



# STATE OF NEW YORK

## 2016 MWBE Disparity Study

### Request For Proposal

RFP Number 13-6069

Empire State Development (“ESD”) is issuing this Request for Proposal (“RFP”) on behalf of the State of New York. This RFP is posted on the ESD website:

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

**Issued: April 10, 2014**

**Submission Deadline: May 29, 2014, 5:00 PM**  
(Late proposals cannot be accepted)

Make all inquiries by email to:

[MWBEDisparity@esd.ny.gov](mailto:MWBEDisparity@esd.ny.gov) by April 25, 2014, 5:00 PM

**Empire State Development**  
**625 Broadway – 8<sup>th</sup> Floor**  
**Albany, NY 12207**  
**518-292-5200**  
<http://www.esd.ny.gov>

**Request For Proposals ("RFP") Response Form**

**RFP Number 13-6069**

**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.

**Empire State Development**  
REQUEST FOR PROPOSALS - (RFP Number 13-6069)  
Table of Contents

<b>SECTION I: Purpose, Background, and Scope of Services</b> .....	4
1.0 Purpose .....	4
1.1 Background .....	4
1.2 Definitions .....	5
1.3 Scope of Service .....	5
1.4 Deliverables.....	12
1.5 Minimum Qualification Requirements .....	15
<b>SECTION II: Administrative Information</b> .....	16
2.0 Inquiries .....	16
2.1 Designated Contacts .....	16
2.2 Pertinent Dates .....	16
2.3 Submission of Proposals .....	16
2.4 Conditions Governing Proposals .....	17
2.5 Freedom of Information Law .....	17
2.6 Notification of Award .....	18
2.7 Cost of Proposal .....	18
2.8 MWBE Participation and EEO .....	18
2.9 Procurement Lobbying .....	18
<b>SECTION III: Contractual Information</b> .....	20
3.0 Contract Preparation .....	20
3.1 Contract Term / Termination / Consideration Adjustment .....	20
3.2 Cancellation .....	20
3.3 Payment Process .....	21
3.4 Intellectual Property / Personal Property Rights .....	21
3.5 Reports .....	24
3.6 Subcontracts .....	24
<b>SECTION IV: Proposal Format and Contents</b> .....	25
4.0 General Information .....	25
4.1 Complete Technical Proposal .....	25
4.2 Complete Cost Proposal .....	28
4.3 Complete Administrative Proposal .....	29
4.4 Evaluation Process .....	32
APPENDIX A – Standard Clauses for All New York State Contracts	
APPENDIX B – Budget	
APPENDIX C – Contractor Travel Reimbursement Guidelines	
APPENDIX D – Non-Collusive Bidding Certification	
APPENDIX E – MacBride Fair Employment Principles	
APPENDIX F – Responsibility Questionnaire Information	
APPENDIX G – Procurement Lobbying Disclosure	
APPENDIX H - Record Layout of NYS Certified MWBE Database	
APPENDIX I - Definitions	
APPENDIX J – State Agencies and Public Authorities	
APPENDIX K – MWBE Forms	

## SECTION I – PURPOSE, BACKGROUND & SCOPE OF SERVICES

### 1.0 PURPOSE

The New York State Department of Economic Development, D/B/A Empire State Development (“ESD”), on behalf of the State of New York (“NYS” or “State”), is authorized and required by New York State Executive Law section 312-a, as amended by Chapter 175 of the Laws of 2010, to seek the services of a qualified vendor (“hereinafter Respondent”) to conduct a complete, comprehensive and legally supportable statewide disparity study (“2016 Disparity Study” or “Study”) regarding (1) the State’s use of minority and women-owned business enterprises (“MWBEs”) as State contractors and subcontractors, and (2) the employment of women and minorities by State contractors and vendors on State contracts.

Disparity Studies are the primary means by which states and large municipalities determine whether there is legal justification for the establishment, continuation or modification of programs designed to promote the full and fair participation of MWBEs, minorities and women in government contracting. The 2016 Disparity Study must achieve three primary objectives. First, the Study must determine the extent to which there exists a disparity between the availability of qualified MWBEs, minorities and women and their actual utilization by State agencies and State public authorities (collectively, “State agencies”), a list of which can be found in Appendix “J,” on State contracts. Second, the Study must provide the basis for determining whether such State Contracts should be subject to race and/or gender conscious remedial programs supported by State law. Third, the Study must establish the basis by which the State will determine overall statewide goals for the participation of MWBEs, minorities and women in State Contracts.

For the purpose of these objectives, the selected Respondent shall be guided in its work by the parameters set forth by the United States Supreme Court in the cases of *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (Croson), and *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (Adarand) and any other decisions that bear on the rights and abilities of state governments to implement race and gender conscious preference programs. The Court applies an exacting “strict scrutiny” test that requires the Disparity Study to provide historical and statistical evidence of prior discrimination by governmental units in order to support a race and gender based plan for contracting work. Such findings provide the State a “compelling interest” in establishing goals for increasing MWBE participation in State contracting. Importantly, the continuing success of the State’s remedial programs requires that they not only be carefully justified, but also meticulously applied such that preferential treatment based on race and gender is determinative in only those very narrow circumstances in which it is truly relevant. To that end, the Respondent should reference and be conversant with New York State Executive Law Article 15-A, “Participation By Minority Group Members and Women with Respect to State Contracts,” the 2010 Disparity Study and current State MWBE program practices and policies, as set forth in Chapter XIV of 5 NYCRR, Parts 140-145.

### 1.1 BACKGROUND

In 1988, the Legislature of the State of New York enacted Executive Law Article 15-A to further the State's policies promoting equal opportunity in employment for all persons through the creation of effective programs designed to eradicate those barriers that have unreasonably

impaired the access of MWBEs to State contracting opportunities.

[\*The State of Minority and Women-Owned Business Enterprise: Evidence from New York\*](#), published April 29, 2010, commonly referred to as the “2010 Disparity Study,” found large, adverse, and statistically significant disparities between the availability of minority and women-owned businesses and their participation in the State's contracting activities. The 2010 Disparity Study further concluded that these disparities between MWBEs and non-MWBEs could not be explained solely, or even mostly, by factors untainted by discrimination. These differences, therefore, gave rise to a strong inference of the presence of discrimination.

The 2010 Business Diversification Act was passed to redress this discrimination regarding State contracts through the statewide MWBE program, and the 2010 Disparity Study was produced to provide the legal basis for the Act.

In late 2010, the Business Diversification Act (“BDA”), which amended provisions of Article 15-A of the Executive Law, was signed into law. The primary purpose of the BDA was to further promote the participation of MWBEs ready, willing and able to perform on State procurement contracts. In addition to that overarching goal, the BDA mandated changes to the program, including eligibility requirements, to ensure that the statewide program would be effective, enforceable and constitutionally sound, and required the study of workforce diversity in employment opportunities that have resulted from State contracting.

The 2010 BDA also sought to more narrowly tailor the MWBE program to the remedial measures outlined in the 2010 Disparity Study. Among those changes was the requirement that no individual or individuals whose ownership, operation and control are relied upon for certification have a personal net worth that exceeds \$3.5 million. In accordance with the statute, the personal net worth (“PNW”) calculation performed by program analysts includes the aggregate adjusted net value of the assets of an individual remaining after total liabilities are deducted. Such assets include the individual's share of assets held jointly with the individual's spouse but do not include the following: (1) the individual's ownership interest in the certified minority and/or women-owned business enterprise; and (2) the individual's equity in his or her primary residence or up to \$500,000 of the present cash value of any qualified retirement savings plan or individual retirement account held by the individual, less any penalties for early withdrawal.

## **1.2 DEFINITIONS**

Please reference Appendix “I” for definitions related to this RFP.

## **1.3 SCOPE OF SERVICES**

The State is seeking a qualified Respondent to conduct a statewide disparity study and policy review:

### **1. Business Study**

For the Business Study (Part 1), the Respondent shall assess the use of qualified MWBEs as contractors and subcontractors by the State for (1) construction; (2) construction-related services (“CRS”); (3) non construction-related services; and (4) commodities.

## **2. Workforce Study**

For the Workforce Study (Part 2) the Respondent shall assess the level of employment of qualified minorities and women by State contractors, subcontractors, and vendors who receive State construction, CRS, non construction-related services and commodities contracts against availability.

## **3. Policy Review**

The Respondent will conduct a review of best practices, Policy Review (Part 3), along race and gender conscious remedial programmatic tools in other states and large municipalities that may be relevant to the NYS context.

## **4. Personal Net Worth Review**

The Respondent shall provide data relating to the PNW, Personal Net Worth Review (Part 4), certification eligibility requirement for the MWBE program.

### **A. Data Collection**

The Respondent shall be solely responsible for defining, researching, compiling, and analyzing all data required to provide the services described in this RFP. The State will, to the extent possible, make records available to the Respondent and cooperate with the Respondent in the retrieval of the records. The records may be available in various formats including the Internet, computer databases, spreadsheets, and physical copies. Where ESD does not provide the Respondent with data, the Respondent must research and gather such data, and must set forth the methods and sources by and from which the data was collected and the steps taken to ensure data integrity. The Respondent may use statistically valid sampling and estimating methods, as appropriate, where actual procurement data and records are incomplete. However, the Respondent is responsible for the legal sufficiency of any such method used.

