that cannot be specifically allocated to a particular project or activity. A cost may not be allocated as an Indirect Cost if any other cost incurred for the same purpose in like circumstances has been assigned as a direct cost. As indicated in Section I.E. of this RFP, the maximum indirect cost chargeable to NYSTAR funds or recognized as Matching Funds under the CAT Program is 15 percent.

Matching Funds: A non-reimbursable component of a project's total cost that is reflective of the *Applicant's* and industry's commitment to the CAT. Refer to Section I.D. of this RFP for specific Matching Funds requirements.

New York State Company or New York Company: A for-profit enterprise with a permanent place of business located in New York State employing a full-time workforce. The company's New York facility must either be (1) the intended recipient of the *CAT's* assistance or (2) directly benefit from the *CAT's* assistance. The *CAT's* assistance must also demonstrably enhance the company's economic activity in New York.

Partners or Partner Organizations: Those organizations that will assist the *Applicant* in achieving its mission. Subject to the limitations of the RFP, Partner Organizations may include, but are not limited to, Regional Technology Development Centers, Centers of Excellence, Centers for Advanced Technology, and other not-for-profit organizations and programs.

Proposal: A response to this Request for Proposals submitted by an *Applicant*.

Regional Technology Development Center (RTDC): One of ten organizations designated pursuant to the 2011 RTDC RFP to serve as the RTDC in the region in which it submitted a proposal for designation.

Regional Innovation Specialist: Each cover two or more RTDC regions and focus on assisting manufacturers resources necessary to grow.

Regional Councils: There are 10 Regional Economic Development Councils which are public-private partnerships composed of local experts and stakeholders from business, academia, local government, and non-governmental organizations.

SME: Small and Medium Sized Enterprise

Small New York State Company: A *New York State Company* with its principal place of business in New York that employs 100 or fewer persons in total, including any parent companies or subsidiaries.

Technology Focus: The field of science or technology in which the *CAT's* research will be conducted; the Technology Focus in the *Proposal* must be either Senior or Advanced Manufacturing as specified in Section I.F. of this RFP.

Technology Cooperative Agreement Recipient (tCAR) grant: NYSTAR was awarded a NIST MEP tCAR grant in the fall of 2010.

APPENDIX C: Forms (Proposal Cover Page – Checklist-Certification; Budget; MWBE)

Request For Proposals (“RFP”) Response Form

RFP Number 14-6094

Please review this RFP. Complete the following information and mail this form, together with your entire proposal (if any), to the address at the bottom of this page. Late proposals will not be accepted.

/ / Attached is our proposal

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

Name of Organization: _____

Address: _____

Is this address your company’s *principal place of business*? Yes___ No___

The term “*principal place of business*” is defined as follows:

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

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

Will this product or service be substantially produced in the State of New York (“NYS” or “State”):
Yes___ No___

Subject to the “Conditions Governing Proposals” section stated in this RFP, proposals must be in agreement with all terms and conditions of this RFP.

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

Signature: _____ **Date:** _____

Type or Print Name and Title: _____

Attach this as the first page of your proposal. If not submitting a proposal, please mail this form to:
MWBEDisparity@esd.ny.gov.

Proposal Cover Page

Applicant	
Proposed Name	
Authorized Organizational Representative (Person authorized to enter into Legal Agreements on behalf of the Applicant.)	Name: Title: Street: City State: NY Zip: E-mail: Phone: Fax:
Partners (Identify potential organizations with which the Applicant intends to partner to provide the services required by the RFP.)	
Proprietary Information (Indicate whether the Proposal contains any proprietary information.)	<input type="checkbox"/> No , this Proposal contains no proprietary information. <input type="checkbox"/> Yes , this Proposal contains proprietary information that is identified in accordance with Section II.D. of the RFP.

Proposal Checklist

Each of the following items is required unless otherwise noted. Failure to include any of these items in accordance with the guidelines provided in the RFP may result in the Proposal being rejected. A checkmark by each item indicates confirmation by the Authorized Organizational Representative that the appropriate sections of the RFP and Frequently Asked Questions have been reviewed and that the items in the Proposal are in conformance with the requirements and are included in both original Proposals and all copies.

