**Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations**

**Background:**

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. 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 an 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, a covered governmental entity must consider 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.

**Instructions:**

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations 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.

**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:_____

_____

Contract Procurement Number:_____

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

Name:_____

Title:_____

## Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

**Background:**

State Finance Law § 139j(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 al this section.

**Instructions:**

A Governmental Entity 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. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

Signed:_____ Date: _____

Name:_____

Title:_____

Contractor Name: _____

Contractor Address: _____

_____

_____

New York State Department of Taxation and Finance

# Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

**ST-220-CA**

(6/06)

**For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help? on back).***

| | | | | |
|---|---|---|---|---|
| Contractor name | | | | *For covered agency use only*<br>*Contract number or description* |
| Contractor's principal place of business | City | State | ZIP code | |
| Contractor's mailing address *(if different than above)* | | | | *Estimated contract value over the full term of contract (but not including renewals)*<br>$ |
| Contractor's federal employer identification number (EIN) | Contractor's sales tax ID number (if different from contractor's EIN) | | | |
| Contractor's telephone number | Covered agency name | | | |
| Covered agency address | | | | *Covered agency telephone number* |

I, _____ (name), hereby affirm, under penalty of perjury, that I am _____ (title) of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

*(Mark an **X** in only one box)*

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____ *(insert contract number or description)* and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

_____ *(sign before a notary public)*

_____ *(title)*

## Instructions

### General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency,* with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

### When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);

ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

## Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared_____,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

[Mark an ***X*** in the appropriate box and complete the accompanying statement.]

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _he is the_____

of_____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _he is a _____

of_____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____
Notary Public

Registration No.
_____

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

### Need help?

**Internet access:** *www.nystax.gov* (for information, forms, and publications)

**Fax-on-demand forms:** 1 800 748-3676

**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

**Hearing and speech impaired** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

## COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

## NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the OSC Help Desk at ciohelpdesk@osc.state.ny.us or call 866-370-4672.

## DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at http://www.osc.state.ny.us/vendrep/documents/definitions.pdf. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

## RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

## REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

## ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

## STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

## I. LEGAL BUSINESS ENTITY INFORMATION

| | |
|---|---|
| Legal Business Entity Name* | EIN (*Enter 9 digits, without hyphen*) |
| Address of the Principal Place of Business (street, city, state, zip code) | New York State Vendor Identification Number |
| | Telephone ext. / Fax |
| E-mail | Website |

Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity, or EIN used in the last five (5) years and the status (active or inactive).

| Type | Name | EIN | Status |
|---|---|---|---|
| | | | |
| | | | |

1.0 Legal Business Entity Type – Check appropriate box and provide additional information:

| | | |
|---|---|---|
| ☐ Corporation (including PC) | Date of Incorporation | |
| ☐ Limited Liability Company (LLC or PLLC) | Date of Organization | |
| ☐ Partnership (including LLP, LP or General) | Date of Registration or Establishment | |
| ☐ Sole Proprietor | How many years in business? | |
| ☐ Other | Date Established | |

If Other, explain:

1.1 Was the Legal Business Entity formed or incorporated in New York State? ☐ Yes ☐ No

If 'No,' indicate jurisdiction where Legal Business Entity was formed or incorporated and attach a Certificate of Good Standing from the applicable jurisdiction or provide an explanation if a Certificate of Good Standing is not available.

☐ United States State _____

☐ Other Country _____

Explain, if not available:

1.2 Is the Legal Business Entity publicly traded? ☐ Yes ☐ No

If "Yes," provide CIK Code or Ticker Symbol

1.3 Does the Legal Business Entity have a DUNS Number? ☐ Yes ☐ No

If "Yes," Enter DUNS Number

***All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," which can be found at http://www.osc.state.ny.us/vendrep/documents/definitions.pdf.**

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

## I. LEGAL BUSINESS ENTITY INFORMATION

| | |
|---|---|
| 1.4 If the Legal Business Entity's Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State?<br>(Select "N/A," if Principal Place of Business is in New York State.) | ☐ Yes ☐ No<br>☐ N/A |
| If "Yes," provide the address and telephone number for one office located in New York State. | |
| 1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)?<br>If "Yes," check all that apply:<br>☐ New York State certified Minority-Owned Business Enterprise (MBE)<br>☐ New York State certified Women-Owned Business Enterprise (WBE)<br>☐ New York State Small Business (SB)<br>☐ Federally certified Disadvantaged Business Enterprise (DBE) | ☐ Yes ☐ No |

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

| Name | Title | Percentage Ownership (*Enter 0% if not applicable*) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

## II. REPORTING ENTITY INFORMATION

The Reporting Entity for this questionnaire is:

Note: Select only one.