The following is a list and description of the data sources available from the State, anticipated needs for data, and potential sources for the required data.

#### **1. NYS MWBE Spending Data**

ESD will provide the Respondent with electronic files from the State’s Central Accounting System<sup>1</sup> (“CAS”), [State Financial System](#) (“SFS”), [Public Authorities Reporting Information System](#) (“PARIS”), [New York State Contracting System](#) (“NYSCS”) for payment transactions included in the scope of this Study on State contracts procured by State agencies and authorities for the period from April 1, 2010 to March 31, 2015. Such data will include:

---

<sup>1</sup> CAS is the legacy accounting system, which was replaced by SFS in April of 2012.

- a. Originating agency/authority
- b. Information identifying the contractor
- c. Contract specifications (i.e., start date, end date, expended amounts, purpose)
- d. To the limited extent possible, subcontracting information

## **2. MWBE Availability Data**

The Respondent shall research the existence of MWBEs within the State's relevant market area as a whole and within the various regions of the State. In addition to the State's Directory of New York State Certified MWBEs (<https://ny.newnycontracts.com/>), the Respondent shall research, review, and include, as appropriate, information from public and private registries of MWBEs, business or industry groups, listings of federally and locally certified MWBEs, the New York Department of State database of active incorporations, etc. Furthermore, the Respondent shall also obtain and analyze relevant data sources, such as U.S. census data, and shall demonstrate that it has employed valid statistical sampling in order to accurately ascertain the number of MWBEs in the State's relevant market area.

## **3. NYS Workforce Data**

Where available, ESD will provide the Respondent with workforce utilization data from State agencies in physical or electronic formats from CAS, SFS, NYSCS and other state records management systems for the period from April 1, 2010 to March 31, 2015.

Such data will include:

- a. Originating agency/authority
- b. Information identifying the contractor
- c. Contract specifications (start date, end date, expended amounts, purpose)
- d. To the limited extent possible, subcontract information
- e. To the limited extent possible, workforce assigned to the project, broken by gender, race, and EEO category

## **4. Workforce Availability Data**

The Respondent shall research the existence of qualified minorities and women within the State's relevant market area as a whole and within the various regions of the State. The Respondent shall research, review, and include as appropriate information from sources including, but not limited to the New York Department of Labor, workforce or industry groups, federal and local workforce data, etc. Furthermore, the Respondent shall obtain and analyze relevant data sources, such as U.S. Census data, and shall demonstrate that it has employed valid statistical sampling to accurately ascertain the number of minorities and women in the State's relevant market area.

## **5. Personal Net Worth Data**

ESD will provide to the Respondent electronic files containing personal net worth data from the NYSCS. The Respondent shall also obtain additional relevant data from other

sources, which may include Federal and State agencies, necessary to develop a comprehensive profile of the personal net worth of business owners such that the data can be segmented according to firm characteristics, such as: industry sector, firm size and revenue, region of the state, as well as demographics of the owner, including gender, race, and personal net worth.

## **B. Disparity Analysis**

In determining whether any disparity exists for Part 1 or Part 2 of the Study, Respondent shall (i) define and calculate availability; (ii) segment the utilization analysis by region and by dollar amount of State contract, or other appropriate metrics; and (iii) conduct appropriate statistical or econometric analysis of the utilization data to determine the extent, if any, of the disparities.

### **1. Availability**

#### **a. Business Study (Part 1)**

The Respondent shall define and quantify the availability of qualified MWBEs in each of the relevant market sectors (construction, CRS, non construction-related services, and commodities), subsectors (by North American Industry Classification System (“NAICS”) codes) and regions of the State. MWBE analysis should include break downs by race and ethnic groups and gender. In analyzing availability, the Respondent shall:

- i. Define qualified and available MWBEs for each market sector (construction, CRS, non construction-related services and commodities) and region of the State;
- ii. Collect and provide data on MWBEs by region and market sector that includes an assessment of information pertaining to business and professional capacity to perform on State contracts, broken down by gender and minority group member status of owners of firms. MWBE data shall include relevant information impacting capacity such as gross revenues, total annual receipts, total employees, years of experience, required licensure or other uniform and relevant measures.
- iii. For each region of the State and within the relevant market sector(s), develop a business demographics profile showing the number of qualified, available firms owned by non-minorities, women, minorities (broken down by minority group), non-minority women and minority (broken down by minority group) women, with the percentage of the total number of firms that each group represents.

#### **b. Workforce Study (Part 2)**

The Respondent shall define, quantify and explain the availability of qualified minority group members and women in each of the relevant market sectors (construction, CRS, non construction-related services and commodities), subsectors (by NAICS codes) and regions of the State. MWBE analysis should include breakdowns by race and ethnic groups and gender. In analyzing availability, the Respondent shall:

- i. Determine and report on the criteria used to define qualified and available minority group members and women for each of the market sectors (construction, CRS, non construction-related services and commodities) and regions of the State;
- ii. Collect and provide data on minority group members and women by region and market sector that includes an assessment of information pertaining to business and professional capacity to perform on State contracts and serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities, broken down by gender and minority group member status of owners of firms. Workforce data shall include information impacting workers' ability to perform on State contracts and serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities including, where appropriate, skill and training levels, experience, and necessary licensures and certifications.
- iii. For each region of the State and within the relevant market sectors, develop a workforce demographics profile showing the number of qualified, available minorities and women that are ready, willing and able to perform on State contracts and serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities, with the percentage of the total number of persons that group represents in the overall workforce.

## 2. Utilization

### a. Business Study (Part 1)

- i. MWBEs (as either primes or subs) that were actually utilized on State contracts;
- ii. total State contracts awarded to MWBE firms broken down by prime contacts and subcontracts; and
- iii. dollars paid to MWBE firms broken down by prime contacts and subcontracts; and

Respondent shall also provide:

- i. total number of MWBEs that were actually utilized on State contracts broken down into to primes and subs
  - ii. total State contracts awarded to MWBE firms broken down by prime contacts and subcontracts; and
  - iii. total dollars paid to MWBE firms broken down by prime contacts and subcontracts
- ### b. Workforce Study (Part 2)

The Respondent shall analyze the Workforce Utilization. Relative to State contracts, the utilization analysis must describe percentages of:

- i. minority group members and women actually utilized by State contractors as staff or laborers on State contracts and;

- ii. minority group members and women who actually served on management level bodies, including boards of directors, and as senior executive officers within contracting entities
- iii. total State contracts minority group members and women worked on as staff or laborers;
- iv. total State contracts where minority group members and women served on management level bodies, including boards of directors, and as senior executive officers within contracting entities

Respondent shall also provide:

- i. total value of State contracts where minority group members and women worked as staff or laborers;
- ii. total value of State contracts where minority group members and women served on management level bodies, including boards of directors, and as senior executive officers within contracting entities

### **3. Disparity**

#### **a. Business Study (Part 1)**

In determining whether any disparity exists between the number of qualified MWBEs that are ready, willing and able (i.e. available) to perform State contracts for construction, CRS, non construction-related services and commodities in the various regions of the State, and the number of such MWBEs actually engaged to perform such contracts – and to the extent possible, subcontracts – the Respondent shall (a) define and calculate MWBE availability; (b) segment the utilization analysis by region and by dollar amount of State contract, or other appropriate metrics; and (c) conduct appropriate statistical or econometric analysis of the utilization data to determine the extent, if any, of the disparity.

The Respondent shall fully define “statistically significant disparity” for the purposes of its analysis, and explain the rationale underlying its definition. In assessing any statistical disparity in utilization rates, the Respondent shall employ appropriate statistical methodologies to control for any relevant non-MWBE-related characteristics or criteria that might affect the disparity analysis, explain any such criteria it considers, and describe the statistical analysis it utilizes.

#### **b. Workforce Study (Part 2)**

In determining whether any disparity exists between the number of qualified minority group members and women that are ready, willing and able (i.e. available) to perform State contracts for construction, CRS, non construction-related services and commodities in the various regions of the State, and the number of such minority group members and women actually engaged to perform such contracts – and to the extent possible, subcontracts – the Respondent shall (a) define and calculate the

availability of qualified minority group members and women; (b) segment the utilization analysis by region and by dollar amount of State contract, or other appropriate metrics; and (c) conduct appropriate statistical or econometric analysis of the utilization data to determine the extent, if any, of the disparity.

In determining whether any disparity exists between the number of qualified minority group members and women that are ready, willing and able (i.e. available) to serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities for construction, CRS, non construction-related services and commodities in the various regions of the State, and the number of such minority group members and women actually engaged to serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities – and to the extent possible, subcontracts – the Respondent shall (a) define and calculate qualified minority group members and women availability; (b) segment the utilization analysis by region and by dollar amount of State contract, or other appropriate metrics; and (c) conduct appropriate statistical or econometric analysis of the utilization data to determine the extent, if any, of the disparity.

The Respondent shall fully define “statistically significant disparity” for the purposes of its analysis and explain the rationale underlying its definition. In assessing any statistical disparity in utilization rates, the Respondent shall employ appropriate statistical methodologies to control for any relevant non-minority group members and women related characteristics or criteria that might affect the disparity analysis, and the Respondent shall identify and explain any such criteria it considers and the statistical analysis it utilizes.

