

NEW YORK STATE
ECONOMIC DEVELOPMENT COUNCIL
REQUEST FOR PROPOSAL (RFP)

Economic Development Marketing Services for Lead Generation

PROPOSAL DUE DATE – June 28, 2013

(No proposal will be accepted beyond this date)

Release Date – May 28, 2013

Request For Proposal (RFP) Response Form

Please review this RFP carefully. Complete the following information and mail this form together with your entire proposal to the address at the bottom of this page. Late proposals cannot be accepted.

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:

Phone #: _____ **Fax #:** _____

Signature: _____ **Date:** _____

Type or Print Name and Title: _____

Please mail this Response Form with entire proposal to: NYSEDC Marketing RFP, NYS Economic Development Council, 111 Washington Avenue, Albany, NY 12210. Proposals must be received by NYSEDC not later than June 28, 2013.

NEW YORK STATE
ECONOMIC DEVELOPMENT COUNCIL

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SECTION I - ADMINISTRATIVE INFORMATION

1.0 Purpose

The New York State Economic Development Council (hereafter referred to as “NYSEDC”) has issued this Request for Proposal (RFP) in partnership with Empire State Development (hereafter referred to as “ESD”) to secure a qualified individual or firm (the “Contractor”) to design and execute for NYSEDC a direct marketing campaign to targeted businesses outside New York State. The successful Contractor will be responsible for identifying qualified leads for business attraction, marketing New York State opportunities to such qualified leads, and providing operational support for NYSEDC in industry-related activities and promotions.

Contractor shall be an independent contractor and shall remain free to perform services for other parties, provided that such parties are disclosed to NYSEDC.

1.1 Inquiries

Inquiries should be addressed to:

NYSEDC Marketing RFP
NYS Economic Development Council
nysedc.rfp@gmail.com

All questions must be submitted in writing to NYSEDC Marketing RFP via e-mail. Please do not contact NYSEDC by telephone. Questions must be received no later than June 7, 2013. All inquiries must cite the particular RFP section in the question, if applicable. Answers to all questions of a substantive nature will be provided to all known recipients of the RFP.

1.2 Schedule of Pertinent Dates

Release of RFP	May 28, 2013
Deadline for Receipt of Questions	June 7, 2013
Submission of Proposals	June 28, 2013 by 3:00 PM Eastern Standard Time
	Late proposals cannot be accepted.
Award of Contract	Week of July 8, 2013 (estimated)
Projected Contract Start Date	July 22, 2013

1.3 Submission of Proposals

Proposals must be received by NYSEDC no later than **3:00 P.M. U.S. Eastern Standard Time**, on **June 28, 2013**. Submit ten (10) print copies of the proposal to the following address:

**NYS Economic Development Council
111 Washington Avenue
Albany, NY 12210
Attention: NYSEDC Marketing RFP**

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

In addition to print copies, please **submit an electronic copy of the proposal by email to nysedc.rfp@gmail.com**. This will **NOT** be considered a substitute for a timely print copy submission.

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

2.0 Background

New York State Economic Development Council

The New York State Economic Development Council is New York State's principal organization representing economic development professionals. Our 900 members include the leadership of Industrial Development Agencies, Local Development Corporations, commercial and investment banks, underwriters, bond counsels, utilities, chambers of commerce and private corporations. The purpose of NYSEDC is to promote the economic development of the state and its communities, to encourage sound practices in the conduct of regional and statewide development programs, and to develop education programs that enhance the professional development skills of NYSEDC members. One of our key activities includes organizing business marketing programs to promote New York as a world class business location, and provide opportunities for NYSEDC members to market their regions of New York to potential business investors.

Empire State Development is New York's chief economic development agency. The mission of Empire State Development is to promote a vigorous and growing economy, encourage the creation of new job and economic opportunities, increase revenues to the State and its municipalities, and achieve stable and diversified local economies. Through the use of loans, grants, tax credits and other forms of financial assistance, Empire State Development strives to enhance private business investment and growth to spur job creation and support prosperous communities across New York State.

2.1 Scope of Services

NYSEDC and ESD seek a Contractor to implement a direct marketing campaign to targeted businesses outside New York State. The Contractor is to design and execute an outreach strategy to generate "qualified leads". The responsibilities of the Contractor shall include identification of target companies, project identification, qualification, and appointment setting as further described in this Section 2.1 and provide the deliverables as described in Section 2.3 of the RFP.

