



Empire State Development

Andrew Cuomo
Governor

Kenneth Adams
ESD CEO

VIRTUAL TRADE SHOW & ONLINE INFORMATION PORTAL

**TO PROMOTE NEW YORK STATE EXPORTS AND EXPORTERS
OF GOODS AND SERVICES**

Request For Proposals

RFP NUMBER 12-6070
RFP Released: August 15, 2012

PROPOSAL DUE DATE – September 10, 2012
(Late proposals cannot be accepted)

Empire State Development
Albany, New York 12245
www.esd.ny.gov

Request For Proposal (RFP) Response Form

RFP #12-6070

Please review this RFP. Complete the following information and mail this form or if submitting a proposal, this form together with your entire proposal, to the address at the bottom of this page. Late proposals cannot 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 meetings of its board of directors occur, 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 determinate is where the actual "business" of the corporation 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 NYS: Yes_____ No_____
- Subject to the "Conditions Governing Proposals" article 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: _____

By checking this box, we request that you remove our name from your bidders' list

Mail this as the first page of your proposal. If not submitting a proposal, please e-mail this form to: rfpinfo@esd.ny.gov with the RFP title in the subject line.

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
REQUEST FOR PROPOSALS
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RFP 11-6052

SECTION I - ADMINISTRATIVE INFORMATION

1.0 Purpose

The New York State Department of Economic Development (hereafter referred to as “DED”, “NYSDED” or the “Department”) has issued this Request for Proposal (“RFP”) seeking a qualified individual or firm (the "Contractor") to perform economic development services for the creation, launch and maintenance of a Virtual Trade Show & Online Information Portal presence in order to promote the exports of goods and services from New York State (NYS) small business enterprises (SBEs).

The main objective of this project is to locate an independent contractor who will:

- a) Create, develop and launch an online Virtual Trade Show & Online Information Portal website for the effective international marketing of New York State exports of goods and services;
- b) Deliver the Virtual Trade Show & Online Information Portal website with customized features to meet NYS objectives, including providing for SBE subscriptions at affordable rates;
- c) Create an Online Information Portal providing access to information resources and referrals, and linkages to other essential websites, resources and portals;
- d) Ensure that the website will provide real time tracking in detail of visitors, leads generated, results achieved for DED and New York State exporters;
- e) Advance effective global marketing and branding of designated New York State industries and firms per the 2011 NYS STEP grant (see details in Exhibit C).

It is important and in the interest of the selected contractor (the “Contractor”) that the Contractor maintains independence and remains free to perform business development services for other parties, and therefore, in order for the Department to secure the Contractor’s services, it is critical that an independent contractor relationship be established versus an employer-employee relationship.

1.1 Inquiries

Inquiries should be addressed to:

Lisa Sutton, Contract Administrator
NYS Department of Economic Development
lsutton@esd.ny.gov

All questions must be submitted in writing to Ms. Sutton via e-mail. Please do not contact the Department by telephone. Questions must be received by the Department no later than August 24, 2012. All inquiries must cite the particular RFP section in the questions. Question submittals must include a completed bidder identification form. (See Exhibit D, Form 4). **All questions and answers will be posted**

on the NYSCR website <http://www.nyscr.org> and distributed to all known potential bidders. It is the bidder's responsibility to monitor and review the Q&A for clarifications and information pertinent and required of bidders. Answers to all questions of a substantive nature will be provided to all known recipients of the RFP.

1.2 Schedule of Pertinent Dates

Release of RFP	August 15, 2012
Deadline for Receipt of Questions	August 24, 2012
Submission of Proposals	September 10, 2012 by 3:00 PM U.S. Eastern Standard Time
	Late proposals cannot be accepted.
Interviews	By appointment at the discretion of NYSDSD
Contract Award	October 2012 (estimated)
Contract Begins	October 2012 (estimated)

1.3 Submission of Proposals

Interested individuals or firms must submit their proposals no later than **3:00 P.M. U.S. Eastern Standard Time on September 10, 2012.** Please submit your proposal via e-mail to the following address:

rfpinfo@esd.ny.gov

Please list *Virtual Trade Show & Online Information Portal* in the subject line.

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

1.4 Designated Contacts

For the purpose of the Procurement Lobbying requirements of this RFP (see section 3.7 and Exhibit D), the Department's designated contacts shall be Ms. Lisa Sutton and employees designated by the Department as part of the Department's Contract Management Unit and all staff designated by the Department to have responsibility and duties in the Department's International Division and the Department's Counsel's Office.

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

2.0 Background

The Department is empowered under Section 100 as well as Article 10 of the NYS Economic Development Law to encourage and develop commerce with other states and foreign countries. Information regarding the Department’s activities, programs, incentives, target industries for foreign direct investment, etc., can be found on the Department’s website at <http://www.esd.ny.gov>.

The Department was awarded a 2011 State Trade and Export Promotion (STEP) grant from the US Small Business Administration, a portion of which will support this RFP. This RFP is designed to create a partnership and to generate lasting vendor-client relationships among the Virtual Trade Show & Online Information Portal provider, the Department and New York State small businesses seeking export opportunities. Leveraging an economy-of-scale model, the intended partnership solution will measurably increase the export of New York State businesses’ goods and services to global markets in the most professional, effective, innovative and economical manner.

2.1 Scope of Services

The Contractor shall perform Virtual Trade Show & Online Information Portal Development Activities, Marketing, Management and Reporting Services (collectively identified as the “Services”) as further described in this Section 2.1. For the purpose of this RFP and any contract (“the Contract”) resulting from it, Virtual Trade Show & Online Information Portal Development Activities shall mean the creation, launch and maintenance of a Virtual Trade Show & Online Information Portal & Online Information Portal presence in order to promote the exports of goods and services on the part of New York State small business enterprises (SBEs), pursuant to the State’s 2011 STEP grant, and potential continuation and expansion in the event of a 2012 STEP award. The Contractor shall render the Services in accordance with the highest professional standards. The Contractor shall coordinate with the Project Director who shall represent the Department’s interest in coordinating with the Contractor regarding the Services. The Department shall identify the Project Director prior to commencement of the Contract.

The New York State Department of Economic Development requires the implementation of an already existing and well established Virtual Trade Show & Online Information Portal web application and environment. For the purposes of this RFP, NYSDDED views the pre-existing application-solution as the following:

- The established application is owned, delivered, hosted and managed remotely by one or more providers.
- The application is configured and/or customized to provide a New York State Virtual Trade Show & Online Information Portal. Licensing (if required) is to be paid on a recurring schedule and manner to be determined during contract negotiations.

- This New York State Virtual Trade Show & Online Information Portal will be offered on a subscription basis solely to businesses of the State of New York. Such annual subscriptions, to be paid by SBE exhibitors directly to the Contractor, are to be affordably priced (starting at no more than \$200 for the first year).

The Services performed by the Contractor under the Contract shall include the following:

- ▶ Create, develop and launch an online Virtual Trade Show & Online Information Portal website for the effective international marketing of New York State SBE exports of goods and services.
- ▶ Deliver the fully operational New York State Virtual Trade Show & Online Information Portal website (NYS site) with customized features to include (but not be limited to):
 - an entry hall reception area ‘landing page’ as detailed below,
 - facilities for the general marketing promotion of New York State,
 - pavilions for specific industries and for multi-industry groups of firms,
 - virtual facilities for business-to-business networking, for information sharing, for presentations,
 - exporter booths, including profiles, brochures, links,
 - special exhibits and events,
 - directories,
 - information portal with essential resources, referrals, and links to other website portals,
 - marketing, informational and training content on-demand and ‘live’ in real time,
 - other marketing materials using social media and specialized promotions,
 - multilingual capacity, the basic website to be in English, with company profiles, banners, and titles translated into Chinese and Korean, and adaptable for other languages.
- ▶ Advance effective global marketing and branding of designated New York State industries and firms per the 2011 NYS STEP grant (see details in Exhibit C), with potential expansion in the event of a 2012 NYS STEP grant award.
- ▶ Develop marketing plan and deploy marketing of NYS site to appropriate sites and portals and email lists, according to targeted industry clusters and events, in order to generate significant and sustained visitation to the site, with a focus on targeted and qualified buyers and business partners. Examples of marketing tools:
 - Social media campaigns/promotions via Facebook, Twitter and LinkedIn, etc.;
 - Promotional press releases as new developments arise about the show;
 - NYS site banner display ads on targeted global marketing sites, notably on reputable, vetted Chinese and Korean sites to invite visitors and to send direct invitations to companies participating in relevant trade shows;
 - Online Information Portal with access to information resources and referrals, along with the capacity for linkages to other essential websites, resources, referrals and portals.

- ▶ Consistent with marketing plan, create landing page for the New York State that provides the visitor with opportunities to investigate the advantages of doing business in New York, with vital contact information and informative videos profiling the state, main business sectors and industry clusters interested in exporting activities and relevant contacts. Such landing page, content and releases would be created in collaboration with the Department.
- ▶ Provide website key-words in as many languages as possible (minimum: English, Chinese Mandarin, Chinese Cantonese, Korean, French, German, Spanish, Portuguese, Arabic...), to ensure global search results.
- ▶ Ensure provision of real time monitoring, reporting and tracking of website visitors to various components of the landing page, leads generated, results achieved for DED and New York State exporters. Visitors should be allowed to visit the basic site without registration, but must register with a valid email address to interact with New York State exhibitors.
- ▶ Provide New York State and individual New York State business exhibitors with the ability to monitor visitors to their site(s), including information on the region of origin and click-throughs, and allowing for online chat and other business interaction.
- ▶ Develop and administer quarterly an exhibitor survey to measure the effectiveness and results of company participation and to provide feedback to the Department.