- The Applicant's Proposal demonstrates that the Applicant has the ability to meet the matching funds requirements explained in Section I.D. of the RFP and the Applicant is aware that it must provide all matching funds demonstrated in its proposal in the ensuing contract.
- Five bound and tabbed copies of the Proposal including all required appendices are included in the submission.
- The hard copies of the Proposal include **all** required forms and appendices. No additional sections, appendices, or supporting documentation have been included. The Proposal is formatted according to the instructions in Section III of the RFP.
- An electronic copy of the Proposal including all forms and appendices will be submitted to rfpinfo@esd.ny.gov within 24 hours of the Proposal deadline.
- The Authorized Organizational Representative identified on the Proposal Cover Page has signed the Certification following this checklist.
- A Table of Contents prepared in accordance with Section III.B. of the RFP is included.
- An alphabetized "Glossary of Terms Used," as described in Section III.C. of the RFP, with a brief definition of each item, is included in the Proposal.
- A non-proprietary Executive Summary prepared in accordance with Section III.D. of the RFP is included.
- A complete Proposal Narrative is included. The Proposal Narrative addresses all review criteria in Section IV. of the RFP and the additional requirements included in Section III.E. of the RFP. The narrative, excluding the table of contents, glossary, executive summary, required forms, and appendices, **does not exceed 10 pages**.
- Success Stories are included as **Appendix 1** of the Applicant's Proposal.
- The Staff Resume is included as **Appendix 2** to the Proposal.
- Complet and mathematically accurate budget forms are included as **Appendix 3** to the Proposal.
- Completed Minority and Women-Owned Business Enterprise Forms are included as **Appendix 4** to the Proposal.
- If proprietary information is included in this Proposal, it has been identified in accordance with Section II.D. and a letter requesting FOIL exception is included as **Appendix 5** to the Proposal. The Applicant Institution has checked the appropriate box on the Proprietary Information line on the Proposal Cover Page.

Certification

The following certification must be made by the Authorized Organizational Representative designated on the Proposal Information Page.

I certify that each section and template required in the Request for Proposals is included in the originals and each copy of the Proposal submitted. I understand that failure to include any of the required items or failure to follow the format or use the templates provided in the RFP may result in this Proposal being rejected without review. I further certify that the Marketing, Matching and Engagement Program Frequently Asked Questions have been consistently checked, and this Proposal is in compliance with any pertinent information posted.

I certify that no New York State government funds other than those specified as eligible in the Request for Proposals are being used as Matching Funds in this Proposal.

I certify that the internal policies of the Applicant including, but not limited to, policies related to conflict of interest, collaboration with industry and/or not-for-profit organizations, confidentiality, and intellectual property are consistent with the goals of the Marketing, Matching and Engagement Program as outlined in the Request for Proposals and will not impede on the Applicant's ability to achieve the economic impacts described in this Proposal. Copies of the Applicant's policies and procedures will be maintained on site and made available for inspection by ESD/NYSTAR or its designee upon request.

Finally, I certify that the information provided in this Proposal is accurate and no misrepresentations have been made in any part of this submission. I further certify that the Applicant and any Partners have the ability to meet and, if a Marketing, Matching and Engagement Program designation is received, intend to provide the financial and/or administrative commitments outlined in the Proposal.

Signature of the Authorized Organizational Representative

(Signature)

(Date)

M/WBE Utilization Goal Requirements For NYSDDED Contracts

REQUIREMENTS AND PROCEDURES REGARDING BUSINESS PARTICIPATION OPPORTUNITIES FOR CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE) ON NYS DEPARTMENT OF ECONOMIC DEVELOPMENT (NYSDDED) CONTRACTS

I. General Provisions

- A. The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing and (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of Economic Development (the “Department”), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Labor Law or other applicable federal, state or local laws.
- C. Failure to comply with the following requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions or enforcement proceedings as allowed by the Contract.

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

2. The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the Letter of Intent to award Contract.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement (see Minority and Women-Owned Business Enterprises Equal Employment opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. Contractor will include the provisions of sections (a) through (c) of this subsection in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

C. Staffing Plan

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

D. Workforce Employment Utilization Report ("Workforce Report")

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

III. Contract Goals

A. For purposes of this procurement, the Department hereby establishes a goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation.

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

http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp.

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

IV. MWBE Utilization Plan

A. MWBE Utilization Plan

1. Contractor is required to submit an MWBE Utilization Plan to the Department with this bid/proposal or in the event such a plan was not submitted with a bid/proposal, prior to the execution of this Contract.
2. The Utilization Plan shall list the MWBEs Contractor intends to use to perform on the Contract and provide a description of the Contract scope of work which Contractor intends to structure to increase the participation by NYS Certified MWBEs on Contract pursuant to the prescribed Contract Goals set herein, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of the Contract which Contractor intends to be performed by NYS Certified MWBEs.
3. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and/or during the Contract term must be reported on a revised MWBE Utilization Plan and submitted to the Department for approval.