## **C. Policy Study Components**

### **1. Policy Review**

ESD seeks information outlining the use and efficacy of race and gender conscious remedial programmatic tools in other states and large municipalities which might be instructive to NY State practitioners and policymakers as they craft policies, programs and procedures designed to remedy utilization disparities in State contracting. *Croson* and its progeny should guide Respondent’s assessment of such programs.

### **2. Personal Net Worth Review**

ESD seeks information concerning the personal net worth of business owners within the State’s relevant industry sectors for the purpose of assessing the MWBE program’s personal net worth eligibility criterion. In order for ESD to determine the impact of the personal net worth eligibility requirement, the data must include the personal net worth for all business owners within the State’s relevant market area(s) segmented according to industry sector, firm size, revenue and region of the state as well as the gender and race of the owner and whether their business is an MWBE. This analysis should be limited in scope to those businesses in industry sectors reflective of the type of goods and services commonly procured or funded by NYS contracts. To fulfill its purpose, the data must be compiled using statistically sound methodology that permits identification of the mean

and median personal net worth within the industry sectors analyzed.

## **1.4 DELIVERABLES**

### **A. General Requirements**

All deliverables shall be subject to the following requirements:

1. The Respondent will be required to prepare and submit the documents, identified below, to ESD as both a physical copy and in an encrypted electronic format compatible with Microsoft software with complete tabular findings. ESD shall have access upon request to all data, information, and analyses generated during the course of the Study.
2. All reports shall be: (a) written in clear and concise language using consistent terms; (b) organized in a logical manner; (c) fully illustrated with relevant examples; and (d) consistent with widely accepted methodology. The Respondent shall provide to ESD all notes, work papers, records and documentation that detail, chronicle, and support its methods, analysis and conclusions for each of the elements in the work. Should the Respondent develop a computerized database in the course of the work, the Respondent shall provide the database to ESD. Programs and data entry materials developed in connection with the Study must be compatible with Microsoft compatible software. The final version of any deliverable must address any deficiencies or concerns raised by ESD regarding the draft deliverable.

### **B. Monthly Progress Reports**

ESD requires monthly progress reports that describe tasks undertaken and the portion of each task that has been completed to date, as well as the tasks scheduled to be undertaken in the following month. These reports should also identify any problems encountered that might impact the work schedule or the successful completion of tasks, and the steps taken by the Respondent to resolve those problems. Any revisions to the work plan must be included in these monthly progress reports.

### **C. Disparity Study Report**

#### **1. Business Study Component (Part 1)**

- a. The Disparity Study Report shall address each of the relevant requirements of

Section 1.3 above, including:

- i. Data Collection
- ii. Availability Study
- iii. Utilization Analysis
- iv. Statistical Disparity

- b. Respondent shall provide a database of qualified MWBE and non-MWBE firms in each region of the State available to perform State contracts for construction, CRS, non construction-related services, and commodities. The database must include a

description of the primary business of the firm identified by NAICS codes, the firm owner's gender, ethnicity, the size of the firm based on gross revenue, region of the State, and dollar value paid to each contracting entity for work on State contracts during the Study period. A copy of the database is to be provided to ESD in an electronic format compatible with Microsoft software.

- c. Furthermore, Respondent shall provide statistically significant availability, utilization, and disparity data that is customized (or customizable) to individual agencies' contracting activity. This shall be for the purpose of providing individual agencies with goal setting tools.

## **2. Workforce Study Component (Part 2)**

- a. Workforce Component (Part 2) of the Disparity Study Report shall address each of the requirements of Section 1.3 above. This shall include:
  - i. Data Collection
  - ii. Availability Study
  - iii. Utilization Analysis
  - iv. Statistical Disparity
- b. Respondent shall provide data on the number of qualified minority group members and women that are ready, willing and able (i.e. available) to provide labor on State contracts for construction, CRS, non construction-related services and commodities and the number of such minority group members and women actually engaged to perform such contracts, and to the extent possible, subcontracts. The data shall include dollar value paid to each contracting entity for work on State contracts during the Study period along with the size of the firm based on gross revenue and region of the State. The data must be organized by industry using NAICS codes and identify relevant factors, such as education level, experience, region of the State, etc. that will enable the State to ascertain the degree to which a disparity exists between those minorities and women within the relevant marketplace that are ready, willing and able to perform work on State contracts as compared with those minorities and women that are actually providing labor on State funded contracts.
- c. Respondent shall provide data on the number of qualified minority group members and women that are ready, willing and able (i.e. available) to serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities for construction, CRS, non construction-related services and commodities and the number of such minority group members and women actually engaged to serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities for construction, CRS, non construction-related services and commodities and to the extent possible, subcontracts. The data shall include dollar value paid to each contracting entity for work on State contracts during the Study period along with the size of the firm based on gross revenue and region of the State. The data must be organized by industry using NAICS codes and identify relevant factors, such as education level, experience, geography, etc. that will enable the State to ascertain the degree to

which a disparity exists between those minorities and women within the relevant marketplace that are ready, willing and able to serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities for construction, CRS, non construction-related services and commodities as compared with those minorities and women who served on management level bodies, including boards of directors, and as senior executive officers within contracting entities for construction, CRS, non construction-related services and commodities.

**D. Policy Findings**

**1. Policy Analysis**

The policy review shall provide information concerning policy recommendations based on Respondent’s understanding of effective tools designed to remediate disparities in MWBE participation in as contractors and minorities and women performing on government contracts. This assessment should include recommended best practices information around legality of policies, such as contract goals, set-asides, mentor-protégé programs, and price preferences.

**2. Personal Net Worth Analysis**

The Personal Net Worth analysis shall report the Respondent’s findings on the PNW values of current and prospective MWBE business owners in the relevant NYS marketplace by industry sectors. The PNW data must be provided in a format that permits ESD to perform essential analysis to determine the impact of the PNW eligibility requirements.

**E. Schedule of Deliverables**

Deliverable Name	Date Due
Draft Disparity Study Report	No later than August 30, 2015
Final Disparity Study Report	No later than November 15, 2015
Draft Policy Analysis	No later than August 30, 2015
Final Policy Analysis	No later than November 15, 2015
Draft Personal Net Worth Analysis	No later than August 30, 2015
Final Personal Net Worth Analysis	No later than November 15, 2015

**1.5 MINIMUM QUALIFICATION REQUIREMENTS**

Responses to this RFP must include information about Respondent’s current capabilities, past experiences working with other states and large municipalities and how those experiences may inform or impact work with New York State as it relates to operating models and leading practices.

A. Prior to the proposal due date for this RFP, the Respondent must have been in business for a minimum of five (5) years, performing relevant quantitative analyses, such as those described in Section 1.3 (Scope of Services) of this RFP.

- B. The Respondent must provide the names and addresses of at least three (3) business references.
- C. Prospective Respondents must possess adequate financial resources and organizational capacity to perform the services described in this RFP in an efficient and effective manner, with financial resources to pay expenses in advance of receipt of payment from ESD. ESD prefers a letter from a Certified Public Accountant (CPA) indicating that the Respondent has sufficient working capital, positive net worth, and has or can obtain a line of credit. ESD will also accept a letter from a party other than a CPA (such as an attorney, bank officer, corporate attorney, parent holding company) familiar with and attesting to the financial condition of the Respondent.
- D. The Respondent must adopt strict privacy protections to adequately protect the confidentiality of all data. All data transmissions must be encrypted. Throughout the course of this project, the Respondent may have access to confidential company information. The Respondent selected for this project must agree to protect confidential information and to sign non-disclosure agreements prepared by ESD. All information provided to, collected or otherwise obtained by the Respondent, the Respondent's staff and all subcontractors is proprietary and may not be disclosed in perpetuity, to any party other than ESD itself without ESD's express written approval.
- E. This section (1.5) of the RFP is not intended to itemize all requirements for an award of this project. See Section 4 of the RFP for additional information on proposal format and contents.

## SECTION II - ADMINISTRATIVE INFORMATION

### 2.0 INQUIRIES

All questions must be submitted in writing via email to [MWBEDisparity@esd.ny.gov](mailto:MWBEDisparity@esd.ny.gov) with "MWBE Disparity Study" in the subject line. Please do not contact ESD by telephone.

**Questions must be received by ESD no later than April 25, 2014 by 5:00 PM.**

All inquiries must specifically cite any relevant section of the RFP in the question. Answers to all questions of a substantive nature will be posted on ESD's website at <http://esd.ny.gov/CorporateInformation/RFPs.html> under the heading: **Request for Proposals (RFP): 2016 Disparity Study Q and A**. The Questions and Answers page will be updated periodically until all questions received by the deadline have been answered. It is the responsibility of each Respondent to check the Questions and Answers page.

### 2.1 DESIGNATED CONTACTS

For the purpose of the Procurement Lobbying requirements of this RFP (see section 2.9 and Appendix G).

ESD's designated contacts shall be Lisa Sutton, all other members of ESD's Contract Management Unit, the Commissioner of the Department of Economic Development and his designee(s), and the Director of the Division of Minority and Women-Owned Business Development. Although several staff contacts are named for the purposes of Procurement Lobbying requirements, Respondents are instructed to contact only [MWBEDisparity@esd.ny.gov](mailto:MWBEDisparity@esd.ny.gov) with any questions or issues.