The Contractor shall perform his/her responsibilities for trade development and export promotion in accordance with the specification as described in Exhibit C of this RFP. The Contractor shall also provide support for special projects as designated by the Department.

2.2 MANDATORY QUALIFICATION REQUIREMENTS

Your proposal must demonstrate your ability to comply with each of the items identified below. Inability to demonstrate compliance with these qualifications will result in the disqualification of your proposal.

- 2.2.1 Experience in export promotion, investment attraction, and marketing, with at least 5 years of such experience in international markets;
- 2.2.2 Demonstrated knowledge of the global online business practices, in particular in China and Korea;
- 2.2.3 University degree; and
- 2.2.4 Demonstrated knowledge of New York State (i.e. economics, geography, business community).

2.2.5 Site Compliance Requirements.

The contractor must ensure that the Virtual Trade Show & Online Information Portal site conforms to the standards delineated in all applicable NYS Office for Technology policies, which can be found at <http://www.cio.ny.gov/tables/technologypolicyindex.htm>. The Site must also include the recommendations of the Americans with Disabilities Act Standard for Accessible Design (<http://www.usdoj.gov/crt/ada/stdspdf.htm>) and the W3C Accessibility Guidelines (<http://www.w3.org/WAI/guid-tech.html>). Moreover, the Site must conform to the standards delineated in the NYS Office of Cyber Security and Critical Infrastructure Coordination Policy P03-002 v 3, which can be found at <http://www.dhSES.ny.gov/ocs/resources>. These policies include standards on physical and environmental security, access control, systems development and maintenance and citizens' notification in the event of a breach (or suspected breach) of private information.

2.3 Selection Criteria

Proposals that meet all the mandatory qualifications as outlined in Section 2.2 above will be evaluated by NYSDDED based on the Selection Criteria stated in this section. Proposals will be scored based on the following criteria:

- | | |
|---|---------------------------------------|
| 2.3.1. <u>Experience of the organization and the staff proposed to carry out the scope of services/plan of action</u> | 30 points |
| 2.3.2. <u>Plan of action</u>
(Evaluation of the approach proposed to accomplish the Section 2.1 – Scope of Services and Exhibit C as further discussed in Section 3.1 of this RFP) | 30 points |
| 2.3.2. <u>Cost</u>
(Please review Section 3.1, item f and complete Exhibit B – Financial Proposal in full. Do NOT substitute your own budget format.) | 30 points |
| 2.3.4. <u>Language Translation ability</u> | 5 points |
| 2.3.5. <u>Knowledge of New York State</u> | 5 points |
| 2.3.6 <u>Interview/Oral Presentation</u> | (Re-score of written proposal) |

Interview/Oral Presentation of finalists may be conducted at the discretion of the Department. The interview/oral presentation will allow finalists to elaborate on information included in their proposals and provide additional information. The purpose of the interview/oral presentation is to provide the Department's Evaluation Committee with the opportunity to 1.) meet the finalists, 2.) clarify information included in the proposal that is unclear, and 3.) obtain a more detailed understanding of the extent of the Contractor's knowledge of the RFP subject matter, project requirements and whether the methods and resources used by the Contractor are

necessary, cost effective, and appropriate. Key personnel directly responsible for the project must participate in the interview/oral presentation. Costs incurred by the finalists for preparation and participation in the interviews/oral presentations including but not limited to travel and staff time shall be the sole responsibility of each finalist.

2.4. Evaluation Process

Initial evaluation of proposals will be done in two parts – Technical Evaluation and Cost Evaluation. NYSDDED’s Evaluation Committee will review the technical portion of each proposal based on the technical criteria listed above. NYSDDED’s Evaluation Committee will not be advised of the costs proposed or cost scores (points awarded for cost) prior to the selection of the Finalists. However, the Evaluation Committee may be advised of information contained in each bidder’s budget (EXHIBIT B) if such information is deemed by the Department to be pertinent in assessing the level of effort to be put forth by the bidders in performing the project. Then cost scores, computed by NYSDDED’s Contract Management Unit based on a weighted average formula, will be added to the technical score resulting in the total score for the written proposal.

NYSDDED reserves the right to determine whether interviews/oral presentations will be necessary. If NYSDDED decides to conduct interviews/oral presentations, such interviews/oral presentations will occur as follows:

2.4.1 Following the evaluation of proposals as provided above, the Evaluation Committee will determine the Finalists to be interviewed as those having the highest combined technical and cost scores. The Department reserves the right to select any number of firms as finalists.

2.4.2 Each Finalist will be notified of the date, place and time of their interview/oral presentation to be held in Albany, New York. The interview/oral presentation should further document the proposer’s ability to provide the required services. Key personnel directly responsible for the project including the Senior Project Consultant should be present and participate in the oral presentation/interview. Further information with regard to the format of this stage of the evaluation may be provided to the Finalists prior to their interviews/oral presentations. Each presentation will be limited to one (1) hour in duration.

2.5 Contract Award

Following the interviews/oral presentations, if any, the Evaluation Committee members will re-score each proposer interviewed on the technical criteria listed above. NYSDDED anticipates that the Evaluation Committee will make an award recommendation of one proposer based upon its determination of the best value for NYSDDED as the highest total scores (technical and cost).

Upon selection, negotiations will be commenced with the successful proposer to enter into a contract setting forth the general terms that would govern any subsequent contract for services contemplated by this RFP. The Department will not enter into protracted negotiation with the successful bidder over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract. If the successful bidder does not sign and return to the Department the proposed contract including any draft of the proposed contract, within thirty (30)

calendar days of receipt by the Contractor, the Department reserves the right to declare the award of the project to the Contractor null (null award). The Department will not be responsible for any cost incurred by the Contractor as a result of a null award. An award will then be made to the next highest scoring proposer.

2.6 Debriefing

An unsuccessful bidder has the right to a debriefing regarding the reasons its proposal was not selected for award. Upon request, the Department will provide a debriefing to any unsuccessful applicant as to the reasons that the proposal submitted was not selected for an award. To request a review of an unsuccessful proposal contact Ms. Lisa Sutton, Office of Fiscal Management, by e-mail at lsutton@esd.ny.gov. A review should be requested by an unsuccessful bidder within thirty (30) days of the date of the notice that its proposal was not selected for an award.

SECTION III - PROPOSAL CONTENT AND CONDITIONS

3.0 General Information

In preparing proposals, individuals and firms should follow the guidelines within this RFP.

3.1 Complete Proposal

Each participating individual or firm must submit a complete proposal with each element of the Selection Criteria, Section 2.3, addressed. In addition, all proposals must include the following information. Bidders supplying incomplete responses may be deemed non-compliant. Please follow the format listed below:

- a. Title page, indicating:
Name, address, phone & fax number, contact person, email address, 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 60 days.
- b. Table of Contents
- c. Approach to provide the Scope of Services in Section 2.1 and Exhibit C
Develop a plan of action describing how your organization intends to accomplish all of the duties described in Section 2.1 - Scope of Services, and Exhibit C and to meet the main objectives stated in Section 1.0 of this RFP. Your approach should demonstrate your knowledge and experience, and how you will use such background to accomplish the tasks under Section 2.1 – Scope of Services. If subcontracting, subcontractors must be identified by contractor name, and the bid shall include an explanation of the specific function they perform and a description of the working arrangements. Plan of action shall be limited to 25 pages, single-spaced on 8½”x11” or A4 paper. The Department reserves the right to reject any proposal in which the bidder does not offer all of the services included in Section 2.1 and Exhibit C of this RFP.
- d. Experience
NYSDDED considers direct, prior experience in providing the Services requested in this RFP highly desirable. Your proposal must cite how your company meets the experience requirements listed in Section 2.2, including narratives of past projects, successful results, and client and contact lists. Also include three references who can substantiate that your organization meets those requirements.
- e. Organization and Staffing
Include in your proposal current resume(s) of professional staff who will be performing the services. Highlight experience relevant to the Scope of Services discussed in Section 2.1 and Exhibit C and specifically identify any special education, certification, language ability, and/or training.

f. Financial Proposal

Exhibit B of this RFP must be completed and submitted as part of your proposal. DO NOT USE AN ALTERNATIVE BUDGET FORMAT. Each bidder must complete Exhibit B for each of the contract years. The budget for this RFP is not to exceed \$150,000 for coverage of all development and launch costs. It is expected that individual New York State small company exhibitors will pay an annual subscription fee, directly to the Contractor, and affordability of such fee (starting at no more than \$200 for the first year) will be essential to favorable consideration of proposals. Costs shall include all employment-related expenses including payroll taxes, health insurance, employer liability insurance, workers' compensation, etc. If any duties will be filled with subcontractors, please include their costs under the Subcontractor line. Subcontractor services are performed by other organizations or individuals who are not employees of the Contractor. All figures shall be included in U.S. dollars. Note: New York State will not pay for Contractor relocation expenses. Do not include such costs in your financial proposal.

g. Other

Please complete and include all required documents including Procurement Lobbying Disclosures Pursuant to Sections 139-j and 139-k of State Finance Law, Non-Collusive Bidding Certification, MacBride Fair Employment Principles, Responsibility Questionnaire, and M/WBE Utilization Goal Requirements For NYSDDED Contracts. The Successful Bidder must also complete the following but their inclusion is not required at the time of proposal:

- New York State tax forms ST-220-CA and ST-220-TD. The ST-220-CA may be found at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf. The ST-220-TD may be found at http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_fill_in.pdf.
- A State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term (Form A) available at <http://www.osc.state.ny.us/agencies/gbull/g226forma.pdf>
- The State Consultant Services Contractor's Annual Employment Report (Form B), to be submitted annually, available at <http://www.osc.state.ny.us/agencies/gbull/g226form%20b.pdf>.

More information on the consultant services reporting can be found at <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>.