In this difficult financial environment and challenging market, NYSEDC and ESD seek a partner who can identify and implement highly creative, cost effective marketing messaging to attract new business to New York State. For the purpose of this RFP and any contract (the "Contract") resulting from it, the Services shall mean:

(i) **Marketing** of New York State and NYSEDC to the following eight (8) target industry clusters: life sciences, IT (nano-electronics and software), optics and imaging, food and beverage processing, renewable energy, advanced materials processing, transportation equipment and financial services. Marketing activities should include but not necessarily be limited to the following:

- *Identification of target companies.* Target lists will be developed by contractor in conjunction with participating NYSEDC members and Empire State Development

Industry Directors, Research and NYSTAR staff. Note: NYSEDC will deploy one point person to communicate with the Contractor.

- *Project Identification and qualification.* Connect with decision-makers at targeted companies to ascertain their growth plans in regards to expansion or relocation, and their anticipated type of investment and preferred site location factors.
- *Appointment setting.* Baseline outreach effort will be to pursue meeting time by phone, webinar, or in-person with firms. Contractor will also assist with obtaining appointments at the major trade shows attended by firms from our target industry clusters.
- *Canadian Prospects.* Contractor will assist with identifying Canadian firms for foreign direct investment into New York State, with a strong focus on firms located primarily in Ontario and Quebec provinces.
- *Basic customer relationship management (CRM) software.* All analytics and communications data should be housed in an easily accessible CRM solution that provides a simple and basic analysis of the overall effort. This CRM solution should not be a large part of the overall budget.

(ii) **Definition of a “qualified lead.”** A qualified lead will be considered any prospect with a valid business purpose to talk to New York State with the intent of building a relationship. Prospects do not need an immediate tangible project to be considered as having a valid purpose to talk to New York State, but a project should be in the pipeline where New York State would be considered. Prospects identified as “qualified leads” will be contacted to schedule a meeting with a NYSEDC and ESD representative. The end goal is to create opportunities for NYSEDC and ESD economic development professionals to lay the groundwork for mutually beneficial relationships with potential inward investors.

2.2 Budget

This will be a one year contract, with the option for renewal for additional contract years. The contractor’s budget should reflect costs for marketing activity, which shall represent direct marketing expense. Marketing activity shall not mean personnel fees, personnel expenses, overhead, rent, and other similar expenses.

2.3 Deliverables

The Contractor will also be responsible for providing:

- Obtain a minimum 56 appointments with “qualified leads”, and achieve a target goal of seven (7) appointments in each of the eight (8) target industry clusters.
- When appointments are confirmed, the Contractor will be responsible for providing a company profile (to the extent that it is available) that includes:
 - Revenues, number of employees, areas of operation, major suppliers and competitors;
 - Key company personnel, including contact information;
 - Project details, including expected job creation, project timeframe and geographic location(s) being considered;

- Summary of financial stability and capacity to expand;
 - Name and title of executives interviewed and synopsis of interviews.
- Customer relationship management (CRM) software that provides real time and complete access to the entire lead generation and research effort.
- Monthly activity reports that reflect activities and accomplishments within 30 days of the month covered by the report. The reports shall include discussions that demonstrate how the following objectives are being met:
 - Identification of potential “qualified leads” within target industries;
 - Detailed information regarding project identification information culled from target list prospects;
 - Status of completed or scheduled appointments with “qualified leads”; and
 - Status update on CRM software updates, additions, and changes.
- The marketing and outreach plan shall be provided by the Contractor within 30 days of the contract start date and shall cover the period from the start of the contract through one year from time of contract commencement.

2.4 Mandatory Qualification Requirements

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

1. Demonstrated knowledge of and at least five (5) years experience in working on economic development marketing.
2. Proven experience in direct marketing and outreach through various channels.
3. Demonstrated accomplishments in economic development marketing.
4. Staff assigned to this project with relevant experience and qualifications.
5. Contractor must provide the name, address, phone number, contact name, title and email address of three business references and three economic development agencies that can substantiate that your company has successfully conducted similar projects in the past.
6. Contractor must have the economic resources to pay expenses in advance of reimbursement from the NYSEDC and ESD, for the services described in Section 2.1 and 2.2 of this RFP, as well as the staff and administrative expense itemized in your proposal budget.

