

## **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 unlawful 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/WBEs), Minority Group Members and women share in the economic opportunities generated by ESD's participation in projects or initiatives, and/or the use of ESD funds.

Each proposing respondent 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 unlawful discrimination in employment or hiring because of the race, creed, color, national origin, sex, sexual orientation, age, disability or marital status of any individual.

A copy of the respondent's 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 unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce relative to contracts executed by ESD or to projects or initiatives utilizing ESD funds. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (ii) At the request of ESD, the Contracting Party shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, 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 the anticipated workforce cannot be identified, 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 contractor shall, to the extent permitted by law, agree to undertake a program of affirmative action as directed by and substantially in accordance with the affirmative action program of ESD. ESD requests that respondents agree to use their best efforts to provide for the meaningful participation of M/WBEs, Minority Group Members and women; and implement the following affirmative action program for the development work (the "work") as set forth in the RFP.

- ESD's non-discrimination and affirmative action policy will apply to this contract. This policy assigns M/WBE participation programs. ESD's Affirmative Action Unit, in consultation with relevant parties, will develop an appropriate M/WBE program for this contract.

The selected contractor is required to use its best efforts to consider forming joint ventures, associations, partnerships, or other similar entities with M/WBE firms, where appropriate or feasible, to assist in meeting this affirmative action program.

Respondents are requested to complete Schedule A-2 to denote the subcontractors that the respondents propose to use in achieving M/WBE participation.

Upon commencement of the project and quarterly thereafter during the term of the project, the Contracting Party shall submit to the AAO a Workforce Employment Utilization Report (Schedule A-3) of the workforce actually utilized on the project, 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 through A-3) shall be certified to by an owner or officer of the Contracting Party.

The Contracting Party 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 occupation code.

The AAO is available to assist you in identifying New York State certified M/WBEs that can provide goods and services in connection with the project. If you require M/WBE listings, please call the AAO at (212) 803-3225.