3.2 Conditions Governing Proposals

Only those individuals or firms who have supplied complete information will be considered. 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 3.4 Freedom of Information Law).

The Department reserves the following prerogatives:

- to accept or reject any or all proposals;
- to decline to award a contract resulting from this RFP;
- to waive or modify minor irregularities in proposals received;
- to eliminate mandatory qualifications unmet by all bidders;
- to disqualify proposals that fail to meet the mandatory qualifications;
- to require clarification from any bidder for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;
- to negotiate with any or all bidders, within the proposal requirements, to best serve the interests of the State of New York;
- to amend the specifications after their release, with due notice given to all those solicited to modify their proposals to reflect the changed specifications;
- to utilize any or all ideas submitted in the proposals received unless those ideas are covered by legal patent or proprietary rights;
- to award contract(s) for any or all parts of a proposal; and
- to elect to award contract(s) to one or more responsive and responsible bidders, provided that the basis for the election among multiple contracts at the time of award shall be the most practical and economical alternative and shall be in the best interest of the State.

By submitting a proposal, an individual or firm 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.

3.3 Alternative Proposals

The Department will consider alternative proposals with respect to the Scope of Service (Section 2.1 and Exhibit C), Financial Proposal (Exhibit B), and other sections and appendices of the RFP, except for terms and conditions mandated by New York State Law or Regulation. An alternative proposal is one that recommends goods and/or services that are not in compliance with the Scope of Service, Financial Proposal and, in some cases, other sections of the RFP. The Department does not solicit alternative proposals but will consider them. Please be advised that an alternative proposal cannot be considered by the Department, unless you also submit a proposal in exact compliance (Compliant Proposal) with the terms of this RFP, including completion of Exhibit B. A Compliant Proposal is required to allow the Department to compare your proposal to other Compliant Proposals received by the Department.

3.4 Freedom of Information Law

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

Individuals or firms which submit proposals to the Department may request that the Department 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 state the reasons for the requested exception. It must also specify the proposal or portions thereof, for which the exception is requested.

If the Department grants the firm's request for exception from disclosure, the Department shall keep such proposal in secure facilities and shall notify the firm of any request the Department receives for disclosure of the proposal.

3.5 Notification of Award

The Department will notify the successful proposer by written confirmation. Each proposer whose proposal is rejected will be notified in writing by the Department.

A contract defining all terms and conditions of the parties will be drafted by the Department. The contract may incorporate sections of this RFP, the State's standard contracting provisions (attached hereto as Exhibit A) and as much of the successful firm's final proposal as may be appropriate among its provisions. After the Department and the successful firm execute the contract, it must be submitted for approval to the Attorney General's Office (AG), the Office of the State Comptroller (OSC), and in some cases the Department of Civil Service. The Contract will not be considered fully executed until approved by both the AG and OSC.

3.6 Liability

The Department is not liable for any costs incurred by any individual or firm for work performed to prepare its proposal or for any travel and or other expenses incurred in the preparation and/or submission of its proposal. Further, the Department is not liable for any costs incurred until the contract has been approved by the Attorney General and the State Comptroller's Office.

3.7 Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder 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, is identified in Section 1.4 of this solicitation. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers 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 Offerer/bidder 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 Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> or by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41st Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. E-mail: Anne.Phillips@OGS.State.NY.US.

State Finance Law Sections 139-j and 139-k may be viewed at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-j.htm> and at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-k.htm>

SECTION IV - CONTRACTUAL INFORMATION

4.0 Contract Term

The successful proposer shall perform the work and provide the services set forth in this RFP as an independent contractor for a period of one year, with the option to renew for two additional years. Both parties agree that any contract resulting from this RFP shall end on the termination date unless terminated as described in Section 4.1 – Cancellation below.

4.1 Cancellation

Once a contract or other agreement resulting from this RFP is fully executed and approved, the Department has the right to cancel it for cause or unavailability of State funds at any time or for convenience on thirty (30) calendar days written notice to the Contractor. The Department shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; or (iii) convenience. The Department at its option may terminate the Contract for convenience without prior notice upon paying the Contract an amount equal to 30 calendar days' fee in lieu of such notice. If cancelled for cause, payment to the Contractor for charges incurred will be made at the Department's sole discretion. If cancelled for unavailability of State funds, the Department will not be liable for payment but will use its best efforts to pay outstanding charges previously approved by the Department to the extent permitted by New York State Law.

Additionally, the Department also reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k (see Exhibit D) 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.

4.2 Subcontracting Requirements

The bidder may subcontract elements of the program for which it lacks locally or in-house capabilities. The firm's proposal must identify the subcontracting firm or firms and cite the proposal. The Department is an equal opportunity contractor and reserves the right to review and approve all subcontracting firms.

After the contract resulting from this RFP, if any, is awarded, any subcontractors or purchases in excess of \$15,000 that were not originally identified in the Contractor's proposal must adhere to the following:

- For subcontracts or purchases that are competitively bid the Contractor must request proposals from a minimum of five qualified firms, and the lowest responsible proposer shall be accepted unless otherwise approved in writing by the Department.
- Subcontracts or purchases that are sole or single source must include a detailed justification and require the written approval of the Department prior to entering into the agreement.

The Contractor may not, without written consent of the Department, assign to any party the Contract nor any interest herein, or claim hereunder.

4.3 Financial Terms/Payment Process

(a) Payment for Contractor's Services. All amounts referred to in this RFP and the Contract shall be in United States Dollars. The Department shall pay to the Contractor a fee for the Services as established in the Contractor's Financial Proposal. No other amounts for compensation, expenses, taxes, fees or other costs shall be owed by the Department to the Contractor for Services during the term of the Contract. Payment for services performed to the satisfaction of the Department shall be made in the ordinary course of State business upon receipt of duly authenticated invoices/vouchers and upon receipt of reports and/or deliverables, if required elsewhere in this RFP. Receipts (original copies preferred, the Department reserves the right to require original receipts) for all non-personnel expenses must be attached as evidence of cost. A detailed accounting of the staff time and effort attributed to complete tasks is required and must include personnel titles, hourly rates, dates of service, and deliverables. Travel expenses will be billed based upon prevailing New York State per diem rates which can be found at <http://www.osc.state.ny.us/agencies/travel/reimbrate.htm>. Vouchers or invoices shall detail expenses in a manner essentially similar to the financial proposal required as part of your proposal and subject to the terms and conditions discussed throughout this RFP. Payment shall require the approval of the Department's Project Director .

(b) Expenses. Contractor shall be responsible for all expense which Contractor incurs in rendering services under the Contract, including without limitation, compensation to Contractor's subcontractors, employees, assistants or agents, if any, travel expenses, long distance, and local telephone charges, entertainment expenses, office rental or mortgage expenses, training expenses, the cost of tools and supplies, and all other expenses incurred in rendering services under the Contract.

(c) Payments of Taxes Assessments. As an independent contractor, the Department will not be responsible for payment of any FICA, FUTA, or other similar charges or withholding for Contractor, and Contractor acknowledges and agrees that it is solely the Contractor's obligation to report and pay all Designated Area or any country or political subdivision thereof, federal, state and local income, self-employment and other taxes due for him on all compensation from the Department as may be required by law. The Department will issue a Form 1099 for all compensation paid to Contractor. Additionally, Contractor assumes full responsibility for the payment of all assessments or contributions, whether of the Designated Area or any country or political subdivision thereof, state or U.S. federal, with respect to all employees engaged by Contractor to perform services in connection with the Contract. Contractor shall furnish to the Department, on the request of the Department, a certificate or other evidence of compliance with all laws of the Designated Area or any country or political subdivision thereof, New York or U.S. concerning contributions, taxes and payroll compensation, transaction, sales, use or other taxes or assessments of whatever nature or kind levied or assessed as a consequence of the work performed or on the compensation to be paid

under the Contract.

(d) Deviations from Financial Proposal. Should additional costs not provided for in the Financial Proposal but related to the Contract be incurred, the Contractor shall be responsible for payment of such costs. The Department reserves the right to provide additional funding, at its sole discretion, for expenses for special projects that are not considered part of the RFP.

(e) Termination. Upon termination, the Department shall pay to the Contractor a pro rata share of any amounts due and payable pursuant to Section 4.3(a) of this RFP through the effective date of the termination. Within ten (10) business days after the effective date of termination of the Contract, the Contractor shall deliver to the Department all unearned payments previously advanced to the Contractor. If the Contractor fails to turn over all unearned payments to the Department, then, in addition to any other rights or remedies that the Department may have in law or in equity, the Department shall be entitled to recover from the Contractor interest at the annual rate of twelve (12) percent per annum on the principle amount of all unreturned unearned payment, together with court costs and reasonable attorney fees incurred in the collection of such amounts.

4.4 Relationship

(a) Independent Contractor Status. The relationship of the Contractor to the Department shall be that of an independent contractor, not an employee.

(b) No Control by Department. The parties acknowledge and agree that the Contractor shall use Contractor's own judgment as to time, place, details and means by which Contractor accomplishes the results of Contractor's Services under the Contract, that Contractor is not subject to instructions by the Department as to when, where, and how the Services should be performed, that Contractor is not required to work set hours of the day or week established by the Department, that Contractor is not required to perform Services in sequence determined by the Department, and that nothing contained herein shall be construed to create the relationship of employer and employee between the Department and the Contractor; provided, however, that Contractor is expected to provide the Services in a timely and competent manner in order to meet the needs and expectations of the Department.

(c) Employees of Contractor. The Contractor may, at its sole expense, employ and retain such employees as may be necessary to conduct the Services. All obligations relating to the compensation, benefits and taxes of such employees shall be the sole obligation and responsibility of the Contractor, who shall be deemed the employer of such employees. The Contractor shall direct the work of all employees and subcontractors.