2.5 Selection Criteria/Evaluation

Proposals that meet all the mandatory qualifications as outlined in Section 2.4 above will be evaluated by NYSEDC and ESD based on the Selection Criteria stated in this section.

Proposals will be scored based on the following criteria:

- 1. Technical evaluation** consisting of:
 - a. **Demonstrated Experience (20 points)**

Relevant marketing experience in performing services similar to those described in Sections 2.1 and 2.3 of this RFP for similar statewide economic development clients with clear, demonstrated impact

b. Quality of Approach & Performance Metrics (25 points)

Thorough and creative plan proposed to accomplish Scope of Services (Section 2.1) with demonstrated ability to execute said proposal in a timely fashion. Your proposal must address each item listed in Sections 2.1 through 2.3 above and a timeline for execution plan of action. (See also Section 3.1.)

c. Organizational capability (15 points)

Commitment, capability and expertise of the specific staff to be assigned to this account

d. Minority and Women-Business Enterprise Certification (10 points)

Contractor's participation in New York State's MWBE certification program helps to advance the State's policy initiatives aimed at supporting business opportunities for the MWBE community.

2. Resources and cost evaluation (30 points)

a. Evaluation of the adequacy, appropriateness, effectiveness, and reasonableness of the resources proposed by the firm to accomplish the scope of services and tasks set forth in Section 2.1 – Scope of Services.

b. Evaluation of the total cost proposed in the financial and resource proposal as set forth in Section 3.1.

EVALUATION PROCESS

The evaluation of proposals will be done in two parts – Technical Evaluation, Resources and Cost Evaluation. The Technical Evaluation will review the technical portion of each proposal based on the technical criteria listed above in Section 2.5, 1.a-c. The Cost Evaluation shall be computed using a weighted average formula by the evaluator(s) or, at NYSEDC and ESD's discretion. The technical, resource and cost scores will be added together resulting in the total score for the written proposal. Total points will not be the sole determining factor for contractor selection.

CONTRACT AWARD

NYSEDC anticipates that a single Contractor will be conditionally designated based upon NYSEDC's determination of the best value for NYSEDC and ESD. Upon selection, negotiations will be commenced with the conditionally designated proposer to enter into a contract setting forth the general terms that would govern any subsequent contract for services contemplated by this RFP. NYSEDC will not enter into protracted negotiation with the conditionally designated proposer over contract terms and conditions or wait an unreasonable

amount of time for the return of a signed contract including any amendments thereto. If the conditionally designated proposer does not sign and return to NYSEDC the proposed contract including any draft of the proposed contract, within thirty (30) calendar days of receipt, NYSEDC reserves the right to withdraw from consideration such proposer. NYSEDC will not be responsible for any cost incurred by the conditionally designated proposer as a result of a withdrawal from consideration. Further conditional designation would then be made to the next highest responsible scoring proposer.

SECTION III - PROPOSAL CONTENT AND CONDITIONS

3.0 General Information

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

3.1 Complete Proposal Instructions

Each participating bidder must submit a complete proposal with each element of Sections 2.1, 2.2, 2.3, and 2.4 addressed. In addition, all proposals must include the following information. Bidders supplying incomplete responses may be deemed non-compliant. Please follow the format listed below:

- 1.) Title page, indicating:
Name, address (both mail and email) phone & fax number, contact person, and federal ID number (if any). It must also include a signed statement that the offer shall be firm and not revocable for a period of 60 days unless withdrawn in writing.
- 2.) Table of contents and page numbers
- 3.) Technical Proposal

a. Experience

- **Provide background information on your company**, including: history, years in business, and experience in the past 5 years, company size, number of employees, types of services provided, locations, parent company, and/or affiliate information, type of company, etc. Also include a discussion on how your company meets the experience, knowledge and accomplishment requirements in Section 2.4 of this RFP.
- **Specify the accreditations your company** has acquired since its inception, and give details of any company membership of professional or trade organization affiliations
- **Attach a listing of at least three (3) relevant business references and (3) relevant economic development agency references**, including the name of the reference entity, a brief statement describing the relationship between the proposer and the reference entity, and the name, title and telephone number of a contact person at the reference entity.
- **Attach a current client list**

b. Proposed Approach and Performance Metrics

The Approach shall address:

- **Scope of work.** Describe in detail how your company will provide the Scope of Work described in Section 2.1 and 2.3 of this RFP within the budget set forth at Section 2.2.
- **Marketing and outreach plan.** Outline the key elements of a directed marketing plan to promote New York State as a premier business location

for out-of-state and foreign prospects in the identified seven target industry clusters.