☐ Legal Business Entity

*Note: If selecting this option, "Reporting Entity" refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)*

☐ Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF "REPORTING ENTITY" AND "ORGANIZATIONAL UNIT" FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

*Note: If selecting this option, "Reporting Entity" refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)*

IDENTIFYING INFORMATION

a) Reporting Entity Name

| Address of the Primary Place of Business (street, city, state, zip code) | Telephone<br>ext. |
|---|---|

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

| d) Does the Reporting Entity have a DUNS Number? | ☐ Yes ☐ No |
|---|---|

If "Yes," enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity. *For each person, include name and title. Attach additional pages if necessary.*

| Name | Title |
|---|---|
| | |
| | |

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

## INSTRUCTIONS FOR SECTIONS III THROUGH VII

For each "Yes," provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each "Other," provide an explanation which provides the basis for not definitively responding "Yes" or "No." Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

| **III. LEADERSHIP INTEGRITY**<br>**WITHIN THE PAST FIVE (5) YEARS, HAS ANY CURRENT OR FORMER REPORTING ENTITY OFFICIAL OR ANY INDIVIDUAL CURRENTLY OR FORMERLY HAVING THE AUTHORITY TO SIGN, EXECUTE OR APPROVE BIDS, PROPOSALS, CONTRACTS OR SUPPORTING DOCUMENTATION ON BEHALF OF THE REPORTING ENTITY WITH ANY GOVERNMENT ENTITY BEEN:** | |
|---|---|
| 3.0 Sanctioned relative to any business or professional permit and/or license? | ☐ Yes ☐ No ☐ Other |
| 3.1 Suspended, debarred, or disqualified from any government contracting process? | ☐ Yes ☐ No ☐ Other |
| 3.2 The subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct? | ☐ Yes ☐ No ☐ Other |
| 3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:<br>a) Any business-related activity; or<br>b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness? | ☐ Yes ☐ No ☐ Other |
| For each "Yes" or "Other" explain: | |

| **IV. INTEGRITY – CONTRACT BIDDING**<br>**WITHIN THE PAST FIVE (5) YEARS, HAS THE REPORTING ENTITY:** | |
|---|---|
| 4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, debarment for a violation of New York State Workers' Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law? | ☐ Yes ☐ No |
| 4.1 Been subject to a denial or revocation of a government prequalification? | ☐ Yes ☐ No |
| 4.2 Been denied a contract award or had a bid rejected based upon a non-responsibility finding by a government entity? | ☐ Yes ☐ No |
| 4.3 Had a low bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract? | ☐ Yes ☐ No |
| 4.4 Agreed to a voluntary exclusion from bidding/contracting with a government entity? | ☐ Yes ☐ No |
| 4.5 Initiated a request to withdraw a bid submitted to a government entity in lieu of responding to an information request or subsequent to a formal request to appear before the government entity? | ☐ Yes ☐ No |
| For each "Yes," explain: | |

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

| **V. INTEGRITY – CONTRACT AWARD**<br>**WITHIN THE PAST FIVE (5) YEARS, HAS THE REPORTING ENTITY:** | |
|---|---|
| 5.0 Been suspended, cancelled or terminated for cause on any government contract including, but not limited to, a non-responsibility finding? | ☐ Yes ☐ No |
| 5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract? | ☐ Yes ☐ No |
| 5.2 Entered into a formal monitoring agreement as a condition of a contract award from a government entity? | ☐ Yes ☐ No |
| For each "Yes," explain: | |

| **VI. CERTIFICATIONS/LICENSES**<br>**WITHIN THE PAST FIVE (5) YEARS, HAS THE REPORTING ENTITY:** | |
|---|---|
| 6.0 Had a revocation, suspension or disbarment of any business or professional permit and/or license? | ☐ Yes ☐ No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of Minority-Owned Business Enterprise, Women-Owned Business Enterprise or federal certification of Disadvantaged Business Enterprise status for other than a change of ownership? | ☐ Yes ☐ No |
| For each "Yes," explain: | |