(d) Insurance. Contractor agrees to maintain such insurance necessary to fully protect both Contractor and Department from any and all claims under the Workers'

Compensation Act, or any foreign country is equivalent, including maintaining insurance, through appropriate local government department or agency; or employers' liability laws, and from any and all other claims for damage to property or for personal injury, including death, made by any person whomsoever, that may arise from or relate to performance of the Services by Contractor, any subcontractor or any person directly or indirectly engaged or employed by Contractor or any subcontractor. Contractor agrees to provide the Department with certificates evidencing the required insurance coverage within thirty (30) days after Contractor begins performance of the Services.

(e) Department Not a Joint Venturer or Partner. In entering into and complying with the Contract, Contractor is at all times performing as an independent contractor. Nothing in the Contract shall constitute or be construed as a creation of a partnership or joint venture between Contractor and the Department, or their successors or assigns.

(f) Title to Contractor's Materials. Title to the materials to be furnished by Contractor in connection with the performance of the Services shall remain with the Contractor unless otherwise specified in Sections 4.6 and 4.7.

4.5 Minority and Women-owned Business Enterprises ("MWBE") Participation and Equal Employment Opportunities ("EEO")

Article 15-A of the New York State Executive Law §§ 310–318 ("the Statute") was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. The New York State Department of Economic Development (NYSDDED) fully supports the efforts of the State of New York to promote Equal Employment Opportunity (EEO) for all persons and promote equality of economic opportunity for minority group members and women who own business enterprises.

NYSDDED has developed compliance requirements, forms and procedures to ensure that Contractors (to include those who submit bids/proposals in an effort to be selected for contract award as well as those successful bidders/proposers with whom NYSDDED enters into State Contracts) and proposed or actual Subcontractors comply with requirements concerning Equal Employment Opportunities for Minority Group Members and Women and meaningful participation opportunities for certified minority-owned or women-owned business enterprises (MWBEs) in the NYSDDED procurement process. Contractors participating in and/or selected for procurement opportunities with NYSDDED shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for MWBEs, including but not limited to, the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development ("DMWBD") and set forth at 5 NYCRR Parts 140-144).

The parties shall refer to Exhibit H, attached and incorporated by reference herein, for the specific EEO/MWBE requirements and associated forms required by this procurement. Forms shall be submitted without any changes to any NYSDDED goals specified in Exhibit H of this RFP. Copies of the required NYSDDED Forms are identified in Exhibit H.

4.6 Intellectual Property/Personal Property Rights in Data, Computer Software & Other Intellectual Property

(a) 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 cards, tapes, discs, and other electronic 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 the Department in the course of performance of this Agreement hereunder, (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 the Department. 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 Contractor hereby covenants and agrees to transfer all right, title and interest in any such Data to the Department, and cooperate with the Department, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

(b) Rights in COTS Computer Software. Any commercial off-the-shelf ("COTS") computer software and its related documentation and licenses which were purchased by the Contractor to perform data collection, data dissemination and marketing as discussed in this Agreement shall be transferred to the Department to the extent permissible by the original license. The transfer of such COTS software shall be accomplished at no additional cost to the Department.

(c) Rights to Contractor 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 Contractor and existing at the time of the effective date of this Agreement and which, during the Term of this Agreement is used by the Contractor in the conduct of the performance of this Agreement in such a fashion as to render such preexisting software to the state of being an integral and necessary operating component of the Contractor-Developed Computer Software developed under this Agreement (thereinafter referred to as "Contractor-Owned Pre-Existing Computer Software/Documentation"), shall be deemed to remain the property of the Contractor and all right, title and interest therein to the same shall continue to vest in the Contractor, with the express understanding that the Contractor hereby licenses the Department to use such Contractor Owned Pre-Existing Computer Software/Documentation as provided for in subparagraph (d) herein below.

(d) Rights to Contractor-Developed Computer Software and Software Documentation. The Contractor will design, develop and install computer software as may be required for the Department. The Department 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

Contractor in the direct course of performance of this Agreement (hereinafter “Contractor-Developed Computer Software and Software Documentation”), shall be deemed to be the property of the Department and all right, title and interest therein to the same shall vest in the Department.

(e) For Software License Agreements. For software license agreements regarding any and all pre-existing computer Software and Documentation including Software/Documentation developed by the Contractor or purchased from outside sources, the Contractor hereby grants to the Department a nonexclusive, royalty-free, irrevocable, license to the Department, for:

1. All Software and Software Documentation (as herein above defined) developed or purchased in the course of performance of this Agreement; and
2. Only that Contractor-Owned Pre-Existing Computer Software/Documentation (as herein above defined) which forms an integral and necessary operating component of the Contractor-Developed Computer Software created under this Agreement;
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 Contractor-Developed Computer Software and Software Documentation, and the Contractor-Owned Pre-Existing Software/Documentation;

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

(f) Other Intellectual Property Rights. Except for those intellectual property rights otherwise addressed in sections (a) through (e) above the Contractor 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, this Agreement rendered to the Department by the Contractor or any of its employees or subcontractors during the term of this 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 the Department. 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 Contractor hereby covenants and agrees to transfer all right, title and interest in any such Items to the Department, and will cooperate with the Department, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest. The Contractor hereby assigns all rights in such intellectual property to the Department, shall, and will ensure that its employees and subcontractors shall, supply all assistance reasonably requested in securing for the Department'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 the Department in applying or otherwise registering, in the Department's name, all rights to any such

Items. The Department has the right to grant license to make, use, buy or sell any Items derived from the services performed under this Agreement. Provided however, upon mutual agreement of the Contractor and the Department, the Department 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, this Agreement.

(g) Additional rights. The Department reserves the right to include additional or revised intellectual/personal property provisions in the Contract 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 the Department, 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 Contractor to the Department, for the purpose of carrying out the provisions of this RFP. Property, plant, equipment may be subject to intellectual/personal property regulation when agreed to in writing by the parties.

4.7 Confidentiality: For and in consideration of the term of the Contract, Contractor agrees to the following for the ongoing protection of the Department:

(a) Obligations. The Contractor and the Department agree that Contractor shall have an affirmative duty to preserve the confidentiality and safekeeping of all Department documents and “Confidential Information” (as defined below). In particular, except to the extent that the use or disclosure of any Confidential Information is required to carry out Contractor’s assigned duties as an independent contractor for the Department, during the term of the Contract and following the termination of the Contract (for whatever reason):

(1) Misappropriation; use for the purpose of competing with Department, either directly or indirectly; disclose to any third party, either directly or indirectly; or aid anyone else in disclosing to any third party, either directly or indirectly; all or any part of any Confidential Information; or

(2) Use, disclose, divulge or communicate directly or indirectly to any third party: (a) the names, addresses and other contact data regarding any customers of the Department; or (b) the details of any contracts, business transactions or negotiation to which the Department is party or of any tenders, offers or proposals submitted or to be submitted by the Department in connection with its business.

(b) Scope. For purposes of the Contract, “Confidential Information” shall mean confidential and proprietary business or technical information furnished to or obtained by Contractor during the course of his contracting arrangement with the Department (including, without limitation, information created, discovered, developed or made know by such Contractor as part of his engagement with the Department), whether such information is in the form of

data, forecasts, records, reports or other documents prepared by or on behalf of the Department. Such Confidential Information includes, by way of illustration, but is not limited to: (1) any Department information regarding a Department Customer (as defined below), including but not limited to customer lists, contracts, business transactions, requirements, billing histories, needs, and products or services provided by the Department to such customers; or (2) all financial information concerning the Department, including but not limited to financial statements, balance sheets, profit and loss statements, earnings, commissions and salaries paid to employees, sales data and projections, forecasts, cost analyses, and similar information; or (3) all Department information regarding sources and methods of supply to the Department, including but not limited to supply agreements, supplier lists, supply terms, product discounts and similar information; or (4) all plans and projections for business opportunities for new or developing business of the Department, including but not limited to marketing concepts and business plans; or (5) all software, drawings, specifications, models, and marketing techniques developed by the Department; or (6) all information relating to the Department's services, products, prices, costs, development activities, service performance, operating results, employee lists, personnel matters, and other confidential or proprietary information; or (7) any of the information described in subsections (1)-(6) of this Section 4.7(b) that the Department obtains from another party or entity and that the Department treats or designates as confidential or proprietary information, whether or not such information is owned or was developed by the Department. "Confidential Information" shall not include information that is generally known or available to the public.

For purposes of the Contract, "Department Customer" means any company or individual customer of the Department: (1) at the time of the end of the term of the Contract; (2) who contacted Contractor, whom Contractor contacted or served, or for whom Contractor assisted in contact or service during the term of the Contract; and/or (3) any company or individual customer of the Department who purchased products or services from the Department during term of the Contract.

(c) Return of Documents/Data. Contractor acknowledges and agrees that, with the exception of information that Contractor can demonstrate was possessed or owned by him prior to his engagement with the Department that has not otherwise been modified, updated, or improved by Contractor or the Department in connection with his engagement with the Department, all sales files, customer records, customer lists, supplier records, supplier lists, product information, letters, contracts, notes, notebooks, records, reports, memoranda, formulae, and all other Department materials, documents, and data used, prepared, or collected by Contractor as part of his engagement with the Department, in whatever form, are and will remain the property of the Department. Contractor also understands and agrees that all Confidential Information that comes into his possession while he is an independent contractor of the Department, whether prepared by him or others, is and will remain the property of the Department. Thus, Contractor agrees that he will return all documents, written material, information, products, devices, and other property belonging to the Department, as well as all documents and other materials of any kind that constitute or contain any Confidential Information, in his possession or control, regardless of how stored or maintained, including all originals, copies, and compilations and all information stored or maintained on computer, tapes, discs, or any other form of technology upon the earlier to

occur of (i) five (5) business days after receipt of the Department's written request to return such property or (ii) the last day of the Contractor's engagement with the Department.