- **Prioritization.** Given the breadth of activities included in the scope of work and a fixed budget, priority must be placed on activities that will result in the highest return on investment of time and money. Provide an experienced-based perspective on which activities, should result in the highest return on investment

Performance metrics discussion shall address:

- Performance measures related to each element of the proposed program are essential and required. Please include suggested metrics, tracking methodology and a process for regular, ongoing reporting that demonstrates clear ROI for NYSEDC and ESD's investment.

c. Organizational Capability

- **Demonstrate the company's organizational capability** to provide the Scope of Work and Deliverables described in Sections 2.1 and 2.3.
- **Specify who would be the primary contacts** and dedicated staff on the NYSEDC and ESD account. Include resumes identifying their experience working with the seven target industry clusters and economic development marketing as it relates to developing target lists, and attracting and securing "qualified leads" in addition to, knowledge of/experience with New York State
- Identify how much time each staff person would devote to this account.

4). Financial and Resource Proposal

A Financial and Resource Proposal must be completed and submitted as part of your proposal. Each bidder must demonstrate how it will complete the Scope of Services within a reasonable budget. Annual cost shall include all employment-related expenses including payroll taxes, health insurance, employer liability insurance, etc. The bidder shall include in his proposal the expenses associated with attending (admission fees, travel, etc.) the Trade Shows as noted in Section 2.1 but not the costs of exhibiting (booth fees) at such events. Should NYSEDC and its members wish to exhibit at the events, it intends to contract for those services directly with the organizers. If any of the personnel duties will be filled with subcontractors, please identify any such subcontractor and separately include their costs in the proposal. Subcontractor services are performed by other organizations or individuals who are not employees of the Contractor. All figures shall be included in U.S. dollars. Note: NYSEDC will not pay for Contractor relocation expenses. Do not include such costs in your financial proposal. In addition, discuss resource allocation and recommendations on how resources should be allocated to marketing and outreach activities. Discuss your approach to optimizing the budget to ensure NYSEDC achieves maximum impact.

3.2 Proposal Conditions

Only those individuals or firms who have supplied complete information will be considered. Any patented or proprietary information included in the proposal must be clearly identified in the proposal and in a cover letter submitted with the proposal (see Section 3.4).

NYSEDC reserves the following prerogatives:

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

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

3.3 Alternative Proposals

NYSEDC and ESD may consider alternative proposals with respect to the Scope of Service (Section 2.1) and Deliverable (Section 2.3) of the RFP. An alternative proposal is one that recommends goods and/or services that are not in compliance with the Scope of Service, Budget and, in some cases, other sections of the RFP. NYSEDC and ESD does not solicit alternative proposals but will consider them. Please be advised that an alternative proposal cannot be considered by NYSEDC and ESD, unless you also submit a proposal in exact compliance (Compliant Proposal) with the terms of this RFP. A Compliant Proposal is required to allow NYSEDC and ESD to compare your proposal to other Compliant Proposals received by NYSEDC and ESD.

3.4 Notification of Award

NYSEDC will notify the conditionally designated proposer verbally, followed by written confirmation.

A contract defining all terms and conditions of the parties will be drafted by NYSEDC. The contract may incorporate SECTION II - PROGRAM BACKGROUND AND SCOPE OF SERVICES of this RFP, and as much of the conditionally designated proposer's final proposal as may be appropriate among its provisions. After NYSEDC and the conditionally designated proposer execute the contract, it must be submitted for approval to the NYSEDC Executive Committee.

3.5 Liability

NYSEDC is not liable for any costs incurred by any individual or firm for work performed to prepare its proposal or for any travel or other expenses incurred in the preparation and/or submission of its proposal. Further, NYSEDC is not liable for any costs incurred prior to the time that the contract has been approved by NYSEDC's Executive Committee.

