

REQUEST FOR PROPOSALS

PROGRAM EVALUATOR



Harlem
Community
Development
Corporation

ISSUED BY: **HARLEM COMMUNITY DEVELOPMENT CORPORATION**

ISSUE DATE: OCTOBER 15, 2010

RESPONSES DUE: NOVEMBER 29, 2010

STATE OF NEW YORK
DAVID A. PATERSON, GOVERNOR

EMPIRE STATE DEVELOPMENT CORPORATION
DENNIS MULLIN, CHAIRMAN

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HARLEM COMMUNITY DEVELOPMENT CORPORATION

PROGRAM EVALUATOR

REQUEST FOR PROPOSALS

INTRODUCTION AND PURPOSE

Harlem Community Development Corporation (“Harlem CDC”), a wholly-owned subsidiary of New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESD”) was created in July 1995, pursuant to an act of the Legislature of the State of New York, to plan promote and implement economic development and job creation opportunities in the Harlem community. To advance these goals, Harlem CDC and other State, City and community organizations works in conjunction with ESD to promote the development of retail, commercial, residential and land use initiatives in Harlem as economic development catalysts.

This Request for Proposals (“RFP”) is being issued by Harlem CDC to solicit proposals from professional program evaluators (“Respondent(s)”) to perform a bi-annual evaluation, as required by legislation, of the effectiveness of each component of the comprehensive development programs undertaken by Harlem CDC. In the last evaluation comprehensive assessments of Harlem CDC’s programs were performed and it was pointed out that many of the issues identified have been long standing and the effectiveness of the programs were evaluated. For 2010/11 it is desired that the evaluator.

- Update the status of the long-term issues
- Identify specific resources and relationships that will allow Harlem CDC to expand its programs and increase their effectiveness
- Identify sources of funding for the agency in these dire economic times

All responses to this RFP should take into consideration that:

1. the evaluation report will be submitted to the Directors of Harlem CDC as well as the New York State Director of the Budget, the Speaker of the Assembly and the Temporary President of the Senate;
2. the evaluation report should make recommendations for improvements which would make the development program of Harlem CDC more effective; and
3. the assessment and draft report should be completed no later than Friday, February 11, 2011.
4. The final report should be completed no later than Monday, March 28, 2011.

SELECTION PROCESS

Harlem CDC is soliciting proposals from firms familiar with community development and governmental agencies to conduct an analysis of Harlem CDC's program activities.

The chosen firm shall be selected based upon the following:

- Overall responsiveness to the RFP.
- Clarity of explanation of the methodology to be utilized to conduct the evaluation and produce the required evaluation report.
- Ability to meet project deadlines.
- Experience with complex program evaluations.
- Experience with community-based economic development organizations.
- Reasonableness of proposed budget.
- Level of Affirmative Action and MBE/WBE participation.

At least three references, with contact persons' telephone numbers, from similar projects must be included in the proposal.

The selected candidate will be notified via telephone, followed by an official letter of notification and a draft of the recommended contract agreement. As part of the selection

process following the initial review of submitted responses, Harlem CDC may choose to contact some of the Respondents for an interview.

SUBMISSION REQUIREMENTS

Each Respondent's submission should include a cover letter evidencing an understanding of the general nature of the work to be performed, supported by a brief statement of the candidate's ability to provide the requested services. The letter should describe the general approach and methodology to be employed to fulfill the requests outlined below:

The submission should also include:

- A detailed approach to completing tasks and a description of how assessments will be made.
- A clear, comprehensive scope of services, including an activity schedule with timelines for each proposed task.
- A proposed budget, broken out by task.
- If applicable, an organization chart with defined roles and responsibilities for assigned staff should be included.
- Relevant project experience, references and resumes of persons who will participate in the evaluation.
- Commitment to State and City non-discrimination and affirmative action policy.

SCOPE OF WORK

The Respondent shall perform any and all tasks relevant to assessing the program activities of Harlem CDC for the period April 1, 2008 through March 31, 2010.

The Respondent will be required to conduct the evaluation and complete a draft report by Friday, February 11, 2011. The final report should be complete no later than Monday, March 28, 2011.

The Respondent is expected to conduct a review and evaluation of the items listed below.

Governed by a twenty-five member Board of Directors (the "Board"), Harlem CDC was created in June 1995 as the successor to the Harlem Urban Development Corporation ("HUDC"), and is funded by appropriations from the State of New York through its parent, ESD. Additional funding is generated via various activities, e.g.: (1) income generated from properties owned or controlled by Harlem CDC; (2) the marketing of residential units; and (3) management of a contract under the New York State Weatherization Assistance Program.

With a staff of seventeen (17), a budget of approximately \$2.5 million, and a service area extending from 96th Street to 178th Street, and from the Harlem River to the Hudson River, Harlem CDC serves the communities of East, Central and West Harlem, and Washington Heights by conducting an array of activities that are all designed to support the State's economic development and job creation efforts.

Harlem CDC, as a community development agency, has a broad range of powers under its enabling statute. Pursuant to New York State legislation, Harlem CDC has the following functions and duties:

- to formulate and implement a comprehensive development program for the Harlem community;
- to promote effective community participation, representation and support for such a program;

- to identify and recommend projects which may be undertaken in cooperation with the Harlem community;
- to provide assistance to not-for-profit organizations engaged in economic and housing development in the Harlem community;
- to evaluate ongoing projects of ESD in the Harlem community and to make recommendations with respect to such projects;
- to cooperate in the delivery of development programs agreed upon by ESD and various community organizations;
- to review and make recommendations with respect to any project proposed by ESD in the Harlem community; and
- to initiate development projects within the Harlem community designed to foster economic growth and community revitalization.

As a consequence of its limited staff and resources, the mission adopted by the Board is somewhat narrower than the broad mandate given to Harlem CDC by the Legislature. This mission is to serve the greater Harlem community through planning, facilitating and assisting with the development of real estate projects throughout the greater Harlem area that will restore it as a commercially vibrant and economically stable community, and to empower local entrepreneurs and community-based organizations to plan and execute their own development projects. Harlem CDC seeks to accomplish its goals and objectives by fostering various forms of partnerships and alliances with local organizations, such as community boards and the Upper Manhattan Empowerment Zone (“UMEZ”).