(d) Duration of Confidentiality Obligations. Contractor agrees that he will maintain and keep all Confidential Information strictly confidential throughout the term of the Contract and for a period of twelve (12) months after his engagement with the Department ends. In addition, Contractor agrees that the provisions of this Section 4.7 shall survive the termination or end of Contractor's independent contractor relationship with the Department, regardless of the date, reason or manner of such termination, and such termination shall not in any way impair or affect Contractor's continued obligation to observe the provisions of this Section 4.7.

4.8 Right to Publish. The Contractor shall not publish, circulate or disclose any articles, reports or other writing concerning their business or the subject matter of the Contract without the prior written consent of the Department.

4.9 Compliance with Applicable Laws. The Contractor shall, at all times, comply with and observe all applicable laws, statutes, codes, ordinances and regulations which are in effect during the term of the Contract and which, in any manner govern or affect the Contractor's performance of the Services, including without limitation the laws of the United States, the Designated Area or any country or political subdivision thereof.

4.10 Indemnification.

(a) General. The Contractor hereby agrees to indemnify the State and the Department and each of their directors, officers, employees and agents, and hold the State and the Department, and each of their directors, officers, employees and agents, harmless from and against any and all claims, demands, and causes of action based on any violation of any laws, statutes, codes, ordinances, and regulations and the defense of any such claims, demands or causes of action, including, in each case, any such arising from actual or alleged action or omissions of the Contractor or any of its subcontractors or employees.

(b) Taxes. Contractor shall indemnify the Department and the State against all liability and loss in connection with, and shall assume full responsibility for payment of all Designated Area or any country or political subdivision thereof, United States, state and local taxes or contributions imposed or required under unemployment insurance, workers' compensation, social security, pension, and income tax laws, with respect to the Contractor and Contractors' employees and subcontractors.

4.11 Publicity. Any publication or news releases relating to the Representative Offices shall state that the Representative Offices is supported by the New York State Department of Economic Development or Empire State Development as instructed by the Department. Any publications and news release shall be reviewed and coordinated in advance with NYS agency representatives.

Exhibit A

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from

disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to

be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the

subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

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

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

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

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

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

document these efforts and to provide said documentation to the State upon request; and

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

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

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

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

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

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

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

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.

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December 2011

Exhibit B
Financial Proposal

COMPLETE this financial proposal form in full (Contract Years 1 through 3 and totals). Do not change the budget format. Failure to complete the financial proposal or bidder changes to the format may result in the disqualification of your proposal.

Refer to Section 3.1, item f for additional guidance on completing the following budget.

Budget Category	Contract Year 1	Contract Year 2	Contract Year 3
Contractual Personal Services- Development of NYS Virtual Trade Show & Online Information Portal Site: List Names and Titles: _____ _____ _____ _____	\$ _____	\$ _____	\$ _____
Subcontractor (if any): _____	\$ _____	\$ _____	\$ _____
Telecommunications (telephone, cellular, internet, fax service, other) and Postage, Freight, and Delivery	\$ _____	\$ _____	\$ _____
Advertising & Marketing of NYS site including business meals, travel and entertainment expenses	\$ _____	\$ _____	\$ _____
Other Expenses	\$ _____	\$ _____	\$ _____
TOTALS	\$ _____	\$ _____	\$ _____
Subscription Fees from NYS exhibitors Paid directly to Contractor by NYS SBES Subscription @ \$ _ _ _ (Not to exceed \$200 in first year)	\$ _____	\$ _____	\$ _____
Net Profit to State enter % _ _	\$ _____	\$ _____	\$ _____
Net Profit to Contractor enter % _ _	\$ _____	\$ _____	\$ _____

Exhibit C

Additional Specifications on Scope of Services

Revised Technical Proposal: Creative Export Expansion through “Go East to Export New York, US!”

Statement of GEENYUS! Goals and Objectives:

With the support of SBA STEP program funding, the proposed “Go East to Export New York, US!” (GEENYUS!) initiative will promote New York State’s unique talent and technology, focusing on creative and innovative sectors, bolstered by public/private partnerships in Regional Economic Development Councils, and building an updated awareness of the NYS ‘brand.’ GEENYUS! project recommendations reflect the committed interest and export readiness of small business partners that want to expand market share in China and the Republic of Korea. This initiative will diversify and increase NYS small business enterprise (SBE) exports to growing, challenging and increasingly competitive Chinese and Korean markets, while protecting SBE intellectual property and overcoming regulatory and other market barriers. In summary:

- Eight diverse traditional, innovative and creative manufacturing, services and agribusiness industry clusters were selected for GEENYUS! based on NYS competitive assets, industry commitment and significant market opportunities in China and Korea, including wine and foods, music, fashion design, medical-bio technologies, jewelry, cleantech, mining equipment and technologies, and consulting engineering. Trade event activities will also serve the State’s diverse SBEs and MWBEs by including both ‘horizontal’ or multi-industry trade promotion events, and ‘vertical’ or industry-specific efforts focused on the eight selected sectors.
- GEENYUS! project leadership will assess, prepare and recruit NYS SBEs, ensuring that activities effectively reach disadvantaged, minority and rural SBE exporters throughout the State; whether in New York City, the Appalachian Southern Tier, the Hudson Valley or Upstate New York. These efforts will be accomplished by working with DED’s DWBD, SBDC, USDOC, GTI, and with industry and regional business partners.
- Project activities will build upon private sector partners’ commitment, and federal and state agency resources, including in-depth market expertise and NYS contractual representation in China and Korea. GEENYUS! structure, implementation and support will be anchored by public/private sector partnerships, and an integrated federal-state government team approach, including Small Business Administration (SBA) colleagues, the Small Business Development Centers in NYS (SBDC), the US Department of Commerce Export Assistance Centers in NYS and Commercial Service posts overseas (USDOC), and the Appalachian Regional Commission (ARC).
- Three key project deliverables, detailed in the Workplan that follows, include:
 - Export market preparation with best practices for project infrastructure, programs and services:
 - Customized market assessment, research (pricing, logistics, regulatory barriers, etc.); results measurement;
 - Creative marketing materials, website development, online exporter exhibits and directories, branding of selected industries (e.g. NYS wine, food and fashion) – all translated into Chinese and Korean;
 - SBE participation in export training and other services from SBDCs, and trade finance from NYBDC;
 - Staff participation in the STEP Best Practices in Export Promotions Conference; membership in national and regional professional development: State Trade Development Organizations-[SIDO](#); Eastern Trade Council-ETC;
 - Export market development:
 - Roll-out of marketing message and materials about the advantages of buying from NYS SBE exporters;
 - Linkage of SBE suppliers to major corporate exporters (e.g. GE for cleantech) to increase indirect exports;
 - Recruitment of qualified SBEs for overseas trade shows and missions, featuring customized meetings with potential buyers/agents/distributors, business networking receptions and events showcasing NYS firms;
 - Recruitment of SBEs for participation in reverse trade missions with buying delegations hosted in NYS;

Export market results:

- Securing agreements with agents/distributors, closing direct/indirect export sales, creating/retaining NYS jobs;
- Increasing availability of trade finance for SBEs (partnering with SBDC for training and application assistance; partnering with [NYBDC](#) to encourage lenders to increase availability of trade finance for SBEs); and
- Quantifying performance measurement (detailed below).

- GEENYUS! overall project outcome goals for expanding NYS export activity in China and Korea include:
 - Recruiting **310 NYS SBEs** for GEENYUS! export events, **including 43% or 132 Rural/MWBE SBEs; 25% new to export, 25% new to market, 25% expanding markets and 25% indirect exporters;**
 - Increasing SBE exports by **\$250 MM; \$175MM in China and Hong Kong and by \$75MM in Korea**, and
 - Creating or retaining **2,500 export-related jobs** in NYS.

Connecting New York State Technology Clusters with Asian Market Opportunities:

Eight technology dependent employment clusters have been identified by NYS government research as innovation economy clusters. Each of the clusters listed below consists of a group of related industries that either produce or employ technology intensively, and have a high proportion of technology related employment. These innovation technology clusters are a mix of manufacturing and service industries. Their relative importance varies from region to region across the state. Total statewide employment in the technology clusters is roughly 2.8 million.

- Cleantech Manufacturing
- Health Care
- Life Sciences
- Electronics, Imaging and Photonics
- Higher Education
- Research and Supporting Services
- Finance and Insurance
- Information

Additional research conducted by Battelle (*Essential New York Initiative*) focused on upstate New York's innovative technology clusters, identifying the following strengths:

Environmental and Energy Systems (68 firms, 6800 employees, 16.6% employment growth in five years)

This cluster includes wide-ranging manufacturers and service firms aimed at supplying products and services for analyzing, engineering, monitoring, controlling or modifying indoor and/or outdoor environments.

Digital and Electronic Devices (162 firms, 12,200 employees, 22.5% growth in five years)

This cluster consists of both component manufacturers (e.g. semiconductors, integrated circuits) and end-user products (e.g. computer based instruments, radar and communications equipment. Upstate New York is a world-class production center for radar and sonar systems, and home to leading firms in that export throughout the world.

Biosciences and Medical Technology (172 firms, 6,000 employees, 3.3% employment growth over 5 years)

This cluster consists of those firms primarily involved in biotechnology and life sciences R&D, pharmaceutical manufacturing, and manufacturing of analytical instruments and medical devices.

Packaging (69 firms, 4200 employees, 25% growth over five years)

The packaging cluster includes a wide diversity of firms engaged in more traditional transport packaging (e.g. pallet manufacturing), product containers (e.g. metal cans, glass jars, plastic tubs) and unique or distinct consumer packaging (e.g. juice pouches, ice cream cartons, custom printing and labeling).

