

**NEW YORK STATE  
URBAN DEVELOPMENT CORPORATION d/b/a Empire State Development**

**FULL-SERVICE ADVERTISING, MARKETING, BRANDING,  
MEDIA, AND COMMUNICATIONS AGENCY**

**for**

**BUSINESS MARKETING CAMPAIGN**

**Request for Proposal, Part II**

**PROPOSAL DUE DATE: September 16, 2011 by 3:00 PM EST  
(Late proposals cannot be accepted)**

**Released date: August 25, 2011**

**Request For Proposal (RFP) Response Form**

**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 occurs, and where a company's business is managed, conducted and directed, regardless of where the administrative departments or the physical property of the business are located. For purposes of determining the principal place of business, a foreign business enterprise's principal place of business is not necessarily the same as its state of incorporation. In sum, the 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 mail this form to: Harvey Cohen, 633 3<sup>rd</sup> Avenue, 34<sup>th</sup> Floor, New York, NY 10017.

NEW YORK STATE  
URBAN DEVELOPMENT CORPORATION  
REQUEST FOR PROPOSAL (RFP)

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**APPENDIX A – BUDGET**

(Prepare 3 budget packets assuming the following Total Budgets: \$10, \$25 and \$50 million)

**This budget section must be separately bound from the rest of your proposal. Complete the budget for this project in full. Enter actual amounts, not “ranges.”**

**RATES APPLY TO:**  Initial Two-Year Term  First Renewal Year  Second Renewal Year

<u>Media Commission</u> % will be applied to gross media expenditure		%	
<u>Production Expense</u> All production expenses incurred in-house (except with respect to Personnel as identified below) or out-of-house, shall be billed at actual cost with no mark-up due the Contractor.			
<u>Personnel</u>	Number of Hours Annually	Billing Rate per Hour \$	Annual Total \$ <b>(Hours x Billing Rate)</b>
Specific Personnel 1/ Account Management Creative Management Production Management Media Buyer Web Site Design/Production Digital Media Production	_____ _____ _____ _____ _____	_____ _____ _____ _____ _____	_____ _____ _____ _____ _____
Other Personnel 2/ 1. All Other Professionals 2. Clerical 3. _____ 4. _____ 5. _____	_____ _____ _____ _____ _____	_____ _____ _____ _____ _____	_____ _____ _____ _____ _____
<u>Administrative Expenses</u> (Billed at actual cost, no mark-up permitted) Telecommunications Supplies Legal & Other Professional General administrative _____ _____			Annual Total \$ _____ _____ _____ _____ _____
<u>Grand Total Prsnel./Admnstrtv. Expenses</u>			_____
<u>Travel</u> Travel expense incurred shall be reimbursed in accordance with State rates, as identified in Appendix B of this RFP.			

APPENDIX B

NYS CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES

1. Allowance for lodging and meals have been set at the Federal Government allowances for their employees. The State allowance will change when the Federal allowances change. This usually occurs on an annual basis. Reimbursements will be made at the current published rates.

Receipts for lodging are mandatory. Receipts are not required for meals when the traveler is in overnight travel status. The Schedule which lists rates currently in effect for all destinations within the State is available at the New York State Office of the State Comptroller's website: <http://www.osc.state.ny.us/agencies/travel/reimbrate.htm>

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

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

Rates for areas outside of New York, the continental United States and foreign areas, are also available at the New York State Office of the State Comptroller's Website at: <http://www.osc.state.ny.us/agencies/travel/reimbrate.htm>

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

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

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

3. No reimbursement will be allowed for lunch.
4. To be entitled to full meal allowances, traveler must be in travel status overnight and eligible for reimbursement for breakfast and dinner.
5. Meal Allowance for Non-Overnight Travel  
When a traveler is in travel status for less than a day and lodging charges are not incurred, reimbursement will be made for breakfast and dinner with receipts, at the following maximum rates:

	Breakfast	Dinner
\$71 Meal Allowance	\$14	\$57
\$66 Meal Allowance	\$13	\$53
\$61 Meal Allowance	\$12	\$49
\$56 Meal Allowance	\$11	\$45
\$51 Meal Allowance	\$10	\$41
\$46 Meal Allowance	\$9	\$37

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

#### 6. Transportation Costs

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

Receipts/air passenger coupons are required for reimbursement.