| **VII. LEGAL PROCEEDINGS**<br>**WITHIN THE PAST FIVE (5) YEARS, HAS THE REPORTING ENTITY:** | |
|---|---|
| 7.0 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation? | ☐ Yes ☐ No |
| 7.1 Been the subject of an indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime? | ☐ Yes ☐ No |
| 7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful? | ☐ Yes ☐ No |
| 7.3 Had a government entity find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law? | ☐ Yes ☐ No |
| 7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any government entity involving a violation of federal, state or local environmental laws? | ☐ Yes ☐ No |
| 7.5 Other than previously disclosed:<br>a) Been subject to fines or penalties imposed by government entities which in the aggregate total $25,000 or more; or<br>b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity? | ☐ Yes ☐ No |
| For each "Yes," explain: | |

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

| VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY | |
|---|---|
| 8.0 Within the past five (5) years, has the Reporting Entity received any formal unsatisfactory performance assessment(s) from any government entity on any contract? | ☐ Yes ☐ No |
| If "Yes," provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses. | |
| 8.1 Within the past five (5) years, has the Reporting Entity had any liquidated damages assessed over $25,000? | ☐ Yes ☐ No |
| If "Yes," provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses. | |
| 8.2 Within the past five (5) years, have any liens or judgments (not including UCC filings) over $25,000 been filed against the Reporting Entity which remain undischarged? | ☐ Yes ☐ No |
| If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses. | |
| 8.3 In the last seven (7) years, has the Reporting Entity initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending? | ☐ Yes ☐ No |
| If "Yes," provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses. | |
| 8.4 During the past three (3) years, has the Reporting Entity failed to file or pay any tax returns required by federal, state or local tax laws? | ☐ Yes ☐ No |
| If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the Reporting Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses. | |
| 8.5 During the past three (3) years, has the Reporting Entity failed to file or pay any New York State unemployment insurance returns? | ☐ Yes ☐ No |
| If "Yes," provide the years the Reporting Entity failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses. | |
| 8.6 During the past three (3) years, has the Reporting Entity had any government audit(s) completed? | ☐ Yes ☐ No |
| a) If "Yes," did any audit of the Reporting Entity identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any material disallowance? | ☐ Yes ☐ No |
| If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses. | |

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

| **IX. ASSOCIATED ENTITIES**<br>**THIS SECTION PERTAINS TO ANY ENTITY(IES) THAT EITHER CONTROLS OR IS CONTROLLED BY THE REPORTING ENTITY.**<br>**(SEE DEFINITION OF "ASSOCIATED ENTITY" FOR ADDITIONAL INFORMATION TO COMPLETE THIS SECTION.)** | |
|---|---|
| 9.0 Does the Reporting Entity have any Associated Entities?<br>Note: All questions in this section must be answered if the Reporting Entity is either:<br>– An Organizational Unit; or<br>– The entire Legal Business Entity which controls, or is controlled by, any other entity(ies).<br>If "No," SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X. | ☐ Yes ☐ No |
| 9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:<br>a) Any business-related activity; or<br>b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness? | ☐ Yes ☐ No |
| If "Yes," provide an explanation of the issue(s), the individual involved, his/her title and role in the Associated Entity, his/her relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). | |
| 9.2 Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over $50,000? | ☐ Yes ☐ No |
| If "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses. | |
| 9.3 Within the past five (5) years, has any Associated Entity: | |
| a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process? | ☐ Yes ☐ No |
| b) Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity? | ☐ Yes ☐ No |
| c) Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract? | ☐ Yes ☐ No |
| d) Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of $500,000? | ☐ Yes ☐ No |
| e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime? | ☐ Yes ☐ No |
| f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity? | ☐ Yes ☐ No |
| g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending? | ☐ Yes ☐ No |
| For each "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses. | |

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

| X. FREEDOM OF INFORMATION LAW (FOIL) | |
|---|---|
| 10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).<br>Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. | ☐ Yes ☐ No |
| Indicate the question number(s) and explain the basis for the claim. | |

| XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE | | |
|---|---|---|
| Name | Telephone<br>ext. | Fax |
| Title | Email | |

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
# FOR-PROFIT BUSINESS ENTITY

## Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State contracting entities in making responsibility determinations regarding an award of a contract or approval of a subcontract; (2) recognizes that the Office of the State Comptroller (OSC) will rely on information disclosed in the questionnaire in making responsibility determinations and in approving a contract or subcontract; (3) acknowledges that the New York State contracting entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (4) acknowledges that intentional submission of false or misleading information may constitute a misdemeanor or felony under New York State Penal Law, may be punishable by a fine and/or imprisonment under Federal Law, and may result in a finding of non-responsibility, contract suspension or contract termination.