Precision Metalworking (202 firms, 9900 employees, 19.2% growth over five years)

This cluster includes firms engaged in higher end or more sophisticated metalworking processes, as a supplier (typically to the automotive or aerospace industries) or as a manufacturer of complicated or high tolerance metal parts and products.

Rationale for Selection of GEENYUS! Innovation Clusters: Analysis, corporate leadership in innovation for potential SBE indirect export growth, and commitment from industry and regional partners led to the selection of four of these innovation clusters as priorities for GEENYUS! direct and indirect export expansion focus, including:

Cleantech Manufacturing Technology Cluster: The increased economic emphasis on green jobs, pollution reduction and renewable energy is reflected in the composition of the **cleantech** manufacturing technology cluster. This cluster is a large group of manufacturing and services industries including: renewable energy; alternative fuels; system integration for generation, transmission, smart grid; transportation via electric, hybrid, battery-power; buildings & construction with energy efficient systems and materials. Total statewide employment in the cluster is about 135,000.

Life Sciences Technology Cluster: Life Sciences includes pharmaceuticals as well as **medical** equipment and supplies, including electro-medical and electrotherapeutic apparatus. The cluster benefits from New York's extensive university capabilities in **biomedical** research. Statewide total cluster employment is about 41,000.

Information, Communications and New Media Technology Cluster: New York City in particular is a major global player in the **media** industries. The Information, Communications and New Media technology cluster includes traditional publishing, software, motion picture, **recording**, television, radio, and cable. Also included are telecommunications industries and data processing and related services. Statewide total employment is about 300,000. The cluster's location quotient of 1.38 indicates a high level of employment concentration.

Research and Supporting Services Technology Cluster: This cluster combines scientific R&D industries with related industries, including computer systems design, **consulting**, and architecture and **engineering services**. New York is home to major corporate research facilities for Corning Corporation, Eastman Kodak, General Electric, IBM, Xerox and other employers. Total cluster employment statewide is about 405,000.

In addition to innovation industry clusters, this proposal also reflects New York State's comparative advantages and industry commitment and expertise in four other creative and traditional industries, including NYS wine and foods, fashion design, jewelry and mining equipment and technologies. Selection of these sectors, and of multi-industry export promotion programs, will appeal to SBEs and MWBEs throughout NYS. Industry associations, regional groups, and other partners actively involved in creating the GEENYUS! initiative are listed below by cluster:

Cleantech: [CenterState Corporation for Economic Opportunity](#) has **2,000** paying members in 12 Upstate NY counties, sponsored business trips to China for 3,300 participants over past four years and is affiliated with the [Global Cleantech Cluster Association](#) and [Tech Garden](#) to advance exports by high technology firms; **The Solar Energy Consortium (TSEC)** represents **95** partner companies; **CEG & CEN** represent **Capital Region tech and manufacturing firms**.

Medical and Bio Technologies: New York Biotechnology Association ([NYBA](#)) has membership of 250 bioscience companies, world class research institutes and related professional services, many of which are SBEs; [MedTech](#) is an industry association at the hub of bioscience and medical device and equipment manufacturers and technologies.

Music: American Association of Independent Music ([A2IM](#)) has 86 label members and 67 associate members in NYS and market intelligence showing enormous potential in Chinese and Korean music markets for recorded, digital and touring, shows intense commitment, evidenced by in-kind support and 21 support letters from members and associates.

Consulting Engineering: American Council of Engineering Companies of New York ([ACEC New York](#)) has nearly 300 members, primarily SBEs, and many have strong interest in exporting to Asia; ACEC partnered with DED on a 1995-99 Market Development Cooperator Program project to expand services exports in Latin America.

Jewelry: 47th Street Business Improvement-[Diamond District](#) represents many highly skilled manufacturers eager to expand exports and jobs; partnering with Hong Kong Trade Development Council ([HKTDC](#)) and active USDOC support.

Fashion Design: Initiatives such as "Made in New York," "Save the Garment District" and "[Fashion 2020](#)" are supported by Mayor Bloomberg and [NYCEDC](#), Senator Gillibrand, USDOC; expertise from [ENK trade](#) shows partnering with China International Clothing and Apparel Fair; Council of Fashion Designers of America, etc. GEENYUS! project support will focus on NYS SBE value-added content and design that expand NYS exports and related jobs.

Wine & Food: [Ruig Wine Exports LLC](#), a consultant representing many NYS SBE wineries; the [New York Wine & Grape Foundation](#) "Uncork New York!" brand; [NYS Department of Agriculture & Markets](#); all committed to showcasing NYS wines paired with NYS foods in export promotion events in China and Korea.

Mining Equipment & Technologies: is a target sector selected by the Appalachian Regional Commission- [ARC Export Trade Advisory Council](#) and USDOC, given its importance to rural firms in the Appalachian region of NYS.

Multi-Industry: The [NYS SBDC International Business Development Program](#), with an office in Beijing, 17 years of experience building unparalleled networks and cooperative agreements with Chinese business and government contacts at all levels, and lead organizer of trade missions and business matchmaker conferences in China and NYS, actively assists SBEs expand exports and jobs through training, trade finance assistance, and guidance on exporting to China.

GEENYUS! Export Expansion Strategies: A variety of export promotion efforts will be undertaken for improving market access in China and Korea by vetted NYS SBEs; as individual firms and as part of innovative industry clusters:

- Creative Marketing: development and dissemination of promotional marketing materials, exhibits and online website presence to expand awareness of NYS SBEs, customized to effectively serve NYS industry needs (e.g. creating ‘brand’ identity for NYS wines and processed foods, promoting “Made in NY” global fashion capital);
- Trade Shows: major industry events in targeted markets that draw buyers and sellers and feature exhibitors. Participation may involve arranging a booth exhibit, matchmaking meetings, promotional events, business networking receptions, technical seminars, etc.
- Single or Multiple Company Promotions: arranged by USDOC, these events offer firms a customized, smaller scale export exhibit opportunity to meet SBE needs, with options related to venue and level of related services: [US Commercial Service Korea events](#); [US CS China Single Company Promotion](#).
- Trade Missions: travel to targeted markets for matchmaking meetings (e.g. USDOC Gold Key services), business exchanges and networking receptions customized to needs of industry cluster or multi-industry group.
- Reverse Trade Missions: Chinese and Korean buying delegations in NYS for SBEs’ matchmaking meetings.
- Showcasing Events: to promote NYS SBE exports and industry recognition by featuring major marketing events, public/private partnerships, signing ceremonies, receptions, etc., notably Wine & Food pairings and Music tours.

Summary Statement about GEENYUS! Quality Controls:

Performance and results will be measured by the most effective on-line software applications, to facilitate expert promotion of SBE goods and services exports, and real-time tracking of effectiveness. Technology tools will include contract and client relationship management systems (CRM), and Virtual Trade Show & Online Information Portal promotions. Project funding will adapt the CRM quality control systems to the project, and will develop a multi-lingual website, customized for NYS and GEENYUS! SBEs, featuring a NYS pavilion hall, directory, links to each SBE’s Virtual Trade Show & Online Information Portal booth exhibit (with contact information, photo and video content, interactivity, etc.); all available in Chinese and Korean. Examples of potential service providers are included in the attachments (from ThinkGlobal- Commercial News USA on-line; and ExpoGlobalOnline). Specific metrics are summarized in the chart below. ***NOTE:*** *prior to being qualified and accepted for receiving GEENYUS! export assistance, all NYS SBE participants will be required to formally stipulate that they will share detailed information about their export results with DED, SBA, and USDOC.*

Types of NYS SBE and MWBE Clients to be Assisted and Measured	GEENYUS! Project Deliverables for All Client Types	Performance Metrics and Measurement	Results Verification, Quality Controls Reporting
<p>New-to-Export (NTE): <i>an exporter that has not exported anywhere in the world during the last 24 months, except for unsolicited orders or orders placed by US-based intermediaries.</i></p>	<p><u>Export Market Preparation Outputs:</u> <i>Direct, measurable action undertaken by team to assist NYS exporters, e.g.:</i></p> <ul style="list-style-type: none"> - Exporter assessment, qualification - Export counseling and guidance - Trade lead generation and referrals - Customized Market Analysis- export strategies and implementation plans for NYS firms/industry sectors - Project management for clients via development of trade shows, missions, other export events - Receiving export training and technical assistance, esp. for trade finance (SBDC, NYBDC, ExIm, etc.) 	<p><u>Output Measures:</u></p> <p>Number of companies:</p> <ul style="list-style-type: none"> - Assessed per Export Readiness Checklist - Assisted with counseling - Provided trade leads/referrals - Encouraged to participate in trade show, trade mission or other export event - Receiving export training and technical assistance, esp. related to trade finance (SBDC) 	<p><u>Outputs/DED assistance:</u></p> <ul style="list-style-type: none"> - fully documented, with relevant background (e.g. copies of agreements, correspondence, etc.) - tracked via online Virtual Trade Show & Online Information Portal promotions; - compiled electronically via CRM and online tools. - Client data to indicate SBE exporter Type, Location (Rural), MWBE, and/or other classifiable status
<p>New-to-Market (NTM): <i>an exporter reaching a global market to which it has not exported during the last 2 years, except for unsolicited orders or orders placed by US-based intermediaries.</i></p>	<p><u>Export Progress:</u> <i>Intermediate export-related success, short of an export sale, benefiting client, due to assistance from team and programs</i></p> <ul style="list-style-type: none"> - Recruitment of participants for trade shows, missions, reverse missions, etc. - Agreements with agent/distributor, joint venture, licensing, franchise, etc. - Expansion of sales channels for direct or indirect exports - Resolution of market access barriers (standards, regulations, testing and certification) or trade complaints - Avoiding loss/ harm to exporting 	<p><u>Progress Measures- Number of:</u></p> <ul style="list-style-type: none"> - Trade shows, missions, reverse missions, export events - Customized match-making meetings or contacts for clients - Advocacy: removal of market access barriers; resolution of trade complaints, etc. <p>Number of companies:</p> <ul style="list-style-type: none"> - Participating in export events - Reaching sales agreements - Opening export sales offices - Avoiding loss/ harm to export activity 	<p><u>Progress/DED assistance:</u></p> <p>Details about team service toward client progress:</p> <ul style="list-style-type: none"> - intensive tracking via CRM and online promotional tools - Client data to indicate SBE exporter Type, Location (Rural), MWBE, and/or other classifiable status
<p>Increase-to-Market (ITM): <i>an exporter achieving export growth in global markets where firm is already active.</i></p> <p>Increase-to-Indirect-Export (IIE): <i>an exporter increasing indirect exports via sales to a larger exporting US company or corporation.</i></p>	<p><u>Export Outcome:</u> <i>sale and/or job success due to team and programs</i></p> <ul style="list-style-type: none"> - Direct or indirect export sale of NYS goods or services. - Trade-related jobs created/ retained. - Export increase via international tourism to, investment in NYS - Trade finance secured 	<p><u>Outcome Measures:</u></p> <p>Number of SBEs that are:</p> <ul style="list-style-type: none"> - NTE - NTM - ITM - IIE <p>Number of firms receiving trade finance</p> <p>Number of NYS export-related jobs created or retained</p> <p>\$ Value of:</p> <ul style="list-style-type: none"> - Export Sales: projected and actual; direct and indirect - Trade Finance secured 	<p>Export sales data verified by exporter or by primary international party to the transaction (e.g., the foreign buyer, the foreign agent appointed, etc.) and reported via CRM.</p> <p>Export-related jobs verified by exporter.</p> <ul style="list-style-type: none"> - Trade finance amount verified by exporter - Client data to indicate SBE exporter Type, if Rural, MWBE, and/or other classifiable status