The selected Respondent will be asked to review the comprehensive programs, activities and services of Harlem CDC.

ORGANIZATION

Harlem CDC has four departments, each responsible for a programmatic area that reflects an aspect of Harlem CDC's overall mission.

Residential Development

The mission of Harlem CDC's Residential development Department is to facilitate, support and promote the production of a range of housing projects, including homeownership for low and middle-income residents, throughout the greater Harlem area. Residential projects are developed in partnership with the New York State Affordable Housing Corporation, New York City's Department of Housing Preservation and Development, the New York City Housing partnership, Federal government programs and private organizations such as Fannie Mae and Freddie Mac. In addition, the Residential Development Department:

- Works in conjunction with community-based organizations as well as for-profit and not-for-profit organizations to explore development options for publicly- and privately-owned vacant and underutilized properties, package sites for development, and market homeownership projects to Harlem residents and the general public. Technical resources include its architectural team that also monitors construction of Harlem CDC's projects.
- Works with lending institutions and public sector partners to help ensure appropriate allocation of resources to revitalization projects in Harlem.
- Administers a revolving loan fund that provides low-cost loans and grants to help assist with predevelopment expenses associated with residential and mixed-use multiple-dwelling projects within Harlem CDC's service area.
- Works with private developers to provide residential marketing and sales services for affordable housing projects developed under State and city programs.
- Is a HUD-approved Housing Counseling agency, providing services including training and advice to first-time home buyers, to homeowners facing foreclosure and to renters confronted by a variety of problems.

Commercial Development:

- Facilitate, support and encourage the renovation and redevelopment of vacant or underutilized commercial property in order to create employment opportunities and to increase the availability of retail and office space at rents that are affordable to local businesses and organizations.

- Provide advice, information and technical assistance to local entrepreneurs and small businesses so that they can participate in new and ongoing business opportunities in Harlem.
- Provide the involvement of local retailers and other entrepreneurs in major projects being undertaken in Harlem.
- Facilitate access to New York State's resources and programs intended to assist small businesses.

The Director of Commercial Development position has been vacant since September 2003. Requests to fill this position were submitted on 10/6/03, 5/10/04, 6/10/2006 and 8/21/2007

Planning Department:

- Provide technical assistance and resources to Community Boards and others in the formulation of a comprehensive land use and economic development strategy for each of the four Community Board Districts in Harlem.
- Provide technical support to community-based organizations and entrepreneurs and stakeholders so that they can provide constructive advocacy and build momentum for projects that will result in sustainable economic development and community revitalization.
- Provide ideas, leadership and build consensus around urban planning issues.
- Contribute to the projects being developed by the Residential and Commercial Departments by providing urban planning insights and demographic data.

Weatherization Assistance Program:

This program contributes to Harlem CDC's mission of community development by providing resources to maintain and upgrade the stock of privately-owned affordable housing in our service area, which consists primarily of multi-family rental and owner-occupied buildings. In order to qualify for this program, it must be demonstrated that a majority of tenants have household incomes within program guidelines. The Weatherization Assistance Program can assist landlords by paying a substantial portion of the cost of energy-saving measures. In addition, the program directly benefits tenants by providing greater comfort and safety, as well as lower utility bills. Dwelling units occupied by the elderly, families with children and persons with disabilities are given priority.

In addition to providing financial assistance to retrofit buildings in ways that increase energy efficiency and reduce operating costs, our Weatherization staff provides the following technical services to building owners:

- Energy Audit – an evaluation of residential buildings to determine which energy-saving measures are appropriate based on an analysis of projected cost versus savings.
- Counseling in Energy Management.
- Construction Management – although installations of heating systems, lighting fixtures and windows are performed by independent contractors, Weatherization staff supervises this work as it is being carried out and approves completed work.

Note: In May 2009 the State of New York unveiled a Weatherization Assistance Program Plan for American Recovery and Reinvestment Act (ARRA) funds. The plan serves as New York's application for Weatherization funds and the guide for allocation of more than \$394.6 million in federal residential energy conservation funding. These funds will provide assistance to more than 45,000 households across the State. The plan was prepared in accordance with the Final Rule for the Program (10 CFR Part 440), and with Recovery Act Grant Guidance issued by the US Department of Energy (DOE).

Under the Governor's direction, coordination among agencies that administer energy, housing and human service programs has increased significantly. This plan will describe new efforts to ensure that Weatherization assistance is targeted to households receiving Home Energy Assistance Program benefits, and the State's activities to develop a "green workforce" will provide skilled workers who subgrantees can hire, to successfully implement the increased funding provided by the Recovery Act.

HOW TO RESPOND

The Respondent should submit an original and six (6) copies of the submission to the address given below. All responses should be forwarded using the information provided, and must be received by 3:00 p.m. on Monday, November 29, 2010.

Rose M. Jeffrey
Corporate Secretary/Manager of Office Operations
Harlem Community Development Corporation
Adam Clayton Powell, Jr. State Office Building
163 West 125th Street, 17th floor
New York, New York 10027

GENERAL TERMS AND CONDITIONS

Potential Respondents are advised that Harlem CDC reserves the right to reject any and all submitted proposals. All submissions are generated at the sole risk and expense of the Respondent and become the property of Harlem CDC, even if rejected.

In addition, this RFP is subject to the specific conditions, terms and limitations stated below:

- (a) Harlem CDC shall be the sole judge of whether a response complies with the requirements of this Request and the merits of each individual response.
- (b) Acceptance of a Respondent's proposal pursuant to this RFP will not create any rights on the Respondent's part. Therefore, Harlem CDC advises all respondents that this creates no legal obligation on the part of Harlem CDC, and does not constitute an offer.
- (c) This RFP may be withdrawn, if it is deemed by Harlem CDC in the exercise of its sole discretion in the best interest of Harlem CDC to do so, or if, in the sole judgment of Harlem CDC, all responses are unacceptable. Issuance of this Request does not obligate Harlem CDC to undertake any action.
- (d) Respondents shall conform to and be subject to all applicable laws, regulations, policies, procedures and executive orders of all federal, State and New York City authorities having jurisdiction, as the same may be amended from time to time.
- (e) Respondents to this RFP may be rejected by Harlem CDC if such Respondent or any principal, partner, officer, director or principal shareholder of the Respondent's firm is determined, in the sole discretion of Harlem CDC, to be under indictment or criminal investigation or to be in arrears or in default on any debt, contract or obligation to or with a New York State or local government entity.
- (f) Neither Harlem CDC nor the State of New York shall be obligated to pay and shall not pay, or in any way compensate any Respondent and/or Respondent's firm for the costs incurred in the preparation of responses to this RFP.
- (g) Respondents shall comply with the provisions of ESD's Non-Discrimination and Affirmation Action Program, attached to and made a part of the RFP. Harlem CDC encourages firms with significant participation of minorities and women to respond to the RFP.