### 2.2 SCHEDULE OF PERTINENT DATES

Release of RFP	April 10, 2014
Deadline for Receipt of Questions	<b>April 25, 2014 by 5:00 PM EST</b>
Submission of Proposals	<b>May 29, 2014 by 5:00 PM EST</b> <b>Late proposals cannot be accepted.</b>
Oral Presentations/Interviews	By appointment at the discretion of ESD
Award of Contract	May 2014 (estimated)
Start of Contract	June 2014 (estimated)

Interviews/oral presentations by finalist Respondents may be held at the discretion of ESD.

### 2.3 SUBMISSION OF PROPOSALS

Respondents must submit their proposals no later than **5:00 P.M. U.S. Eastern Standard Time**, on **May 29, 2014**. Submit 5 copies of the proposal to the following address:

Empire State Development  
**Office of Fiscal Management**  
**625 Broadway – 8<sup>th</sup> floor**  
**Albany, NY 12245**  
**Attention: Lisa Sutton**

**In addition to hard copies**, the Respondent must submit an identical electronic version of the proposal to [MWBEDisparity@esd.ny.gov](mailto:MWBEDisparity@esd.ny.gov) with “MWBE Disparity Study – *Respondent 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 Respondent to ensure timely submission of its proposal. Proposals received after the scheduled date and time will not be accepted.

Review this RFP carefully, including the selection criteria described in section 4.4, to insure that your proposal contains all required information.

## **2.4 CONDITIONS GOVERNING PROPOSALS**

Only those Respondents that have supplied complete information will be considered. Respondents supplying incomplete responses will be deemed non-compliant.

Freedom of Information Law: Any patented or proprietary information included in the proposal must be clearly identified in the proposal and in a cover letter submitted with the proposal (see Section 2.5 below).

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

ESD reserves the following prerogatives:

- A. To accept or reject any or all proposals;
- B. To decline to award a contract resulting from this RFP;
- C. To require clarification from any Respondent for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;
- D. To disqualify proposals that fail to meet the mandatory qualifications;
- E. To waive or modify minor irregularities in proposals received;
- F. To eliminate mandatory requirements unmet by all Respondents;
- G. To negotiate with any or all Respondents within the proposal requirements, to best serve the interests of the State of New York;
- H. To amend the specifications contained in the RFP after its release, with due notice given to all potential Respondents known to ESD to reflect the changed specifications;
- I. To utilize any or all ideas submitted in the proposals received unless those ideas are covered by legal patent or proprietary rights and the Respondent has so advised ESD in statements contained in the Respondent’s proposal and in a cover letter attached hereto; and,

J. To award contract(s) for any or all parts of a proposal.

## **2.5 FREEDOM OF INFORMATION LAW**

ESD is subject to the Freedom of Information Law (FOIL), which governs the process for the public disclosure of certain records maintained by ESD (See Public Officers Law, Sections 87 and 89).

Individuals or firms which submit proposals to ESD may request that ESD except all or part of such proposal from public disclosure, pursuant to Section 87(2)(d) of the Public Officers Law, on the ground that the proposal contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the firm submitting the information. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for such an exception must be in writing and should state the reasons for the requested exception. It must also specify the proposal or portions thereof for which the exception is requested.

ESD shall notify the Respondent of any requests for confidential or proprietary materials and whether those materials are exempt from FOIL.

## **2.6 NOTIFICATION OF AWARD**

ESD will notify the Successful Respondent in writing. ESD will notify each Respondent whose proposal is not selected for the award of this project.

## **2.7 COST OF PROPOSAL**

ESD is not liable for any and all costs incurred by any Respondent, including the Successful Respondent or any individual or firm associated with the Respondent, for work performed to prepare, explain and submit the Respondent's proposal. In addition, ESD is not liable for any and all costs incurred by the Respondent or any individual or firm associated with the Respondent to discuss, propose, negotiate or otherwise address in any way whatsoever, terms and conditions of any contract resulting from this RFP. Furthermore, ESD is not liable for any costs incurred until the contract has been fully ratified by ESD.

## **2.8 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES ("MWBE") PARTICIPATION AND EQUAL EMPLOYMENT OPPORTUNITIES ("EEO")**

A. General Obligations:

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of ESD contracts. The contract which ESD will prepare based on this RFP will contain provisions regarding the Respondent's obligations under Article 15-A of the Executive Law and its implementing regulations, the Respondent's obligations under Article 15 of the Executive Law, and clauses dealing with equal employment opportunities.

Please refer to Section IV of this RFP for more information.

## **2.9 PROCUREMENT LOBBYING**

Pursuant to State Finance Law §§139-j and 139-k, this RFP includes and imposes certain restrictions on communications between ESD and a Respondent during the procurement process.

A Respondent is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by ESD and the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, are all staff from ESD Contract Management Unit; the Commissioner of the Department of Economic Development and his designee(s); the President and Chief Operating Officer of the Empire State Development Corporation and his designee(s) and the Director of the Division of Minority and Women-Owned Business Development.

To avoid conflicts and other issues concerning statutory exceptions, ESD requires that Respondent contact only ESD staff identified in the aforementioned section of this solicitation.

ESD employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Respondent pursuant to these two statutes.

Certain findings of non-responsibility can result in rejection for contract award; in the event of two findings within a 4-year period, the Respondent will be debarred from obtaining governmental procurement contracts.

Further information about these requirements can be found at:

<https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.asp> or,

by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41<sup>st</sup> Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607.

State Finance Law Sections 139-j and 139-k may be viewed at:

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/sfl139-j.htm>

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/sfl139-k.htm>

## **SECTION III - CONTRACTUAL INFORMATION**

### **3.0 CONTRACT PREPARATION**

A contract defining all terms and conditions of the parties will be drafted by ESD. The contract may incorporate any or all of this RFP, "Standard Clauses for All New York State Contracts" (attached hereto as APPENDIX A), and as much of the Successful Respondent's final proposal as may be appropriate, and other documents as may be deemed suitable by ESD.

After ESD and the Successful Respondent execute the contract, it must be submitted for approval to the Attorney General's Office, the Office of the State Comptroller, and in some cases the Department of Civil Service, before it can become effective.

ESD will not enter into protracted negotiation with the Successful Respondent over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract. If the Successful Respondent does not sign and return to ESD the proposed contract including any draft of the proposed contract, within thirty (30) calendar days of receipt by the Respondent, ESD reserves the right to declare the award of the project to the Respondent null. ESD will not be responsible for any cost incurred by the Respondent as a result of a null award. Moreover, ESD reserves the right to cancel for cause any proposed amendment to the original contract which is not signed and returned to ESD within thirty (30) calendar days of receipt by the Respondent.

### **3.1 CONTRACT TERM / TERMINATION / CONSIDERATION ADJUSTMENT**

The Successful Respondent shall perform the work and provide the services set forth in this RFP beginning on or about June, 2014 and ending December 30, 2015 unless terminated sooner as provided for in this section of the RFP. This contract may be extended or renewed for additional periods provided the total contract with extensions does not exceed five (5) years. In the event of the renewal of this contract, prices may be adjusted in accordance with the Consumer Price Index Urban (CPIU), or at other rates as may be documented from authoritative sources, at ESD's discretion.

The State shall have the right to terminate this contract early for cause or convenience as more fully described in Section 3.2 of this RFP.

### **3.2 CANCELLATION**

Once a contract or other agreement resulting from this RFP is fully executed and approved, ESD has the right to cancel it immediately for cause or unavailability of State funds, and for convenience at any time on thirty (30) days written notice to the Respondent. If cancelled for convenience, ESD agrees to pay Respondent for approved charges incurred in the performance of the Contract up to the time of cancellation. If cancelled for cause, payment to the Respondent for approved charges incurred will be made at ESD's sole discretion. If cancelled for unavailability of State funds, ESD will not be liable for payment, but will use its best efforts to pay outstanding charges previously approved by ESD to the extent permitted by New York State Law.

### **3.3 PAYMENT PROCESS**

Payment for services performed to the satisfaction of ESD shall be made in the ordinary course of State business upon receipt of duly authenticated invoices/vouchers and upon receipt of reports and/or other documentation, if required elsewhere in this RFP. Receipts (original copies preferred) for all non-personnel expenses must be attached as evidence of cost. ESD shall reimburse the Respondent for travel expenses incurred in the performance of contractual duties, in accordance with rates permitted by New York State. See Appendix C for travel rates used within the United States and the US Department of State website located at:

<http://www.osc.state.ny.us/agencies/travel/travel.htm>

Invoices shall detail expenses in a manner essentially similar to the Budget (Appendix B of this RFP) required as part of your proposal.