In conclusion, should the SBA favorably consider this application, and grant a STEP award to New York State, federal officials can be assured that the GEENYUS! proposal enjoys the highest level of NYS government support. As the previously submitted Governor’s Endorsement Letter indicates, this effort is entirely aligned with New York’s new approach to economic development on both a global and regional scale. In addition to intensifying the State’s commitment to expanding SBE exports and improving the global competitiveness of businesses and workers, New York is also establishing Regional Councils to help guide public investment in communities throughout the state. This regional focus is based on the principle that economic development resources are most effective when they support a well

developed regional strategy that leverages core regional assets. Our Regional Council approach is modeled after the structure of HUD's Empowerment Zone Program, where regional stakeholders come together to develop a shared vision for their region's future, and agree on strategies and goals to achieve that vision. Regional Economic Development Councils, in conjunction with DED's Regional Office network, will ensure the broadest possible outreach to key industry clusters and NYS SBEs and MWBEs, so that they directly benefit from GEENYUS! support to expand exporting.

Exhibit D
**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 contracts¹. 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 bidders (“Offerers”) 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 bidders 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.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-j.htm> and at <http://www.ogs.state.ny.us/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 bidder (“Offerer”), 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 an Offerer/bidder during the procurement process. An Offerer/bidder 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 Offerers 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 Offerer/bidder 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 Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> or by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41st Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. E-mail: Anne.Phillips@OGS.State.NY.US.

Termination Provisions

¹ “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.

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 - Offerer's Affirmation of Understanding of and 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 Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

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.

Offerer 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 - Offerer'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 Offerer 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 Offerer must agree to the certification and provide it to the procuring Governmental Entity.

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

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

Offerer 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)

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

By: _____ Date: _____

Signature: _____

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 REGARDING THIS IFB.

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 Offerer or was retained, employed or designated on behalf of the Offerer 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.

Offerers and those designated, employed or retained by Offerers 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) Date: _____

From: _____
(Name and title of Offerer)

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 Offerer: _____

_____ Telephone Number: _____

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

Your Occupation: _____

1. Is the above named person or organization the "Offerer" 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 "Offerer" 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

Exhibit E

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 knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
3. 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 _____, 20__ 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 _____

Bidder's Identifying Data

Bidder's Name _____

Business Address _____

Street _____

City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Federal id. Number _____

If Bidder is a Partnership complete the following:

Name of Partners or Principals

Business Address

If Bidder is a Corporation complete the following:

Name

Business Address

President

Secretary

Treasurer

Exhibit F

**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

Exhibit G

RESPONSIBILITY QUESTIONNAIRE

INSTRUCTIONS:

Please complete this form answering every question. A "Yes" answer to any question requires a written explanation attached to the questionnaire and submitted on company letterhead signed by an officer of the company.

Companies are responsible for updating information in their Responsibility Questionnaire as changes occur. Any vendor recommended for award on a New York State contract will be required to have this form on file to ratify any of the contracts.

QUESTIONS:

Within the past five years, has your firm, any affiliate¹, any owner or officer or major stockholder or any person involved in the bidding or contracting process been the subject of any of the following:

1. a judgment or conviction for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, or bid collusion?

_____YES _____NO
2. a criminal investigation or indictment for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, or bid collusion?

_____YES _____NO
3. an unsatisfied judgment, injunction or lien obtained by a government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any government agency?

_____YES _____NO
4. an investigation for a civil violation (excluding minor traffic infractions) by any local, state or federal agency?

_____YES _____NO
5. a grant of immunity for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, or bid collusion?

_____YES _____NO
6. a local, state, or federal suspension, debarment or termination from a contract process?

_____YES _____NO
7. a local, state or federal contract suspension or termination for cause prior to the completion of the term of a contract?

_____YES _____NO
8. a local, state, or federal denial of award for non-responsibility?

_____YES _____NO
9. an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal contract?

_____YES _____NO

¹ "Affiliate" meaning: (a) any entity in which the contractor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

10. a State Labor Law violation deemed willful? _____YES _____NO
11. a firm-related bankruptcy proceeding? _____YES _____NO
12. a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license? _____YES _____NO
13. a decertification, revocation or forfeiture of Women’s Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status? _____YES _____NO
14. an occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful? _____YES _____NO
15. a rejection of a bid on a New York State contract for failure to comply with the MacBride Fair Employment Principles? _____YES _____NO
16. a citation, notice, violation order, pending administrative hearing or proceeding or determination for violations of:
- federal, state or local health laws, rules or regulations
 - unemployment insurance or workers’ compensation coverage or claim requirements
 - ERISA (Employee Retirement Income Security Act)
 - federal, state or local human rights laws
 - federal or state security laws
 - federal INS (Immigration and Naturalization Services) and Alienage laws
 - Sherman Act or other federal anti-trust laws
- _____YES _____NO
17. complaints or reports of contract deviation received within the past two years for contract performance issues arising out of a contract with any federal, state or local agency? _____YES _____NO
18. disputes within the past two years concerning your company’s failure to provide commodities or services to political subdivisions within the past two years pursuant to centralized contracts with the New York State Office of General Services? _____YES _____NO
19. Employee Identification No., Social Security No., Name, DBA, trade name or abbreviation previously or currently used by your business which is different from that listed in your proposal. _____YES _____NO

CERTIFICATION:

The undersigned: recognizes that this responsibility questionnaire is submitted for the express purpose of assisting the State of New York or its agencies or political subdivisions to make a determination; acknowledges that the State or its agencies and political subdivisions may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 USC Section 1001; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

Name of Business

Signature of Officer

Address

Typed Copy of Signature

City, State, Zip

Title

Federal I.D. No.

Exhibit H

M/WBE Utilization Goal Requirements For NYSDed Contracts

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

I. General Provisions

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

II. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
 - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the Letter of Intent to award Contract.

3. If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement (see Form 100 – Minority and Women-Owned Business Enterprises Equal Employment opportunity Policy Statement).
4. The Contractor’s EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. Contractor will include the provisions of sections (a) through (c) of this subsection in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

C. Form 101 - Staffing Plan

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

D. Form 102 - Workforce Employment Utilization Report (“Workforce Report”)

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by the Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the

performance of the Contract from Contractor's and/or sub Contractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the subject contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

III. Contract Goals

A. For purposes of this procurement, the Department hereby establishes a goal of 2% for Minority-Owned Business Enterprises (“MBE”) participation and 3% for Women-Owned Business Enterprises (“WBE”) participation.

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

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

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

IV. MWBE Utilization Plan

A. Form 103 – MWBE Utilization Plan

1. Contractor is required to submit an MWBE Utilization Plan to the Department on “Form 103” with this bid/proposal or in the event such a plan was not submitted with a bid/proposal, prior to the execution of this Contract.
2. The Utilization Plan shall list the MWBEs Contractor intends to use to perform on the Contract and provide a description of the Contract scope of work which Contractor intends to structure to increase the participation by NYS Certified MWBEs on Contract pursuant to the prescribed Contract Goals set herein, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of the Contract which Contractor intends to be performed by NYS Certified MWBEs.
3. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and/or during the Contract term must be reported on a revised MWBE Utilization Plan and submitted to the Department for approval.