(h) Harlem CDC is a wholly owned subsidiary of the Empire State Development Corporation, a State of New York public benefit corporation and, as such, materials submitted to it may be subject to the Freedom of Information Law (“FOIL”). If a Respondent provides materials of a confidential nature not intended for disclosure to third parties, the Respondent should clearly indicate the specific material it considers confidential. Subject to the provisions of FOIL and any other applicable laws, ESD and Harlem CDC may agree to maintain the confidentiality of such materials if requested. ESD, Harlem CDC and the State of New York assume no responsibility for any loss or damage resulting out of any determination requiring disclosure of information pursuant to FOIL.

(i) Selected consultant will be required to provide evidence of the following insurance:

1. Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
2. Commercial Automobile insurance of not less than \$1 million;
3. Errors and Omission insurance of \$1 million; and
4. Evidence of Workers Compensation/ Employer’s Liability insurance.

Insurance evidence must disclose (a) the \$2 million General Liability aggregate applies only to this Project and (b) ESDC and HCDC are named as additional insured on a primary basis.

(j) Procurement Requirements

a. State Finance Law Sections 139-j and 139-k

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this solicitation. These Procurement Requirements (1) govern permissible communications between potential respondents and Harlem Community Development Corporation or other involved governmental entities with respect to this solicitation during the procurement process; and (2) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this solicitation.

To comply with the Procurement Requirements: (i) all communications regarding this solicitation, from the issuance of this solicitation through award and approval of any resulting contract (the “Restricted Period”), be conducted only with the contact person(s) listed below; (ii) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law, copies of which are attached to this solicitation as Attachment B-1 and B-2; and (iii) periodic updating of such forms during the term of any contract resulting from this solicitation. Respondents must submit both of these forms, properly completed, as part of their proposals. The Procurement Requirements also require Harlem Community Development Corporation employees to obtain and report certain information when contacted by prospective bidders during the Restricted Period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the

State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

A copy of Harlem Community Development Corporation's Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k is attached to this solicitation as Attachment B-1 and B-2. Neither this summary nor the referenced Policy is a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

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

Copies of the 139J & 139K forms can be found at:

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

All potential Respondents are solely responsible for full compliance with the Procurement Requirements.

ALL QUESTIONS, COMMENTS, REQUESTS FOR CLARIFICATION AND OTHER COMMUNICATIONS REGARDING THIS SOLICITATION MUST BE IN WRITING – AND SUBMITTED TO: Wayne A. Benjamin, AIA Harlem Community Development Corporation at 163 West 125th Street, 17th Floor New York, New York 10027. CONTACT WITH ANY OTHER PERSON REGARDING THIS SOLICITATION IS PROHIBITED BY LAW. All questions and requests for clarification will be responded to in writing and disseminated to all persons and organizations having expressed an interest in this solicitation.

b. State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits Harlem Community Development Corporation from approving any such contract with any entity if that entity or any of its affiliates or subcontractors make sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the immediately preceding consecutive four sales tax quarters and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all respondents to this solicitation must include in their responses a properly completed Form ST-220-CA or an affidavit that the entity is not required to register, copies of which are included as Attachment B-1 and B-2. Solicitation responses that do not include a properly completed ST-220-CA or affidavit are incomplete and no contract will be approved without the appropriate forms, duly executed. Copies of the ST-220 form or affidavit can be found at: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>

c. Standard OSC Review Clause:

This contract may be subject to review and approval by the Office of the State Comptroller (“OSC”) pursuant to Public Authorities Law section 2879-a and the regulations

issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the state, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If this contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with this contract, unless and until OSC approval has been received.

ATTACHMENTS

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ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION RFP
PROVISIONS

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION RFP PROVISIONS

It is the policy of the State of New York, and the ESD, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with Contracting Parties to ensure that Minority and Women-owned Business Enterprises (M/WBE") and Minority Group Members and women participate in the economic benefits generated by ESD's participation in projects or initiatives, and/or the use of ESD funds.

Each proposing bidder must represent and warrant that, if successful in obtaining a Contract, it shall (i) comply with the provisions of this section relating to Non-Discrimination and Affirmative Action and (ii) require its Contracting Parties and/or employees to comply with any and all federal, State and local law, policy, orders, rules and regulations which prohibit discrimination in employment or hiring because of the race, creed, color, national origin, sex, sexual orientation, age, disability or marital status of any individual.

An Equal Employment Opportunity ("EEO") Policy Statement shall be included as part of the response to any RFP. The respondent's EEO Policy Statement shall contain, but not necessarily be limited to, and the respondent, **as a precondition to entering into a valid and binding Contract**, shall, during the performance of said Contract, agree to the following:

- (i) The Contracting Party will (a) not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (b) undertake or continue existing programs of affirmative action to ensure that M/WBE's, Minority Group Members and women are afforded equal employment opportunities without discrimination, and (c) make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce relative to Contracts executed by ESD on projects or initiatives utilizing EDS funds.
- (ii) The Contracting Party 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, sexual orientation, age, disability or marital status.
- (iii) At the request of ESD, the Contracting Party 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, sexual orientation, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.

Any respondent submitting a proposal shall include a Staffing Plan (Schedule A-1) of the anticipated workforce to be utilized on said Contract or, where required, information on the respondent's total workforce, including apprentices, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by ESD.

The selected consultant is encouraged to consider forming joint ventures, associations, partnerships, or other similar entities with M/WBE firms, and to provide for the meaningful participation of M/WBE firms, minority group members and women on ESD contracts, where appropriate or feasible.