Transportation by personally owned automobiles will be reimbursed at the IRS rate in effect at the time of travel unless ESD agrees to an alternative rate. The mileage rate for the calendar year 2011, effective January 1, 2011 is .51 cents per mile.

All taxi charges must be substantiated by a receipt.

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

## APPENDIX C

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

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

#### Statutory Summary

Changes to the New York State Finance Law (referred to as the “new State Finance Law”) effective January 1, 2006, significantly alter the administrative process for the development of State procurement contracts<sup>1</sup>. The procedures discussed herein are put in place to address the new State Finance Law. Empire State Development (ESD) recognizes the considerable additional responsibility that the new State Finance Law places on potential bidders (“Offerers”) as well as on ESD and we regret any inconvenience. ESD 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 ESD.
- Requires ESD to record all contacts made by lobbyists and contractors (you) about a governmental procurement so that the public knows who is contacting ESD about procurements.
- Requires ESD to designate persons who generally may be the only staff contacted relative to ESD’s procurement in a restricted period.
- Authorizes the imposition of fines and penalties against persons/organizations engaging in impermissible contacts about ESD 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.

#### Empire State 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 ESD 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 ESD 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 ESD’s Contract Management or Publications Unit. To avoid conflicts and other issues concerning statutory exceptions, ESD requires that Offerers contact only ESD staff identified in the aforementioned section of this solicitation. ESD employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the 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.

#### Termination Provisions

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<sup>1</sup> “Procurement contract” shall mean any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, article eleven-B state finance law contracts, program contracts between not-for-profit organizations, as defined in article X1-B of the state finance law, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed procurement contracts.

ESD 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, ESD 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.

Empire State Development 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 ESD 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.

ESD 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).

Empire State Development 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 EMPIRE STATE DEVELOPMENT WHENEVER YOU CONTACT US DURING THE DESIGNATED PERIOD. ATTEMPTS TO CONTACT ESD 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 ESD's intention to record all Contacts.

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

To: Urban Development Corporation d/b/a Empire State 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

**APPENDIX D**

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

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

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

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not 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 \_\_\_\_\_, 2011 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

## **APPENDIX E**

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

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

- (1) has business operations in Northern Ireland;

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

if yes:

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

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

---

Signature

Date

**APPENDIX F**

**NEW YORK STATE RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY**

[http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)

*This form is attached separately but must be completed and returned along with all other RFP materials to Harvey Cohen by 3:00pm EST on September 16, 2011.*

**APPENDIX G**

**CONTRACTOR CERTIFICATION TO COVERED AGENCY**

[http://www.tax.ny.gov/pdf/2007/fillin/st/st220td\\_507\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/2007/fillin/st/st220td_507_fill_in.pdf)

*This form is attached separately but must be completed and returned along with all other RFP materials to Harvey Cohen by 3:00pm EST on September 16, 2011.*

**APPENDIX H**

**AFFIDAVIT OF NON-APPLICABILITY OF STATE TAX LAW § 5-A**

State of New York     }  
                                  } ss.:  
County of                }

\_\_\_\_\_ [state name], being duly sworn, do depose and state under penalty of perjury that I am the \_\_\_\_\_ [state title] of the contractor \_\_\_\_\_ [state name of contractor] responding to the procurement solicitation by the New York State Urban Development Corporation d/b/a Empire State Development or its subsidiary (collectively, "ESD") herein. I have read and am aware of the requirements of State Tax Law § 5-a with respect to registration with the New York State Department of Taxation and Finance ("NYSDTF") in connection with collection of sales and compensating use taxes imposed by Articles 28 and 29 of the State Tax Law. Neither the contractor nor any affiliate or sub-contractor as defined in the State Tax Law is registered or is required to be registered with NYSDTF for this purpose pursuant to any provision of the State Tax Law. I make this affidavit intending that ESD will rely thereon in considering the contractor's response to the solicitation, and with knowledge that any false information contained herein shall render the contractor's response to the solicitation non-responsive, and may result in other action by ESD including, without limitation, reporting the statement to relevant authorities.