### **3.4 INTELLECTUAL PROPERTY/PERSONAL PROPERTY RIGHTS IN DATA, COMPUTER SOFTWARE & OTHER INTELLECTUAL PROPERTY**

#### **3.4.1. Rights in Data:**

All studies, reports, findings, sources, bibliographies, subscriber lists, mailing lists, working papers, files, input materials and output materials, the media upon which the same are located (including, without limitation, cards, tapes, discs, and other storage facilities), together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, and all other materials, prepared for and delivered to ESD in the course of performance of any contract resulting from this RFP ("Agreement") , (hereinafter referred to as "Data"), shall be deemed to be "work made for hire" (as defined in Section 101 of Title 17 of the United States Code), and shall be provided to and become the exclusive property of ESD. Data shall be deemed and determined to not include computer software and related documentation. If it is determined that any Data encompassed above does not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Respondent hereby covenants and agrees to transfer all right, title and interest in any such Data to ESD, and cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

#### **3.4.2. Rights in COTS Computer Software:**

Any commercial off-the-shelf ("COTS") computer software and its related documentation and licenses which were purchased by the Respondent to perform data collection, data dissemination and marketing in satisfaction of an Agreement shall be transferred to ESD to the extent permissible by the original license. The transfer of such COTS software shall be accomplished at no additional cost to ESD.

#### **3.4.3. Rights to Respondent-Owned Pre-Existing Computer Software/Documentation:**

All computer software and related documentation, together with any versions of same or

other intermediate components thereof, which may or may not be either confidential or proprietary, which was owned by the Respondent and existing at the time of the effective date of an Agreement and which, during the term of such Agreement is used by the Respondent in the conduct of the performance of the Agreement in such a fashion as to render such preexisting software to the state of being an integral and necessary operating component of the Respondent-Developed Computer Software developed under the Agreement (hereinafter referred to as "Respondent-Owned Pre-Existing Computer Software/Documentation"), shall be deemed to remain the property of the Respondent and all right, title and interest therein to the same shall continue to vest in the Respondent, with the express understanding that the Respondent hereby licenses ESD to use such Respondent-Owned Pre-Existing Computer Software/Documentation as provided for in subparagraph 3.4.5 herein below.

#### **3.4.4. Rights to Contractor-Developed Computer Software and Software Documentation:**

The Respondent will design, develop and install computer software as may be required for ESD. ESD will have exclusive ownership of the software including all documentation, source and executable code. All computer software and related documentation, together with any versions of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed by the Respondent in the direct course of performance of an Agreement (hereinafter "Respondent-Developed Computer Software and Software Documentation"), shall be deemed to be the property of ESD and all right, title and interest therein to the same shall vest in ESD.

#### **3.4.5. For Software License Agreements**

For software license agreements regarding any and all pre-existing computer Software and Documentation including Software/Documentation developed by the Respondent or purchased from outside sources in the course of performance on an Agreement, the Respondent hereby grants to ESD a nonexclusive, royalty-free, irrevocable, license to ESD, for:

3.4.5.1. All Software and Software Documentation (as herein above defined) developed or purchased in the course of performance of an Agreement; and

3.4.5.2. Only that Contractor-Owned Pre-Existing Computer Software/Documentation (as herein above defined) which forms an integral and necessary operating component of the Respondent-Developed Computer Software created under an Agreement;

3.4.5.3. This license shall include the right to reproduce for archival purposes only, and to use and make and permit others to use and make any modifications necessary to the Respondent-Developed Computer Software and Software Documentation, and the Respondent-Owned Pre-Existing Software/Documentation;

3.4.5.4. The rights granted by this license do not include any rights to derivative works, modifications, revisions, and upgrades to the Respondent-Developed Computer Software and Software Documentation which are developed by the Respondent after the term of an Agreement, or any extensions thereto, expires or is terminated.

### **3.4.6. Other Intellectual Property Rights:**

Except for those intellectual property rights otherwise addressed in sections 3.4.1. through 3.4.5. above, the Respondent agrees that all other patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, an Agreement rendered to ESD by the Respondent or any of its employees or subcontractors during the term of an Agreement (hereinafter "Items") shall be deemed to be a "work made for hire"(as herein above defined), and shall be provided to and become the exclusive property of ESD. If it is determined that any Items encompassed above do not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Respondent hereby covenants and agrees to transfer all right, title and interest in any such Items to ESD, and will cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest. Respondent hereby assigns all rights in such intellectual property to ESD, and will ensure that its employees and subcontractors shall, supply all assistance reasonably requested in securing for ESD's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such intellectual property, and will provide full information in regards to any such Item and execute all appropriate documentation prepared by ESD in applying or otherwise registering, in ESD's name, all rights to any such Items. ESD has the right to grant licenses to make, use, buy or sell any Items derived from the services performed under an Agreement. Provided however, upon mutual agreement of the Respondent and ESD, ESD may waive its property rights, in writing, to any and all patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, an Agreement.

### **3.4.7. Additional rights**

ESD reserves the right to include additional or revised intellectual/personal property provisions in an Agreement in addition to or in place of those described herein, with regard to the ownership (exclusive and/or nonexclusive) of any property or work product created or purchased as a result of any Agreement resulting from this RFP. The presumption is that, unless otherwise stated and agreed to in writing, all intellectual property is owned by ESD, including reports, surveys and all other works made or performed for hire. Specifically exempt from the provisions of this paragraph are property, plant and equipment provided by the Respondent to ESD, for the purpose of carrying out the provisions of this RFP. Property, plant and equipment may be subject to intellectual/personal property regulation when agreed to in writing by the parties.

## **3.5 REPORTS**

In addition to reports discussed elsewhere in this RFP, ESD reserves the right to request reasonable programmatic and/or financial reports. When requested to do so, the Successful Respondent will provide ESD with reports in a reasonable time and in an acceptable format.

### **3.6 SUBCONTRACTING**

Subcontracting is permitted when required by the Respondent to fulfill the terms and conditions of this RFP. If you intend to use subcontractors, your proposal must identify them (name and address) and explain which element(s) of the Scope of Service (section 1.3) and the Budget (see Appendix B), the subcontractor(s) is responsible for. ESD is an equal opportunity contractor and reserves the right to review and approve all subcontracting firms (see Section 2.8 for details on MWBE subcontracting).

After the contract resulting from this RFP, if any, is awarded, any subcontracts or purchases in excess of \$50,000 that were not originally identified in the Respondent's proposal must adhere to the following:

- For subcontracts or purchases which are competitively bid, Respondent must request proposals from a minimum of three qualified firms, and the lowest responsible bidder shall be accepted unless otherwise approved in writing by ESD.
- Subcontracts or purchases that are sole or single source (entered into without submission to competitive bid) must be approved in writing by ESD prior to entering into the agreement. For purposes of this agreement, "sole source" contracts are defined as those where only one vendor is capable of supplying the required services, properties or creative artistry, because such service or property is so unique that it cannot be duplicated or obtained elsewhere. "Single source" contracts are defined as where, although more than one vendor can supply the required services or properties, circumstances of a material and substantial nature make the awarding of the contract to one vendor over the others appropriate. Prior to the acceptance of such services or properties the Respondent shall provide a detailed written statement to ESD which shall describe the sole or single source determination, the alternatives considered, and the terms of the proposed contract. In addition, the Respondent must establish, to the satisfaction of ESD, the reasonableness of the proposed expenditure. In general, the price charged to ESD should be no greater than the price charged in the private sector. Sole/single source contracts are to be avoided whenever possible.

## SECTION IV - PROPOSAL FORMAT AND CONTENTS

### 4.0 GENERAL INFORMATION

In preparing proposals, Respondents must follow the guidelines and instructions within this RFP. A Respondent should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformity to the RFP instructions and requirements, as well as completeness and clarity in the proposal response. The Respondent is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process, or may be deemed non-responsive. A proposal that does not provide all the information requested below may be subject to rejection. The State does not require, nor desire, any promotional material which does not specifically address the response requirements of this RFP.

### 4.1 COMPLETE TECHNICAL PROPOSAL

The purpose of the Technical Proposal is to provide firms with an opportunity to demonstrate their qualifications, competencies, and capacity to undertake the engagement described herein. Below is a listing of the technical information to be provided by the Respondent. The Technical Proposal should contain sufficient information to assure ESD of its completeness. ESD requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below. **Respondents must not include cost in their Technical Proposals.**

- A. **Title Page** - Indicate name, address, phone & fax number, contact person, and federal ID number (if applicable). It must also include a statement that the offer shall be firm and not revocable for a period of 90 days.
- B. **Request for Proposal (RFP) Response Form** (see second page of the RFP)
- C. **Table of Contents**
- D. **Work plan**

Proposals must include a work plan detailing the proposed research designs, indicating the techniques and methodologies planned to meet the objectives of the Study, as well as tasks, activities, data-gathering, analyses, milestones, and other information describing how the Respondent will complete and meet the goals of the Project. A Respondent must demonstrate clear understanding of the research question, the relevant data, and the analysis required for the Study. Where appropriate, a Respondent shall describe the effect of relevant court decisions on the proposed Study design, methodology and data analysis within the work plan. In addition, the work plan must identify any assumptions, hypotheses to be tested, anecdotal evidence, qualitative or quantitative data, procedures, and models that will be gathered and analyzed to test any such assumptions or hypotheses.

If sampling is proposed, discuss how this approach will ensure that the study is reliable and disparity data sufficient to be customized (or customizable) to individual agencies' contracting activity (e.g., to provide individual agencies with goal setting tools -see Section 1.4.C.1.c.). A successful Respondent shall conduct the Study and meet the prescribed deliverables in accordance with the work plan included in its proposal.