SECTION IV - CONTRACTUAL INFORMATION

4.0 Contract Term

Contractor shall perform the work and provide the services set forth in this RFP as an independent contractor for a period of one (1) year.

NYSEDC reserves the right to cancel any contract resulting from this RFP as described in Section 4.1 – Cancellation below. Both parties agree that any contract resulting from this RFP shall be for one year from contract execution unless earlier terminated as described in Section 4.1 – Cancellation below.

4.1 Cancellation

Once a contract or other agreement resulting from this RFP is fully executed and approved, NYSEDC has the right to cancel it early, in whole or in part, for cause or unavailability of funds at any time or for convenience on thirty (30) calendar days written notice to the Contractor. If cancelled for cause, payment to the Contractor for charges incurred will be made at NYSEDC's sole discretion. If cancelled for convenience, NYSEDC agrees to pay the Contractor for charges incurred in the performance of the Contract up to the time of cancellation.

4.2 Subcontracting Requirement

Contractor may subcontract elements of the program for which it lacks location or in-house capabilities, but must identify the scope and budget for any such subcontracted work.

Contractor may not, without written consent of NYSEDC, assign to any party the Contract or any interest herein, or claim hereunder.

4.3 Financial Terms/Payment Process

a) Payment for Contractor's Services. All amounts referred to in this RFP and the Contract shall be in United States Dollars. NYSEDC shall pay to the Contractor a fee for the Services as established in the Contractor's Financial Proposal. No other amounts for compensation, expenses, taxes, fees or other costs shall be owed by NYSEDC to the Contractor for Services during the term of the Contract. Payment for services performed to the satisfaction of NYSEDC shall be made in the ordinary course of business upon receipt of duly authenticated invoices/vouchers, list of tasks performed during the billing period in a format acceptable to NYSEDC and upon receipt of reports and/or deliverables, if required elsewhere in this RFP. Contractor shall invoice NYSEDC monthly on the first day of each month. Unless otherwise agreed by the parties, all payments relating to fees described in the Contract shall be made by NYSEDC by deposit into the Contractor Account which is further described in Section 4.3(e).

b) Expenses. The Contractor shall be responsible for all expense which Contractor incurs in rendering services under the Contract, including without limitation, compensation to Contractor's subcontractors, employees, assistants or agents, if any, travel expenses, long

distance and local telephone charges, entertainment expenses, office rental or mortgage expenses, training expenses, the cost of tools and supplies, and all other expenses incurred in rendering services under the Contract.

c) Payments of Tax Assessments. As an independent contractor, NYSEDC will not be responsible for payment of any FICA, FUTA or other similar charges or withholding for Contractor, and Contractor acknowledges and agrees that it is solely the Contractor's obligation to report and pay all federal, state and local income, self-employment and other taxes due for him on all compensation from NYSEDC as may be required by law. NYSEDC will issue a Form 1099 for all compensation paid to the Contractor. Additionally, Contractor assumes full responsibility for the payment of all assessments or contributions, whether of state or U.S federal, with respect to all employees engaged by Contractor to perform services in connection with the Contract.

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

e) Contractor Account. The Contractor shall establish and maintain a deposit account ("Contractor Account") with a financial institution designated by the Contractor. The Contractor shall notify NYSEDC of the location and account number of such Contractor Account.

f) Accounting Records.

(1) NYSEDC shall not be liable for a negative balance in the Contractor Account or any other account.

(2) All expenses shall be recorded in the books of the Contractor and charged against the Contractor Account cost. The Contractor shall not be allowed any fee, commission or other benefit based on cost incurred under Contract.

(3) Financial records of the Contractor shall be maintained in accordance with generally accepted accounting principles in the United States.

(4) Financial records shall be kept on an accrual basis.

f) No Benefits. Contractor will be responsible for providing Contractor's own benefits and insurance coverage during the term of the Contract.

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

4.4 Relationship

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

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

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

(d) Other Activities of Contractor. The Parties agree that Contractor may be engaged as a consultant, employee or otherwise in non-profit, business or commercial activities for other parties during the term of this contract, provided that such activities: (1) do not prevent Contractor from performing its obligations as set forth in the Contract; and (2) the Contractor discloses those activities which are performed by the Contractor for another state, trade association, or trade group.