- B. The Department will review the MWBE Utilization Plan and issue to Contractor a written notice of acceptance or deficiency within twenty (20) days of its receipt. A notice of deficiency shall include (1) the name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals and the reasons why it is not acceptable; (2) elements of the Contract scope of work which the Department has determined can be reasonably structured by Contractor to increase the likelihood of participation in the Contract by NYS Certified MWBEs; and (3) other information which the Department determines to be relevant to the MWBE Utilization Plan.
- C. In the event a notice of deficiency is issued Contractor shall respond to the notice within seven (7) business days of receipt by submitting a written remedy in response to the notice of deficiency to the Department. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the Contractor and direct Contractor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on forms provided by the Department. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. The Department may disqualify Contractor as being non-responsive under the following circumstances:
 - 1. If Contractor fails to submit a MWBE Utilization Plan;
 - 2. If Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
 - 3. If Contractor fails to submit a request for waiver in the event of a deficiency within the utilization plan; or
 - 4. If the department determines that Contractor has failed to document good faith efforts to meet the contract goals prescribed in Article III.

V. Waivers

- A. For Waiver Requests Contractor should use Form 104 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Department, upon review of the Utilization Plan and updated Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form MWBE 105) to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Administration Hearing on Disqualification

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

VIII. Complaints

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

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

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

IX. Liquidated Damages - MWBE Participation

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

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

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

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

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

EEO (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) This organization will include the provisions of sections (a) through (c) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

Minority Business Enterprise Liaison

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

M/WBE Contract Goals

_____ % Minority Business Enterprise Participation
_____ % Women's Business Enterprise Participation

EEO Contract Goals

_____ % Minority Labor Force Participation
_____ % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

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

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

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

PREPARED BY (Signature):	TELEPHONE NO.: EMAIL ADDRESS:	DATE:
NAME AND TITLE OF PREPARER (Print or Type):		Submit completed with bid or proposal M/WBE 101 (Rev 11/08)

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

Instructions for completing:

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

RACE/ETHNIC IDENTIFICATION

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

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

OTHER CATEGORIES

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

WORK FORCE EMPLOYMENT UTILIZATION

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

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

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

PREPARED BY (Signature):	TELEPHONE NO.:	DATE:
NAME AND TITLE OF PREPARER (Print or Type):	EMAIL ADDRESS:	
Submit completed form to: NYS (add Agency name) M/WBE 102 (Revised 11/08)		

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

Instructions for completing:

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

RACE/ETHNIC IDENTIFICATION

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

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
- **OTHER CATEGORIES**
- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** **Male or Female**

M/WBE UTILIZATION PLAN

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

Offeror's Name:

Address:

City, State, Zip Code:

Telephone No.:

Region/Location of Work:

Federal Identification No.:

Solicitation No.:

Project No.:

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

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

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).

<p>PREPARED BY (Signature): DATE:</p> <p>NAME AND TITLE OF PREPARER (Print or Type): SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	TELEPHONE NO.:	EMAIL ADDRESS:
	FOR M/WBE USE ONLY	
	REVIEWED BY:	DATE:
	<p>UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____ Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work: _____</p> <p>NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p>	
M/WBE 103 (Revised 11/08)		

REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.

Offeror/Contractor Name:	Federal Identification No.:		
Address:	Solicitation/Contract No.:		
City, State, Zip Code:	M/WBE Goals: MBE	%	WBE %
<p>By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</p>			
<p>Contractor is requesting a:</p> <p>1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development: _____</p>			
PREPARED BY (Signature):	Date:		
<p><small>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</small></p>			
Name and Title of Preparer (Printed or Typed):	Telephone Number:	Email Address:	
Submit with the bid or proposal or if submitting after award submit to:	***** FOR M/WBE USE ONLY *****		
	REVIEWED BY:	DATE:	
	<p>Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional</p> <p><input type="checkbox"/> Notice of Deficiency Issued _____</p> <p>*Comments:</p>		
<p>New York State Department of Economic Development Attn: Diane Kinnicutt M/WBE Program Management Unit Albany, New York 12245</p>			

M/WBE 104 (Revised 11/08)

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note: Unless a Total Waiver has been granted, the Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by AGENCY, to determine M/WBE compliance.

Is this a final report? Check One
 Yes _____ No _____

**M/WBE Quarterly Report
 of**

NYS AGENCY Contract No. _____ **Project No.** _____

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project. The payments as shown made are in compliance with contract documents for the above referenced project.

Contractors Name and Address		Federal ID#		Goals/\$ Amt. MBE _____%= _____ WBE _____%= _____		Contract Type _____					
		Project Completion Date		Work Location		Reporting Period: ___ 1 st Quarter (4/1-6/30) ___ 3 rd Quarter (10/1-12/31) ___ 2 nd Quarter (7/1-9/30) ___ 4 th Quarter (1/1-3/31)					
M/WBE Subcontractor/Vendor		Product Code*	Work Status This Report	Total Subcontractor Contract Amount		Payments this Quarter		Previous Payments		Total Payment Made to Date	
				MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
Name: FED ID#			___ Active ___ Inactive ___ Complete								
Name: FED ID#			___ Active ___ Inactive ___ Complete								
Name: FED ID#			___ Active ___ Inactive ___ Complete								
Name: FED ID#			___ Active ___ Inactive ___ Complete								
Total											

*See below for Product Codes

Date _____ **Name** _____ **Title** _____

Signature _____

PRODUCT KEY CODE

A	=	Agriculture/ Landscaping (e.g., all forms of landscaping services)
B	=	Mining (e.g., geological investigations)
C	=	Construction
C15	=	Building Construction – General Contractors
C16	=	Heavy Construction (e.g., highway, pipe laying)
C17	=	Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)
D	=	Manufacturing
E	=	Transportation, Communication and Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	=	Wholesale/Retail Goods (e.g. hospital supplies and equipment, food stores, computer stores, office supplies)
G52	=	Construction Materials (e.g., lumber, paint, law supplies)
H	=	Financial, Insurance and Real Estate Services
I	=	Services
I73	=	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)
I81	=	Legal Services
I82	=	Education Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	=	Social Services (Counselors, vocational training, child care)
I87	=	Engineering, architectural, accounting, research, management and related services

CONTRACTOR BID SOLICITATION LETTER

MBE/WBE
 Main Street
 Anywhere, New York 00000

Re: CONTRACT # _____
 COUNTY _____
 Project Title _____

Dear MBE/WBE:

We are the low bidder on Project/Contract # _____ which involves [type of contract(s)] _____ in the _____ of New York. We are currently soliciting bid quotations or proposals from NY State certified M/WBE firms for any tasks of the work contained in this contract. The specialty items contained include the following:

ITEM(S)	DESCRIPTION	QUANTITY	PROJECTED START DATE

The Work Plan and specifications are currently available at our office for your review. If you are interested in participation on this project, please complete and submit a copy of the MBE/WBE Contractor Participation Bid/Proposal (Attachment # 7) no later than thirty (30) days from the (due date) _____.

If you need additional information and assistance, or need to review the Work Plan and specifications, please contact (authorized representative) of our office at (telephone).

In the event that you cannot bid on this contract please complete the attached Minority/Women’s Contractor Unavailability Certification Form (See Attachment # 8).

Thank you for your interest as we look forward to a successful project.

Sincerely,

New York State Department of Economic Development

**M/WBE SUBCONTRACTORS AND SUPPLIERS
LETTER OF INTENT TO PARTICIPATE**

Recipient/Contractor: _____ Contract/Project No.: _____

Address: _____

Federal ID#: _____ Project/Contract # _____ Location of Work: _____

Dear Recipient/Contractor:

I, _____ intend to perform work for _____
(Name of Subcontractor/Vendor's Firm) (Name of Consultant/Contractor)

located at _____ in connection with the above project. My Minority/Women Business Enterprise (M/WBE) status as a MBE () and/or WBE () is certified as of _____
(Check all as applies) (cert. date)

_____ is prepared to do the following:
(Name of Subcontractor/Vendor's Firm)

(Describe work to be performed on the above project)	Unit Price	Total Amount

You have projected _____ for such work to start.
(Commencement Date)

_____ will sign a formal contract for the above work conditioned upon the
(Name of Subcontractor/Vendor's Firm)

approval of your executed contract with the recipient/contractor.

MBE: Subcontractor or Supplier (Please circle one)

WBE: Subcontractor or Supplier (Please circle one)

Company Official's Name _____ Title: _____

Company Official's Signature: _____

Address: _____

Consultant/Contractor (Please circle one)

Company Official's Name: _____ Title: _____

Company Official's Signature _____ Date: _____

Telephone Number: () _____ Fax Number: () _____

M/WBE CONTRACTOR PARTICIPATION BID/PROPOSAL

Prime Contractor _____
 Address _____

Re: CONTRACT # _____
 COUNTY _____
 Project Title _____

TO: _____
 (Name of Prime Contractor)

_____ proposes to perform the work as follows:
 (Name of M/WBE Firm)

(Specify in detail the particular work items to be performed thereof and associated dollar amounts)

TYPE OF WORK	UNIT PRICE	DOLLAR AMOUNT

 NAME OF M/WBE CONTRACTOR

 SIGNATURE OF M/WBE CONTRACTOR

 DATE

M/WBE CONTRACTOR UNAVAILABILITY CERTIFICATION

PROJECT/CONTRACT # _____

I, _____
(Principal or Prime Consultant/Contractor)

_____ of _____
(Title) (Name of Consultant's/Contractor's Firm)

_____ (Address) _____ (Telephone Number)

I certify that on (Date) _____ I contacted the following New York State Certified Minority/Women Business Enterprises by registered mail to obtain bids for work to be performed on the above-mentioned contract.

List of names of M/WBEs, and type of work that bids were requested

- _____
- _____
- _____

To the best of my knowledge and belief, said New York State Certified Minority/Women Business Enterprise contractor(s) was unavailable for work on this project, or unable to prepare a bid for the following reasons: Pease check appropriate reasons given by each MBE/WBE firm contacted above.)

- _____ I did not have the capability to perform the work
- _____ Contract too small
- _____ Remote location
- _____ Received solicitation notices too late
- _____ Did not want to work for this contractor
- _____ Other (give reason) _____

Signature of Prime Consultant/Contractor

Title Date