**The undersigned certifies that he/she:**

- is knowledgeable about the Reporting Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Reporting Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State will rely on the information disclosed in the questionnaire when entering into a contract with the Reporting Entity; and
- is under obligation to update the information provided herein to include any material changes to the Reporting Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State contracting entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Officer _____

Printed Name of Signatory _____

Title _____

Reporting Entity Name _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____ 20 _____ ;

_____ Notary Public

## ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

**Vendor Name and Date:** _____

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State ("NYS"), bidders/proposers for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of the contract. Such partnering may be as sub-contractors, suppliers, protégés or other supporting roles (herein collectively called "Subcontractors").

Bidders/proposers need to be aware that, if selected through this ESD solicitation, they will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive NYS Subcontractors in performing the contract, including without limitation: (i) purchasing commodities; and (ii) utilizing services and technology. Further, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its NYS business partners. NYS businesses will promote the contractor's optimal performance under the contract, thereby benefiting public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore encourages bidders/proposers to provide maximum assistance to NYS businesses in their use of the contract. The potential participation by all kinds of NYS businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of NYS businesses by responding to the questions below (negative responses will not adversely affect contract selection):

(A) Do you anticipate the need for Subcontractors fulfilling the requirements of this ESD contract? Yes ☐ No ☐

(B) Do you anticipate that NYS businesses will be used in the performance of this ESD contract as Subcontractors? Yes ☐ No ☐

<u>NOTE</u>: If the answer to question (B) is Yes, please identify NYS businesses that will be used and attach identifying information such as name, address, contact information, nature of business. Please also be prepared to provide ESD on a regular basis (at least quarterly) with the amounts paid to NY businesses.

The statement highlighted in yellow should be put on company letterhead and signed by a proper designee of the responding party.

## Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the bidder or respondent on company letterhead and affirmed as true under penalty of perjury:

> *"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law."*

The list in question is maintained by The Office of General Services. No Proposal that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestment Act.

For further information and to view the list in question please go to:

http://www.ogs.ny.gov/about/regs/ida.asp

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-1**

M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

---

I, _____ (CONTRACTOR OR GRANT REPRESENTATIVE),

the _____ (GRANTEE/COMPANY NAME)

agree to adopt the following policies with respect to the project being developed or services rendered at

_____.

## NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

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

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

(d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

## MWBE PARTICIPATION (MWBE)

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

(1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

(2) Request a list of State-certified M/WBEs from ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at OCSD@ESD.NY.GOV.

(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

(4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

Agreed on this _____ day of _____ 20_____.

By: _____
(SIGNATURE)

**Print Name:** _____

**Title:** _____

**Minority & Women-owned Business Enterprise-Equal Employment Opportunity Liaison**

_____ (name of designated contractor/grantee liaison) is designated as the Minority and Women-owned Business Enterprise Liaison responsible for administering the Minority and Women-owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

_____% Minority Business Enterprise Participation

_____% Women's Business Enterprise Participation

_____% **TOTAL/OVERALL M/WBE Participation Goal**

**EEO Contract Goals**

NOT APPLICABLE % Minority Labor Force Participation

NOT APPLICABLE % Female Labor Force Participation

_____
(Signature of Contractor's Authorized Representative)

***Name:** _____

***Company:** _____

***Title:** _____

***Phone:** _____

***Fax:** _____

***Address:** _____

_____

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

STAFFING PLAN

## OCSD-2

(REQUIRED ONLY OF CONTRACTS VALUED AT $250,000 OR MORE)

---

**Submit with Bid or Proposal – Instructions on page 2**

| | | |
|---|---|---|
| **Contract No.:** | **Project Location:** | **Report includes Prime Contractor/Subcontractors:**<br>☐ Work force to be utilized on this contract<br>☐ Total work force<br>☐ Prime Contractor<br>☐ Subcontractor<br>**Subcontractor Name(s):** |
| **Contract Name / Details:** | | |
| **Company Name:**<br>**Company Address and Contract Details:** | | |

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

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

| | | |
|---|---|---|
| **PREPARED BY (Signature):**<br><br>**DATE:** | **NAME:**<br>**TITLE:**<br>**TELEPHONE:** | **ALTERNATE TEL:**<br>**EMAIL:**<br>**OTHER:** |

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

## OCSD-2

STAFFING PLAN

(REQUIRED ONLY OF CONTRACTS VALUED AT $250,000 OR MORE)

---

**General Instructions:** All Contractors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form OCSD-2) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form for the contractor's and/or Subcontractor's total work force.