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

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

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

V. Waivers

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

VI. Quarterly MWBE Contractor Compliance Report

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

VII. Administration Hearing on Disqualification

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

VIII. Complaints

- A. If the Department determines that the Contractor is not in compliance with the requirements found in Part 142 of the MWBE Regulations and the Department is unsuccessful in its efforts to resolve the matter and bring the Contractor into compliance with the requirements, the Department may file a complaint with the Director according to the provisions of Executive Law Article 15-A, §§ 313 & 316 or may assess liquidated damages pursuant to § 316-a.
- B. Subsequent to the award of this Contract, if Contractor submits a Request for Waiver of MWBE participation goals and the Department denies the request or fails to respond within twenty (20) days of receiving it, or if Contractor has received a written determination from the Department that Contractor has failed or refused to comply with the provisions of this Contract, Contractor may file a complaint with the Director in accordance with the provisions of Executive Law Article 15-A, §§ 313 & 316.
- C. The complaint must be filed within twenty (20) days of the Department's receipt of the Request for Waiver. If the Department fails to respond in that time, or within twenty (20) days of a notification that the request has been denied by the Department or within twenty (20) days of receipt of notification from the Department that the Contractor has failed or refused to comply with the goals:
 - 1. A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
 - 2. The party filing a complaint, whether the Contractor or the Department, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.
 - 3. Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty (30) days of

receipt of the complaint the Director is unable to resolve the complaint to the satisfaction of the Department and the Contractor, the complaint shall be referred to the Division's designated hearing officer. Upon conclusion of the administrative proceeding, the hearing officer will submit to the Director his or her final determination regarding the alleged violation of the Contract or refusal of the Department to grant a waiver request by the Contractor and his or her recommendations regarding the imposition of fines, sanctions or penalties.

4. The Director, within ten (10) days of receipt of the hearing officer's decision, will issue a final determination with regard to fines, sanctions or penalties and shall cause a copy of such determination to be served upon the contractor by personal service or by certified mail, return receipt requested.
5. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by Contractor or Contractor's representative or the Contractor's willful and intentional disregard of the MWBE participation requirement included in this Contract may include a determination that Contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such Contract for up to one year following the final determination.
6. If a Contractor has previously been debarred, the penalties imposed for any subsequent violations, if such violation occurs within five years of the first violation, may result in debarment for up to five (5) years after the final determination. Such information shall be posted on the Division's web site.
7. The determination of the Department or the Contractor to proceed with a complaint shall not preclude the Department, in its discretion, from pursuing any other remedies which it may have pursuant to law and Contract, including withholding from payments to the Contractor the estimated amount of the fines and penalties which may be imposed pursuant to this subsection.

IX. Liquidated Damages - MWBE Participation

- A. In lieu of the complaint procedures set forth in Article VIII of this Appendix, if the Department determines that Contractor is not in compliance with the requirements of this subsection and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

I, _____ (CONTRACTOR REPRESENTATIVE),
the _____ (AWARDEE/CONTRACTOR)
agree to adopt the following policies with respect to the project being developed or services rendered at
_____.

MWBE PARTICIPATION (MWBE)

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 ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at OCSD@ESD.NY.GOV.
- (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.

EQUAL EMPLOYMENT OPPORTUNITY POLICY (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, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (c) At the request of the ESD, 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 organization's obligations herein.

- (d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors 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.
- (e) The 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 this contract.

Agreed on this _____ day of _____ 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____

Minority & Women Business Enterprise-Equal Employment Opportunity Liaison

_____ (Name of Designated Liaison) is designated as the Minority and Women Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

EEO Contract Goals

_____% Minority Business Enterprise Participation

_____% Minority Labor Force Participation

_____% Women's Business Enterprise Participation

_____% Female Labor Force Participation

_____% TOTAL/OVERALL M/WBE Participation Goal

(Signature of Authorized Representative)

Print Name: _____

Title: _____

Date: _____

OCSD-4

M/WBE UTILIZATION PLAN

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Federal Employer Identification No. (FEIN):

Offeror's Name:

Region/Location of Work:

Offeror's Address:

Solicitation No.:

City, State, Zip Code:

Project No.:

Telephone No.:

M/WBE Goals in the Contract: MBE - % WBE - %

1. Certified M/WBE Subcontractors/Suppliers Federal Employer Identification Number (FEIN), Name, Address, Phone, Fax and Email Address.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts / Supplies / Services and intended performance dates of each component of the contract.
A.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

6. If unable to fully meet the M/WBE goals set forth in the contract, the Offeror must submit a Waiver Request form, which may be obtained from the Office of Contractor and Supplier Diversity, at OCSD@ESD.NY.GOV.