Responsive proposals will discuss the Respondent's proposed methodology for gathering the required data and how it would ensure the statistical significance of the analysis for the purposes described in Section 1. Where ESD does not provide the Respondent with required information, the Respondent must research and gather such data, and must set forth the methods and sources by and from which the data is to be collected (including, but not limited to, from prime contractors on State contracts), and must describe the means by which data integrity will be established. The work plan should also discuss any significant hurdles or challenges that Respondents anticipate will impede the success of the project. For each challenge identified, Respondents should discuss how they would mitigate those risks.

Respondents must also identify any expected variances between the requirements set forth in the RFP and Respondents' plans to complete the Study. The work plan should also include a timeline for the task to be completed in order to ensure the Schedule of Deliverables (Section 1.4.E) is met.

A Respondent must identify the resources it plans to utilize to complete the Study, including subcontractors, external data, software packages, and other anticipated resources. The work plan must describe how Respondents will employ subcontracts (especially MWBEs, and women and minority group members) performing the work necessary to complete the Project. As described in Section 4.3.A below, the Respondent is expected to utilize MWBEs for contractual opportunities generated in connection with the scope of work to achieve an overall MWBE Participation Goal of 23% related to the total value of ESD's funding.

#### **E. Respondent Experience and Qualifications**

In this section of the Technical Proposal, Respondents should demonstrate relevant experience by providing the following:

1. A summary of the Respondent's technical expertise that describes the unique capabilities of the Respondent. This narrative should highlight the Respondent's ability to provide successful prior experience conducting disparity analyses, or analogous studies and include a description of the direct prior experience of your firm with New York State and/or other comparable governmental entities relating to disparity and policy analysis.
2. Respondents should detail at least three similar engagements comparable to those services detailed in Section 2.3, but no more than five. Please indicate, for each engagement completed:
  - Name of client organization

- Type of client (e.g. government entity (local, State, Federal), private company etc.)
- Project description and services provided
- Project duration including start/end dates
- Number of Respondent staff (FTEs) involved in the engagement
- Any other information regarding the project that would assist ESD in determining the success experienced by the client. This may include previous disparity studies. If you wish to include previous studies as examples of your experience, please include a link to the study and not a hard copy in your proposal.

### 3. Firm References

The Respondent is asked to supply ESD with the names and contact information for two individuals (one primary and one alternate contact person) that ESD may contact as a reference for each engagement described above.

ESD may seek information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Respondent to the client during the engagement.

Information provided by references may be used by ESD for proposal evaluation purposes. ESD is not responsible for the lack of responsiveness of the references listed by Respondents, and the State is not required to alert Respondents of a reference's unresponsiveness during the proposal evaluation period. Inability to contact a reference will not be looked upon favorably.

ESD reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the State deems to be the most effective and efficient manner.

### **F. Staff Experience and Qualifications**

In this section of the Technical Proposal, Respondents should demonstrate that the staff proposed have the knowledge and ability to perform the services described in the RFP and provide the following:

1. A project management and staffing plan that describes the unique capabilities of the individuals assigned. Include a narrative description of the specific function/role that each staff member would perform and their specific qualifications for their proposed role in this engagement. Lead staff should be identified. Respondents should submit resumes for all members of the proposed team, including any subcontract personnel who may work on the engagement.
2. State all relevant information regarding the number, qualifications and experience of the staff to be specifically assigned to this engagement. Indicate how the staff competency level over the term of the contract will be assured.

3. Respondents should submit staff references' contact information for at least three (3) references from recent engagements, preferably with governmental entities, who can comment on the experience of the lead staff proposed for this engagement. Names, titles, addresses and telephone numbers of organizations and individuals who may be contacted for reference must be included.

ESD may seek information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Respondent to the client during the engagement.

Information provided by references may be used by ESD for proposal evaluation purposes. ESD is not responsible for the lack of responsiveness of the references listed by Respondents, and ESD is not required to alert Respondents of a reference's unresponsiveness during the proposal evaluation period. Inability to contact a reference will not be looked upon favorably.

The State reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the State deems to be the most effective and efficient manner.

#### **4.2 Complete Cost Proposal**

All Respondents must complete and submit with their proposal the budget which appears in this RFP as Appendix B. Respondents may not substitute their own budget in place of Appendix B. Proposals received that do not include a budget in the form of Appendix B will be deemed noncompliant and will not be considered for the award of this project. The budget shall include the cost of performing the tasks outlined herein. The budget shall be separate from their technical proposal.

The proposal must include a description of each of the following:

*Staff Fees* including the title of each individual assigned to the project; hourly rate per individual assigned to the project; and estimated number of hours for each individual assigned to the project.

*Administrative Expenses* including costs related to such items as photocopying, telecommunications, travel, data analysis, interviewing, etc. (See Appendix B - Budget). Travel expenses will be reimbursed at the current rates for New York State employees. A copy of the current rates is attached (Appendix C).

*Other Expenses* identifying any other expenses (i.e. subcontracted services) by type and dollar amount. For subcontracted services itemized by subcontract name, job title, hours, hourly rate and total.

#### **4.3 Complete Administrative Proposal**

Please complete and include Appendices B, D, E, F, G (Budget, Non-Collusive Bidding

Certification, MacBride Fair Employment Principles, Responsibility Questionnaire Information, and Procurement Lobbying Disclosures Pursuant to Sections 139-j and 139-k of State Finance Law respectively). The Successful Respondent must also complete the following:

#### **A. Non-Discrimination/Contractor and Supplier Diversity Requirements**

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

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

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, ESD hereby establishes an overall goal of 20% for MWBE participation. A Successful Respondent must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of an Agreement, and agree that ESD may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/>

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

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

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Respondent achieved the

contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under an Agreement.

By submitting a bid or proposal, a Respondent agrees to submit the following documents and information as evidence of compliance with the foregoing:

1. Respondents are required to submit a MWBE Utilization Plan on Form #OCSD-4 with their proposal. Any modifications or changes to the MWBE Utilization Plan after the adoption of an Agreement and during the term of the Agreement must be reported on a revised MWBE Utilization Plan and submitted to ESD.
2. ESD will review the submitted MWBE Utilization Plan and advise the Respondent of ESD's acceptance or issue a notice of deficiency within 30 days of receipt.
3. If a notice of deficiency is issued, Respondent agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent and direct the Respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
4. ESD may disqualify a Respondent as being non-responsive under the following circumstances:
  - a) If Respondent fails to submit an MWBE Utilization Plan;
  - b) If Respondent fails to submit a written remedy to a notice of deficiency;
  - c) If Respondent fails to submit a request for waiver; or
  - d) If ESD determines that Respondent has failed to document good faith efforts.

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

Respondents are required to submit a Quarterly M/WBE Contractor Compliance & Payment Report on Form #OCSD-6 to ESD by the 10<sup>th</sup> day following each end of quarter over the term of the Agreement documenting the progress made toward achievement of the MWBE goals of the Agreement.

### **Equal Employment Opportunity Requirements**

By submission of a proposal in response to this RFP, the Respondent agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Respondent is required to ensure that it, and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition,

replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Respondent, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to an Agreement; or (ii) employment outside New York State.

Respondent further agrees, where applicable, to submit with the proposal a staffing plan (Form #OCSD-2) identifying the anticipated work force to be utilized on an Agreement and, will, upon request, submit to ESD a workforce utilization report identifying the workforce actually utilized on the Agreement if known.

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

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

**All MWBE forms are attached here as Appendix K.**

**The successful bidder must also complete the following but their inclusion is not required at the time of proposal submission:**

- New York State tax forms ST-220-CA and ST-220-TD. The ST-220-CA may be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD may be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf).
- A State Consultant Services Contractor's Planned Employment- From Contract Start Date Through the End of the Contract Term (Form A).
- The State Consultant Services Contractor's Annual Employment Report (Form B), to be submitted annually by awardee. Forms A and B are available at <http://www.osc.state.ny.us/procurement/> (Other Resources - Consultant Disclosure Information Forms A & B).

More information on the Respondent services reporting can be found at <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>, Chapter XI.18.C.

## **4.4 Evaluation Process**

### **A. General Information**

ESD will evaluate each proposal based on “Best Value.” This means that the proposal that “optimizes quality, cost, and efficiency among responsive and responsible [Respondents]” shall be selected for award (State Finance Law, Article 11, § 163).

ESD, at its sole discretion, will determine which proposal best satisfies its requirements. ESD reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this document may be eliminated from consideration. Qualified staff/individuals will evaluate all submitted proposals. ESD may request clarification of a proposal. The evaluation process will include separate technical and cost evaluations and will be conducted as set forth herein.

Upon review of proposals submitted by Respondents, ESD may, at its discretion, submit to Respondents written questions and requests for clarification relating to their Technical, Administrative, and/or Cost Proposals. Respondents will be provided a reasonable period of time in which to submit written responses to ESD’s requests for clarification.

Other than to provide clarifying information as may be requested by the Governor’s Office, no Respondent will be allowed to alter its proposal or add information.

### **B. Submission Review**

ESD will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in Section 4 of this RFP. Proposals that are materially deficient in meeting the submission requirements (as determined by ESD) or that have omitted material documents (as determined by ESD) may be rejected at the sole discretion of ESD. All proposals passing the Submission Review will be evaluated.