**Instructions:**

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

**RACE/ETHNIC IDENTIFICATION:**

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

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

**OTHER CATEGORIES:**

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

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

## OCSD-3A

### Workforce Utilization Report Instruction Sheet

**Instructions for Submitting the Workforce Utilization Report**

The Workforce Utilization Report ("Report") is to be submitted on a monthly basis for construction contracts, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total workforce, information on the contractor's and/or subcontractor's total workforce shall be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to ESD within ten (10) days of the end of each month or quarter, whichever is applicable.

**Instructions for Completing the Workforce Utilization Report**

1. Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. Enter the number of the contract that the Report applies to along with the name and address of the contractor or subcontractor for which the Report has been prepared.
3. Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report.
4. Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor's or subcontractor's total workforce.
5. Verify that job titles are provided under the column titled "SOC Job Title" for each employee whose work will be reflected on the Report. If a necessary job title is not included, please add the corresponding job category, title and corresponding job code to the "EEO 1 Job Categories" "SOC Job Title" and "SOC Job Code" columns from the list of job categories, SOC titles, and SOC codes reflected on the attached Classification Guide.
6. In the first group of boxes, identify the number of hours worked by persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
7. In the second group of boxes, identify the number of persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
8. Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

**Race/Ethnic Identification**

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to

belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:

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

**Resources**

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact the Office of Contractor and Supplier Diversity (OCSD) at OCSD@esd.ny.gov.

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

# OCSD-4

## OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION PLAN

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

*** indicates mandatory fields**

***Contractor Name:** _____

***Representative Name:** _____

***Phone:** _____

***Fax:** _____

***Email:** _____

**Address:** _____

**Town, State & Zip:** _____

***ESD Contract/Project Number:** _____

**RFP/RFQ/Solicitation Number:** _____

***MWBE Goals:** MBE____% + WBE ____% = **MWBE GOAL** ____%

| 1. *Certified M/WBE Firm Name, Contact Person's Name, Address, Phone and Email. | 2. * MBE / WBE / or BOTH | 3. Federal ID No. | 4. Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available) | 5. Dollar Value of Contract (if unavailable or yet undetermined, indicate $1) |
|---|---|---|---|---|
| A. | NYS ESD CERTIFIED<br>☐ MBE<br>☐ WBE | | | |
| B. | NYS ESD CERTIFIED<br>☐ MBE<br>☐ WBE | | | |

6. **If unable to fully meet the M/WBE goals set forth in the contract, the Contractor must submit a Waiver Request form, which may be obtained from the Office of Contractor and Supplier Diversity, at OCSD@ESD.NY.GOV.**

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

**OCSD-4**

## OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION PLAN

---

**PREPARED BY (Signature):** _____ **DATE:** _____

**Preparer's Name (Print or Type):** _____

**Preparer's Title:** _____

**Date:** _____

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

| **TELEPHONE NO.:** | **EMAIL ADDRESS:** |
|---|---|

**** FOR OCSD-M/WBE USE ONLY ****

| **REVIEWED BY:** | **DATE:** |
|---|---|

**UTILIZATION PLAN APPROVED?**

☐ YES ☐ NO Date:

**Contract No.:**

**Project No. (if applicable):**

**Contract Award Date:**

**Estimated Date of Completion:**

**Amount Obligated Under the Contract:**

**Description of Work:**

**NOTICE OF DEFICIENCY ISSUED?**

☐ YES ☐ NO Date of Issue:

**NOTICE OF ACCEPTANCE ISSUED?**

☐ YES ☐ NO Date of Issue:

The MWBE Certification status of the firms listed on this form **MUST** be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises.