Upon commencement of the Contract and quarterly thereafter during the term of the Contract, the Contracting Party shall submit to the AAO a Workforce Employment Utilization Report (Schedule A-3) of the workforce actually utilized on the Contract, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO. In the case where the Contracting Party's and/or subcontractor's workforce does not change within the quarterly period, the Contracting Party shall so notify the AAO in writing. Accuracy of the information contained in the reporting documentation (Schedules A-1 and A-3) shall be certified to by an owner or officer of the Contracting Party.

ATTACHMENT

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth herein, and as developed by Empire State Development (“ESD”).

Affirmative Action Officer (“AAO”)

Shall mean ESD’s Affirmative Action Officer or his/her designee, managing the affirmative action program for ESD.

Contract

Shall mean (i) a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a **Contracting Party**, providing for a total expenditure in excess of \$5,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in whole or in part with ESD funds and (ii) any loan or grant agreement funded in whole or in part with ESD funds.

Contracting Party

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by ESD and (ii) **any borrower or grantee** receiving funds from ESD pursuant to a loan or grant document.

Subcontract

Shall mean an agreement providing for a total expenditure in excess of \$1,500 between a **Contracting Party** and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESD funds.

Minority Business Enterprise (“MBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Women-owned Business Enterprise (“WBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Best Efforts - Minority and Women-owned Business Enterprise Participation

Best efforts are not limited to the efforts specified herein, and (ii) the role of M/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women's trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work, including the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/WBE participation on the Contract;
- (e) Utilizing the resources of the ESD Affirmative Action Unit to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts;
- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Contracting Party will meet its obligations herein; and
- (g) Remitting payment in a timely fashion.
- (h) A Contracting Party's best efforts will be assessed by examining the total dollar value of the work performed by M/WBEs. The total dollar value of the work performed by M/WBEs will be determined as:
(i) the dollar value of the work subcontracted to M/WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more M/WBEs -- the contract price multiplied by the percentage of the entity's profits/losses which are to accrue to M/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party -- the contract price.

Best Efforts - Minority Group Member and Female Workforce Participation

The Contracting Party shall use best efforts to provide for meaningful Minority Group Member and female workforce participation; such best efforts shall include at least the following in connection with the work:

- (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at the premises. The Contracting Party shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain such a working environment, with specific attention to Minority Group Member or female individuals working at the premises;
- (b) State in all solicitations or advertisement for employees that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, sexual orientation, age disability or marital status;
- (c) Send to each labor union or representative of workers with which a collective bargaining agreement or understanding is in place, a notice advising the said labor union or workers' representative of commitments under this Section, and post copies of the notice in conspicuous places available to employees and applicants for employment;

- (d) Establish and maintain a current list of Minority Group Member and female recruitment sources and community organizations, and provide written notification to them when employment opportunities are available. Maintain a record of the organizations' responses;
- (e) Maintain a current file of the name, address and telephone number of each Minority Group Member and female applicant and any referrals from a union, recruitment source or community organization, and of the action taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back by the union or, if referred, was not employed, this shall be documented in writing in the file with the reasons therefore, along with whatever additional actions the Contracting Party may have taken;
- (f) Disseminate the Contracting Party's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in meeting its Equal Employment Opportunity obligations, by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, and other similar items, by specific review of the policy with all management personnel and with all Minority Group Member and female employees at least once a year, and by posting the company Equal Employment Opportunity policy on bulletin boards accessible to all employees at each location where work is performed under this Contract;
- (g) Disseminate the Contracting Party's Equal Employment Opportunity policy externally by including it in any advertising in the news media, specifically including Minority Group Member and female news media, and providing written notification to and discussing the Equal Employment Opportunity policy with any contractor with whom the Contracting Party does or anticipates doing business; and,
- (h) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.
- (i) A Contracting Party's best efforts will be assessed by calculating a percentage equal to the person hours of training and employment of minority or female workers, as the case may be, used by any Contracting Party, divided by the total person hours of training and employment of all workers (including supervisory personnel).
- (j) The required participation for minority and female employment and training must be substantially uniform throughout the work.
- (k) Contracting Party shall not participate in the transfer of minority or female employees or trainees from employer-to-employer or from project-to-project for the sole purpose of meeting the Contracting Party's obligations herein.
- (l) In striving to provide for meaningful M/FWF participation, Contracting Party shall use its best efforts to identify and employ qualified minority and female supervisory personnel and journey persons.
- (m) The non-working hours of trainees or apprentices may not be considered in measuring M/FWF participation unless: (i) such trainees or apprentices are employed by Contracting Party during the training period; (ii) the Contracting Party has made a commitment to employ the trainees or apprentices at the completion of their training, subject to the availability of employment opportunities; and (iii) the trainees are trained pursuant to an approved training program.

ATTACHMENT

SCHEDULE A-1
STAFFING PLAN

SCHEDULE A-1

STAFFING PLAN

Project/RFP Title _____ Location of Contract _____

Contractor/Firm Name _____ Address _____

County _____

Zip _____

City _____

State _____

Zip _____

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

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

CERTIFICATION:

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

Signature _____ Date _____ Telephone Number _____

Forward to:

Empire State Development
 Affirmative Action Unit - Laverne Poole
 633 Third Avenue
 New York, NY 10017

Office: (212) 803-3224

Fax: (212) 803-3223

CONTRACTORS STAFFING PLAN
Instructions for Completion

PURPOSE:

The Contractors Staffing Plan is prepared by all contractors providing good, products and merchandise, or services (skilled and non-skilled) or professional consulting services (inclusive of professional construction consultant services) to a state agency. The plan is required prior to the award of a contract and contains the anticipated staff assignments during the contract. **In instances where that cannot be identified, the contractor may identify the total work force of the company.** The form will be reviewed by state agencies for the purposes of equal employment opportunity requirements.

GENERAL INFORMATION:

1. **Project/RFP Title:** describe the project for which you are competing as indicated on the RFP/RFB document.
2. **Location of Contract:** the company's location and postal zip code.
3. **Contractor/Firm Name:** the company that will be providing the workforce. Include *address* with city name, state and zip code.
4. **Check applicable categories:**
(1) *Staff Estimated include: Contract/Project Staff* (check in cases where the workers to be assigned can be determined, **Total Work Force** (check in the event the contract work force cannot yet be determined, **Subcontractors** (check if the work force for the project is that of a subcontractor).
(2) *Type of Contract: Construction Consultants, Commodities, Services/Consultants* (check appropriate box).