### **C. Technical Evaluation (75 Points)**

An evaluation panel will independently score each Technical Proposal that meets the submission requirements of this RFP. Evaluation Panel members will score Technical Proposals to identify Respondents with the highest probability of satisfactorily providing the services described in Section 1 of this RFP. Individual Panel member scores will be averaged to calculate a technical score for each responsive Respondent. The technical evaluation is 75 points of the final score with the following evaluation criteria categories:

- Work Plan
- Respondent Experience and Qualifications
- Staff Experience and Qualifications

Evaluations will be based on the Respondent's demonstration of its ability to provide the services required through its Technical Proposal. Considering the above criteria, ESD may review and check Respondent and/or staff references. Evaluation panel members may re-evaluate any technical scores as a result of these reference checks. The inability to contact a reference provided by a Respondent will not be looked upon favorably.

During the evaluation process, ESD may require clarifying information from a Respondent. If specific sections of the written proposal require clarification, ESD will identify the section(s) and information requested in writing. The Respondent shall respond by the deadline stated in the correspondence. In addition, ESD may use the proposal, information obtained through any interviews, and ESD's own investigation of a Respondent's qualifications, experience, ability or financial standing, and any other material or information submitted by the Respondent in the course of evaluation and selection under this RFP. The State reserves the right to contact other sources not necessarily identified in the proposal to obtain information.

#### **D. Cost Evaluation (25 Points)**

ESD's Finance Office will review the Proposal documents for responsiveness to cost requirements. If a Cost Proposal is found to be non-responsive, that proposal will be eliminated from consideration. All complete, responsive proposals will receive a cost score.

Cost Proposals will be evaluated on the Respondents' proposed project total cost. The maximum score (25 points) will be allocated to the proposal with the lowest cost according to this formula. All other proposals will receive a proportionate score to the proposal with the lowest cost, according to the following formula:

$$\text{Cost points awarded} = (25 \text{ potential points}) \times (\text{Low Bid} / \text{Respondent's Bid})$$

#### **E. Finalists**

An initial composite score for each responsive Respondent will be calculated by adding the Technical Proposal points to the Cost Proposal points to determine the Finalists. The finalist Respondents will be the Respondents with the three highest Initial Composite Scores and any Respondents within ten percent of the average Initial Composite Score of the top three ranked Respondents.

#### **F. Interviews**

Interviews/Oral Presentation of finalists may be conducted at the discretion of the Department. The Department reserves the right to conduct the interviews at the Department's Albany or New York, NY office, or via telephone, video conference or other online communication protocol. The finalists will be contacted to schedule an appointment for interviews.

The interview will be designed to allow finalists to demonstrate their ability to provide the required services. The proposed primary contact, as well as lead staff and other key

personnel who would be responsible for providing the required services, should be present and participate in the interview.

Further information with regard to the format of this stage of the evaluation may be provided to the Firm prior to the interview. The interview should substantiate the characteristics and attributes claimed by the proposer in the written response to the RFP. Technical scores may be revised based on the information gained from Finalist Interviews; however, the interviews will not be an opportunity to cure material omissions in Respondents' proposals and are not a substitute for a well-written proposal.

In the event that there is only one finalist Respondent, ESD may choose to forego the interview at its discretion.

#### **G. Final Composite Score**

The final composite score will be the sum of the final technical and cost scores for each Respondent. The Respondent with the highest final composite score will be selected for award.

## 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](mailto: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](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

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

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

employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

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

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

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

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

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

January 2014

## APPENDIX B BUDGET

Refer to Section 4.2 for additional guidance on completing the following budget

PERSONNEL (Please list specific titles)			
<u>Title</u>	<u>Hourly Rate</u>	<u>Number of Hours</u>	<u>Total Item</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
Total Personnel Costs			\$ _____
ADMINISTRATIVE (i.e. Supplies, Travel, , IT Services, Telecommunications Etc.) Please list			
_____			\$ _____
_____			\$ _____
_____			\$ _____
_____			\$ _____
_____			\$ _____
_____			\$ _____
_____			\$ _____
_____			\$ _____
Total Administrative Expenses			\$ _____
OTHER EXPENSES (i.e. subcontract)			
_____			\$ _____
_____			\$ _____
_____			\$ _____
_____			\$ _____
Total Other Expenses			\$ _____
TOTAL COST			\$ _____

**Do not change the format of this Budget. Attach additional pages if required follow the format of this page.**

## APPENDIX C

### CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES

The maximum per diem rates permitted by the travel guidelines of the New York State Office of State Comptroller can be found at the following web site: <http://www.osc.state.ny.us/agencies/travel/travel.htm>

Receipts for lodging are mandatory. Receipts are not required for meals when the traveler is in overnight travel status. The attached Schedule lists rates currently in effect for all destinations within the State.

The per diem allowances are based on the county of assignment, therefore, the traveler's destination, as noted on the claim for reimbursement, must include the county, as well as the city. The Schedule ends with the rate for all locations (counties) not listed on the Schedule.

Please note that all applicable taxes are included in the maximum lodging allowances. No reimbursement for taxes will be made separately.

The maximum reimbursement for lodging and meal expenses may not exceed the lodging and meal allowances for the area of travel.

If the cost of lodging exceeds the maximum allowance for lodging in the area of travel, the traveler's meal allowance must be used to offset the higher lodging rate. The following examples of an overnight stay in a location with a maximum allowance of \$110 (\$68 lodging, \$42 meals) at various lodging rates, illustrates how this will be applied:

<u>Actual Lodging</u>	<u>Meal Allowance</u>	<u>Max. Total Allowance</u>
\$68	\$42	\$110
90	20	110
84	26	110
156	0	110
160	0	110

2. No reimbursement will be allowed for lunch.
3. To be entitled to full meal allowances, traveler must be in travel status overnight and eligible for reimbursement for breakfast and dinner.
4. Meal Allowance for Non-Overnight Travel  
When a traveler is in travel status for less than a day and lodging charges are not incurred, reimbursement will be made for breakfast (20% of M&IE rate) and dinner (80% of M&IE rate) with receipts
5. Transportation Costs

Any common carrier transportation costs incurred should be at coach rate unless extenuating circumstances prevent such, in which instance a justification must be submitted with the expense.

Receipts/air passenger coupons are required for reimbursement.

Transportation by personally owned automobiles will be reimbursed at the IRS rate in effect at the time of travel unless the Department agrees to an alternative rate.

All taxi charges must be substantiated by a receipt.

**NOTE:** *Incidental expenses such as tips to bellmen, porters, hotel maids, etc., continue to be included in the Federal allowance*

**APPENDIX D**

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

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

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

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowing be disclosed by the Bidder prior to opening , directly or indirectly, to any other Bidder or to any competitor; and

No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ Day of \_\_\_\_\_, 200\_\_\_ as the act and deed of said individual, corporation or partnership.

**Person Legally Responsible for Binding Bidder**

Name \_\_\_\_\_ Title \_\_\_\_\_  
Signature \_\_\_\_\_

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

\_\_\_\_\_  
Legal name of person, firm or corporation                      \_\_\_\_\_  
Legal name of person, firm or corporation

**Person(s) Legally Responsible for Binding Participant**

Name _____	Name _____
Title _____	Title _____
Business Address _____	Business Address _____
Street	Street
_____	_____
City                      State	City                      State

**Identifying Data**

Bidder's Name \_\_\_\_\_

Business Address \_\_\_\_\_

Street

City

Telephone \_\_\_\_\_

**IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:**

**NAME OF PARTNERS OR PRINCIPALS**

**BUSINESS ADDRESS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IF BIDDERS(S) (ARE) A CORPORATION , COMPLETE THE FOLLOWING:**

**NAME**

**BUSINESS ADDRESS**

**President:**

**Secretary:**

**Treasurer:**

**President:**

**Secretary:**

**Treasurer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## APPENDIX E

### NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MACBRIDE FAIR EMPLOYMENT PRINCIPLES

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

- (1) has business operations in Northern Ireland;

Yes \_\_\_\_ or No \_\_\_\_

if yes:

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

Yes \_\_\_\_ or No \_\_\_\_

---

Signature

Date

## APPENDIX F

Vendor Name: \_\_\_\_\_

### **Vendor Responsibility Information**

Effective January 1, 2005, the Office of the State Comptroller has conveyed that all requests for contract approval must include information regarding Vendor Responsibility. The NYS Department of Economic Development recommends that vendors file the required questionnaire online via the NYS VendRep System. To enroll in and use the system, see the instructions available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <http://portal.osc.state.ny.us>.

Failure to submit a completed questionnaire may result in either a grant or designation being rescinded or delayed. In addition, the NYS Department of Economic Development reserves the right to rescind upon a finding that the recipient is deemed not responsible to receive funds.

Please check one of the following:

- A Vendor Responsibility Questionnaire has been filed online and has been certified/updated within the last six months.
  
- A Vendor Responsibility Questionnaire is attached hereto.

## APPENDIX G

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

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

#### Statutory Summary

Changes to the New York State Finance Law (referred to as the “new State Finance Law”) effective January 1, 2006, significantly alter the administrative process for the development of State procurement contracts<sup>2</sup>. The procedures discussed herein are put in place to address the new State Finance Law. The New York State Department of Economic Development recognizes the considerable additional responsibility that the new State Finance Law places on potential Respondents (“Respondent”) as well as on the Department and we regret any inconvenience. The Department assures you that we are interested in receiving a proposal from your company. Among other things, the new law:

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

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

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

#### NYS Department of Economic Development Policy Language

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

---

<sup>2</sup> “Procurement contract” shall mean any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, article eleven-B state finance law contracts, program contracts between not-for-profit organizations, as defined in article X1-B of the state finance law, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed procurement contracts.