OCSD-4

M/WBE UTILIZATION PLAN

<p>PREPARED BY (Signature): _____ DATE: _____</p> <p>Preparer's Name (Print or Type): _____</p> <p>Preparer's Title: _____</p> <p>Date: _____</p> <p style="margin-top: 20px;">SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">TELEPHONE NO.:</td> <td style="width: 50%; padding: 2px;">EMAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 5px;">** FOR OCSD-M/WBE USE ONLY **</td> </tr> <tr> <td style="padding: 2px;">REVIEWED BY:</td> <td style="padding: 2px;">DATE:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____</p> <p>Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work: _____</p> <p style="margin-top: 10px;">NOTICE OF DEFICIENCY ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> <p style="margin-top: 10px;">NOTICE OF ACCEPTANCE ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> </td> </tr> </table>	TELEPHONE NO.:	EMAIL ADDRESS:	** FOR OCSD-M/WBE USE ONLY **		REVIEWED BY:	DATE:	<p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____</p> <p>Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work: _____</p> <p style="margin-top: 10px;">NOTICE OF DEFICIENCY ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> <p style="margin-top: 10px;">NOTICE OF ACCEPTANCE ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p>	
TELEPHONE NO.:	EMAIL ADDRESS:								
** FOR OCSD-M/WBE USE ONLY **									
REVIEWED BY:	DATE:								
<p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____</p> <p>Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work: _____</p> <p style="margin-top: 10px;">NOTICE OF DEFICIENCY ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> <p style="margin-top: 10px;">NOTICE OF ACCEPTANCE ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p>									

Submit with Bid or Proposal – Instructions on page 2

Solicitation No.:	Reporting Entity:	Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor Subcontractor's Name:
Offeror's Name:		
Offeror's Address:		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification										Disabled		Veteran		
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		(M)	(F)	(M)	(F)	
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

PREPARED BY (Signature): _____	NAME: TITLE: DATE:	TELEPHONE NO.: ALTERNATE TEL: EMAIL ADDRESS:
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Submit completed with bid or proposal M/WBE 101 (Rev 04/2012)

OCSD-2

STAFFING PLAN

General Instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (M/WBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or Subcontractor's total work force.

Instructions:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES:

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

Waiver Applicant		
Offeror / Contractor Name:	Fed ID No.:	
Address:	Solicitation/Contract No.:	
City, State, Zip Code:	M/WBE Goals: MBE: _____% WBE: _____%	
<p><u>By submitting this form and the required information, the offeror / contractor certifies that every "Good Faith Effort" has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract. Review 5 NYCRR §142.8, Contractor's Good Faith Efforts, on page 2 of this form for the precise definition of "Good Faith Effort".</u></p>		
<p>Contractor is requesting a:</p> <p>1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development). Date of such filing with Empire State Development Corporation: _____</p>		
<p>PREPARED BY (Signature): _____ Date: _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</p>		
Name and Title of Preparer (Printed or Typed):	Telephone Number:	Email Address:
<p>Submit with the bid or proposal or if submitting after award submit to:</p> <p>Empire State Development Corporation Office of Contractor and Supplier Diversity 633 Third Avenue, 33rd Floor New York, New York 10017</p>	***** FOR M/WBE USE ONLY *****	
	<p>REVIEWED BY: _____ DATE: _____</p>	
	<p>Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional</p> <p><input type="checkbox"/> Notice of Deficiency Issued _____</p> <p>* Comments: _____</p>	

5 NYCRR §142.8 - Contractor's Good Faith Efforts

- (a) The contractor must document its good faith efforts toward meeting certified minority and women-owned business enterprise utilization plans by providing, at a minimum:
 - (1) Copies of its solicitations of certified minority and women-owned business enterprises and any responses thereto;
 - (2) If responses to the contractor's solicitations were received, but a certified minority or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
 - (3) Copies of any advertisements for participation by certified minority and women-owned business enterprises timely published in appropriate general circulation, trade and minority or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
 - (4) Copies of any solicitations of certified minority and/or women-owned business enterprises listed in the directory of certified businesses;
 - (5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
 - (6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority and women-owned business enterprises.