TOTAL ANTICIPATED WORK FORCE:

1. **Federal Occupational Category:** The contractor's work force is broken down and reported by the nine Federal Occupational Categories (FOC's) consistent with the Federal government's EEO-1 categories for the private sector labor force. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.
2. **Total Number of Employees:** Record the total number of all persons employed in each FOC regardless of ethnicity (either to be assigned to the contract/project staff OR in the company's total work force, as indicated by the categories selected in number 4 (1) Staff Estimated, of the General Information. Report the number of male employees in column (1), and the total number of female employees in column (2) for each FOC. In columns (3) through (10), report the number of male and female *minority* group member, based on the following defined groups:

Black (not of Hispanic origin): all persons having origins in any of the Black African racial groups.

Hispanic: all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race.

Asian or Pacific Islander: all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

Native American or Alaskan Native: all persons having origins in any of the original peoples of North America.

TOTAL PERCENT MINORITY:

Add all minority group members (male and female) columns (3) through (10), divide by the total numbers of all employees in that FOC (columns 1 + 2). Post the percentage result for that FOC. [Total number of minority employees (columns 3 through 10) / Total number of employees (columns 1 and 2)].

TOTAL PERCENT FEMALE:

Divide the number of female employees (column 2) in the FOC, by the total number of both Male and Female (column 1 + 2). Post the percentage result for that FOC. [Total female employees (column 2)) total number of employees (columns 1 and 2)].

TOTALS:

To compute the column totals, add vertically. *Total Percent Minority Employees and Total Percent Female Employees* should be calculated as shown above, using the summed column totals.

The Contractors Staffing Plan is to be completed by the prime contractor and signed and dated by an authorized representative before submission. The *Company Official's Name, Title, Telephone Number, Signature and Date* signed should be provided where indicated on the form.

ATTACHMENT

SCHEDULE A-2
SCHEDULE OF MINORITY/WOMEN-OWNED BUSINESS
PARTICIPATION

SCHEDULE A-2

SCHEDULE OF MINORITY/WOMEN OWNED BUSINESS PARTICIPATION

(No substitutions may be made on this submission except by prior written approval from Empire State Development)

_____ Project: _____ Trade: _____
 Name of Bidder
 _____ Bidder's Contract Amount: _____
 Address
 _____ Telephone Number: () _____

Name/Address/Phone No. of Minority/Women-owned Business	MBE or WBE	Joint Venture, Subcontractor or Supplier	Scope of Work to be Performed	Proposed Contract Price or Purchase Amount & Percentage

CERTIFICATION:
 I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Schedule of Minority/Women Owned Business Participation and (ii) to the best of my knowledge, information and belief the information herein is complete and accurate.

Signature _____ Date _____

Forward to:
 Empire State Development
 Affirmative Action Unit - Laverne Poole
 633 Third Avenue
 New York, NY 10017
 Office: (212) 803-3224 Fax: (212) 803-3223

ATTACHMENT
SCHEDULE A-3
WORKFORCE EMPLOYMENT UTILIZATION REPORT

WORKFORCE EMPLOYMENT UTILIZATION REPORT
NON-CONSTRUCTION
Instructions for Completion

PURPOSE:

The *Workforce Employment Utilization Report For Non-Construction Firms* is prepared by all contractors, and subcontractors if any, supplying commodities or providing professional construction consulting or consulting services (skilled or non-skilled) to a state agency to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the *contract specific work force* can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific workforce *cannot* be separated out, the contractor's *total workforce* is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractors compliance with the contracts equal employment opportunity requirements.

GENERAL INFORMATION:

1. **Name of contracting state agency** and state agency code (five-digit code).
2. **Reporting period** covered by report (mm/dd/yy); **check** to indicate *Quarterly or Semi-Annual* Report.
3. **Contractor firm name** (prime contractor on summary report submitted to agency) and **address** (including city name, state and zip code); **check** if the contractor is a NOT-FOR-PROFIT.
4. **Type of Report:** **check** to indicate whether report covers (i) the *Contract Specific Workforce* or (ii) the *Company's Total Workforce* (in the event the contract specific workforce cannot be separated out).
5. Contractor **Federal Employer Identification number** or payee identification number (prime contractor i.d. on summary report); **check** to indicate prime or subcontractor report.
6. **Contract Amount** is dollar amount based on terms of the contract.
7. **Contract number** is the agency assigned number given to the contract.
8. **Location of work** including county and zip code where work is performed.
9. Indicate **Product or Service provided** by contractor (brief description).
10. **Contract start date** is month/day/year work on contract actually began.
11. Contractor's **estimate of the percentage of work completed** at the end of this reporting period.

FEDERAL OCCUPATIONAL CATEGORIES:

The contractor's workforce is broken down and reported by the nine *Federal Occupational Categories (FOC's)* consistent with the Federal government's EEO-1 categories for the private sector labor force. These are: *Officials and Managers, Professionals, Technicians, Sales, Office & Clerical (Administrative Support), Craft Workers, Operatives, Laborers, and Service Workers*. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

TOTAL NUMBER OF EMPLOYEES:

Record the *total number of all persons employed* in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total workforce, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) through (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- X **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- X **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- X **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands;

X *Native American or Alaskan Native*: all persons having origins in any of the original peoples of North America.

TOTAL PERCENT MINORITY = sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

TOTAL PERCENT FEMALE = total number of female employees in the FOC (column 2) divided by the total number of all employees in that FOC (column 1 + column 2).

TOTALS:

Column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

SUBMISSION:

The workforce utilization report is to be completed by both prime and subcontractors and **signed and dated** by an *authorized representative* before submission. This **Company Official's name, official title and telephone number** should be printed or typed where indicated on the bottom of the form.

The **prime contractor** shall complete a report for its own workforce, **collect** reports completed by each subcontractor, and **prepare a summary report for the entire combined contract workforce**. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N of the NYCRR pursuant to Article 15-A of the Executive Law*.

COMPANY EMPLOYMENT DATA (Sections A through C):

The Contractor shall also include with the first Workforce Employment Utilization Report and as part of the documentation required for final payment, such data describing: a) the total number of company employees at commencement of the project, b) the total number of company employees at the completion of the project and c) any net increases in the number of employees in the company. Net increases in employment shall be further classified by ethnicity, gender and Occupational Code; and shall be attributable to the contractor's participation in an ESD project or initiative.