**Termination Provisions**

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

**Form 1 - Respondent's Affirmation of Understanding of 7 Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**

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

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

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

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

**Form 2 - Respondent's Certification of Compliance with State Finance Law §139-k(5)**

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

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

Respondent Certification:

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

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

**Form 3 - Respondent Disclosure of Prior Non-Responsibility Determinations**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Respondent must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4)

years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Respondent" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether a Respondent fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Respondent that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Respondent is necessary to protect public property or public health safety, and that the Respondent is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

The Department must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

**Respondent Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_ Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

(Add additional pages as necessary)

RESPONDENT CERTIFIES THAT ALL INFORMATION PROVIDED TO THE GOVERNMENTAL ENTITY WITH RESPECT TO STATE FINANCE LAW §139-K IS COMPLETE, TRUE AND ACCURATE.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**THIS FORM TO BE COMPLETED AND RETURNED TO THE DEPARTMENT WHENEVER YOU CONTACT US DURING THE DESIGNATED PERIOD. ATTEMPTS TO CONTACT THE DEPARTMENT WILL NOT BE ACKNOWLEDGED UNLESS YOU PROVIDE THIS FORM. THIS INCLUDES THE SUBMISSION OF QUESTIONS PURSUANT TO SECTION 1.1 OF THIS RFP.**

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

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

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

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

To: The New York state Department of Economic Development

Regarding Procurement Project No.: \_\_\_\_\_ (See first page of this document)

From: \_\_\_\_\_  
(Name and title of Respondent)

Date: \_\_\_\_\_

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

Address of Respondent: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

Your Occupation: \_\_\_\_\_

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

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

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

## APPENDIX H

### Record Layout of NYS Certified MWBE Database

*The Department's Division of Minority and Women Owned Businesses maintains a database of minority and women-owned businesses it has certified pursuant to Article 15-A of NYS Executive Law*

*This MS Access database holds records are over 7000 businesses and includes following data:*

- *Company name*
- *Federal ID number*
- *Address*
- *Ethnicity of owners*
- *Certification (MBE, WBE, MWBE)*
- *Certification Status (date of certification)*
- *Gross sales*
- *Number of Employees*

*Industry (Construction, Contraction Consulting, Commodities, Service Consulting)*

## APPENDIX I

1. "Minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- Black persons having origins in any of the Black African racial groups;
- Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
- Native American or Alaskan native persons having origins in any of the original peoples of North America.
- Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

2. Minority- or women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation authorized to do business in this State, independently owned and operated, and that is at least fifty-one percent owned by one or more minority group members or women or minority women, where such ownership is real, substantial and continuing.

3. Public authorities: The 39 public authorities covered by Article 15-a are as follows:

- Albany County Airport Authority;
- Albany Port District Commission;
- Alfred, Almond, Hornellsville Sewer Authority;
- Battery Park City Authority;
- Cayuga County Water and Sewer Authority;
- Dormitory Authority of the State of New York;
- Empire State Plaza Performing Arts Center Corporation;
- Facilities Development Corporation;
- Industrial Exhibit Authority;
- Livingston County Water and Sewer Authority;
- Long Island Power Authority;
- Long Island Rail Road;
- Long Island Market Authority;
- Manhattan and Bronx Surface Transit Operating Authority;
- Metro-North Commuter Railroad;
- Metropolitan Suburban Bus Authority;
- Metropolitan Transportation Authority;
- Natural Heritage Trust;
- New York City Transit Authority;
- New York Convention Center Operating Corporation;
- New York State Bridge Authority;
- New York State Energy Research and Development Authority;
- New York State Olympic Regional Development Authority;
- New York State Science and Technology Foundation.
- New York State Thruway Authority;
- Niagara Falls Public Water Authority;

- Niagara Falls Water Board;
- Port of Oswego Authority;
- Power Authority of the State of New York;
- Roosevelt Island Operating Corporation;
- Schenectady Metroplex Development Authority;
- State Insurance Fund;
- Staten Island Rapid Transit Operating Authority;
- State University Construction Fund;
- Triborough Bridge and Tunnel Authority;
- Upper Mohawk valley regional water board;
- Upper Mohawk valley regional water finance authority;
- Upper Mohawk valley memorial auditorium authority; and
- Urban Development Corporation and its subsidiary corporations.

4. "State contract" shall mean:

- a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency;
- a written agreement in excess of one hundred thousand dollars 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; and
- a written agreement in excess of one hundred thousand dollars 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.

The State contracts, including loans and grants, that are the subject of this Study are the state funded contracts entered into by State agencies, 39 public authorities, the State University of New York ("SUNY"), and the City University of New York ("CUNY") during the study period.

1.2.5 The State University of New York ("SUNY") and the City University of New York ("CUNY") include all their constituent units except community colleges and independent institutions operating statutory or contract colleges on behalf of New York State.

## **APPENDIX J**

### **Agencies and Public Authorities**

Adirondack Park Agency  
Aging, State Office for the  
Agriculture and Markets, Department of  
Albany County Airport Authority  
Albany Port District Commission  
Alcoholic Beverage Control, Division of  
Alcoholism and Substance Abuse Services, Office of  
Alfred Sewer Authority  
Almond Sewer Authority  
Arts, Council on the  
Audit and Control, Department of (a/k/a State Comptroller's Office)  
Banking Department  
Battery Park City Authority  
Bridge Authority  
Budget, Division of the  
Capital District Transportation Authority  
Cayuga County Water & Sewer Authority  
Children and Family Services, Office of  
City University Construction Fund  
City University of New York  
Civil Service, Department of  
Commission on Public Integrity  
Consumer Protection Board  
Correction, State Commission of  
Correctional Services, Department of  
Crime Victims Board  
Criminal Justice Services, Division of  
Developmental Disabilities Planning Council  
Dormitory Authority  
Economic Development, Department of  
Education Department, State  
Elections, State Board of  
Empire Center at the Egg (Empire State Performing Arts Center Corporation)  
Employee Relations, Office of  
Energy Research and Development Authority  
Environmental Conservation, Department of  
Executive Chamber  
Financial Control Board  
Foundation for Science, Technology & Innovation (Formerly NYSTAR)  
General Services, Office of  
Health, Department of  
Higher Education Services Corporation

Homeland Security, Office of  
Hornellsville Sewer Authority  
Housing and Community Renewal, Division of  
Housing Finance Agency  
Hudson River Park Trust  
Hudson River/Black River Regulating District  
Human Rights, Division of  
Industrial Exhibit/State Fair (Industrial Exhibit Authority)  
Inspector General, Office of the State  
Insurance Department  
Insurance Fund  
Labor, Department of  
Lake George Park Commission  
Law, Department of  
Livingston County Water & Sewer Authority  
Long Island Market Authority  
Long Island Power Authority  
Long Island Rail Road Company  
Lottery, Division of  
Medicaid Inspector General, Office of  
Mental Health, Office of  
Mental Hygiene, Department of  
Mental Retardation and Developmental Disabilities, Office of  
Metro-North Railroad Company  
Metropolitan Transportation Authority  
Military and Naval Affairs, Division of  
Mortgage Agency, State of New York  
Motor Vehicles, Department of  
MTA Bridges and Tunnels  
MTA Long Island Bus  
MTA New York City Transit Authority  
Natural Heritage Trust  
New York City School Construction Authority  
Niagara Falls Water Authority  
  
Niagara Falls Water Board  
Niagara Frontier Transportation Authority  
NYS Athletic Comm'n  
NYS Emergency Management Office  
NYS Employment Relations Board  
NYS Non-Profit Racing Association Oversight Board  
NYS Office of Cyber-Security and Critical Infrastructure Coordination  
NYS Office of Federal Affairs  
NYS Tug Hill Commission  
Office Of National And Community Service is separately appropriated but it is housed and staffed within OCFS  
Olympic Regional Development Authority  
Parks, Recreation and Historic Preservation, Office of

Parole, Division of  
Port of Oswego Authority  
Power Authority  
Prevention of Domestic Violence, Office for the  
Probation and Correctional Alternatives, Division of  
Public Employment Relations Board  
Public Service, Department of  
Quality of Care and Advocacy for Persons with Disabilities  
Racing and Wagering Board, State  
Real Property Services, Office of  
Regulatory Reform, Governor's Office of  
Roosevelt Island Operating Corporation  
Schenectady Metroplex Development Authority  
State Insurance Fund  
State Police, Division of  
State University Construction Fund  
State University of New York  
State, Department of  
Tax Appeals, Division of  
Taxation and Finance, Department of  
Technology, Office for  
Temporary and Disability Assistance, Office of  
Thruway Authority  
Transportation, Department of  
Triborough Bridge and Tunnel Authority  
Unified Court System  
Upper Mohawk Valley Memorial Auditorium  
Upper Mohawk Valley Regional Water Board  
Upper Mohawk Valley Regional Water Finance Authority  
Urban Development Corp (a/k/a Empire State Development Corp)  
Veterans' Affairs, Division of  
Welfare Inspector General, Office of  
Workers' Compensation Board

## APPENDIX K

### MWBE Forms