**This directory is available at https://ny.newnycontracts.com.**

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

## OCSD-5

WAIVER REQUEST FORM

| Waiver Applicant | |
|---|---|
| Contractor Name: | Fed ID No.: |
| Full Address: | Contract / RFP Number: |
| Project Details (Contract Name, Project Location): | Have you Previously submitted a Waiver Request? (YES/NO) |

**By submitting this form and the required information, the Contractor certifies that every "Good Faith Effort" has been taken to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Review 5 NYCRR §142.8, Contractor's Good Faith Efforts, on pages three and four of this form for the precise definition of "Good Faith Effort". Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor's responsibility to ensure that adequate, clear and complete information is presented to the Office of Contractor and Supplier Diversity (OCSD).**

***CURRENT CONTRACT VALUE: $**

***CURRENT MBE & WBE GOALS:**

MBE: _____ % + WBE: _____ % = **OVERALL MWBE GOAL:** _____ %

INDICATE ONLY THE OVERALL MWBE GOAL IF SPECIFIC MBE AND WBE GOALS WERE NOT ASSIGNED.

***CONTRACTOR IS REQUESTING :**

1. ☐ **MBE** Waiver – A waiver of the MBE Goal for this procurement is requested.
   CURRENT MBE GOAL: _____ %
   REQUESTED MBE GOAL: _____ %
2. ☐ **WBE** Waiver – A waiver of the WBE Goal for this procurement is requested.
   CURRENT WBE GOAL: _____ %
   REQUESTED WBE GOAL: _____ %
3. ☐ **OVERALL MWBE Waiver** – A waiver of the MWBE Goal for this procurement is requested.
   CURRENT OVERALL MWBE GOAL: _____ %
   REQUESTED MWBE GOAL: _____ %

PREPARED BY (Signature): _____ Date: _____

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.

| *Name and Title of Preparer: | *Telephone Number: | *Email: |
|---|---|---|
| | | |

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

## OCSD-5

WAIVER REQUEST FORM

---

Submit with the bid or proposal or if submitting after award submit to:

**Empire State Development Corporation**
**Office of Contractor and Supplier Diversity**
**633 Third Avenue, 33rd Floor**
**New York, New York 10017**

******* FOR M/WBE USE ONLY *******

| **REVIEWED BY:** | **DATE:** |
|---|---|
| | |

**Waiver Granted:** ☐ **YES** **MBE:** ☐ **WBE:** ☐

☐ **Total Waiver** ☐ **Partial Waiver**

☐ **ESD Certification Waiver** ☐ ***Conditional**

☐ **Notice of Deficiency Issued** _____

* **Comments:**

_____

_____

_____

_____

_____

## 5 NYCRR §142.8 - Contractor's Good Faith Efforts

(a) Contractors must document their good faith efforts toward utilizing certified minority- and women-owned business enterprises, including but not limited to, those identified within a utilization plan. Such documented efforts, shall include, at a minimum:

(1) Copies of its solicitations of certified minority- and women-owned business enterprises and any responses thereto;

(2) If responses to the contractor's solicitations were received, but a certified minority- or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;

(3) Copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;

(4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority- and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;

(5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority- and women-owned business enterprises.

(b) In addition to the information provided by the contractor in subdivision (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:

(1) where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontract or supplier opportunities in the contract;

(2) the number of certified minority- and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;

(3) the actions taken by the contractor to contact and assess the ability of certified minority- and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;

(4) whether the contractor provided relevant plans, specifications or terms and conditions to certified minority- and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;

(5) the terms and conditions of any subcontract or provision of suppliers offered to certified minority- or women-owned business enterprises and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;

(6) whether the contractor offered to make up any inability to comply with the certified minority- and women-owned business enterprises goals in the subject State contract in other State contracts being performed or awarded to the contractor;

(7) the extent to which contractor's own actions, including but not limited to, any failure by contractor to discharge contractor's duties pursuant to this Part or article 15-A of the Executive Law, contributed to contractor's inability to meet the maximum feasible portion of the contract goals;

(8) whether the contractor knowingly utilized one or more certified minority- and/or women-owned business enterprises, in the performance of the subject State contract, that contractor knew or reasonably should have known could not perform a commercially useful function.

(9) whether the contractor submitted compliance reports pursuant to section 142.11 of this Part, which identified certified minority- and/or women-owned business enterprises that contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned pursuant to section 142.2 of this Part. and

(10) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

I, _____, as _____ (title) of _____firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?[1]

[1] Do not include onsite project overhead.

4. Does your company provide technical training[2] to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

[2] Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

STATE OF _____

COUNTY OF ) ss:

On the _____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

_____

Notary Public