- (b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
 - (1) Whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;
 - (2) The number of certified minority and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
 - (3) The actions taken by the contractor to contact and assess the ability of certified minority and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
 - (4) Whether the contractor provided relevant plans, specifications or terms and conditions to certified minority and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
 - (5) The terms and conditions of any subcontract or provision of suppliers offered to certified minority or women-owned business enterprises and a comparison of such terms and conditions

FORM OCSD-6

QUARTERLY M/WBE COMPLIANCE AND PAYMENT REPORT

PROJECT SPONSOR/DEVELOPER
(or "REPORTING COMPANY"):

FEDERAL EIN #:

ADDRESS:

TOWN/COUNTY/ZIP:

CONTACT PERSON:

TELEPHONE:

EMAIL:

ESD/OCSD REPRESENTATIVE:

PROJECT NAME:

PROJECT #:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

Attach M/WBE executed contracts, final lien waivers, cancelled checks, etc., or other documentation describing the "Good Faith Efforts" taken to achieve M/WBE program. This report should be completed and signed by an officer of the Reporting Company.

PRIME CONTRACTOR (Federal EIN #, Firm's Name, Address, Contact Person, Title and Phone # with area code)	CONTRACT AMOUNT	M/WBE SUBCONTRACTOR (Federal EIN #, Subcontractor Name, Address, Contact Person, Title and Phone # with area code)	SCOPE OF SERVICES	M/WBE CONTRACT AMOUNT	M/WBE PAYMENTS PREVIOUSLY REPORTED	M/WBE PAYMENTS ON CURRENT REPORT	TOTAL M/WBE PAYMENTS TO DATE

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

SIGNATURE: _____

DATE: _____

SUBMIT REPORT TO: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
EMPIRE STATE DEVELOPMENT CORPORATION
633 THIRD AVENUE, 33rd FLOOR
NEW YORK, NY 10017

Completed Exhibits may also be emailed directly to OCSD at ocsd@esd.ny.gov. All email submissions must include the name and contact information of the individual or firm submitting the information.

QUESTIONS? Please contact the OCSD's Project Managers or email the division at ocsd@esd.ny.gov.

Diane Kinnicutt

*Director, OCSD
(518) 292-5727*

dkinnicutt@esd.ny.gov

*Special Projects
DED Procurement
ESD Subsidiaries – MSDC,
HCDC, CCDC, ECHDC, USA
NIAGARA, JDA*

Elizabeth Gocs

*Project Manager, OCSD
(518) 292-5204*

egocs@esd.ny.gov

*Capital District
Central New York
Finger Lakes
North Country
Connect NY Broadband*

Denise Ross

*Project Manager, OCSD
(212) 803-3226*

dross@esd.ny.gov

*Southern Tier
Mohawk Valley
Mid-Hudson Region
NYC - Manhattan, Staten
Island & Bronx*

Vikas Gera

*Project Manager, OCSD
(212) 803-3244*

vgera@esd.ny.gov

*Long Island
Western New York
NYC - Brooklyn & Queens
ESD Procurements*

OCSD-3

WORKFORCE EMPLOYMENT UTILIZATION REPORT

Contract No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Reporting Period: <input type="checkbox"/> January 1, 20 - March 31, 20 <input type="checkbox"/> April 1, 20 - June 30, 20 <input type="checkbox"/> July 1, 20 - September 30, 20 <input type="checkbox"/> October 1, 20 - December 31, 20					
Contractor's Name:		Report includes: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force					
Contractor's Address:							

Enter the total number of employees in each classification in each of the EEO-Job categories identified.

EEO - Job Category	Total Work Force	Work force by Gender		Work force by Race/Ethnic Identification														
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary / Apprentices																		
Totals																		

PREPARER'S NAME: (Signature):	TITLE:	Date:	TELEPHONE NO.:	EMAIL ADDRESS:
--	---------------	--------------	-----------------------	-----------------------

Submit the above completed form to:

**Empire State Development Corporation
Office of Contractor and Supplier Diversity
633 Third Avenue, 33rd Floor
New York, NY 10017**

General Instructions: The work force utilization (M/WBE **102**) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

Instructions for completing:

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female