- A. Total Company Employees: Total number of company employees in N.Y.S. offices, upon commencement of project. Classify employee by gender, ethnicity and occupation.
- B. Total Company Employees: Total number of company employees in N.Y.S. offices, upon completion of project. Classify employee by gender, ethnicity and occupation.
- C. Net Increase (C1 and C2): Provide information identifying any net increase in the number of employees in the company upon project completion. Classify any new employee by gender, ethnicity and occupation.

OCCUPATIONAL CODES

Officials/Administrators	100
Professionals	110
Technicians	120
Sales Workers	130
Office & Clerical	140
Craft Workers	150
Operatives	160
Laborers	170
Service Workers	180

FORWARD TO:

Empire State Development
Affirmative Action Unit – Helen Daniels
633 Third Avenue
New York, NY 10017-6754
Office: (212) 803-3225 FAX: (212) 803-3223

ATTACHMENT

SCHEDULE A-4

NYS M/WBE CERTIFIED CONSULTANTS LISTING

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Les Thompson
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Nerou Neil Cheng
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John Hsu
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Elizabeth Young
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Manika Gulati
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RIVERA SIERRA & COMPANY

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SY ROSE LLC

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BLUE CARDINAL, LLC

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MEDCO CONSULTANTS

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STRATES CORPORATION

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KNOWLEDGE TRANSFER GROUP, INC.

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Kelly Bloss
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REDMOND WORLDWIDE, INC.

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Michael Redmond
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Gerrie Nachman
Management Consultants

ATTACHMENT
B-1

State Finance Law §139-j. Restrictions on contacts during the procurement process* (as amended by Chapters 56 and 395 of the Laws of 2006, Chapter 501 of the Laws of 2007, Chapter 169 of the Laws of 2009 and Chapter 4 of the Laws of 2010)

1. For the purposes of this section, the following terms will have the following meanings unless specified otherwise.
 - a. "Governmental entity" shall mean: (1) any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary; (2) each house of the state legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (7) a subsidiary or affiliate of such a public authority.
 - b. "Article of procurement" shall mean a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a governmental procurement.
 - c. "Contacts" shall mean any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity's conduct or decision regarding the governmental procurement.
 - d. "Proposal" shall mean any bid, quotation, offer or response to a governmental entity's solicitation of submissions relating to a procurement.

e. "Governmental procurement" shall mean: (i) the public announcement, public notice, or public communication to any potential vendor of a determination of a need for a procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer.

f. "Restricted period" shall mean the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, the state comptroller.

g. "Procurement contract" shall mean any contract or other agreement, including an amendment, extension, renewal or change order to an existing contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the contract as it was finally awarded or approved by the comptroller, as applicable), 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 eleven-B of this chapter, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, contracts governing organ transplants, contracts allowing for state participation in trade shows, and eminent domain transactions shall not be deemed procurement contracts.

h. "Offerer" shall mean the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that

communicates with the procuring agency regarding a governmental procurement in the exercise of its oversight duties shall not be considered an offerer.

i. "Revenue contract" shall mean any written agreement between a governmental entity, as that term is defined in subparagraphs one, four, five, six or seven of paragraph a of this subdivision, and an offerer whereby the governmental entity gives or grants a concession or a franchise.

j. "Unified court system" shall, for the purposes of this section only, mean the unified court system of the state of New York, or the office of court administration, where appropriate, other than town and village justice courts in jurisdictions with a population under fifty thousand, when it acts solely in an administrative capacity to engage in governmental procurements and shall not include the unified court system or any court of the state judiciary when it acts to hear and decide cases of original or appellate jurisdiction or otherwise acts in its judicial, as opposed to administrative, capacity.

2. Every governmental entity that undertakes a governmental procurement shall:

a. at the same time that a restricted period is imposed, designate, with regard to each governmental procurement, a person or persons who are knowledgeable about the procurement and who may be contacted by offerers relative to the governmental procurement;

b. make any determinations on any governmental procurement: (1) in a manner consistent with the principles provided for under subdivision two of section one hundred sixty-three of this chapter, or, if the governmental entity is a public benefit corporation, as that term is defined in section sixty-six of the general construction law, and the majority of the members consist of persons either appointed by the governor or who serve as members by virtue of holding a civil office of the state, the procurement guidelines adopted pursuant to section twenty-eight hundred seventy-nine of the public authorities law, and (2) free from any conduct that would be prohibited by subdivision five of section seventy-three or section seventy-four of the public officers law, or of other applicable ethics code provisions that are equivalent to subdivision five of section seventy-three or section seventy-four of the public officers law where the public officials that are involved in the governmental procurement are not subject to subdivision five of section seventy-three or section seventy-four of the public officers law;

3. Each offerer that contacts a governmental entity about a governmental procurement shall only make permissible contacts with respect to the governmental procurement, which shall mean that the offerer:

a. shall contact only the person or persons who may be contacted by offerers as designated by the governmental entity pursuant to paragraph a of subdivision two of this section relative to the governmental procurement, except that the following contacts are exempted from the provisions of this paragraph and do not need to be directed to a designated contact pursuant to section one hundred thirty-nine-k of this article:

(1) the submission of written proposals in response to a request for proposals, invitation for bids or any other method for soliciting a response from offerers intending to result in a procurement contract;

(2) the submission of written questions by a method set forth in a request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract, when all written questions and responses are to be disseminated to all offerers who have expressed an interest in the request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract;

(3) participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract;

(4) complaints by an offerer regarding the failure of the person or persons designated by the procuring governmental entity pursuant to this section to respond in a timely manner to authorized offerer contacts made in writing to the office of general counsel of the procuring governmental entity, provided that any such written complaints shall become a part of the procurement record;

(5) offerers who have been tentatively awarded a contract and are engaged in communications with a governmental entity solely for the purpose of negotiating the terms of the procurement contract after being notified of tentative award;

(6) contacts between designated governmental entity staff of the procuring governmental entity and an offerer to request the review of a procurement contract award;

(7) (a) contacts by offerers in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before the governmental entity conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding; or