(e) Limitation on Authority. The Contractor acknowledges that it is not an agent or legal representative of NYSEDC and the Contractor shall not have nor represent that it does have any power or right to bind NYSEDC. Neither NYSEDC nor any employee or agent of the Contractor shall be deemed to be the legal representative or an employee of NYSEDC by reason of the contract. Nothing contained in the Contract shall in any way be construed to create an agency or employee relationship between the Contractor and NYSEDC.

(f) Insurance. Contractor agrees to maintain such insurance necessary to fully protect both Contractor and NYSEDC from any and all claims under the Workers' Compensation Act, including maintaining insurance, through appropriate local government department or agency, or employers' liability laws, and from any and all other claims for damage to property or for personal injury, including death, made by any person whomsoever, that may arise from or relate to performance of the Services by Contractor, any subcontractor or any person directly or indirectly engaged or employed by Contractor or subcontractor. Contractor agrees to name NYSEDC as an additional insured and to provide NYSEDC with certificates evidencing the required insurance coverage before Contractor begins performance of the Services.

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

(h) Title to Contractor's Materials. Title to the materials to be furnished by Contractor in connection with the performance of the Services shall remain with the Contractor unless otherwise specified in Sections 4.8.

4.5 Intellectual Property/Personal Property Rights in Data Computer Software and Other Intellectual Property

(a) Rights in Data. All studies, reports, findings, sources, bibliographies, subscriber lists, mailing lists, working papers, files, input materials and output materials, the media upon which the same are located (including cards, tapes, discs, and other storage facilities), together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, and all other materials, prepared for and delivered to NYSEDC in the course of performance of the Contract (hereinafter referred to as "Data"), shall be deemed to be "work made for hire" (as defined in Section 101 of Title 17 of the United States Code), and shall be provided to and become the exclusive property of NYSEDC. Data shall be deemed and determined to not include computer software and related documentation. If it is determined that any Data encompassed above does not fall within the definition of "work made for hire" (as defined in Section 101 of the Title 17 of the U.S.C), the Contractor hereby covenants and agrees to transfer all right, title and interest in any such Data to NYSEDC, and cooperates with NYSEDC, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

(b) Rights to Contractor Owned Pre-Existing Computer Software/Documentation. All computer software and related documentation, together with any versions of the same or other intermediate components thereof, which may or may not be either confidential or proprietary, which was owned by the Contractor and existed at the time of the effective date of the Contract and which, during the Term of the Contract is used by the Contractor in the conduct of the performance of the Contract in such a fashion as to render such preexisting software to the state of being an integral and necessary operating component of the Contractor-Developed Computer Software developed under the Contract (hereinafter referred to as "Contractor Owned Pre-Existing Computer Software/Documentation") shall be deemed to remain the property of the Contractor and all right, title and interest therein to the same shall continue to vest in the Contractor, with the express understanding that pursuant to the Contract the Contractor shall license to NYSEDC the right to use such Contractor Owned Pre-Existing Computer Software/Documentation to the extent necessary for NYSEDC to derive the benefits of the Contract scope.

(c) Rights to Contractor Developed Computer Software/Documentation. The Contractor will design, develop and install computer software as may be required for NYSEDC for purposes of the Contract scope. NYSEDC will have exclusive ownership of the software including all

documentation, source and executable code. All computer software and related documentation, together with any versions of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed by the Contractor in the direct course of performance of the Contract (hereinafter "Contractor Developed Computer Software/Documentation") shall be deemed to be the property of NYSEDC and all right, title and interest therein to the same shall vest in NYSEDC.