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Sworn to before me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

STAMP My commission expires on \_\_\_\_\_

## APPENDIX I

### ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION CONSULTANT CONTRACT PROVISIONS

#### I. Policy

It is the policy of the State of New York and 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 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.

- 1) The Contracting Party represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
  - (a) Contracting Party shall (i) not 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 insure that Minority Group Members and women are afforded equal employment opportunities without discrimination, and (iii) make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on Contracts. Such action shall be taken with reference to, but not limited to, recruitment, employment, 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.
  - (b) At the request of the AAO, 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.
- (2) Upon commencement of the contract services and quarterly thereafter during the term of the Contract, the Contracting Party shall submit to the AAO a Workforce Employment Utilization Report (Schedule A-1) 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.
- (3) 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 contract services, b) the total number of company employees at completion of contract services 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.

The Contracting Party shall include, or cause to be included, the provisions of clauses (1) through (3) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

## II. Goals for Minority and Women-Owned Business Enterprise Participation

- (a) The Contracting Party is required to use its best efforts to achieve an overall M/WBE participation goal of 20% (15% minority and 5% women) of the total dollar value of the Contract.
- (b) The goal for M/WBE participation in the performance of the work is expressed as a percentage of the contract price.
- (c) 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 the M/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party -- the contract price.
- (d) The Contracting Party shall include, or cause to be included, the provisions of clauses (a) through (c) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

## III. Reporting Requirements

The Contracting Party will permit access to its books, records and accounts, with respect to the Contract, by the AAO for purposes of investigation to ascertain compliance with the provisions herein. Upon request, the Contracting Party shall periodically file, or cause to be filed, reports, substantially in the format attached hereto as Schedule A-1 and A-2 (MBE/WBE Compliance Report to be filed quarterly), with the AAO detailing compliance with the provisions of these non-discrimination and affirmative action clauses. Accuracy of the information contained in the reporting an owner or officer of the Contracting Party shall certify to documentation.

## IV. Non-Compliance and Sanctions

In the event that any Contracting Party violates any of the provisions herein, the ESD may require that the following sanctions and remedies for non-compliance be imposed:

- (a) Summon the Contracting Party for a hearing with the AAO.
- (b) After any such hearing, and a determination by the AAO that the Contracting Party has failed to comply with any of these provisions, and the passage of time in which to remedy such failure has transpired, this Contract may be canceled, terminated or suspended, in whole or in part. Alternatively, the AAO, in his/her sole discretion, may assess liquidated damages against the Contracting Party for failure to demonstrate its best efforts in complying with the affirmative action program. Liquidated damages may be assessed in an amount equal to the dollar value of Contracts that would have been realized by M/WBEs if the goals had been achieved.
- (c) If such an award is assessed against any Contracting Party, (i) the amount of such assessment may be withheld from any monies due to the Contracting Party by the ESD or; (ii) may be paid to the ESD by the Contracting Party that has been found to fail to comply with the affirmative action program. Any liquidated damages collected hereunder shall be paid into one or more M/WBE technical assistance funds administered by the ESD.
- (d) Such sanctions that may be imposed and remedies invoked here under shall be considered independent of, or in addition to, sanctions and remedies otherwise provided by law.

## **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 in Sections II herein, and developed by ESD.

### **Affirmative Action Officer (“AAO”)**

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

### **Best Efforts - Minority and Women-owned Business Enterprise Participation**

Best efforts are not limited to the efforts specified herein, and 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. Such record keeping must include 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 AAO to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts; and
- (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.
- (g) The Contracting Party shall remit payment in a timely fashion.

#### 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 the ESD and (ii) any borrower or grantee receiving funds from the ESD pursuant to a loan or grant document.

### **ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS**

#### 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.

#### 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.

#### 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’S WBE/MBE COMPLIANCE REPORT WHICH MUST BE FILED QUARTERLY  
WILL BE POSTED ON THE ESD WEBSITE AT THE FOLLOWING URL**

**<http://10.74.80.40/CorporateInformation/RFPs.html>**

## APPENDIX H1