(b) complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction; or

(c) protests, appeals or complaints to the state comptroller's office during the process of contract approval, where the state comptroller's approval is required, provided that the state comptroller shall make a record of such communications and any response thereto which shall be entered into the procurement record pursuant to section one hundred sixty-three of this chapter; or

(d) complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the state comptroller's office;

(8) communications between offerers and governmental entities that solely address the determination of responsibility by a governmental entity of an offerer;

(9) Any communications relating to a governmental procurement made under section one hundred sixty-two of the state finance law undertaken by (i) the non-profit-making agencies appointed pursuant to paragraph e of subdivision six of section one hundred sixty-two of the state finance law by the commissioner of the office of children and family services, the commission for the blind and visually handicapped, or the commissioner of education, and (ii) the qualified charitable non-profit-making agencies for the blind, and qualified charitable non-profit-making agencies for other severely disabled persons as identified in subdivision two of section one hundred sixty-two of this chapter; provided, however, that any communications which attempt to influence the issuance or terms of the specifications that serve as the basis for bid documents, requests for proposals, invitations for bids, or solicitations of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a state agency, the state legislature, the unified court system, a municipal agency or local legislative body shall not be exempt from the provisions of this paragraph; provided, however, that nothing in this subdivision shall be construed as recognizing or creating any new rights, duties or responsibilities or abrogating any existing rights, duties or responsibilities of any governmental entity as it pertains to implementation and enforcement of

article eleven of this chapter or any other provision of law dealing with the governmental procurement process, and that nothing in this subdivision shall be interpreted to limit the authority of a governmental entity involved in a government procurement by exercise of an oversight function from providing information to offerers regarding the status of the review, oversight, or approval of a governmental procurement that has been submitted to or is under review by that governmental entity.

b. shall not attempt to influence the governmental procurement in a manner that would result in a violation or an attempted violation of subdivision five of section seventy-three or section seventy-four of the public officers law, or of other applicable ethics code provisions that are equivalent to subdivision five of section seventy-three or section seventy-four of the public officers law where the public officials that are involved in the governmental procurement are not subject to subdivision five of section seventy-three or section seventy-four of the public officers law;

4. Violations of paragraph a of subdivision three of this section shall include any contacts during the restricted period of a governmental procurement between the offerer and any member, officer or employee of any governmental entity other than the entity conducting the governmental procurement; provided, however, that nothing in this section shall be deemed to prohibit an offerer from communicating with a member of the state legislature or legislative staff about a governmental procurement being conducted by a governmental entity other than the state legislature, or a member of the state legislature or legislative staff contacting a governmental entity about a governmental procurement being conducted by a governmental entity other than the state legislature, provided that the member of the state legislature or legislative staff is acting in his or her official capacity.

5. Governmental entity staff may consult the model guidelines that may be established by the advisory council on procurement lobbying pursuant to section one-t of the legislative law in implementing this section.

6. a. Every governmental entity shall incorporate a summary of the policy and prohibitions regarding permissible contacts during a governmental procurement pursuant to subdivision three of this section, and copies of rules and regulations and applicable governmental entity guidelines and procedures regarding permissible contacts during a governmental

procurement pursuant to subdivision three of this section into their solicitation of proposals or bid documents or specifications for all procurement contracts.

b. 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. Such a written affirmation by an offerer shall be deemed to apply to any amendments to a procurement submitted by the governmental entity after an initial affirmation is received with an initial bid.

7. Notwithstanding any law to the contrary, prior to conducting an award of a procurement contract, a governmental entity conducting a governmental procurement shall make a final determination of responsibility of the proposed awardee in accordance with paragraph f of subdivision nine of section one hundred sixty-three of this chapter, or, if the governmental entity is a public benefit corporation, as that term is defined in section sixty-six of the general construction law, and the majority of the members consist of persons either appointed by the governor or who serve as members by virtue of holding a civil office of the state, according to the procurement guidelines adopted pursuant to subparagraph (iii) of paragraph (b) of subdivision three of section twenty-eight hundred seventy-nine of the public authorities law; provided, however, that nothing in this subdivision shall be construed as abrogating or diminishing any existing rights, duties or responsibilities of any governmental entity as it pertains to determinations of responsibility.

8. Any member, officer or employee of a governmental entity who becomes aware that an offerer has violated the provisions of subdivision three of this section with regard to permissible contacts during any governmental procurement shall immediately notify the ethics officer, inspector general, if any, or other official of the procuring governmental entity responsible for reviewing or investigating such matters. If an offerer violates the provisions of subdivision three of this section with regard to permissible contacts at a governmental entity other than the governmental entity conducting the governmental procurement, the member, officer or employee who becomes aware of the violation shall notify the ethics officer, inspector general, if any, or other official of the governmental entity responsible for reviewing or investigating such matters where that member, officer or employee works, who shall in turn notify the ethics officer, inspector general, if any, or other official of the procuring

governmental entity responsible for reviewing or investigating such matters at the procuring governmental entity.

9. Every governmental entity shall establish a process for review by its ethics officer, inspector general, if any, or other official responsible for reviewing or investigating any allegations of violations of the provisions of subdivision three of this section with regard to permissible contacts on governmental procurements, and for the imposition of sanctions if such violations have been found to exist.

10. a. Upon notification of any allegation of a violation of the provisions of subdivision three of this section with regard to permissible contacts on governmental procurements, the governmental entity's ethics officer, inspector general, if any, or other official of the procuring governmental entity responsible for reviewing or investigating such matters shall immediately investigate such allegation and, if sufficient cause exists to believe that such allegation is true, shall give the offerer reasonable notice that an investigation is ongoing and an opportunity to be heard in response to the allegation.