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

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

4.6 Confidentiality

For and in consideration of the term of the Contract, Contractor shall agree to the following for the ongoing protection of NYSEDC:

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

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

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

(b) Scope. For purposes of the Contract, “Confidential Information” shall mean confidential and proprietary business or technical information furnished to or obtained by Contractor during the course of its contracting arrangement with NYSEDC (including, without limitation, information created, discovered, developed or made know by such Contractor as part of its engagement with NYSEDC), whether such information is in the form of Data, Items, forecasts, records, reports or other documents prepared by or on behalf of NYSEDC. Such Confidential Information includes, by way of illustration, but is not limited to: (1) any NYSEDC information regarding a NYSEDC Customer (as defined below), including but not limited to customer lists, contracts, business transactions, requirements, billing histories, needs, and products or services provided by NYSEDC to such customers; or (2) all financial information concerning NYSEDC, including but not limited to financial statements, balance sheets, profit and loss statements, earnings, commissions and salaries paid to employees, sales data and projections, forecasts, cost analyses, and similar information; or (3) all NYSEDC information regarding sources and methods of supply to NYSEDC, including but not limited to supply agreements, supplier lists, supply terms, product discounts and similar information; or (4) all plans and projections for business opportunities for new or developing business of NYSEDC, including but not limited to marketing concepts and business plans; or (5) all software, drawings, specifications, models, and marketing techniques developed by NYSEDC; or (6) all information relating to NYSEDC’s services, products, prices, costs, development activities, service performance, operating results, employee lists, personnel matters, and other confidential or proprietary information; or (7) any of the information described in subsections (1)-(6) of this Section 4.6(b) that NYSEDC obtains from another party or entity and that NYSEDC treats or designates as confidential or proprietary

information, whether or not such information is owned or was developed by NYSEDC. “Confidential Information” shall not include information that is generally known or available to the public.

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

(c) Return of Documents/Data. Contractor acknowledges and agrees that, with the exception of information that Contractor can demonstrate was possessed or owned by it prior to its engagement with NYSEDC that has not otherwise been modified, updated, or improved by Contractor or NYSEDC in connection with its engagement with NYSEDC, all sales files, customer records, customer lists, supplier records, supplier lists, product information, letters, contracts, notes, notebooks, records, reports, memoranda, formulae, and all other NYSEDC materials, documents, and data used, prepared, or collected by Contractor as part of its engagement with NYSEDC, in whatever form, are and will remain the property of NYSEDC. Contractor also understands and agrees that all Confidential Information that comes into its possession while an independent contractor of NYSEDC, whether prepared by it or others, is and will remain the property of NYSEDC. Thus, Contractor shall return to NYSEDC all documents, written material, information, products, devices, and other property belonging to NYSEDC, as well as all documents and other materials of any kind that constitute or contain any Confidential Information, in Contractor’s possession or control, regardless of how stored or maintained, including all originals, copies, and compilations and all information stored or maintained on computer, tapes, discs, or any other form of technology upon the earlier to occur of (i) five (5) business days after receipt of NYSEDC’s written request to return such property or (ii) the last day of the Contractor’s engagement with NYSEDC.

(d) Duration of Confidentiality Obligations. Contractor shall maintain and keep all Confidential Information strictly confidential throughout the term of the Contract and for a period of twelve (12) months after engagement with NYSEDC ends. In addition, Contractor shall agree that the provisions of this Section 4.6 shall survive the termination or end of Contractor’s independent contractor relationship with NYSEDC, regardless of the date, reason or manner of such termination, and such termination shall not in any way impair or affect Contractor’s continued obligation to observe the provisions of this Section 4.6.

4.7 Right to Publish

The Contractor shall not publish, circulate or disclose any articles, reports or other writing concerning the subject matter of the Contract without the prior written consent of NYSEDC. Any publication or news releases relating to the Contract shall state that the Services are supported by the New York State Economic Development Council.

4.8 Compliance with Applicable Law

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

4.9 Indemnification

(a) General. The Contractor hereby agrees to indemnify NYSEDC and each of NYSEDC's directors, officers, employees and agents, and to hold NYSEDC and each of NYSEDC's directors, officers, employees and agents, harmless from and against any and all claims, demands, and causes of action based on any violation of any laws, statutes, codes, ordinances, and regulations and the defense of any such claims, demands or causes of action, arising directly or indirectly from actual or alleged action or omissions of the Contractor or any of its subcontractors or employees in connection with the Contract.

(b) Taxes. Contractor shall indemnify NYSEDC against all liability and loss in connection with, and shall assume full responsibility for, United States, state and local taxes or contributions imposed or required under unemployment insurance, workers' compensation, social security, pension, and income tax laws, with respect to the Contractor and Contractor's employees and subcontractors.