b. A finding that an offerer has knowingly and willfully violated the provisions of subdivision three of this section shall result in a determination of non-responsibility for such offerer, and such offerer and its subsidiaries, and any related or successor entity with substantially similar function, management, board of directors, officers and shareholders (hereinafter, for the purposes of this paragraph "offerer"), shall not be awarded the procurement contract, unless the governmental entity finds that the award of the procurement contract to the offerer is necessary to protect public property or public health or safety, and that the offerer is the only source capable of supplying the required article of procurement within the necessary timeframe, provided, that the governmental entity shall include in the procurement record a statement describing the basis for such a finding. Any subsequent determination of non-responsibility due to violation of this section within four years of a determination of non-responsibility due to a violation of this section shall result in the offerer being rendered ineligible to submit a proposal on or be awarded any procurement contract for a period of four years from the date of the second final determination. Every governmental entity shall ensure that its solicitations of proposals for procurement contracts require offerers to disclose findings of non-responsibility due to violations of the provisions of subdivision three of this section within the previous four years by any governmental entity. The

failure of offerers to timely disclose accurate and complete information or otherwise cooperate with the governmental entity in administering this provision shall be considered by the governmental entity in its determination of responsibility; provided, further, that the governmental entity shall not award a contract to an offerer who fails to timely disclose accurate and complete information or otherwise cooperate with the governmental entity in administering this provision unless the governmental entity finds that the award of the procurement contract to the offerer is necessary to protect public property or public health or safety, and that the offerer is the only source capable of supplying the required article of procurement within the necessary timeframe, provided, that the governmental entity shall include in the procurement record a statement describing the basis for such a finding. Upon a determination of non-responsibility or debarment due to a violation of this section, the governmental entity shall notify the office of general services, which shall keep a list of all offerers who have been determined to be nonresponsible bidders or debarred due to violations of this section; the office of general services shall make publicly available such list and shall publish such list on its web site.

c. If a violation of the provisions of subdivision three of this section is found to have knowingly and willfully occurred, then the ethics officer or inspector general, if any, or other official of the procuring governmental entity responsible for reviewing or investigating such matters shall report instances of employee violation of the guidelines and procedures regarding implementation of subdivision two of this section to the governmental entity's head.

11. Nothing in this section shall be deemed to prevent: (a) contacts by offerers in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before the governmental entity conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding; or

(b) complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction; or

(c) written protests, appeals or complaints to the state comptroller's office during the process of contract approval, where the state comptroller's approval is required by law, and where such communications and any responses thereto are made in writing and shall be entered in the procurement record pursuant to section one hundred sixty-three of this chapter; or

(d) complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the state comptroller's office; provided, however, that nothing in this subdivision shall be construed as recognizing or creating any new rights, duties or responsibilities or abrogating any existing rights, duties or responsibilities of any governmental entity as it pertains to implementation and enforcement of article eleven of this chapter or any other provision of law dealing with the governmental procurement process.

* NB Repealed July 31, 2014

ATTACHMENT B-2

State Finance Law §139-k. Disclosure of contacts and responsibility of offerers* (as amended by Chapter 395 of the Laws of 2006, Chapter 501 of the Laws of 2007, Chapter 169 of the Laws of 2009 and Chapter 4 of the Laws of 2010))

1. For purposes of this section, the following terms will have the following meanings unless specified otherwise.

a. "Governmental entity" shall mean: (1) any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary; (2) each house of the state legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) a public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (7) a subsidiary or affiliate of such a public authority.

b. "Article of procurement" shall mean a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a governmental procurement.

c. "Contacts" shall mean any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was

intended to influence the governmental entity's conduct or decision regarding the governmental procurement.

d. "Proposal" shall mean any bid, quotation, offer or response to a governmental entity's solicitation of submissions relating to a procurement.

e. "Governmental procurement" shall mean: (i) the public announcement, public notice, or public communication to any potential vendor of a determination of a need for a procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer.

f. "Restricted period" shall mean the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, the state comptroller.

g. "Procurement contract" shall mean any contract or other agreement, including an amendment, extension, renewal, or change order to an existing contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the contract as it was finally awarded or approved by the comptroller, as applicable), 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 eleven-B of this chapter, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, contracts governing organ transplants, contracts allowing for state participation in a trade show, and eminent domain transactions shall not be deemed procurement contracts.

h. "Offerer" shall mean the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicates with the procuring agency regarding a governmental procurement in the exercise of its oversight duties shall not be considered an offerer.

i. "Revenue contract" shall mean any written agreement between a governmental entity, as that term is defined in subparagraphs one, four, five, six or seven of paragraph a of this subdivision, and an offerer whereby the governmental entity gives or grants a concession or a franchise.

j. "Unified court system" shall, for the purposes of this section only, mean the unified court system of the state of New York, or the office of court administration, where appropriate, other than town and village justice courts in jurisdictions with a population under fifty thousand, when it acts solely in an administrative capacity to engage in governmental procurements and shall not include the unified court system or any court of the state judiciary when it acts to hear and decide cases of original or appellate jurisdiction or otherwise acts in its judicial, as opposed to administrative, capacity.

2. Each governmental entity shall ensure that solicitation of proposals or bid documents or specifications, or contract documents, as applicable, for procurement contracts shall require offerers to disclose findings of non-responsibility made within the previous four years by any governmental entity where such prior finding of non-responsibility was due to: (a) a violation of section one hundred thirty-nine-j of this article, or (b) the intentional provision of false or incomplete information to a governmental entity.

3. The failure of an offerer to timely disclose accurate or complete information to a governmental entity pursuant to subdivision two of this section shall be considered by such governmental entity in its determination of the responsibility of such offerer. No procurement contract shall be awarded to any such offerer, its subsidiaries, and any related or successor entity with substantially similar function, management, board of directors, officers and shareholders (hereinafter, for the purposes of this subdivision, "offerer"), unless the governmental entity finds that the award of the procurement contract to the offerer is necessary

to protect public property or public health or safety, and that the offerer is the only source capable of supplying the required article of procurement within the necessary timeframe, provided, that the governmental entity shall include in the procurement record a statement describing the basis for such a finding.

4. Upon any contact in the restricted period, the governmental entity shall obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact and inquire and record whether the person or organization making such contact was the offerer or was retained, employed or designated by or on behalf of the offerer to appear before or contact the governmental entity about the governmental procurement. All recorded contacts shall be included in the procurement record for the procurement contract.

5. Any procurement contract award subject to the provisions of this section and section one hundred thirty-nine-j of this article shall contain a certification by the offerer that all information provided to the procuring governmental entity with respect to this section is complete, true and accurate, and each such procurement contract shall contain a provision authorizing the governmental entity to terminate such contract in the event such certification is found to be intentionally false or intentionally incomplete. The governmental entity shall include in the procurement record a statement describing the basis for any action taken pursuant to such termination provision.

6. Any 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.

* NB Repealed July 31, 2014